

RULES OF THE
MONROE COUNTY CIVIL SERVICE COMMISSION

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**RULES OF THE
MONROE COUNTY CIVIL SERVICE COMMISSION**

The "Rules of the Monroe County Civil Service Commission" that follow are based upon a revision of the Rules approved by the New York State Civil Service Commission on December 12, 1989, pursuant to a revision and re-codification of New York State Civil Service Law that became effective April 1, 1959 pursuant to Chapter 790 of the Laws of 1958.

These Rules have been amended by the Monroe County Civil Service Commission with the approval of the New York State Civil Service Commission from time to time since the 1961 Revision. The dates of these amendments are included within the text of the Rules.

The current issue of these Rules includes amendments to the Rules and Appendices through July 2009 and March 2012.

MONROE COUNTY CIVIL SERVICE COMMISSION

ROOM 210, COUNTY OFFICE BUILDING

39 MAIN STREET WEST, ROCHESTER, NEW YORK 14614

COMMISSIONERS

Jean Carrozzi, Chairperson

Donald O. Chesworth, Esq.

Ronald Good

Robert Michael Loewke

Brayton McK. Connard, Director of Human Resources, SPHR

Purpose and Effect

It is hereby declared to be the purpose of these rules to provide an orderly and uniform system for the administration of civil service in Monroe County on a basis of merit and fitness as provided in the Civil Service Law of the State of New York. These rules have the force and effect of law, and apply to all positions, which by law are under the jurisdiction of the Monroe County Civil Service Commission. These rules may be amended by the Commission after public hearing and subject to the approval of the State Civil Commission.

RULE I**DEFINITIONS**

Unless otherwise expressly stated, or unless the context or subject matter requires a different meaning, the several terms hereinafter mentioned, whenever used in these rules shall be construed as follows:

1. "Appointing Officer" means the officer, commission, board or body of any civil division to which these rules apply, who has the power of appointment to subordinate positions in any office, court, department, board, commission or institution of any of said civil divisions.
2. "Commission" means the Monroe County Civil Service Commission.
3. "Compensation" means the remuneration authorized for a position and shall include food, lodging, maintenance and commutation when the same is furnished.
4. "Eligible List" means an official public record established and maintained by the Commission as a public record which contains the names of those persons who have successfully completed examinations, listed in order of their final ratings from the highest to the lowest mark.
5. "Employee" means the incumbent of a position appointed to the position in accordance with these rules and the Civil Service Law.
6. "Municipality" means county, town, village, special district, school district or civil division.
7. "Part time employment" means any employment or combination of one or more positions in a civil division in which an individual works fifty percent or less of the time prescribed as the standard work week by the governing body or other appropriate authority of the civil division or wherein the employee earns not more than one half (1/2) of the rate assigned to the position if the position has been allocated to a graded salary schedule.
8. "Position" means an office or employment involving an aggregation of duties to be performed and responsibilities to be exercised by one person.
9. "Reassignment" means the change, without further examination, of a permanent employee from one position to another similar position in the same title under the jurisdiction of the same appointing authority.
10. "Transfer" means the change, without further examination, of a permanent employee from a position under the jurisdiction of one appointing authority to a similar position under the jurisdiction of another appointing authority, or to a position in a different title under the jurisdiction of the same appointing authority.

RULE II**ORGANIZATION AND POWERS OF THE COMMISSION**

The County Executive shall designate one of its members as chairperson. Three commissioners shall constitute a quorum for the transaction of business. The Executive Director may appoint a secretary and such other subordinates, examiners and consultants, within available appropriations, to such positions as the County Legislature shall establish. The Executive Director shall fix the duties of such appointees.

All meetings of the Commission shall be held at the call of the chairperson or upon the call of three (3) members of the Commission. Meetings shall be held whenever the business and work of the Commission requires the same. The Commission shall keep true, accurate and complete minutes of all of its meetings and proceedings. These minutes shall be opened to public inspection at the offices of the Commission.

JURISDICTIONAL CLASSIFICATION**RULE III****EXEMPT CLASS**

1. Positions in the exempt class are those for which competitive or noncompetitive examinations or other qualification requirements are not practicable. (Civil Service Law, Section 41)
2. Positions in the exempt class shall be listed in Appendix A of these rules and made a part hereof.

RULE IV**NON-COMPETITIVE CLASS**

1. A position in the non-competitive class may be filled by the appointment of a person who meets the minimum qualifications established for such position by the commission. A nomination for such an appointment shall state the qualifications of the nominee and shall be filed by the appointing authority with the commission. Such appointment shall become effective only after approval by the commission.
2. Positions in the non-competitive class shall be listed in Appendix B of these rules and made a part hereof.

RULE V

LABOR CLASS

1. The labor class shall include unskilled positions.
2. A position in the labor class may be filled by the appointment of any person selected by the appointing officer of the agency where a vacancy exists. The Commission may require applicants for employment in the labor class to qualify in such tests of their fitness for employment as may be deemed practicable.
3. Positions in the labor class shall be listed in Appendix C of these rules and made a part hereof.

RULE VI UNCLASSIFIED

SERVICE

Positions in the unclassified service shall be listed in Appendix D of these rules and made a part hereof.

RULE VII

EMERGENCY DEFENSE

(Deleted February 14, 1965)

RULE VIII

FLAHERTY

(Deleted JUNE 30, 1998)

RULE IX**RECRUITMENT OF PERSONNEL**

1. Residence requirements for municipal positions.
 - a. An applicant must be at the time of examination and for at least four (4) months prior thereto a resident of the municipality in which appointment is to be made or any reasonable combination of municipalities both in and outside of New York State contiguous to the municipality in which appointment is to be made or contiguous to the municipality in which such municipality is located as determined by the Commission. Residence requirements may be suspended or reduced by the Commission in cases where recruitment difficulty makes such requirements disadvantageous to the public interest.
 - b. When preference in certification is given to residents of a municipality pursuant to subdivision 4-a of section 23 of the Civil Service Law, an eligible must have been a resident of such municipality for at least one (1) month prior to the date of certification in order to be included in a certification as a resident of such municipality and must be a resident of such municipality at the time of certification and appointment.
2. Announcements of examinations.
 - a. The public announcement of an examination shall specify the application fee, if any, the title, the duties of the position, the minimum qualifications required, the issue date, the final date for filing applications, the subjects or scope of the examination and the relative weights thereof, and, if known, the date and place of the examination. Public notice of open-competitive and promotion examinations shall be made at least twenty-five (25) days before the date of the examination and must be conspicuously posted in a public place for fifteen (15) days. The last day for filing applications shall be not less than ten (10) days before the date of the open-competitive examination.

