



State Police Commission

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October 20, 1993

Transmittal Sheet No. 6

To: State Police Commission Members, Colonel Paul W. Fontenot, Russell J. Culotta, Foye L. Lowe, Jr., Rosemary Hannie, Walt Smith, Thomas H. Normile, Baxter W. Welch, Walter L. Smith, III, Charles R. Dupuy, Mark Bascle, Allen T. Moss, Russell G. Fontenot, Michael D. Rawson, Roger L. Jaubert, James L. Matthews, II, Dennis J. Pellerin, Jerry W. Patrick, William B. Stewart and Russell Cook, Sr.

Subject: Revisions to the State Police Commission Rules

At its October 18, 1993 meeting, the State Police Commission adopted revisions to the State Police Commission Rules as follows: State Department of Civil Service, Department of Civil Service and/or Civil Service Commission changed to State Police Commission and the Director of the State Department of Civil Service changed to the Director of the State Police Commission. Additionally, changes were made to Rules 13.12 (a); 13.21 (b) and (d); and 13.37 (a) and (b).

For your convenience, enclosed is a complete copy of Chapter 13 of the Rules. The effective date for these changes is October 18, 1993.

Sincerely,

Debra L. Johnson
Director

Enclosure

CHAPTER 13
APPEALS AND HEARINGS

- 13.1 Amended and re-enacted effective April 1, 1955 as Rule 13.10.
- 13.2 Amended and re-enacted effective April 1, 1955 as parts of Rules 13.11 and 13.20.
- 13.3 Amended and re-enacted effective April 1, 1955 as Rule 13.28.
- 13.4 Amended and re-enacted effective April 1, 1955 as Rule 13.19.
- 13.5 Amended and re-enacted effective April 1, 1955 as parts of Rules 13.21 and 13.25.
- 13.6 Amended and re-enacted effective April 1, 1955 as part of Rule 13.21.
- 13.7 Amended and re-enacted effective April 1, 1955 as Rule 13.27.
- 13.8 Amended and re-enacted effective April 1, 1955 as Rule 13.17.
- 13.9 Amended and re-enacted effective April 1, 1955 as part of Rule 13.22.
- 13.10 Appeals to the Commission.

An appeal may be made to this Commission by

- (a) Any person in the Classified Service who alleges that he has been discriminated against or subjected to any disciplinary action because of his political or religious beliefs, sex, or race.
- (b) Any person in the Classified Service who, having gained permanent status, alleges that he has 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 Service who alleges that he has been deprived of any right, discriminated against, or adversely effected by the violation of any provision of the Article or of any Rule of this Commission.
- (d) Any person in the Classified Service who shall have failed to obtain relief from an allocation or reallocation of a position to a class or by the Classification Plan or any change thereof after a written request for review thereof by the Director or his representative as provided in Rule 5.3 and who alleges that the Director's decision has been discriminatory.

- (e) Any person in the Classified Service who alleges that he has been discriminated against by the application of the Pay Plan or by the application of any change thereof.
- (f) Any person who shall have applied for or been examined, for the Classified Service, without having acquired permanent status therein, and who alleges discrimination in the review of his application, admission to an examination, scoring of examinations, the establishment of an eligible list, or certification therefrom.
- (g) By any person expressly granted the right to appeal to this Commission by the Article or by any Rule of this Commission.
- (h) Any person who alleges that he has been the subject of discrimination as defined in Rule 1.14.1.
- (i) Any person who alleges that he has been discriminated against by any official action taken by the Director.
- (j) Any person seeking a review of a decision made by an appointing authority under the provisions of Rule 10.4.
- (k) Any person in the Classified Service who alleges that he has been demoted, dismissed, discriminated against, or subjected to any disciplinary action based solely on the grounds assigned for an unsatisfactory service rating.
- (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) Any person in the Classified Service who alleges that he has been subjected to any layoff or layoff avoidance action in violation of any provision of Chapter 17 of these Rules.

13.11 Request for Appeal.

A notice of appeal must

- (a) Be in writing; and
- (b) Be signed by the appellant, or on his behalf by an attorney duly licensed to practice law in the Courts of the State of Louisiana, or on his behalf by a senior

student of law designated under the provisions of Rule 13.19(b)2; and

- (c) Give the name and mailing address of the appellant, and of his attorney or designated senior law student, 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; however, the facts must be alleged in sufficient detail to enable the agency to prepare a defense. 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 his religious or political beliefs, sex, race, or any other non merit factor.
- Where a violation of the Article or a Rule is alleged to be a basis for appeal, specific facts supporting the conclusion that a violation 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.

