



## State Police Commission

Post Office Box 66555  
Baton Rouge, LA. 70896-6555  
Phone (225) 925-7057  
Fax (225) 925-7058  
[www.laspc.com](http://www.laspc.com)

John Bel Edwards  
Governor

Jason Hannaman  
Executive Director

January 14, 2019

Transmittal Sheet No. 65

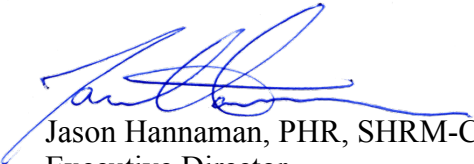
Subject: Revision of Chapters 13 and 16 of State Police Commission Rules.

Effective Date: January 11, 2019

At its meeting on January 10, 2019, on motion duly made and seconded, by unanimous vote of the members present, the State Police Commission voted to revise Chapters 13 and 16 of State Police Commission Rules.

Attached is a complete copy of Chapters 13 and 16 for inclusion in your rules.

Sincerely,



Jason Hannaman, PHR, SHRM-CP  
Executive Director

Attachment

## CHAPTER 13

### APPEALS AND HEARINGS

#### 13.1 Appeals to the Commission.

An appeal may be made to this Commission by

- (a) Any person in the Classified State Police Service who is alleged to have been discriminated against or subjected to any disciplinary action because of his/her political or religious beliefs, sex, or race.
- (b) Any person in the Classified State Police Service who, having gained permanent status, is alleged to have been subjected to any disciplinary action or removal in violation of any provision of Chapter 12 of these Rules.
- (c) Any person in the Classified State Police Service who is alleged to have been adversely affected by the violation of any provision of the State Police Commission Article or of any State Police Commission Rule other than a rule in Chapter 10.
- (d) REPEALED - EFFECTIVE JANUARY 10, 2019
- (e) REPEALED - EFFECTIVE JANUARY 10, 2019
- (f) REPEALED - EFFECTIVE JANUARY 10, 2019
- (g) REPEALED - EFFECTIVE JANUARY 10, 2019
- (h) REPEALED - EFFECTIVE JANUARY 10, 2019
- (i) REPEALED - EFFECTIVE JANUARY 10, 2019
- (j) REPEALED - EFFECTIVE JANUARY 10, 2019
- (k) REPEALED - EFFECTIVE JANUARY 10, 2019
- (l) Any applicant for employment in the Classified Service and any employee in the Classified Service who alleges that he has been discriminated against because of his membership or nonmembership in any private organization.
- (m) REPEALED - EFFECTIVE JANUARY 10, 2019

## 13.2 Request for Appeal.

A notice of appeal must:

- (a) Be in writing. For purposes of this chapter, the terms "written" or "writing" shall include documents created and/or transmitted electronically, including but not limited to emailed or faxed documents; and
- (b) Be signed by the appellant or on the appellant's behalf by an attorney duly licensed to practice law in the Courts of the State of Louisiana or by a senior student of law designated under the provisions of Rule 13.11(b)2; and
- (c) Give the name and mailing address of the appellant and of the attorney or law student signing the notice of appeal, if any; and
- (d) Contain a clear and concise statement of the actions complained against and a clear and concise statement of the basis of the appeal. Where discrimination is alleged to be a basis for appeal, specific facts supporting the conclusion of discrimination must be alleged in detail. The specific facts required will vary depending on the nature of the appeal. A conclusion of discrimination is not sufficient. The types of facts which must be included are:
  1. the date, time and place the discriminatory action took place;
  2. the name of the person or agency alleged to have taken the discriminatory action;
  3. a description of how appellant's action, conduct or performance was the same as that of other persons who were treated differently;
  4. the names of other persons treated differently and the dates the different treatment occurred;
  5. a description of events, including the dates and circumstances thereof, which led appellant to believe that the adverse decision was based on religious or political beliefs, sex, race, or any other non-merit factor.

In all notices of appeal, specific facts supporting the conclusion that a violation and/or discrimination has

occurred must be alleged in sufficient detail to enable the agency to prepare a defense.

- (e) Give the date on which the action appealed from occurred, or that the appellant learned thereof; and
- (f) State the date that the appellant received written notice of the action complained against, if written notice was given; and
- (g) State the relief the appellant seeks.

### 13.3 Delay for Making Appeal.

- (a) No appeal shall be effective unless a written notice complying with the requirements of Rule 13.2 is either
  - (i) received in the office of the Executive Director of the State Police Commission (located at 5825 Florida Blvd., Suite 1180, Baton Rouge, Louisiana 70806), or (ii) is addressed to the Executive Director of the State Police Commission at Post Office Box 66555, Baton Rouge, Louisiana 70896-6555, with proper postage affixed, and is dated by the United States Post Office:
    1. Within thirty (30) calendar days after the date on which appellant received written notice of the action on which the appeal is based when written notice before or after the action is required by these Rules; or
    2. Within thirty (30) calendar days after the date when appellant learned or was aware that the action complained of had occurred when no written notice is required by these Rules or, if required, was given tardily or not at all.
- (b) Legal holidays and days on which the office of the State Police Commission is closed shall not serve to extend the delay period specified in Sub-section (a) hereof; however, if the last day to file as outlined in Sub-section (a) falls on a legal holiday or day on which the Commission office is closed then the appeal shall be considered timely so long as it is received or postmarked on the next business day.
- (c) No appeal shall lie against any action following the expiration of three hundred sixty-five (365) calendar days from the date on which it occurred.