RULE X**APPLICATIONS**

1. Applications of candidates for positions in the classified service must be addressed to the Commission at the office of the Commission and be made on the form prescribed by the Commission.
2. The Commission shall notify each applicant of the disposition of his/her application. Applicants for competitive examination shall be given notice of their approval or disapproval at least four (4) days before the examination.
3. A candidate's application for examination may be exhibited, upon request, to the appointing officer to whom his/her name is certified, or to his/her representative; provided, however, that information therein relating to the candidate's national origin or indicating whether his/her citizenship is by birth or naturalization shall not be divulged. Before a candidate's application for examination is exhibited to the appointing officer or an authorized representative, all reference therein to the candidate's national origin or to the basis of his/her citizenship shall be concealed.

RULE XI**DISQUALIFICATION**

1. A record of disrespect for the requirements and processes of law, including repeated traffic offenses or disregard of summons for traffic offenses, may be grounds for disqualification for examination or, after examination for certification and appointment.
2. The burden of establishing qualifications to the satisfaction of the Commission shall be upon the applicant. Any applicant who refuses to permit the Commission to investigate matters necessary for the verification of his/her qualifications or who otherwise hampers, impedes or fails to cooperate with the Commission in such investigation shall be disqualified for examination or, after examination, for certification and appointment.
3. Any applicant whose application is disqualified for an examination or appointment shall be notified of the reasons for such disqualification and afforded an opportunity to submit facts in opposition to such disqualification prior to final disposition of such application.

RULE XII**EXAMINATIONS**

1. Examinations prepared and rated by the New York State Civil Service Department.
 - a. For examinations prepared and rated by the State Civil Service Department, the provisions of the rules and regulations of the State Civil Service Commission and Department shall govern the rating of examinations, the review of examination papers by candidates and the filing of appeals.
 - b. The State Civil Service Commission shall have sole and exclusive authority to correct any errors in rating upon appeal or otherwise.
2. Examinations prepared and/or rated by the Municipal Civil Service Commission.
 - a. The Commission shall adopt a system to conceal the identity of the candidates' papers in a written examination until such written examination has been rated.
 - b. Applications and examination records and papers of candidates shall be preserved until at least six (6) months after the expiration of the eligible list resulting from such examination, but in no event may records be destroyed except in accordance with the policies of the State Commissioner of Education and the State Civil Service Commission. Whenever an oral examination shall be prescribed as part of an examination, every effort shall be made to insure that a stenographic or recording device record of all the questions and answers be made a part of the examination records.
 - c. Rating keys shall be prepared for each examination held. Such keys shall be a permanent part of the record of each examination. The marking of an examination shall be made on the scale of 100, with 70 the passing score. The Commission may, after the announcement of an examination is made, subdivide the written examination into parts and require a passing mark of 70 in each of the parts in order that candidates be considered further for eligibility. Notice of such arrangements shall be given in the instructions of the written examination.
 - d. Such ratings need not necessarily be arithmetic percentages but may, if recommended by the Chairman, and approved by the Commission, be higher than percentage ratings and be computed on the basis of any type (or combination of types) of the following conversion methods:

Type I - An arithmetic addition of from one (1) to twenty (20) points to arithmetic percentage ratings. For example, a 10 point addition would make 60% become 70% and 88% become 98%. This conversion method may be applied when the examination is too difficult at all levels, i.e. where the highest arithmetic percentage rating is as much below 100% as the barely passable is below 70%.

Type II - An arithmetic adjustment of deductions for errors. For example, in a 100 item test, each item constitutes 1%. If the test is too difficult to use 70% as the standard, a satisfactory adjustment may be to charge $\frac{4}{5}$ instead of 1 for each error. Such adjustment would not affect 100% papers and would raise a 90% paper to 92%, but would raise a 65% paper to 72%. This adjustment affects performance near the passing mark to a greater extent than performance near perfection.

Type III - An arithmetic adjustment of credits. For example, in a 100 item test each item constitutes 1%. If a test is too difficult, or the time allowed for the test is inadequate, so that the highest arithmetic percentage score is only 60%, a satisfactory adjustment may be to allow a credit of $1\frac{1}{2}$ instead of 1 for each correct item. Thus, an arithmetic percentage rating of 60% would be raised 30 points whereas an arithmetic percentage rating of 50% would be raised 25, an arithmetic percentage rating of 40% would be raised only 20 points.

Type IV - A statistical adjustment whereby the distribution of ratings assigned has a pre-determined form. Examples: (a) the ratings of all passing candidates may be evenly distributed between 70% and 100% with the best $33\frac{1}{3}\%$ of candidates assigned ratings from 90% to 100%, the next $33\frac{1}{3}\%$ assigned ratings from 80% to 90% and the lowest $33\frac{1}{3}\%$ assigned ratings from 70% to 80%. (b) a passing mark of 70% may be assigned to candidates attaining a median score and a mark of 80% may be assigned to candidates attaining one standard deviation higher, etc.

Type V - In examinations using true-false or multiple-choice items, distinction between errors and omissions may be made in determining ratings so that candidates who guess or are careless will not unduly benefit in comparison with candidates who make fewer guesses and fewer errors. This type of adjustment is deemed desirable when either the time allowance for the examination or the number of alternatives is limited.

Any officer or employee to whom the identity and rating of one or more candidates in an examination is known shall be disqualified from recommending or approving the use of any conversion formula in such examination. In the event that the identity and rating of one (1) or more candidates in an examination is known to an officer or employee whose duties and functions would otherwise involve the recommendation or

approval of the use of a conversion formula in such examination, the duties and functions of such officer or employee with respect to the recommendation or approval of conversion formula in such examination shall be assigned to another appropriate officer or employee who is not disqualified under the provisions of this subdivision.

Where one of the above methods of conversion is used, the conversion table or formula and the reasons for its use shall be made available upon request to any candidate who inspects his/her examination paper or questions his/her rating.

- e. Every candidate in an examination, shall be notified in writing of his/her final rating. Except for continuous recruitment examinations, he/she shall also, if successful, be notified of his/her final rating and if successful, of his/her relative position on the eligible list established as a result of the examination. Any candidate receiving such notice, or his/her duly authorized representative, may inspect his/her examination papers in the office of the Commission and in the presence of a designated representative of the Commission, provided he/she makes request for such inspection, in writing, within the period of ten (10) days after the date of the post-mark of such notice, and provided that either he/she received a rating of 65 or higher if the examination consisted wholly of short-answer type questions (i.e. multiple choice, or other questions which are scored wholly right or wholly wrong) or received a rating of 60 or higher if the examination consisted of other types of questions. The Commission may grant special permission to inspect papers to those who do not meet the foregoing conditions. The application and examination papers of a candidate shall be exhibited only to the candidate or his/her duly authorized representative, designated as such in writing. The application of an eligible who is being considered for appointment may be shown to the appointing officer.
- f. A candidate may bring a consultant to review the record of an oral examination. The consultant must be approved by the Commission prior to the review and may not be an individual who was in any way involved in the preparation, conduct, or administration of the examination.
- g. A candidate who wishes to appeal to the Commission, his/her rating in one, or more, or all of the subjects of an examination must submit such appeal in writing within twenty (20) days after the earliest date on which his/her examination papers were made available for his/her inspection. Such appeal must show that a manifest error was made in the original rating. Such appeal shall be considered as opening all of the candidate's papers for review, whether resulting in a higher or lower average standing. No change in rating shall be made as a result of an appeal unless it shall affect the candidate's relative position on the eligible list.

h. There shall be no reviews of examinations conducted on a continuous recruitment basis other than for a computational check of the candidate's answers against the key answers; nor shall there be reviews of practical or performance examinations.