13.12 Delay for Making Appeal.

- (a) No appeal shall be effective unless a written notice complying with the requirements of Rule 13.11 is either (i) received in the office of the Director of the State Police Commission (located at 1885 Wooddale Boulevard, Suite 1111, Baton Rouge, Louisiana), or (ii) is addressed to the Director of the State Police Commission at Post Office Box 66555, Baton Rouge, Louisiana, 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.
- (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) No appeal shall be supplemented or amended following the expiration of the delay period stipulated by Sub-section (a) hereof;
- (e) Proof of the timeliness of mailing a request for 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 Director's office shall determine whether the appeal was timely filed.

13.13

The Director shall cause the date of filing to be noted of each notice of appeal. 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.

13.14 Summary Disposition of Appeal.

- (a) At any time after the docketing of an appeal a written request may be filed by any interested party for summary disposition thereof on any of the following grounds:
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 his 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.
- (b) Any request for summary disposition when made prior to the date fixed for the hearing of the appeal may be supported by admissions of fact and written argument or brief; provided, that
1. Before filing, the Director shall require proof of service of a copy of each such instrument on the adverse party, together with the date of such service; and
 2. The adverse party shall have fifteen (15) calendar days after such service, or until the date of the hearing, whichever is sooner, to file with the Director an opposition to the request which opposition may be supported by written argument or brief.
- (c) If the Commission or a referee denies the request or refers it to the merits, it or he may reconsider same at any time prior to its or his final disposition of the appeal.

- (d) The Commission or a referee, on its or his own motion, may at any time summarily dispose of an appeal on any of the grounds listed in Subsection (a) hereof or in accordance with the provisions of Rule 13.19(e).
- (e) When the Commission summarily disposes of an appeal, its decision shall be final on the date it files its written decision with the Director disposing of the case. On the same date that the decision is filed with the Director, the Director shall mail a copy of the decision to the parties. Then a referee summarily disposes of an appeal his decision shall be final in accordance with the provisions of Rules 13.20 and 13.36.
- (f) By filing with the Director a written notice of his intention to do so, an appellant may withdraw or abandon his appeal at any time prior to the hearing thereof by the Commission or a referee if his request is approved by the Director. After an appeal has been heard by the Commission or a referee, it may be withdrawn or abandoned only with approval of the Commission or the referee. The Director shall promptly notify all interested parties of any such withdrawal or abandonment.

13.15 Assigning Appeals for Hearing.

The 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 Director may upset any fixing and may either relegate the case for refixing to the foot of the docket or give it a special assignment both as to time and place. If a referee has been appointed to hear an appeal, he shall fix the time and place for hearing the appeal and may upset and refix same.

13.16 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 Director.
- (b) If the Commission or the 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, he may order that hearings before

the Commission be held in any other convenient place of public accessibility within the State other than the City of Baton Rouge, Louisiana.

- (c) Repealed effective October 15, 1982.
- (d) Repealed effective January 1, 1975.
- (e) All appeals before a referee shall be heard in a convenient place, accessible to the public, selected by the referee.

13.17 Notice of Hearing of Appeals.

- (a) For all hearings conducted after July 1, 1982, and subject to the provision of Sub section (b) hereof, notice of the time and place fixed for the hearing shall be mailed to the appellant and to the authority against whose action the appeal has been taken at least thirty (30) calendar days prior to the date of the hearing;
- (b) With the approval of the Commission, the Director, or the appropriate referee, and by consent of all interested parties, said notice and delay may be waived.

13.18 Continuance of Appeal.

- (a) An appeal fixed for hearing may be continued, without prejudice to the appellant.
 - 1. By the Director, or the appropriate referee in a referred case, upon submission of justifications deemed adequate by the Director or the referee; or
 - 2. By the Commission or its Chairman, for cause deemed sufficient by it; or him; or
 - 3. If it is not reached for hearing.
- (b) With the approval of the Commission, the Director, or the appropriate referee, an appeal fixed for hearing may be continued by consent of all interested parties. If an appellant requests a continuance the Commission or the referee, may, in its or his discretion, deny him any compensation for that portion of time lost by reason of the continuance if his appeal be finally 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.