- (d) Except in the case of an appeal which is subject to being dismissed as defective, no appeal shall be supplemented or amended following the expiration of the delay period provided by Sub-section (a) hereof.

In the case of an appeal which is subject to being dismissed as defective, the appeal may be supplemented or amended only once after the delay period provided by Sub-section (a) hereof.

Upon notice to the parties that an appeal is subject to being dismissed as defective, the Commission or the Referee shall set the time in which the appeal may be supplemented or amended. To be considered, a supplement or amendment or an appeal must be received by or mailed to the Executive Director within the time fixed. The receipt or mailing of the supplemented or amended appeal shall be the same as provided for the original appeal in Sub-sections (a) and (e) hereof. When requested by the appellant within the original time fixed for filing the supplemented or amended appeal, for good cause shown, the Commission or the Referee may extend the period in which the supplemented or amended appeal may be filed.

- (e) Proof of the timeliness of mailing a request for appeal or the supplement or amendment of an appeal shall be shown only by a legible official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. In the event that the postmark is absent or illegible, the date that the request is received in the Executive Director's office shall determine whether the appeal was timely filed.

#### 13.4 Docketing Appeals.

The Executive Director shall cause the date of filing of each notice of appeal to be noted. An appeals docket shall be maintained upon which each appeal shall be docketed in the order filed, be numbered consecutively, and be given an appropriate title. Promptly after docketing, the authority or person against whose action the appeal is directed shall be notified of the appeal.

#### 13.5 Summary Disposition of Appeal.

- (a) Whether on motion of a party or on its own motion, the Commission may summarily dispose of all or part of an appeal on the following grounds or in accordance with the provisions of Rule 13.11(e);

1. That the Commission lacks jurisdiction of the subject matter, or of the person against whom relief is sought.
  2. That the appellant has no legal right to appeal.
  3. That the appeal has not been made in the required manner or within the prescribed period of delay.
  4. That the appeal has become moot.
  5. That an appellant has failed to appear at the time fixed for the hearing of the appeal, without having been granted a continuance.
  6. That the written notice expressing the cause for the action complained against is insufficient; or, that the cause as expressed does not constitute legal ground for the disciplinary action.
  7. That the disciplinary action was not taken by the proper appointing authority.
  8. That, after resting its case in chief, the appointing authority has failed to establish by a preponderance the cause for the disciplinary action or the appellant has failed to establish the claim of discrimination and/or the violation of a rule by a preponderance.
  9. That the undisputed facts clearly establish that the mover is entitled to a summary disposition or partial summary disposition.
- (b)
1. Every written request for summary disposition including all supporting evidence shall contain a certificate, signed by the person filing it, which shall state that the request has been served on the adverse party in a manner which would reasonably provide notice to the adverse party on the same date as the request is to be received by the Commission. The certificate shall state the date and method by which the request was filed and the service was made.
  2. The adverse party shall have forty-five (45) calendar days after such service to file with the Executive Director an opposition, which may be supported by legal argument and admissible

evidence. The Commission or referee may set a different date for the filing of an opposition. Any opposition shall be subject to the certificate and service requirements of 13.5(b)(1).

- (c) A Referee, with or without motion, may at any time summarily dispose of any preliminary or interlocutory issue, claim or request.
- (d) Prior to the final disposition of an appeal, any determination on a request for any relief by a party may be reconsidered by the Commission or a Referee.
- (e) When the Commission summarily disposes of an appeal, its decision shall be final and appealable on the date it files with the Executive Director its written decision thereon.
- (f) Repealed effective December 18, 1995.
- (g) The only documents the Commission shall consider in support of or in opposition to a request for summary disposition are the letter of discipline, the appeal by the classified employee, certified medical records, written stipulations, recorded statements of appellants, transcribed statements of appellants, affidavits, and other documentary evidence that the Commission deems reliable.
- (h) The burden of proof rests with the party requesting summary disposition.

#### 13.6 Assigning Appeals for Hearing.

The Executive Director shall fix the time and place for the hearing of appeals by the Commission, and, as far as practicable, shall fix them in the order in which docketed, provided that, for good cause shown, the Commission, its Chairman, or the Executive Director may upset any fixing or placement on the docket or give the matter a special assignment both as to time and place. If a referee has been appointed to hear an appeal, the referee shall fix the time and place for hearing the appeal and may upset and refix same.

- (a) REPEALED - EFFECTIVE JANUARY 10, 2019
- (b) REPEALED - EFFECTIVE JANUARY 10, 2019

### 13.7 Place of Hearing.

- (a) Subject to the provisions of Subsection (b) hereof all appeals before the Commission shall be heard in a convenient place, accessible to the public, in the City of Baton Rouge, Louisiana, selected by the Executive Director.
- (b) If the Commission or the Executive Director deems that the interest of the State or of any agency thereof, or the location of the parties or witnesses, or the ends of justice so require, the Executive Director may order that hearings before the Commission be held in any other convenient place of public accessibility within the State.
- (c) All appeals before a referee shall be heard in a convenient place, accessible to the public, selected by the Executive Director or referee.