3. Examinations generally.

a. The Commission may at any time during the life of an eligible list, resulting from any examination prepared and rated by the Commission, correct any clerical or computational errors in the ratings of candidates who competed in the examination.

b. Any change in an eligible list pursuant to this rule shall be made without prejudice to the status of any person previously appointed from such eligible list.

c. A test, stated in the announcement to be a planned part of an examination, may nevertheless be waived and the eligible list established on the basis of scores in the other announced competitive rated part or parts of the examination when the number of candidates successful in the preceding part or parts of the examination does not exceed by more than two the number of vacancies to be filled from such eligible list which exist at the time of the establishment of the eligible list.

d. When a vacancy exists in a permanent competitive class position and a permanent competitive class candidate in direct line of promotion, as defined in Rule XXVII, is nominated for non-competitive promotion examination in accordance with Section 52 (7) of Civil Service Law, the Commission may determine that the appropriate examination for such non-competitive promotion shall consist of a review of the candidate's training and experience at the time of nomination.

If the Commission determines the candidate's training and experience meets or exceeds the open-competitive qualifications for the position, the candidate shall be certified as eligible for permanent promotion appointment to the position subject to a probationary period.

4. Examination material security.

In order to prevent the unauthorized publication and dissemination of examination material, the following acts are prohibited except as authorized by the Commission.

a. No person shall copy, record, or transcribe any examination question or answer; or remove from the examination room or possess outside the examination room, any question sheet, answer sheet or booklet, scrap papers, notes or any other papers or materials relating to such examination.

b. A candidate in an examination shall not at any time communicate with an examiner concerning the conduct or content of such

examination; and shall not directly or indirectly communicate to any such person information concerning the content of such examination until completion of the testing of all candidates.

No examiner, proctor or other person charged with the supervision of a group of candidates during an examination shall have authority to waive the provisions of this subdivision. A person who is found by the Commission to have violated the provisions of this subdivision or any similar provision of the rules of any civil service jurisdiction within the State of New York shall be disqualified from appointment to the position for which the examination is being held and may be disqualified from being a candidate for any civil service examination for a period of five years.

RULE XIII

ELIGIBLE LIST

1. Every candidate who attains a passing grade in an examination as a whole and who meets the standards prescribed, if any, for separate subjects or parts of subjects of the examination shall be eligible for appointment to the position for which he/she was examined and his/her name shall be entered on the eligible list in the order of his/her final rating; But if two (2) or more candidates receive the same final grade, they shall be ranked in accordance with such uniform, impartial procedure as may be prescribed therefor by the Commission.
2. The date of the establishment of a list shall be the date fixed therefor by commission resolution, and shall be entered on such list. The duration of all eligible lists shall be fixed by commission resolution prior to the establishment of such lists, but shall not be less than one (1) nor more than four (4) years. The date of establishment of a list and its duration shall be given to all successful candidates at the time when notice of standing on the eligible list is given to such candidates. Where the duration of an eligible list is fixed at less than four years the Commission may by resolution, prior to the expiration date of such list, extend the duration of the list up to the maximum limitation of four (4) years, provided that candidates on such list are notified in writing of the extension of the eligible list.
3. Eligible lists shall be open to public inspection at the office of the Commission. The names of persons who failed to receive a passing examination grade shall not be disclosed to the public.
4. The commission shall have power in its discretion to correct any error and amend any eligible list where it appears that an error has been made. Commissions shall have power to revoke any eligible list where the provisions of these rules were not properly or sufficiently carried out; provided, however, that an eligible list shall not be revoked except after notice and an opportunity to be heard has been

given to all persons whose names appear thereon. The reason for such action shall be recorded in the minutes of the commission and reported to the State Civil Service Commission.

RULE XIV

CERTIFICATION

1. The Commission shall determine the eligible list most nearly appropriate for the position to be filled, and shall certify to the appointing authority a sufficient number of candidates from which selection for appointment may be made. When the name of any eligible is included in a certification for appointment, the names of all other candidates on the list having the same final rating as such eligible shall be included in such certification.
2. A certification issued by the Commission to an appointing officer shall be valid for a period of sixty (60) days from the date of its issuance. After the expiration of such sixty (60) day period, no appointment shall be made except from a new certification.
3. When an eligible is canvassed for appointment or is offered appointment in writing and fails to state his/her willingness to accept such appointment within five (5) business days after the mailing of such canvass or offer, he/she may be considered ineligible for purposes of making selection for such particular appointment.
4. The name of the person declining appointment shall be eliminated from further certification from the eligible list unless declination is for one (1) or more of the following reasons: (a) insufficiency of compensation offered when below minimum of grade of the position for which the examination was held; (b) geographical location of employment; (c) temporary inability, physical or otherwise, which must be satisfactorily explained by the eligible in writing; (d) other reason deemed acceptable by the Commission. Any person declining appointment on the basis of temporary inability will not be certified for appointment until they have notified the Commission in writing of their availability for appointment. The Commission shall enter upon the eligible list the reasons for its action in such cases.
5. Except as otherwise provided herein, appointment or promotion to a position in the competitive class shall be made by the selection of a person on the most nearly appropriate eligible list who is willing to accept such appointment and whose rating in the examination is equal to or higher than the final rating of the third highest ranking eligible on the list indicating willingness to accept such appointment. The term "ranking" as used herein refers to the order in which the names of eligibles appear on the eligible lists as provided in Rule XIII.
6. Whenever a vacancy exists in a position in the competitive class and

an open-competitive examination duly advertised results in three (3) or fewer approved applicants for the examination, the appointing officer may nominate to the commission one of the applicants who may be certified for appointment to fill the vacancy without further examination, provided that he/she has already qualified in an examination of equivalent character within the last four (4) years from the date of nomination.

7. An open-competitive, or promotional eligible list shall not be certified for filling a permanent competitive class vacancy created by reclassification of a permanently encumbered competitive class position if the appointment or promotion from such list would require the layoff of a permanent employee; but this provision shall not apply if the incumbent whose position was reclassified has, following such reclassification, either refused to take an examination for such reclassified position or failed to qualify for appointment, examination or promotion to such position.
8. Whenever a vacancy exists in a position in the competitive class and an open-competitive examination duly advertised results in three (3) or fewer approved applicants, and the announced minimum qualifications for the position included a requirement of possession of a license or certificate in a profession issued by the State of New York, the Commission may waive the examination and certify for appointment to the appointing authority the names of such qualified applicants, provided, however, that such applicants have been licensed or certified in the profession by the State of New York.