13.19 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; and
 2. A senior student of law attending a university in the State of Louisiana who has been recommended by the President of his individuals who have been certified as indigent for the purposes of this Chapter.

The 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 such counsel for any party shall be permitted to examine the same witness.

- (c) Subject to the provisions of Subsection (4) of this Rule, the burden of proof as to the facts shall be on the appointing authority and the Commission or the referee may, in its or his discretion, require him to 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) The Commission or the referee may require the appellant to give his sworn testimony before hearing any other witness on his behalf, and if the Commission or the referee finds from such testimony that he has no just or legal ground to support his appeal, it or he may decline to hear or consider any other evidence and thereupon dismiss the appeal.

- (f) If after hearing appellant's testimony the Commission or the referee is of the opinion that he may have just or legal grounds for his appeal, it or he shall permit him to adduce such other evidence, testimonial or otherwise, as may be relevant.
- (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) The Commission or the referee may require that the parties stipulate to all undisputed facts.
- (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) When a pending case involves substantially the same question of law or fact as presented in a prior case, the Commission or a Referee, at the request of any party or on its or his own motion, may admit as evidence any part of the record in such previous case as it or he may deem relevant; provided, that in the application of this rule no party be deprived of the right to cross examine any adverse witness.
- (m) Subject to the provisions of Subsections (r) and (s), the charges expressed in writing by the appointing authority as cause for demotion, suspension, dismissal, or other action, shall not be accepted as prima facie true. Evidence shall not be received from an appointing authority to supplement or enlarge the charges contained in such written document. The appellant may rebut any proof offered by the appointing authority in support of the charges.
- (n) The Commission, or a referee, on request of any party, or on its or his own motion, any order that the witnesses in any hearing be separated so as to preclude any witness, other than the parties and their

attorneys, from hearing the testimony of any other witness. In the application of this Rule only one person, in addition to counsel, shall represent the appointing authority or any department.

- (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.

The Commission or the referee may in any case on its or his own motion 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 such written argument shall be made to appear by the certificate of the writer.

- (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 shall rule and his 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 employee alleges that he has been discriminated against because of his political or religious beliefs, sex, or race, the facts expressed in writing by the appointing authority as cause for the demotion, suspension, dismissal, or other action, shall be accepted as prima facie true. Evidence shall not be received from an appointing authority to supplement or enlarge the facts as so expressed. The appointing authority may rebut any proof offered by the appellant employee in contradiction of the facts expressed in writing by the appointing authority. The burden of proof as to the facts shall be on the appellant and the

Commission or a referee may, in its or his discretion, require him to open the case.

- (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 where he 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 Section 8(A) of the Article 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.

13.20 Referees.

- (a) The Commission may appoint a referee to take testimony in and to hear and decide removal and disciplinary cases.
- (b) A referee shall have subpoena power and power to administer oaths as well as the powers granted in this Chapter.
- (c) After a referee hears an appeal, he shall prepare a written decision containing his findings of fact and or conclusions of law which decision shall be filed with the Director. On the same date that the referee's decision is filed with the Director, the Director shall mail a copy of the referee's decision to the parties and shall advise the parties of their right to file an application for review of the referee's decision.

- (d) The decision of a referee shall become the final decision of the Commission on the date that the referee's decision is filed with the Director, unless an application for review of the referee's decision is filed in accordance with Rule 13.36.

13.21 Subpoena of Witnesses; Production of Documents.

- (a) The Commission, each member thereof, the Director, the Deputy 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 such witnesses and such books and papers are within the State.
- (b) For all hearings conducted, no subpoena will be issued unless a written request for the issuance of subpoenas is received in the office of the 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 his 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 unless a written request for the issuance of subpoenas is received in the office of the 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 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.
- (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, or the 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.
- (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.

13.22 Dismissal for Non-appearance at Hearing of Appeal.

- (a) If neither the appointing authority nor his counsel appears at the place and time fixed for a hearing in which a disciplinary action is at issue without having been granted a continuance, the Commission or the referee may order the disciplinary action reversed.
- (b) If neither the appellant nor his counsel appears at the place and time fixed for any hearing, without having been granted a continuance, the Commission or the referee may order the appeal dismissed.
- (c) If neither 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 his appearance 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 it or he learns the reason for the absence of the party and his

attorney and determines that the party and his attorney were absent due to circumstances beyond their control.