### 13.8 Notice of Hearing of Appeals.

- (a) Notice of the time and place fixed for the hearing shall be mailed to the appellant and to the appointing authority at least thirty (30) calendar days prior to the date of the hearing;
- (b) With the approval of the Commission, the Executive Director, or the referee, and by consent of all interested parties, this notice and delay may be waived.

### 13.9 Continuance of Appeal.

- (a) An appeal fixed for hearing may be continued, without prejudice to the appellant.
  - 1. By the Executive Director, or the referee in the case, upon submission of justifications deemed adequate by the Executive Director or the referee; or
  - 2. By the Commission or its Chairman, for cause deemed sufficient by either; or
  - 3. If it is not reached for hearing.
- (b) With the approval of the Commission, the Executive Director, or the referee in the case, an appeal fixed for hearing may be continued by consent of all interested parties. If an appellant requests a continuance, the



Commission, may, in its discretion, deny any compensation for that portion of time lost by reason of the continuance if the appeal is sustained.

- (c) No continuance shall be granted except for compelling cause or to serve the ends of justice.
- (d) An appeal fixed for hearing and not reached shall be refixed by preference over any appeal continued for any other reason and any appeal subsequently docketed.

#### 13.10 Pre-Hearing Procedures.

- (a) In any appeal, on its or his own initiative, or on the request of a party, the Commission or the referee for the case may order a pre-hearing conference with the parties and/or their attorneys to consider:
  - 1. The identification and/or simplification of the factual and/or legal issues;
  - 2. What material facts are or are not in substantial dispute, and stipulations which might be entered into by the parties;
  - 3. The limitation of the number of witnesses, including expert or cumulative fact witnesses;
  - 4. Documentary or other exhibits which may be used and/or offered at the hearing; or
  - 5. Such other matters as may aid in the hearing or disposition of the appeal.
- (b) At the discretion of the Commission or the referee for the case, the pre-hearing conference referred to in Section (a) above may be held in person or by other appropriate electronic communication.
- (c) In any appeal, whether before or after a pre-hearing conference, the Commission or referee in the case, with or without a written request of a party made in conformity with the requirements of State Police Commission Rule 13.13(d), may order the parties and/or their attorneys, in the manner and within the time ordered, to produce, exchange copies of and/or allow inspection of documents or other tangible things.

- (d) As soon as practicable after a pre-hearing conference, the Commission or the referee for the case shall render an order which recites:
  - 1. The action taken at the pre-hearing conference;
  - 2. The agreements made by the parties as to any of the matters considered; or
  - 3. The orders made with regard to the production, exchange and/or inspection of documents, tangible things or other exhibits.
- (e) The order issued by the Commission or the referee pursuant to Section (d) above shall control subsequent proceedings, including the hearing, unless modified by the Commission or the referee to prevent injustice.
- (f) After ordered by the Commission or the referee, a party or the party's attorney who fails, without good cause, to produce, exchange copies of and/or allow inspection of any document or other tangible things shall, unless necessary to prevent injustice, be prohibited from using or offering such document or tangible things at the hearing or otherwise.
- (g) Failure of a party or attorney, without good cause, to appear at or participate in a pre-hearing conference ordered by the Commission or the referee shall be a contempt of the Commission and may be punished by the Commission as such. Additionally, within the discretion of the Commission or the referee, this failure may cause the continuance of a hearing, and if the failure is attributable to the appellant, the denial to appellant of back pay or other benefits during the period of delay caused by the failure.

#### 13.11 Procedure for Hearing Appeals.

- (a) All hearings shall be open to the public.
- (b) Parties shall have the right, but shall not be required, to be represented by counsel. Any such counsel must be
  - 1. Duly licensed to practice law in the State of Louisiana; or
  - 2. A senior student of law attending a university in the State of Louisiana who has been recommended by the President of that university specifically for

the purpose of representing individuals who have been certified as indigent for the purposes of this Chapter.

The Executive Director shall establish the procedure by which an appellant shall be certified as indigent for the purposes of this Chapter.

When any party is represented by more than one counsel, as described in this Rule, in any hearing before the Commission, or a referee, only one for each party shall be permitted to examine the same witness.

- (c) Subject to the provisions of Subsection (r) of this Rule, the burden of proof as to the facts shall be on the appointing authority, which shall open the case.
- (d) Where appropriate and not inconsistent with these Rules, the rules of evidence applicable to civil trials in the district courts of the State shall be observed in all hearings before a referee or the Commission.
- (e) REPEALED - EFFECTIVE JANUARY 10, 2019
- (f) REPEALED - EFFECTIVE JANUARY 10, 2019
- (g) Affidavits and other ex parte statements shall not be received in evidence without the consent of all parties, except to refresh memory or to discredit a witness.
- (h) Parties and witnesses shall be subject to cross examination as in civil trials before the courts of the State, and the Commission, each member of the Commission, or referee may examine and cross examine any witness.
- (i) REPEALED - EFFECTIVE JANUARY 10, 2019
- (j) The Commission or the referee may limit corroborative evidence.
- (k) Where appropriate and not inconsistent with these Rules, hearings and the taking of testimony shall be conducted according to the accepted practice in civil trials before the district courts of the State.
- (l) The Commission or the referee may receive stipulations of undisputed facts from the parties. The Commission or the referee may also state for the record those facts which the Commission or the referee find to be undisputed and,

subject to appropriate review, those facts will be deemed to be proven. Thereafter, the Commission or the referee may refuse to receive further evidence on the facts deemed to be proven. A party that timely objects to this ruling shall have the right to proffer evidence to the referee, at which time the Commission members shall exit the hearing room for the duration of the proffer.