RULE XV

PROMOTIONS

1. In order to be eligible to participate in a promotion examination, a candidate must have been employed in a competitive or non-competitive class position on a permanent basis in a lower grade, either in direct line of promotion or in a related or collateral line of promotion as determined by the Commission. The Commission shall determine the minimum period of such service for eligibility to enter a promotion examination, and may also prescribe a minimum period of such service as a qualification for promotion from the resulting eligible list.
2. Any person who is nominated for non-competitive examination for promotion to a position and who fails to appear for such examination or who fails to pass two successive examinations for such promotion shall not thereafter be eligible for employment in such position, except by appointment or promotion from an eligible list established following competitive examination.
3. Promotion examinations for non-competitive class employees shall, in addition to the requirements of Civil Service Law, Section 52 (12), require that applicants shall have been employed in a full-time position.

RULE XVI**PROBATIONARY TERM**

1. Probationary term.
 - a. Except as otherwise provided, every permanent appointment from an open-competitive list and every original appointment to a position in the non-competitive, exempt or labor class shall be for a probationary term of not less than eight (8) nor more than fifty-two (52) weeks. The appointing officer shall notify the appointee, in writing, that such an appointment is probationary.
 - b. The probationary term for a Trainee position, in which an appointee is required to serve a specified training term, shall be not less than twelve (12) nor more than fifty-two (52) weeks.
 - c. The probationary term for deputy sheriff-road patrol and police officer positions shall be not less than twelve (12) nor more than seventy-eight (78) weeks. The probationary term for firefighter and assessor positions shall be not less than twelve (12) nor more than fifty-two (52) weeks.
 - d. The probationary term for an appointment from a promotional list shall be for a period of not less than twelve (12) nor more than twenty-six (26) weeks. Upon written notice of the appointing authority the probationary period upon promotion may be waived and the appointee given a permanent appointment except for appointments made in accordance with Rule XII (3)d.
 - e. Every promotion of an employee to a higher grade position in the labor, non-competitive or exempt class shall be for a probationary term of not less than twelve (12) nor more than twenty-six (26) weeks.
 - f. An appointment shall become permanent upon the retention of the probationer after his/her completion of the maximum period of service or upon earlier written notice following completion of the minimum period of service that his/her probationary term is successfully completed. A copy of such notice shall be sent to the Commission.

If the conduct or performance of a probationer is not satisfactory, his/her employment may be terminated at any time after the completion of the minimum period of service, and on or before completion of the maximum period of service in the manner as prescribed in these rules.

2. Transfers.

Every transfer shall be for a probationary term of not less than twelve (12) nor more than twenty-six (26) weeks. If the conduct or performance of the probationer is not satisfactory, his/her employment in such position shall be discontinued at the end of such term.

3. Restoration to permanent position.

When a permanent employee is promoted from a promotional list or transferred to a position in which he/she is required to serve a probationary term, the position thus vacated by him/her shall not be filled, except on a temporary basis, or contingent permanent basis, during such probationary term. At any time during such probationary term the employee shall have the right to return to his/her previous position at his/her own election. If the conduct or performance of the probationer is not satisfactory, he/she shall be restored to his/her former permanent position at the end of his/her probationary term.

4. Absence during probationary term.

Any periods of authorized or unauthorized absence during the probationary term, may, in the discretion of the appointing authority, be counted as time served in the probationary term. The minimum and maximum periods of the probationary term of any employee shall be extended by the number of work days of his/her absence which, pursuant to this section, are not considered as time served in the probationary term. If absences are not to be counted as time served, the appointing authority shall notify the probationer in writing of this fact.

5. Report on probationer's service.

The probationer's supervisor shall carefully observe his/her conduct and performance and, at least two (2) weeks prior to the end of the probationary term, shall report thereon in writing to the proper appointing authority. The supervisor shall also, from time to time during the probationary term, advise the probationer of his/her status or progress. A probationer whose services are to be terminated for unsatisfactory service, shall to the extent possible, receive written notice at least one (1) week prior to such termination and, upon request, shall be granted an interview with the appointing authority or his/her representatives.

6. Restoration to eligible list.

A probationer whose employment is terminated or who resigns before the end of his/her probationary term may request that his/her name be restored to the eligible list from which he/she was appointed, provided such list is still in existence. His/her name may be restored to such list if the Commission in its discretion determines that the probationer should be given a second opportunity for appointment.

7. Temporary or provisional service in higher-level position.

When an employee who has not completed his/her probationary term is appointed on a temporary or provisional basis to a higher level position, the period of temporary or provisional service rendered by such employee in such higher level position may, in the discretion of the appointing authority, be considered as satisfactory probationary service in his/her lower position and may be counted as such in determining the satisfactory completion of such probationary term. At any time after the expiration of the minimum period of the probationary term, or the entire probationary term if it is one of the fixed duration, the appointing authority shall, on request of such probationer, furnish his/her decision in writing as to whether or not service in such higher level position shall be considered as satisfactory probationary service. In the event of an adverse decision by the appointing authority, such probationer at his/her request, shall be returned to his/her lower position for sufficient time to permit him/her to complete his/her probationary term. The employment of such a probationer in his/her lower position shall not be terminated at the end of his/her probationary term on account of unsatisfactory service unless he/she shall have actually served in such position, in the aggregate, at least the minimum period specified for such probationary term or the entire probationary term if it be one of fixed duration.

8. Removal during probationary term.

Nothing contained in this rule shall be construed to limit or otherwise affect the authority of an appointing authority pursuant to section seventy-five (75) of the Civil Service Law, or applicable negotiated disciplinary procedures, at any time during the probationary term, to remove a probationer for in-competency or misconduct.

9. Every reinstatement of an employee shall be for a probationary term of not less than eight (8) nor more than fifty-two (52) weeks.

RULE XVII

SEASONAL AND TRAINEE APPOINTMENTS

1. Appointment to seasonal positions in competitive class.

a. Positions in the competitive class where the nature of service is such that it is not continuous throughout the year, but recurs in each successive year, except as herein otherwise provided, shall be designated as seasonal positions and shall be subject to the provisions of these rules applicable generally to positions in such class.

2. The Civil Service Commission may require that permanent appointment or promotions to designated positions shall be conditioned upon the satisfactory completion of a term of service as a trainee in such a position or in an appropriate, lower training title or the completion of specified training or academic courses, or both. The period of

such term of training service shall be prescribed by the Commission. Upon the satisfactory completion of such training term, and of specified courses if required, an appointee shall be entitled to full permanent status in the position for which appointment was made. Any appointment hereunder shall be subject to such probationary period as is prescribed in these rules. Also, the employment of such person may be discontinued if his/her conduct, capacity or fitness is not satisfactory, or at any time if he/she fails to pursue or continue satisfactorily such training or academic courses as may be required.