13.23 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 such appeals be consolidated.

13.24 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 Director and upon payment by the person requesting the transcript of such cost as may be determined by the Director.
- (b) Amended and re-enacted, effective October 1, 1979, as Rule 13.20(b).
- (c) When an appeal is taken from any final decision of the Commission, it or the Director may require the party appealing to reimburse the Department of Civil Service for the cost of preparing transcripts of proceedings.
- (d) 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.

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

- (a) Any officer or employee in the classified service who wilfully refuses or fails to appear before the Commission or its Referee in response to a subpoena or a request under the provisions of Rule 13.21, 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 and, in addition to that which is provided for in these Rules, may be found by the

Commission to have forfeited his office or position and may be found by the Commission not to be eligible thereafter for appointment to any position in the classified service for a period not to exceed ten years or be subject to a suspension from his position.

- (b) Any person who wilfully fails to appear in response to a subpoena or to an order issued under the provisions of Rule 13.21 hereof, or who wilfully 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 his appointing authority because he so testifies

13.26 Costs of Appeals.

The Commission or the referee may, in its or his discretion, 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.

13.27 Witness Fees.

- (a) The travel expenses of an officer or employee 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 him.
- (b) The Commission or the referee may order that any person who is not an officer or employee of a 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 or the referee'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 Director

a sum sufficient to cover the mileage and witness fees pending a determination of costs by the Commission or the referee.

13.28 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 Director. The decision of the Commission shall be final on the day that it is filed with the Director.
- (b) On the same date that the decision is filed with the Director, the Director shall mail to all interested parties a copy of the decision.
- (c) If the Commission after any hearing orders dismissed or suspended employee reinstated, it may reinstate such employee under such conditions as it deems proper and subject to Rule 13.18 may order full pay for lost time.

13.29 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 his objection thereto and the grounds therefor, and same 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.

13.30 Repealed, effective March 15, 1966.

13.31 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 or a Referee, shall constitute a final disposition of the appeal

13.32 Recusation of Commission or Referee.

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

13.33 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 or from a final decision of a referee. Final decisions of a referee shall be subject to review as is provided in Rule 13.36.

13.34 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 said Plans or Rules.

13.35 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 order to pay attorney's fees in an amount not to exceed \$1,500, unless the Commission 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 and 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.

13.36 Application for Review of a Referee's Decision.

- (a) Any party may file with the Commission an application requesting the Commission to review a decision of a referee on any question of law or fact.
- (b) To be effective, an application for review of a referee's decision must:
 - 1. Be in writing; and
 - 2. Be filed in the Commission's office within fifteen (15) calendar days after the date that the referee's decision was filed with the Director; and

3. Contain the name and docket number of the appeal sought to be reviewed; and
 4. Specify which factual findings and/or which conclusions of law are believed to be wrong. A general statement that the opinion is wrong or that the evidence does not support the findings will not be considered sufficient; and
 5. Specify which pleadings and exhibits offered into evidence are to be submitted to the Commission with the application for review. A transcript of the proceedings before the referee may not be specified as a pleading or exhibit under this rule. If no pleadings or exhibits are specified, only the referee's decision, the request for appeal and the notice of disciplinary or other action will be submitted to the Commission with the application for review; and
 6. Contain a certificate that a copy of the application for review has been sent to the opposing party.
- (c) The provisions of Rule 13.37 are applicable to the filing of an application or review of a referee's decision.
- (d) An application for review may be accompanied by written argument.
- (e) If the application for review is not timely filed, the decision of the referee shall become the final decision of the Commission as of the date that the referee's decision was filed with the Director.
- (f) A quorum of the Commission shall review every timely application for review as well as the pleadings and exhibits specified in Subsection (b)(5) of this Rule. Thereafter, the Commission may:
1. Issue an order denying the application for review, which order shall be filed with the Director, at which time, the decision of the referee will become the final decision of the Commission. On the same date that the order denying the application for review is filed with the Director, the Director shall mail a copy of the order to the parties; or
 2. Issue an order granting the application for review, specifying on what points the review is

granted, which order shall be filed with the Director.