- (m) Subject to the provisions of Subsections (r) and (s), the facts expressed in writing by the appointing authority as cause for disciplinary action shall not be accepted as prima facie true. Evidence shall not be received to supplement or enlarge the expressed cause. The appellant may offer proof to rebut any proof offered by the appointing authority in support of the expressed cause for the disciplinary action.
- (n) Without a request from a party, the Commission or the referee may order the sequestration of witnesses. Sequestration shall be ordered upon the request of a party. In application of this Rule only one person, in addition to counsel, shall represent the appointing authority or the agency.
- (o) The Commission, or a referee, may fix the total time to be allowed for oral argument, according to the circumstances of each case, and may limit oral argument to one or more issues.

Except with special leave of the Commission, or referee, only one attorney shall be permitted to present oral argument for any party. This rule shall not bar a separate attorney from making the opening and closing for a party.

The Commission or the referee may invite or allow any member or members of the Louisiana State Bar Association to present oral or written argument on any question of law, provided such oral argument is presented at a hearing when all parties are present, or represented, or that a copy of all written arguments be served on all parties, or their counsel, if any. Service of the written argument shall be subject to the certificate and service requirements of 13.5(b)(1).

- (p) The Commission or a referee may take notice of the provisions of the Article, the Rules, the Classification Plan, and the Pay Plan without the necessity of an offer in evidence.

- (q) When during the course of a hearing a ruling by the Commission is to be made, the presiding Commissioner or referee with the consent of the presiding Commissioner shall rule and this ruling shall constitute that of the Commission; provided, that should a member of the Commission object to such ruling or offer an alternative ruling, the ruling of the Commission shall be determined by majority vote of those members present.
- (r) Subject to the provisions of Subsections (m) and (s), when a classified state police employee alleges discrimination because of that employee's political or religious beliefs, sex, or race, the burden of proof as to the alleged discrimination shall be on the appellant.
- (s) In combination appeals, where the appellant denies the verity or severity of a portion or all of the charges set forth in writing and alleges discrimination with respect to all or a portion of the charges:
  - 1. As to that portion of the facts set forth in writing, the verity or severity of which is denied by the appellant, the burden of proof shall rest upon the appointing authority.
  - 2. As to that portion of the appeal in which the appellant alleges discrimination, the burden of proof shall rest upon the appellant.
- (t) Authentic acts delegating appointing authority or certified copies thereof may be offered into evidence without further proof and shall be accepted as prima facie proof of the recitals contained therein.
- (u) When a violation of Article X Section 46 (A) of the Louisiana Constitution or a Rule in Chapter 12 is the basis for appeal, the burden of proof, as to the facts, shall be on the appointing authority. When a violation of any other Section of the Article or any other Rule is the basis for appeal, the burden of proof, as to the facts, shall be on the employee.

#### 13.12 Referees.

- (a) The Commission may appoint a referee to manage an appeal, to hear and decide preliminary and interlocutory issues, claims and/or requests and to hold a hearing and take testimony in an appeal.

- (b) A referee shall have subpoena power and power to administer oaths as well as the powers granted in this Chapter.
- (c) After hearing an appeal, a referee shall prepare proposed written findings of fact and conclusions of law, which shall be submitted as a recommendation to the Commission, which after a review of the record, may accept, modify, or reject the recommendation.

#### 13.13 Subpoena of Witnesses; Production of Documents.

- (a) The Commission, each member thereof, the Executive Director, any referee appointed by the Commission, and any specially designated agent of the Commission shall have the power to order the appearance of witnesses and compel the production of books and papers pertinent to the issues involved in any appeal, provided the witnesses and books and papers are within the State.
- (b) For all hearings conducted, no subpoena requested by a party will be issued unless a written request for the issuance of subpoenas is received in the office of the Executive Director of the State Police Commission no later than fifteen (15) calendar days before the date fixed for the hearing. The request for subpoenas shall contain the names of the witnesses, the street addresses at which the witnesses can be served, and a brief statement of what is intended to be proved by each witness.
- (c) In lieu of the issuance and service of formal subpoenas to State employees, the Commission or any person authorized by Sub-section (a) of this Rule may request any appointing authority to order any designated employee under its supervision to attend and testify at any hearing, and upon being so ordered the employee shall appear at the hearing and furnish testimony.
- (d) For all hearings conducted, no subpoena for the production of books, papers, or other items will be issued at the request of a party unless a written request for the issuance of subpoenas is received in the office of the Executive Director of the State Police Commission no later than fifteen (15) calendar days before the date fixed for the hearing. The request for a subpoena for books, papers or other items shall contain a description of the items to be produced in sufficient detail for identification and shall contain the name and street address of the person who is to be required to produce

the items and a brief statement of what is intended to be proved by each item.