- a. For the purposes of this rule, appointment or promotion to the positions of Deputy Sheriff - Road Patrol, Deputy Sheriff - Jailor, Police Officer, Fire Fighter and Assessor shall be considered as Trainee appointments. The term of training shall conform with the maximum time prescribed by statute for successful completion of the required training programs.

RULE XVIII

EFFECT OF TEMPORARY OR PROVISIONAL APPOINTMENT ON STATUS OF APPOINTEE

1. Effect of temporary appointment on eligibility for permanent appointment.

The acceptance by an eligible of a temporary appointment shall not affect his/her standing on the eligible list for a permanent appointment, nor shall the period of temporary service be counted as part of the probationary service in the event of subsequent permanent appointment.

2. Provisional appointment of permanent employee.

When a permanent employee is given a provisional appointment to a competitive class position in the same department or agency, the position thus vacated by him/her shall not be filled on other than a temporary or contingent permanent basis pending his/her reinstatement thereto upon failure of the provisional appointment to mature into permanent appointment.

3. Successive provisional appointment.

No provisional employee who has refused to take an examination held for permanent appointment shall be given another provisional appointment in the same titled position. No provisional employee who fails two (2) examinations for permanent appointment shall be eligible for provisional appointment in the same title under the same appointing authority. For the purposes of this rule, a failure to appear for an appropriate examination shall constitute a refusal to take an appropriate examination.

4. Contingent permanent appointments.

- a. A contingent permanent appointment is made through the use of an open-competitive or promotional eligible list to fill a

position left vacant as defined in Rule XXI (4) or XVI (3), or by a permanent employee being given a provisional appointment as defined in this rule. Any person appointed on a contingent permanent basis shall have all the rights and benefits of a permanent competitive class employee subject to the following limitations:

1. Probationary Period: All appointments under this rule shall be required to complete the probationary period for original appointment or promotion as prescribed in these rules.
 2. Return of Incumbents: In the event of layoff or the permanent incumbent returns, persons holding positions on a contingent permanent basis shall be displaced before any persons holding permanent status in the same title regardless of total seniority. In the event that more than one (1) position in the same title is held by persons having contingent permanent appointments, displacement among those persons shall be in the inverse order of their contingent permanent appointments.
 3. Preferred List: Upon displacement, if the contingent permanent appointment was made from a promotional eligible list, he/she shall be restored to his/her permanent position and have their name placed on a preferred eligible list for certification as a mandatory list only to the department or agency in which the contingent permanent appointment was made. If the contingent permanent appointee was appointed from an open-competitive eligible list and does not have a permanent position to return to, he/she shall have their name placed on a preferred eligible list for certification as a mandatory list in the civil division in which the contingent permanent appointment was made.
 4. Seniority: When a contingent permanent appointment matures into a permanent appointment, the date of permanent service shall be the date of the original contingent permanent appointment.
 5. Promotion: When a permanent competitive class employee accepts a contingent permanent appointment, the position vacated by such employee shall not be filled except on a temporary or contingent permanent basis until the contingent permanent appointment matures into a permanent appointment.
- b. All appointments under this rule shall be canvassed as "permanent-contingent permanent." A copy of this rule must be included with the canvass letter.
- c. Appointments to contingent permanent positions shall be made by selection of one (1) of the top three (3) candidates on an appropriate eligible list willing to accept a contingent permanent appointment; there will be no re-canvassing of the eligible list in the event the contingent permanent position becomes unencumbered. Acceptance of a contingent permanent

appointment will remove the person's name from the eligible list for any future contingent permanent or permanent vacancies within the department or agency in which the contingent permanent appointment was made.

- d. If a permanent vacancy becomes available in the same title in the department or agency in which a contingent permanent appointment has been made, contingent permanent appointees may be offered reassignment, prior to canvassing for a permanent appointment from an appropriate eligible list or prior to appointing a temporary or provisional to the position.
- e. When a position filled by a contingent permanent appointee becomes unencumbered, the contingent permanent appointee in that position shall immediately gain permanent competitive class status in the class if the required probationary period as prescribed in this rule has been satisfactorily completed.

RULE XIX

TRANSFER OF ELIGIBILITY FOR PERMANENT APPOINTMENT

Upon a written request of an individual and the prospective appointing authority, and subject to the approval of the Commission, any individual serving in a competitive class position as a permanent appointee may be permanently appointed to another competitive class position subject to these Rules without further competitive examination, provided:

- a. There is no preferred list appropriate for filling the position to which appointment is sought containing the name of an eligible willing to accept appointment; and,
 - 1. The Commission determines that the examinations' scopes and qualifications for the positions held and to which appointment is sought are identical; OR,
 - 2. When the examinations' scopes and qualifications are not identical, the New York State Department of Civil Service has determined that the examination for the position held involved or would involve essential tests and qualifications the same or greater than those sought; and,
 - a. The Commission has determined that such appointment is for the good of the service.

RULE XX

REINSTATEMENT

- 1. Reinstatement
 - a. A permanent employee who has resigned from his/her position may be reinstated without examination within four (4) years from

the date of such resignation in the position from which he/she resigned if then vacant or in any vacant position to which he/she was eligible for transfer or reassignment. In computing the four (4) year period within which a person may be reinstated after the resignation, the day the resignation takes effect, any time spent in active service in the military or naval forces of the United States or of the State of New York, and any time served in another position in the civil service of the same municipality shall not be considered. In an exceptional case, the Commission may, subject to the approval of the State Civil Service Commission, for good cause shown and where the interests of the government would be served, waive the provisions of this rule to permit the reinstatement of a person more than four (4) years after resignation. For the purpose of this rule, where an employee on leave of absence resigns, such resignation shall be deemed effective as of the date of the commencement of such leave.

- b. An employee that is laid off from the civil service of a municipality shall be eligible for reinstatement in the same manner as an employee who had resigned.
2. Refusal or failure to accept reinstatement from preferred list.
 - a. Preferred lists shall be established for four (4) years.
 - b. Relinquishment of eligibility for reinstatement. The failure or refusal of a person on a preferred list, after reasonable notice, to accept reinstatement therefrom to his/her former position, or any similar position in the same salary grade for which such list is certified, shall be deemed to be a relinquishment of his/her eligibility for reinstatement, and his/her name shall thereupon be stricken from such preferred list. The name of such person may be restored to such preferred list and certified to fill such appropriate vacancies as may thereafter occur only upon the request of such person and his/her submission of reasons satisfactory to the Commission for his/her previous failure or refusal to accept reinstatement.
 - c. Effect of refusal to accept reinstatement to a lower grade position. A person on a preferred list shall not be deemed to relinquish his/her eligibility for reinstatement therefrom by reason of his/her failure or refusal to accept reinstatement to a position in a lower salary grade than the position from which he/she was suspended or demoted. The name of such person may be withheld from further certification for reinstatement to a position in a lower salary grade than the position to which he/she failed or refused to accept reinstatement.
 - d. Restoration to eligibility for reinstatement not to affect previous appointments. The restoration of the name of a person to a preferred list, or his/her restoration to eligibility for certification therefrom to positions in a lower salary grade than his/her former position, shall not invalidate or in any manner adversely affect any appointment, promotion, reinstatement or demotion previously made to any position to which such person would otherwise have been eligible for

reinstatement from such preferred list.