(g) If the Commission grants the review, it shall to the pertinent portions of the sound recordings of the proceedings conducted before the referee, and thereafter, it may:

1. Remand the appeal with instructions to the referee; or
2. Affirm, reverse or modify the referee's decision based on the record developed before the referee; or
3. Hold new hearings or take additional evidence or both and render its own decisions thereon.

13.37 Delay for Filing an Application for Review of a Referee's Decision.

- (a) No application for review of a Referee's decision shall be effective unless a written notice complying with the requirements of Rule 13.36 is received in the office of the Director of the State Police Commission (located at 1885 Wooddale Boulevard, Suite 1111, Baton Rouge, Louisiana) within fifteen (15) calendar days after the date that the Referee's decision was filed with the Director. Applications for review of a referee's decision may be mailed to the Commission at P.O. Box 66614, Baton Rouge, Louisiana 70896, but to be considered timely, the application must be properly addressed with proper postage affixed and must be postmarked by the United States Postal Service within fifteen (15) calendar days after the date that the Referee's decision was filed with the Director.
- (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 Subsection (a) hereof.
- (c) No application for review of a referee's decision shall be supplemented or amended following the expiration of the delay period stipulated by Subsection (a) hereof.
- (d) Proof of the timeliness of mailing an application for review shall be shown only be 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 application for review is received in the Director's office shall determine whether the application was timely filed.

13.38 Action Required Following Commission or Referee'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 himself ready for work at the time and place of his employment as it existed prior to the termination, shall be returned by the appointing authority to the regular payroll at that time, and shall, at that time or as soon thereafter as possible, present to his employer satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of Appellant's termination, or, if no wages or unemployment compensation have been so received, Appellant shall present a written and signed statement to that effect to his employer upon his return. Further, within fifteen (15) days following receipt of such information the appointing authority shall deliver to the office responsible for the actual disbursement of the funds representing the back pay due a request for such disbursement which office shall promptly cause such disbursement, and 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 check representing the back pay due, the Appellant, at his sole option, may repurchase all or part of the annual leave balance held by him at his termination the value of which was paid to him at his 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 his employer satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of suspension, or, if no wages or unemployment compensation have been received, the Appellant shall present to his employer a signed statement to that effect. Within fifteen (15) days from receipt of such proof of written statement, appointing authority shall deliver to the office responsible for the actual disbursement of the funds representing the back pay due a request for such disbursement, which office shall promptly cause such disbursement, and the appointing

authority shall otherwise comply with the orders contained in the decision, all unless otherwise stayed by a court of competent jurisdiction.

- (c) In the event that a timely application for review of a Referee's decision is filed with the Commission, the Appellant shall be notified immediately by a direct mailing by the appointing authority of the application for review to his last known address, in action to any mailing of that application to Appellant's counsel of record, if any. In such event, the time limits referred to in (a) and (b), above, shall begin to run from the date of the mailing of the decision of the Commission denying the application for review or the rendering of a decision on the merits of an appeal following consideration of the application for review. In the event of a remand by the Commission following consideration of an application for review, the time limits mentioned in (a) and (b), above, shall not begin to run until the date of the mailing to all parties of the subsequent decision of the Referee.
- (d) In the event all or part of 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.

State Police Commission



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Baton Rouge, La. 70896-6555
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October 26, 1993

CORRECTED NOTICE

Transmittal Sheet No. 6

To: State Police Commission Members, Colonel Paul W. Fontenot, Russell J. Culotta, Foye L. Lowe, Jr., Rosemary Hannie, Walt Smith, Thomas H. Normile, Baxter W. Welch, Walter L. Smith, III, Charles R. Dupuy, Mark Bascle, Allen T. Moss, Russell G. Fontenot, Michael D. Rawson, Roger L. Jaubert, James L. Matthews, II, Dennis J. Pellerin, Jerry W. Patrick, William B. Stewart and Russell Cook, Sr.

Subject: Revisions to the State Police Commission Rules

The attachment to Transmittal Sheet No. 6, dated October 20, 1993, contained several typographical errors. Attached please find a corrected copy of Chapter 13 of the Rules.

Sincerely,

A handwritten signature in cursive script that reads 'Debra L. Johnson'.