- (e) No subpoena will be issued at the request of a party unless the request therefor complies with this Rule and the person authorized to issue the subpoena is satisfied that the testimony of the witness or the production of the books, papers, or other items is relevant to the issues before the Commission. If denied, the issue can be presented to the Commission for consideration.
- (f) Authentic copies of books, papers, photographs, or other items in the custody of any department, board, or agency of the State or any sub-division thereof which have been subpoenaed may be admitted in evidence with the same effect as the originals, but if the original books, papers, photographs, or other items are subpoenaed they must be produced and made available for inspection even though authentic copies may be subsequently introduced.
- (g) The Commission, its Chairman, the Executive Director, or a referee, for cause deemed sufficient, may issue an appropriate order at any time recalling any subpoena, subpoena duces tecum, or request issued under the provisions of this Rule. By agreement, the parties may recall a subpoena for a witness.
- (h) The abuse of the privilege to require the attendance of witnesses or the production of books, papers, photographs, or other items shall be deemed a violation of these Rules and shall be dealt with accordingly.
- (i) All subpoenas shall be issued only for the specific hearing for which they are requested. A party may request a reissuance of all or some of the subpoenas for a subsequent hearing date.

#### 13.14 Dismissal for Non-appearance at Hearing of Appeal.

- (a) If, without good cause or excuse, neither a party nor his or her counsel appears at the time and place fixed for hearing, the Commission, on its own or on the recommendation of a referee appointed to hear the appeal, may summarily dispose of the appeal, including dismissing or granting the appeal or other appropriate action.
- (b) Subject to the Commission's discretion to continue a hearing, if an appellant or the chosen representative of the appointing authority fails, without good cause or excuse, to appear at the time and place fixed for

hearing, but that party's counsel is present, that party shall be deemed to have waived the right to appear in person or by a representative.

- (c) If either the appellee or the appellant fails to appear at the place and time fixed for any hearing, but counsel for the absent party is present, the absent party shall be deemed to have waived the right to appear and the hearing shall proceed and testimony may be taken in the absence of the party with the same effect as if the party were present.
- (d) Nothing in this Rule shall prevent the Commission or a referee from continuing the appeal if the Commission or referee learns the reason for the absence and determines that the absence of a party or that party's attorney was due to circumstances beyond the control of the party or attorney.

#### 13.15 Consolidation.

When two or more appeals involve similar or related circumstances, the Commission may order a joint hearing of any or all the matters at issue in the appeals, or may order that all these appeals be consolidated.

#### 13.16 Transcripts of Proceedings of Appeals to the Commission.

- (a) The proceedings of all appeal hearings before the Commission or a referee shall be recorded, but shall be transcribed only upon order of the Commission or the Executive Director and upon payment of the estimated transcription cost thereof as determined by the Executive Director by the party requesting the transcript. After transcription, if the estimate was below the actual costs, the additional costs shall be paid before release of the transcript. If the estimate was higher than the actual costs, a refund of the over payment shall be made to the party making the payment.
- (b) REPEALED - EFFECTIVE JANUARY 10, 2019
- (c) Whenever any portion of the Commission's Rules, Classification Plan, or Pay Plan is relied upon in an appeal to the Court of Appeal and is material to the decision of any issue, the portion relied upon shall be copied into the transcript prepared for the Court of Appeal, First Circuit, if not contained in the Commission's written opinion.



13.17 Refusal to Appear; Refusal to Testify; False Testimony.

- (a) In addition to any other penalties provided by law, any officer or employee in the classified state police service who willfully refuses or fails to appear before the Commission or its Referee in response to a subpoena or a request under the provisions of Rule 13.13, or having appeared refuses to testify or answer any question pertinent to the matters under consideration or who knowingly gives false testimony or who knowingly solicits, condones, or accepts, without refutation, false, or misleading testimony given by any witness in his/her behalf at a hearing, or who fails to produce any books, papers, photographs, or other items pertinent to any hearing may be found by the Commission or the Referee to be guilty of contempt in accordance with these Rules. In addition, the Commission may find that the person has forfeited the office or position held and/or that the person will not to be eligible thereafter for appointment to any position in the classified state police service for a period not to exceed ten years or be subject to a suspension from the office or position held.
- (b) In addition to any other penalties provided by law, any person who willfully fails to appear in response to a subpoena or to an order issued under the provisions of Rule 13.13 hereof, or who willfully fails to answer any questions or to produce any books, papers, photographs, or other items pertinent to any hearing before the Commission or a Referee, or who knowingly gives false testimony or who knowingly solicits, condones, or accepts, without refutation, false, or misleading testimony given by any witness in his/her behalf at any such hearing may be found guilty of contempt by the Commission or the referee in accordance with these Rules.
- (c) Any officer or employee required to testify shall not be subjected to any disciplinary action by the appointing authority of the officer or employee because the employee so testifies.

13.18 Costs of Appeals.

Subject to the provisions of 13.16(a), the Commission or the referee has the discretion to order the costs of any hearing or appeal, or any portion of such costs, including the costs of recording and transcribing testimony to be paid by or charged to either or both interested parties.

### 13.19 Witness Fees.

- (a) The travel expenses of an employee in state police service other than the appellant who is required to appear before the Commission or a referee in the hearing of an appeal shall be paid by the department which employs the employee.
- (b) The Commission or the referee may order that any person who is not an officer or employee of the department and who is subpoenaed to testify at a hearing shall be entitled to the same mileage and fees as are allowed witnesses in civil cases by the Nineteenth Judicial Court for the Parish of East Baton Rouge.
- (c) Witness fees and travel expenses may be taxed to either party, in the Commission's discretion.
- (d) The Commission and any person authorized to issue a subpoena may before doing so, require the party requesting a subpoena of one other than an officer or employee of a department to deposit with the Executive Director a sum sufficient to cover the mileage and witness fees pending a determination of costs by the Commission.