RULE XXI

LEAVE OF ABSENCE

1. A leave of absence without pay, not to exceed one year, may be granted to an employee by an appointing officer. Notice of such leave of absence shall be given to the Commission. Where a leave of absence without pay has been granted for a period which aggregates one year, a further leave of absence without pay shall not be granted unless the employee returns to his position and serves continuously therein for three months immediately preceding the subsequent leave of absence. Notice of such subsequent leave of absence shall be given to the Commission. Absence on leave for more than one year shall be deemed the equivalent of a resignation from the service upon the date of commencement of such absence, except as provided in subdivision 2 of this rule.
2. In an exceptional case, the Commission may for good cause shown waive the provisions of this rule to permit an extension of the leave of absence for an additional one year period. In no case may such leave of absence exceed in aggregate two years from the date of commencement of the leave.
3. A leave of absence without pay, not to exceed four (4) years, shall be granted by an appointing officer to an employee requesting same who is a veteran of the Armed Forces of the United States, and who is entitled to such leave under the provisions of Section 246 of the Military Law. An employee taking such leave shall be reinstated to his/her position, provided he/she makes application for such reinstatement within sixty (60) days after the termination of his/her courses of study.
4. A position left temporarily vacant by the leave of absence of a permanent incumbent may be filled, at the discretion of the appointing authority on a temporary or contingent permanent basis.

RULE XXII

RESIGNATION

1. Resignation in writing.

Except as otherwise provided herein, every resignation from a competitive class position shall be in writing.

2. Effective date.

If no effective date is specified in a resignation, it shall take effect upon delivery to or filing in the office of the appointing official. If an effective date is specified in a resignation, it shall take effect on such specified date. However, if a resignation

is submitted while the employee is on leave of absence without pay, such resignation, for the purpose of determining eligibility for reinstatement, shall be deemed to be effective as of the date of the commencement of such absence. Notwithstanding the provisions of this section, when charges of in-competency or misconduct have been or are about to be filed against an employee, the appointing authority may elect to disregard a resignation filed by such employee and to prosecute such charges; and, in the event that such employee is found guilty of such charges and dismissed from the service, his/her termination shall be recorded as a dismissal rather than as a resignation.

3. Withdrawal or amendment.

A resignation may not be withdrawn, canceled or amended after it is delivered to the appointing authority, without the consent of the appointing official.

4. Voluntary demotion of permanent competitive employee.

An employee who voluntarily elects to relinquish his/her permanent competitive class status to a position and accept a demotion, shall submit a statement of relinquishment to the appointing authority. Upon receipt of the statement of relinquishment by the appointing authority, the employee may be reinstated to any vacant lower salary level position for which he/she is eligible for transfer as provided in Rule XIX. Such statement of relinquishment shall not take effect until the employee is reinstated to the lower level position.

RULE XXIII

REPORTS OF APPOINTING OFFICERS

For the purpose of certification of payrolls and to enable the Commission to keep an official roster of the classified service as required by law, each appointing officer, from time to time, and upon the date of the official action in each case, shall report to the Commission as follows:

1. Every appointment or employment whether permanent, probationary provisional, temporary or otherwise, in the classified service, with the date of commencement of service and the title and compensation of the position.
2. Every failure to accept an appointment under him/her by a person eligible therefor, with copies of the offer or notice of appointment and the reply thereto, if any.
3. Every discharge during or at the end of probationary term with the date thereof.
4. Every vacancy in a position, for whatever reason with the date thereof.
5. Every position abolished, with the date of such abolition.
6. Every change of compensation in a position, with the date thereof.

- 7. Every promotion, giving positions from which and to which made, with the salaries and date thereof.
- 8. Every transfer, giving the positions form which and to which made, with the date and salaries thereof.
- 9. Every reinstatement in a position, with the date and salary thereof.
- 10. Every resignation, or retirement with the date thereof.
- 11. Every leave of absence, with the date and duration thereof.
- 12. Every new position, giving a complete description of the duties thereof.
- 13. Every change in duties of a position giving a complete description of the duties thereof.

RULE XXIV

CERTIFICATION OF PAYROLLS

- 1. Certification required prior to payment
 - (a) No person shall receive salary or compensation until the Commission has certified his or her employment to be in compliance with the provisions of the Civil Service Law and these Rules.
 - (b) The Commission shall not certify the name of any person employed in a manner that does not comply with the provisions of the Civil Service Law and these Rules.
- 2. Extended certification
 - (a) The Commission may certify the employment of a person for a limited or extended period. No further certification shall be necessary for the payment of salary or compensation to such person as long as his or her status, title, and salary grade remain unchanged during the period of the certification granted.
 - (b) The Commission shall require certification of the full payroll of every civil division under its jurisdiction at least once every fiscal year, and shall require such certifications according to the following schedule:

Civil Division

Towns
 Villages
 School Districts
 Other Agencies or
 Special Districts

Payroll(s) to be Certified:

First Full Payroll in March
 First Full Payroll in May
 First Full Payroll in October
 First Full Payroll in June

(c) The Commission may, at any time, require any civil division under its jurisdiction to submit payrolls or accounts for

certification in accordance with Section 100 (1) of the Civil Service Law.

(d) Annual certifications provided by the Commission shall be valid for a period of no more than 12 months following the scheduled date of certification established in these Rules. Certifications provided at any other time during the year shall be valid for a period not to exceed the next scheduled certification established in these rules.

3. Refusal or termination of certification

(a) The Commission shall investigate any discrepancies between the payroll and the official roster and any other instances where the Commission finds the employment of a person may be in violation of the laws and these Rules.

(b) In any case where the Commission finds satisfactory evidence that the employment of a person is in violation of a law and these Rules, or the Commission finds satisfactory evidence of intent to evade the provisions of law or these Rules in regard to the employment of any person, the Commission shall refuse certification of the person and terminate any certification of the person previously made and then in force.

(c) Any refusal, termination or revocation of a certification of any person shall be communicated in writing to the appropriate fiscal or disbursing officer.