Debra L. Johnson
Director

Enclosure

CHAPTER 13
APPEALS AND HEARINGS

- 13.1 Amended and re-enacted effective April 1, 1955 as Rule 13.10.
- 13.2 Amended and re-enacted effective April 1, 1955 as parts of Rules 13.11 and 13.20.
- 13.3 Amended and re-enacted effective April 1, 1955 as Rule 13.28.
- 13.4 Amended and re-enacted effective April 1, 1955 as Rule 13.19.
- 13.5 Amended and re-enacted effective April 1, 1955 as parts of Rules 13.21 and 13.25.
- 13.6 Amended and re-enacted effective April 1, 1955 as part of Rule 13.21.
- 13.7 Amended and re-enacted effective April 1, 1955 as Rule 13.27.
- 13.8 Amended and re-enacted effective April 1, 1955 as Rule 13.17.
- 13.9 Amended and re-enacted effective April 1, 1955 as part of Rule 13.22.
- 13.10 Appeals to the Commission.

An appeal may be made to this Commission by

- (a) Any person in the Classified Service who alleges that he has been discriminated against or subjected to any disciplinary action because of his political or religious beliefs, sex, or race.
- (b) Any person in the Classified Service who, having gained permanent status, alleges that he has 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 Service who alleges that he has been deprived of any right, discriminated against, or adversely affected by the violation of any provision of the Article or of any Rule of this Commission.
- (d) Any person in the Classified Service who shall have failed to obtain relief from an allocation or reallocation of a position to a class or by the Classification Plan or any change thereof after a written request for review thereof by the Director or his representative as provided in Rule 5.3 and who alleges that the Director's decision has been discriminatory.

- (e) Any person in the Classified Service who alleges that he has been discriminated against by the application of the Pay Plan or by the application of any change thereof.
- (f) Any person who shall have applied for or been examined, for the Classified Service, without having acquired permanent status therein, and who alleges discrimination in the review of his application, admission to an examination, scoring of examinations, the establishment of an eligible list, or certification therefrom.
- (g) By any person expressly granted the right to appeal to this Commission by the Article or by any Rule of this Commission.
- (h) Any person who alleges that he has been the subject of discrimination as defined in Rule 1.14.1.
- (i) Any person who alleges that he has been discriminated against by any official action taken by the Director.
- (j) Any person seeking a review of a decision made by an appointing authority under the provisions of Rule 10.4.
- (k) Any person in the Classified Service who alleges that he has been demoted, dismissed, discriminated against, or subjected to any disciplinary action based solely on the grounds assigned for an unsatisfactory service rating.
- (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) Any person in the Classified Service who alleges that he has been subjected to any layoff or layoff avoidance action in violation of any provision of Chapter 17 of these Rules.

13.11 Request for Appeal.

A notice of appeal must

- (a) Be in writing; and
- (b) Be signed by the appellant, or on his behalf by an attorney duly licensed to practice law in the Courts of the State of Louisiana, or on his behalf by a senior student of law designated under the provisions of Rule 13.19(b)2; and

(c) Give the name and mailing address of the appellant, and of his attorney or designated senior law student, 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; however, the facts must be alleged in sufficient detail to enable the agency to prepare a defense. 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 his religious or political beliefs, sex, race, or any other non merit factor.

Where a violation of the Article or a Rule is alleged to be a basis for appeal, specific facts supporting the conclusion that a violation 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.

13.12 Delay for Making Appeal.

- (a) No appeal shall be effective unless a written notice complying with the requirements of Rule 13.11 is either (i) received in the office of the Director of the State Police Commission (located at 1885 Wooddale Boulevard, Suite 1111, Baton Rouge, Louisiana), or (ii) is addressed to the Director of the State Police Commission at Post Office Box 66555, Baton Rouge, Louisiana, 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.
- (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) No appeal shall be supplemented or amended following the expiration of the delay period stipulated by Sub-section (a) hereof;
- (e) Proof of the timeliness of mailing a request for 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 Director's office shall determine whether the appeal was timely filed.

13.13 The Director shall cause the date of filing to be noted of each notice of appeal. 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.

13.14 Summary Disposition of Appeal.

(a) At any time after the docketing of an appeal a written request may be filed by any interested party for summary disposition thereof on any of the following grounds:

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 his 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.

(b) Any request for summary disposition when made prior to the date fixed for the hearing of the appeal may be supported by admissions of fact and written argument or brief; provided, that

1. Before filing, the Director shall require proof of service of a copy of each such instrument on the adverse party, together with the date of such service; and
2. The adverse party shall have fifteen (15) calendar days after such service, or until the date of the hearing, whichever is sooner, to file with the Director an opposition to the request which opposition may be supported by written argument or brief.