### 13.20 Commission Action on Appeal.

- (a) After hearing of an appeal, the Commission shall make a written decision containing its findings of facts and conclusions, which shall be filed with the Executive Director. The decision of the Commission shall be final on the day that it is filed.
- (b) On the same date that the decision is filed, the Executive Director shall mail a copy of the decision to the parties or their counsel.
- (c) If the Commission after any hearing orders a dismissed or suspended employee reinstated, it may reinstate such employee under such conditions as it deems proper and subject to Rule 13.9 may order full pay for lost time.

### 13.21 Interlocutory Rulings.

- (a) Formal exceptions to the interlocutory rulings or orders of the Commission or of a referee are unnecessary. At the time the ruling is made or the order is communicated, a party shall make known any objection thereto and the

grounds therefor, which objection shall be noted in the record.

- (b) The Commission or a referee may, at any time prior to a final decision, recall, reverse, or revise any interlocutory ruling or order.

#### 13.22 Amicable Settlement of Appeals.

In any appeal pending before the Commission, the parties thereto may agree to submit a proposed settlement which, if approved by the Commission, shall constitute a final disposition of the appeal.

#### 13.23 Recusal of a Commissioner or Referee.

The grounds for recusal of a Commissioner or a referee shall be the same as the grounds for the recusal of judges of the courts of the State of Louisiana.

#### 13.24 Interrogatories; Pre-Trial Discovery; Rehearing of Appeal.

- (a) Interrogatories and pre-trial discovery proceedings shall not be recognized by the Commission or a referee.
- (b) No rehearing shall be granted from a final decision of the Commission.

#### 13.25 Finality of Commission Action on Rules and Plans.

No appeal to the Commission shall lie from the adoption by the Commission, after public hearing, of a Classification Plan, a Pay Plan, or of any Rule, or of any Amendment to these Plans or Rules.

#### 13.26 Attorney's Fees.

- (a) When the Commission approves a settlement, rescission or modification of an action that has been appealed, or renders a decision which reverses or modifies an action that has been appealed, the appellee may be ordered to pay attorney's fees in an amount not to exceed \$1,500, unless the Commission concludes that the appointing authority has acted arbitrarily and capriciously, in which case the Commission may award reasonable attorney's fees in excess of that amount.
- (b) The Commission or a referee may allow such evidence and argument in support of the request for attorney's fees as is deemed appropriate considering the status of the

appeal at the time the request for attorney's fees is filed. No attorney's fees shall be awarded unless a written request is filed before the final disposition of the appeal by the Commission.

13.27 Action Required Following Commission's Decision.

- (a) Following the granting of an appeal of a termination, and within fifteen (15) calendar days from the date of the mailing of the decision, the appellant shall present ready for work at the time and place of their employment as it existed prior to the termination. Appellant shall be returned by the appointing authority to the regular payroll at that time. Appellant shall at that time, or as soon thereafter as possible, present to the appointing authority satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of appellant's termination.

If no wages or unemployment compensation have been so received, appellant shall present a written and signed statement to that effect to the appointing authority upon their return. Within fifteen (15) days following receipt of the information about the amount, if any, of wages or unemployment compensation, the appointing authority shall deliver to the human resources office a request for the appropriate disbursement to the employee. The human resources office shall promptly cause this disbursement. The appointing authority shall otherwise comply with the orders contained in the decision. Further, within thirty (30) days from receipt by the appellant of the back pay due, appellant, at their sole option, may repurchase all or part of the annual leave balance they held at the time of termination, the value of which was paid at the time of termination, pursuant to Rule 11.10(a). All of the above shall apply unless otherwise stayed by a court of competent jurisdiction.

- (b) Following the granting of the appeal of a suspension, demotion or reduction in pay, and within fifteen (15) calendar days from the date of the mailing of the copy of the decision to all parties or as soon thereafter as possible, the appellant shall present to the appointing authority satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of suspension. If no wages or unemployment compensation have been received, appellant shall present to the appointing authority a signed statement to that effect. Within fifteen (15) days from receipt of such proof or written statement, the appointing authority

shall deliver to the human resources office a request for such disbursement. The human resources office shall promptly cause such disbursement. The appointing authority shall otherwise comply with the orders contained in the decision.

- (c) In the event all or part of the decision granting an appeal is stayed by a court of competent jurisdiction, the time limits specified herein shall begin to run upon the date the decision of the judiciary in the case presented to it becomes final.