4. Temporary certifications.

When the name of any person is first submitted for certification following his/her appointment, reinstatement, promotion, transfer, or other change in status, and the Commission requires further information or time to enable it to make a final determination thereon, the Commission may certify such person temporarily pending such final determination. In such event, the Commission shall immediately request the necessary additional information from the appointing authority, who shall furnish it forthwith. If such information is not furnished within the time specified by the Commission, or if the Commission finds, following receipt of such information, that the employment of such person is not in accordance with the law and rules, the Commission shall immediately terminate such certification by notice to the appropriate fiscal or disbursing officer.

RULE XXV**CLASSIFICATION PLAN**

1. Definitions. For the purpose of this rule the following definitions shall apply:
 - a. "Class" means one (1) or more positions sufficiently similar with respect to duties and responsibilities to be designated by a single descriptive title and treated as a unit for the purpose of recruiting, examinations, salary and administering other personnel functions.
 - b. "Class title" means the designation given under these rules to a class and to each position allocated to such class.
 - c. "Class specification" means a formal written statement of the class which defines the general character and scope of the duties and responsibilities of positions in the class, lists typical work activities, enumerates the knowledge, skills, abilities and personal characteristics required for successful full performance of the work, states required minimum qualifications and indicates any special requirement of the class.
 - d. "Allocation" means the assignment of a position to an appropriate class as determined by the duties, responsibilities and minimum qualification requirements of the position.
 1. "Reclassification" means the reallocation of a position from one class to another because of a permanent and material change of the duties of that position.
2. Powers and duties. The Commission shall have power and duty to:
 - a. Classify and reclassify all positions in the civil service of all civil divisions under its jurisdiction.
 - b. Prepare and maintain job classification specifications for each class in the competitive, non-competitive and labor jurisdictional classes and establish appropriate minimum qualifications for each class.
 - c. Investigate all matters affecting the classification and reclassification of all positions and from time to time review the duties, responsibilities and qualification requirements of all positions under its jurisdiction and to make revisions in the classification of positions.
3. Classification of Vacant Positions. When a position has or is about to become vacant, the appointing officer shall file a detailed description of the duties and responsibilities of the position and a statement of suggested minimum entrance qualifications for the position when requested with the Commission. After an analysis of

the detailed description of duties and responsibilities, the Commission shall allocate the position to an appropriate class, or, if no appropriate class exists, shall create a new class and prepare a class specification for such position including a statement of appropriate minimum qualifications.

4. Classification of New Positions. When a new position is to be created, the appointing officer shall file a detailed description of the duties and responsibilities of the position and a statement of suggested minimum entrance qualifications for the position with the Commission, prior to creating the position. After an analysis of the detailed description of duties and responsibilities, the Commission shall allocate the position to an appropriate class, or if no appropriate class exists, shall create a new class and prepare a class specification for such new class including a statement of appropriate minimum qualifications.
5. Reclassification of Positions. Either:
 - a. The Commission may, upon its own initiative, review the duties and responsibilities and qualification requirements of any position under its jurisdiction. Appointing authorities and employees in positions under review shall be required to complete a detailed description of the duties and responsibilities of the positions and provide such other information as determined necessary by the Commission. After an analysis of the detailed description of the duties and responsibilities, the Commission shall allocate the position to an appropriate class, or if no appropriate class exists, shall create a new class and prepare a class specification for such position including a statement of appropriate minimum qualifications; or,
 - b. Whenever a permanent and material change is made in the duties and responsibilities of any position, the appointing authority shall file a detailed description of the duties and responsibilities of the position with the Commission. After an analysis of the duties and responsibilities of the position, the Commission shall allocate the position to an appropriate class, or if no appropriate class exists, shall create a new class and prepare a class specification for such position including a statement of appropriate minimum qualifications; or,
 - c. Any employee in the classified service may apply to the Commission for a position reclassification. Such application shall include a detailed description of the duties and responsibilities of the position since the last determination with respect to its classification. After an analysis of the duties and responsibilities of the position, the Commission shall allocate the position to an appropriate class, or if no appropriate class exists, shall create a new class and prepare a class specification for such position including a statement of appropriate minimum qualifications.
6. Notice and Appeals. The Commission shall give reasonable notice of any proposal or application for a change in classification to the appointing authority and to the employee or employees affected

thereby. Any person desiring to submit facts orally or in writing in connection with the reclassification of any position shall be afforded reasonable opportunity to do so. The Commission shall then determine the proper allocation of the position. No employee, either by classification or reclassification, change of title or otherwise shall be promoted, demoted, transferred, suspended or reinstated except in accordance with the provisions of the Civil Service Law and these rules.

7. Effective date of classification and allocation. Any classification or reclassification of a position and the resulting allocation or reallocation of a position to a salary grade affixed for that position by the appropriate civil division pursuant to the provisions of these rules shall become effective no later than the first date of the fiscal year following action of the Commission.

RULE XXVI

PROHIBITION AGAINST QUESTIONS ELICITING INFORMATION CONCERNING POLITICAL AFFILIATION

No question in any examination or application or other proceeding by the Commission or their examiners shall be so framed as to elicit information concerning, nor shall any other attempt be made to ascertain the political opinions or affiliations of any applicant, competitor or eligible, and all disclosures thereof shall be discountenanced by the Commission and its examiners. No discrimination shall be exercised, threatened or promised against or in favor of any applicant, competitor or eligible because of his/her political opinions or affiliation.

RULE XXVII

LAYOFF OF COMPETITIVE CLASS EMPLOYEES

1. For the purpose of this rule the following terms shall mean:
 - a. Direct line of promotion shall be strictly construed in that in order to be considered as direct line all titles must have the same generic root.
 - b. Next lower occupied title shall mean the title in direct line of promotion immediately below the title from which the incumbent is suspended or demoted, unless no one is serving in that title in that layoff unit, in which case it shall be the closest lower title in direct line of promotion in that layoff unit in which one (1) or more persons do serve.
 - c. Layoff unit shall mean each department of a County, City, Town, Village, each School District and each special district. Authorities and community colleges shall be deemed to be separate civil divisions.
 - d. Satisfactory service shall mean service in the last fiscal year
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by an employee during which he did not receive an "unsatisfactory" performance rating and was not found guilty of misconduct or in-competency pursuant to section seventy-five of the Civil Service Law which resulted in the imposition of any of the following penalties upon such employee:

- (i) dismissal from the service, or
 - (ii) suspension without pay for a period exceeding one month, or
 - (iii) demotion in grade and title.
- e. Permanent service shall start on the date of the incumbent's original appointment on a permanent basis in the classified service except for those sworn employees of the Monroe County Sheriff's Department who are covered by the provisions of Section 80 1. c. of Civil Service Law; however, in the case of disabled veterans, the date of original permanent appointment is considered to be sixty (60) months earlier than the actual date, while non-disabled veterans are considered to have been appointed thirty (30) months earlier than their actual date of appointment. For the purpose of this rule the definition of what constitutes a veteran or disabled veteran is contained in section eighty-five of the Civil Service Law.
 - f. A resignation followed by a reinstatement or reappointment more than one (1) year subsequent to the resignation constitutes a break in service. The original appointment date is to be determined from the date of reemployment; the prior service would not count.
 - g. Temporary or provisional service preceding the original permanent appointment does not count. However, temporary or provisional employment immediately preceded and followed by permanent classified service employment does not interrupt continuous service.
 - h. The permanent service of any employee who was transferred from another civil division shall start on the date of his/her original permanent appointment in the classified service in the other civil division.
 - i. If an employee was covered-in to a classified position upon acquisition by a civil division of an agency in which he/she was employed or was a non-sworn employee of the Monroe County Sheriff's Department employed as of March 31, 1993 and covered-in by resolution as provided by Section 59 of Civil Service Law, his/her seniority begins on the effective date of the cover-in. As between that employee and others covered-in on the same date, they shall have the seniority held by them as among themselves in the agency before the cover-in.

2. Suspension.

- a. When an occupied position in the competitive class is abolished, suspension is to be made from among those employees holding the same title in the same layoff unit as the abolished

position.

- b. Among permanent employees, the order of suspension is the inverse of the order of their original permanent appointments in the classified service. See above definition of permanent service for veterans and disabled veterans. An exception to this rule is that the blind have absolute retention rights but only in their job status.
 - c. A blind person may not backdate his/her permanent service if he/she also happens to be either a veteran or disabled veteran.
 - d. A person is considered blind if he/she is so certified by the Commission for the Blind and Visually Handicapped of the New York State Social Services Department.
 - e. When two or more permanent incumbents of positions in a specific title are suspended, demoted or displaced at the same time, the order in which they shall be entitled to displace shall be determined by their respective retention standing, with those having the greater retention standing entitled to displace first.
 - f. When several employees were originally appointed on a permanent basis from the same eligible list on the same day, their retention rights shall be determined by their rank on that eligible list, that person having the highest rank having greater retention rights over those having lower ranks.
 - g. All temporary, provisional and contingent permanent employees occupying these positions must be let go before any permanent employee is suspended from such positions.
 - h. Probationary employees occupying such positions in the same title, must also be suspended before any permanent employee in the layoff unit in that title who has completed his/her probationary period. Probationary employees do, however, have superior retention rights to those of contingent permanent, temporary and provisional employees.
 - i. The order of suspension among probationary employees shall follow the same principles as that among permanent employees.
3. Vertical bumping.
- a. Vertical bumping occurs when an employee in a specific title to which there is a direct line of promotion, who is himself/herself suspended or displaced, displaces an employee in the next lower occupied title in direct line of promotion in the same layoff unit having the least seniority if the employee who seeks to displace has greater retention standing.
 - b. Where the layoff involves more than one (1) position in a title, the order of displacement will be the inverse of the order of suspension. That is, the most senior of the suspended employees will be the first to displace. This shall apply to both vertical bumping and retreat.

- c. If an employee refuses to displace a junior incumbent he/she must be laid off. This, however, does not protect the junior incumbent from being compared in retention standing with other incumbents if other positions at the higher level are being abolished.
 - d. When a next lower title has been occupied by means of displacement regardless of when the displacement into the title has occurred, it is considered to be occupied for further displacement purposes; however, a next lower title which has all of its positions abolished at the same time as positions are abolished at the higher level cannot be considered as occupied. A title which is occupied by an incumbent, temporary, provisional, contingent permanent, probationary or permanent is considered occupied for the purposes of this section.
4. Retreat.
- a. Retreat occurs when and only when there is no lower occupied position in direct line of promotion at any level.
 - b. An employee may retreat by displacing the incumbent with the least retention right who is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in the title from which he/she is currently suspended or displaced. Retreat may only occur where the position in the title formerly held by the displacing incumbent is occupied in the competitive class, in the same layoff unit, and at a lower salary grade; the service of the displacing incumbent while in the former title must have been satisfactory, and the junior incumbent must have less retention standing than the displacing incumbent.
 - c. The service of the displacing incumbent in the title to which he/she is retreating need not have been in the same layoff unit as the one from which he/she is displaced.
 - d. An employee may also displace by retreat to a position in a title he/she last served on a permanent basis although he/she had intervening service in other titles as long as his/her service in each of the intervening titles was on other than a permanent basis. He/she may also displace by retreat to a position, which does not count in the computation of his/her continuous service.
 - e. Where a title change has been effected to better describe the duties of a position but the duties have not substantially changed since the suspended employee last served in that title the new title will for retreat purposes be deemed to be the former title.
5. An employee who refuses to accept an appointment afforded by displacement for whatever reason waives all rights regarding the displacement; however, this employee's name will be entered on an appropriate preferred list.

6. Preferred list standing for competitive class employees on and after October 1, 1972 shall be as follows:
- a. On and after October 1, 1972 those employees whose positions were abolished prior to that date and who therefore had their standing on the preferred list determined by the date of their original appointment on a permanent basis in the competitive class shall retain among themselves such preferred list standing including the preferences to which they were entitled as blind, disabled veterans, and non-disabled veterans.
 - b. Blind employees whose positions are abolished on or after October 1, 1972 shall have their preferred list standing determined by the date of their original appointment on a permanent basis in the classified service, whether or not they are also disabled veterans or non-disabled veterans; provided however, that the blind shall be granted absolute preference on the preferred list over all other employees except those disabled veterans and blind employees whose positions were abolished prior to October 1, 1972 with whose names theirs shall be inter-filed.
 - c. Disabled veterans whose positions are abolished on or after October 1, 1972 shall have their preferred list standing determined by the date of their original appointment on a permanent basis in the classified service; provided however, that the date of such original appointment shall be deemed to be 60 months earlier than the actual date, determined in accordance with Section 30 of the General Construction Law.
 - d. Non-disabled veterans whose positions are abolished on or after October 1, 1972 shall have their preferred list standing determined by the date of their original appointment on a permanent basis in the classified service; provided however that the date of such original appointment shall be deemed to be 30 months earlier than the actual date, determined in accordance with Section 30 of the General Construction Law.
 - e. Non-veterans whose positions are abolished on or after October 1, 1972 shall have their preferred list standing determined by the date of their original appointment on a permanent basis in the classified service.
 - f. The names of all persons encompassed by paragraphs (c), (d) and (e) above whose positions are abolished on or after October 1, 1972 shall be inter-filed on the preferred list with the names of a non-veterans whose positions were abolished prior to October 1, 1972.
7. An appointing authority may take such steps as it may deem necessary in order to secure binding written commitments in advance of suspension, demotion or displacement from employees potentially affected by such suspension, demotion or displacement as to their willingness to accept reassignment or displacement.