(c) If the Commission or a referee denies the request or refers it to the merits, it or he may reconsider same at any time prior to its or his final disposition of the appeal.

- (d) The Commission or a referee, on its or his own motion, may at any time summarily dispose of an appeal on any of the grounds listed in Subsection (a) hereof or in accordance with the provisions of Rule 13.19(e).
- (e) When the Commission summarily disposes of an appeal, its decision shall be final on the date it files its written decision with the Director disposing of the case. On the same date that the decision is filed with the Director, the Director shall mail a copy of the decision to the parties. Then a referee summarily disposes of an appeal his decision shall be final in accordance with the provisions of Rules 13.20 and 13.36.
- (f) By filing with the Director a written notice of his intention to do so, an appellant may withdraw or abandon his appeal at any time prior to the hearing thereof by the Commission or a referee if his request is approved by the Director. After an appeal has been heard by the Commission or a referee, it may be withdrawn or abandoned only with approval of the Commission or the referee. The Director shall promptly notify all interested parties of any such withdrawal or abandonment.

13.15 Assigning Appeals for Hearing.

The 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 Director may upset any fixing and may either relegate the case for refixing to the foot of the docket or give it a special assignment both as to time and place. If a referee has been appointed to hear an appeal, he shall fix the time and place for hearing the appeal and may upset and refix same.

13.16 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 Director.
- (b) If the Commission or the 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, he may order that hearings before the Commission be held in any other convenient place of public accessibility within the State other than the City of Baton Rouge, Louisiana.
- (c) Repealed effective October 15, 1982.

- (d) Repealed effective January 1, 1975.
- (e) All appeals before a referee shall be heard in a convenient place, accessible to the public, selected by the referee.

13.17 Notice of Hearing of Appeals.

- (a) For all hearings conducted after July 1, 1982, and subject to the provision of Sub section (b) hereof, notice of the time and place fixed for the hearing shall be mailed to the appellant and to the authority against whose action the appeal has been taken at least thirty (30) calendar days prior to the date of the hearing;
- (b) With the approval of the Commission, the Director, or the appropriate referee, and by consent of all interested parties, said notice and delay may be waived.

13.18 Continuance of Appeal.

- (a) An appeal fixed for hearing may be continued, without prejudice to the appellant.
 - 1. By the Director, or the appropriate referee in a referred case, upon submission of justifications deemed adequate by the Director or the referee; or
 - 2. By the Commission or its Chairman, for cause deemed sufficient by it; or him; or
 - 3. If it is not reached for hearing.
- (b) With the approval of the Commission, the Director, or the appropriate referee, an appeal fixed for hearing may be continued by consent of all interested parties. If an appellant requests a continuance the Commission or the referee, may, in its or his discretion, deny him any compensation for that portion of time lost by reason of the continuance if his appeal be finally 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.

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

The 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 such counsel for any 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 and the Commission or the referee may, in its or his discretion, require him to 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) The Commission or the referee may require the appellant to give his sworn testimony before hearing any other witness on his behalf, and if the Commission or the referee finds from such testimony that he has no just or legal ground to support his appeal, it or he may decline to hear or consider any other evidence and thereupon dismiss the appeal.
- (f) If after hearing appellant's testimony the Commission or the referee is of the opinion that he may have just or legal grounds for his appeal, it or he shall permit him to adduce such other evidence, testimonial or otherwise, as may be relevant.
- (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) The Commission or the referee may require that the parties stipulate all undisputed facts.
- (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) When a pending case involves substantially the same question of law or fact as presented in a prior case, the Commission or a Referee, at the request of any party or on its or his own motion, may admit as evidence any part of the record in such previous case as it or he may deem relevant; provided, that in the application of this rule no party be deprived of the right to cross examine any adverse witness.
- (m) Subject to the provisions of Subsections (r) and (s), the charges expressed in writing by the appointing authority as cause for demotion, suspension, dismissal, or other action, shall not be accepted as prima facie true. Evidence shall not be received from an appointing authority to supplement or enlarge the charges contained in such written document. The appellant may rebut any proof offered by the appointing authority in support of the charges.
- (n) The Commission, or a referee, on request of any party, or on its or his own motion, may order that the witnesses in any hearing be separated so as to preclude any witness, other than the parties and their attorneys, from hearing the testimony of any other witness. In the application of this Rule only one person, in addition to counsel, shall represent the appointing authority or any department.
- (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.