#### 13.28 Mediation.

- (a) The Commission, or a referee, may direct the attorneys and the parties in an appeal to participate in nonbinding mediation to attempt to resolve the appeal before a hearing.
- (b) Any member of the Commission or the referee, or another person may conduct the mediation.
- (c) The Mediator's role is to facilitate communication among the parties at the mediation. The mediator will not later influence, participate in, or make any decision on any issue in the appeal. The Mediator will not issue any orders or sanctions pertaining to the mediation or the appeal.
- (d) Before the mediation, the attorneys must confer with their clients about the clients' goals and expectations from settlement. The attorneys and every person whose authority is necessary for settlement must appear at the mediation (or, at the discretion of the Mediator, be available by telephone), on time and prepared to negotiate.
- (e) The Commission, or a referee, presiding over the appeal may order the attorneys and/or the parties to bring to, or exchange before the mediation, a witness and exhibit list, relevant documents and/or exhibits, a proposed settlement offer, and anything else that will aid in resolving the appeal.
- (f) The mediation will not be open to the public and will remain confidential.
- (g) If anyone fails to comply with an order pertaining to the mediation, the Commission, or a referee, presiding over the appeal may order appropriate sanctions. Those

sanctions may include punishing for contempt, dismissing the appeal or portions of it, reversing the action appealed or portions of it, and assessing costs and attorney's fees against the noncomplying person.

#### 13.29 Electronic Notice.

For purposes of this chapter, the terms "written" or "writing" shall include documents created and/or transmitted electronically, including but not limited to emailed or faxed documents. Any faxed or emailed document shall be considered filed on the date and time such document is received by the Director.

#### 13.30 Electronic Filing.

The parties to an appeal may have the option to receive all notices, orders, and decisions electronically, with the exception of Settlement documents. All settlements must be submitted with the original signatures of the parties.

Instructions on the procedure to "opt in" are sent with the Notice of Docketing each time a new appeal is filed. Electronic noticing participants are responsible for providing a valid email address for electronic receipt of documents, and must notify the State Police Commission immediately if the email address changes. Participation may be cancelled at any time by written notice to the State Police Commission.

**CHAPTER 16**  
**INVESTIGATIONS**

16.1 Purpose of Chapter; Penalties; Orders.

- (a) To enable the Commission to enforce the provisions of the State Police Commission Article and the State Police Commission Rules, the Commission may investigate conduct asserted to be in violation thereof.
- (b) When, after a public investigative hearing, a classified employee in state police service is found to have violated the State Police Commission Article or a State Police Commission Rule, the Commission may order that employee be suspended, demoted, discharged or otherwise disciplined or fined for contempt in accordance with Rules 2.11 - 2.13.
- (c) When, after a public investigative hearing, the conduct of any person is found to have violated the State Police Commission Article or a State Police Commission Rule, the Commission may issue such orders as it deems appropriate.

16.2 Requests for Investigation.

- (a) Any person who suspects that there has been a violation of the State Police Commission Article or a State Police Commission Rule may file a request for investigation with the Executive Director.
- (b) A request for investigation must be in writing and may not be combined with any other matter. It should: be clearly identified as a request for investigation; provide the name, mailing address and daytime telephone number of the person filing the request; and describe the conduct to be investigated in as much detail as is available to the person filing the request.
- (c) A request for investigation shall not be a public record.

16.3 Investigations by the Executive Director.

- (a) The Executive Director may, even without a request, investigate any suspected violation of the State Police Commission Article or a State Police Commission Rule and shall conduct such investigations as ordered by the Commission.

- (b) Upon receipt of a request for investigation, the Executive Director or the Executive Director's designee shall conduct the investigation as warranted based on the information contained in the request for investigation or any other available information. Thereafter, the Executive Director shall either file formal charges under Rule 16.4 or notify the person who filed the request for investigation that formal charges are not being filed. A copy of Rule 16.4 shall be attached to this notice.

#### 16.4 Formal Charges.

- (a) Any person who asserts that there has been a violation of the State Police Commission Article or a State Police Commission Rule may file formal charges with the Commission by filing the same with its Executive Director.
- (b) Formal charges should be clearly identified as such and may not be combined with any other matter and must:
  - 1. be in writing;
  - 2. contain the name, mailing address, and daytime telephone number of the person filing the charges (hereafter, the complainant) and of the complainant's attorney, if any;
  - 3. contain the name and mailing address of each person who is charged with committing a violation (hereafter, a respondent);
  - 4. REPEALED - EFFECTIVE JANUARY 10, 2019
  - 5. describe the conduct in sufficient detail to enable the Commission to determine whether the alleged conduct violates the State Police Commission Article and/or a State Police Commission Rule and to enable the respondent to prepare a defense; and
  - 6. describe, in detail, the facts which led the complainant to conclude that a violation occurred.
  - 7. REPEALED - EFFECTIVE JANUARY 10, 2019
- (c) When formal charges are filed by someone other than the Executive Director, the Executive Director may join as a complainant.
- (d) Formal charges shall not be a public record.



#### 16.5 Commission Action on Formal Charges.

- (a) Each filing which purports to be formal charges shall be considered by the Commission in executive session.

Thereafter, in its sole discretion, the Commission may take such action as it deems appropriate, including any of the following:

1. decline to investigate the matter and order the charges dismissed;
2. order the Executive Director to conduct an investigation and to submit a report thereon;
3. offer the complainant an opportunity to provide additional information; and/or
4. order a public investigative hearing on some or all of the charges.

- (b) Written notice of the Commission's action shall be given to the complainant.

#### 16.6 Docketing of Public Investigations.

After the Commission orders a public investigative hearing, the charges to be investigated shall be docketed and the case shall become a public record. Copies of the charges to be investigated and the Commission's order shall be mailed to each complainant, each respondent and each respondent's appointing authority, if any.

#### 16.7 Parties; Notice to Parties.

- (a) The parties to a public investigation are the complainant(s) and the respondent(s). Upon a respondent's written request, a respondent's appointing authority may be made a party.

- (b) Whenever this Chapter requires notice to the parties, notice shall be given to all counsel of record and to all unrepresented parties. Notice to counsel of record shall constitute notice to the party represented.

#### 16.8 Consolidation of Public Investigations.

Two or more public investigations involving common issues of law or fact or two or more public investigations involving the same parties may be consolidated for hearing.

#### 16.9 Notice of Hearings.

Written notice of the time and place for a public investigative hearing shall be mailed to the parties at least 30 calendar days before the date of the hearing. With the consent of the parties, this notice and delay may be waived.

#### 16.10 Continuance of Hearings.

A public investigative hearing may be continued by the Commission on its own motion or by its Chairman or its Executive Director:

- (a) for good cause shown; or
- (b) by consent of all parties; or
- (c) if it is no reached for hearing.

#### 16.11 Summary Disposition.

- (a) The Commission, on its own motion or on motion of a party, may summarily dispose of a public investigation under Rule 16.14(b) or Rule 16.15(a) or on any of the following grounds:
  - 1. that the conduct to be investigated, even if proven, would not constitute a violation of the State Police Commission Article or a State Police Commission Rule;
  - 2. that the conduct to be investigated has not been described in sufficient detail to enable the respondent to prepare a defense;
  - 3. that the facts asserted to support the conclusion that a violation occurred, even if proven, do not support that conclusion;
  - 4. that the matter under investigation has become moot and no further action is needed;
  - 5. that the complainant has already been afforded an opportunity to prove the same charges in an appeal hearing or in another public investigative hearing;
  - 6. that the information provided by complainant and any information developed by investigation does not establish a violation as alleged.

- (b) A party may move for summary disposition orally at the public investigative hearing or in writing any time before the Commission renders its final decision in the case.
- (c) When the Commission summarily disposes of a public investigation, it shall render a decision in accordance with Rule 16.16.

#### 16.12 Withdrawal of Charges.

With the approval of the Commission, the charges to be investigated may be withdrawn upon the complainant's written request filed before the date of the public investigative hearing or upon the complainant's oral request made at the hearing.

#### 16.13 Amendment of Charges.

- (a) The charges to be investigated may be amended or supplemented by the Commission on its own motion or, with the approval of the Commission, on written motion of the complainant.
- (b) The respondent shall be notified of any amended or supplemental charges to be investigated and shall be given a reasonable opportunity to prepare a defense against the additional charges.

#### 16.14 Procedure for Hearings.

- (a) The burden of proof, as to the facts, shall be on the complainant.
- (b) The Commission may require the complainant to give his/her sworn testimony before hearing any other witness and if the Commission finds from such testimony that there is no just or legal ground to support the charges, it may decline to hear or consider any other evidence and dismiss the investigation.
- (c) If the investigation is not dismissed under subsection (b), the Commission shall allow the complainant to present such evidence as is relevant to the charges.
- (d) The charges against a respondent shall not be accepted as prima facie true. Evidence shall not be received from the complainant to supplement or enlarge the charges except as approved under Rule 16.13. The respondent may rebut

any proof offered by the complainant in support of the charges.

- (e) Except insofar as they refer to referees, the provisions of State Police Commission Rules 13.11(a), (b), (d), (g), (h), (i), (j), (k), (l), (n), (o), (p) and (q) are hereby made applicable to public investigative hearings.

#### 16.15 Failure of Parties to Appear at Hearing.

- (a) If the complainant, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public investigative hearing, the Commission may order the investigation dismissed.
- (b) If a respondent or a respondent's appointing authority, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public investigative hearing, the respondent and the appointing authority may be deemed to have waived their appearance and testimony may be taken in their absence with the same effect as if present.

##### 16.15.1 Attorney's Fees

When the Commission finds there is no reasonable basis for the complaint under 16.4, the Commission may order the complainant to pay reasonable attorney's fees to the respondent in an amount not to exceed \$1,500 per respondent.

#### 16.16 Decisions.

After concluding a public investigative hearing, the Commission shall render and file a written decision with the Executive Director. The Commission's decision shall be final on the day that it is filed and on that date, the Executive Director shall mail a copy of the decision to the parties.

#### 16.17 Certain Rules Governing Appeal Hearings Adopted by Reference.

Except insofar as they refer to referees, the provisions of the following Rules are hereby made applicable to public investigative hearings:

- (a) Rule 13.7 - "Place of Hearing."
- (b) Rule 13.13 - "Subpoena of Witnesses; Production of Documents."

- (c) Rule 13.16 - "Transcripts of Proceedings of Appeals to the Commission."
- (d) Rule 13.17 - "Refusal to Appear; Refusal to Testify; False Testimony."
- (e) Rule 13.18 - "Costs of Appeals."
- (f) Rule 13.19 - "Witness Fees."
- (g) Rule 13.21 - "Interlocutory Rulings."
- (h) Rule 13.23 - "Recusal of a Commissioner or Referee."
- (i) Rule 13.24 - "Interrogatories; Pre-Trial Discovery; Rehearing of Appeal."

#### 16.18 Applicability to Pending Investigations.

When this Chapter becomes effective, any investigation which has already been docketed but has not yet been decided shall be processed in accordance with Rule 16.5.