The Commission or the referee may in any case on its or his own motion 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 such written argument shall be made to appear by the certificate of the writer.

- (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 shall rule and his 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 employee alleges that he has been discriminated against because of his political or religious beliefs, sex, or race, the facts expressed in writing by the appointing authority as cause for the demotion, suspension, dismissal, or other action, shall be accepted as prima facie true. Evidence shall not be received from an appointing authority to supplement or enlarge the facts as so expressed. The appointing authority may rebut any proof offered by the appellant employee in contradiction of the facts expressed in writing by the appointing authority. The burden of proof as to the facts shall be on the appellant and the Commission or a referee may, in its or his discretion, require him to open the case.
- (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 where he 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 Section 8(A) of the Article 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.

13.20 Referees.

- (a) The Commission may appoint a referee to take testimony in and to hear and decide removal and disciplinary cases.
- (b) A referee shall have subpoena power and power to administer oaths as well as the powers granted in this Chapter.
- (c) After a referee hears an appeal, he shall prepare a written decision containing his findings of fact and or conclusions of law which decision shall be filed with the Director. On the same date that the referee's decision is filed with the Director, the Director shall mail a copy of the referee's decision to the parties and shall advise the parties of their right to file an application for review of the referee's decision.
- (d) The decision of a referee shall become the final decision of the Commission on the date that the referee's decision is filed with the Director, unless an application for review of the referee's decision is filed in accordance with Rule 13.36.

13.21 Subpoena of Witnesses; Production of Documents.

- (a) The Commission, each member thereof, the Director, the Deputy 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 such witnesses and such books and papers are within the State.
- (b) For all hearings conducted, no subpoena will be issued unless a written request for the issuance of subpoenas is received in the office of the Director of the State Police Commission no later than fifteen (15) calendar days before the date fixed for the hearing. The request

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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 his 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 unless a written request for the issuance of subpoenas is received in the office of the 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 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.
- (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, or the 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.
- (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.

13.22 Dismissal for Non-appearance at Hearing of Appeal.

- (a) If neither the appointing authority nor his counsel appears at the place and time fixed for a hearing in which a disciplinary action is at issue without having been granted a continuance, the Commission or the referee may order the disciplinary action reversed.
- (b) If neither the appellant nor his counsel appears at the place and time fixed for any hearing, without having been granted a continuance, the Commission or the referee may order the appeal dismissed.
- (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 his appearance 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 it or he learns the reason for the absence of the party and his attorney and determines that the party and his attorney were absent due to circumstances beyond their control.

13.23 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 such appeals be consolidated.

13.24 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 Director and upon payment by the person requesting the transcript of such cost as may be determined by the Director.
- (b) Amended and re-enacted, effective October 1, 1979, as Rule 13.20(b).
- (c) When an appeal is taken from any final decision of the Commission, it or the Director may require the party appealing to reimburse the State Police Commission for the cost of preparing transcripts of proceedings.

- (d) 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.

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

- (a) Any officer or employee in the classified service who wilfully refuses or fails to appear before the Commission or its Referee in response to a subpoena or a request under the provisions of Rule 13.21, 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 and, in addition to that which is provided for in these Rules, may be found by the Commission to have forfeited his office or position and may be found by the Commission not to be eligible thereafter for appointment to any position in the classified service for a period not to exceed ten years or be subject to a suspension from his position.
- (b) Any person who wilfully fails to appear in response to a subpoena or to an order issued under the provisions of Rule 13.21 hereof, or who wilfully 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 his appointing authority because he so testifies

13.26 Costs of Appeals.

The Commission or the referee may, in its or his discretion, 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.

13.27 Witness Fees.

- (a) The travel expenses of an officer or employee 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 him.
- (b) The Commission or the referee may order that any person who is not an officer or employee of a 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 or the referee'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 Director a sum sufficient to cover the mileage and witness fees pending a determination of costs by the Commission or the referee.

13.28 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 Director. The decision of the Commission shall be final on the day that it is filed with the Director.
- (b) On the same date that the decision is filed with the Director, the Director shall mail to all interested parties a copy of the decision.
- (c) If the Commission after any hearing orders dismissed or suspended employee reinstated, it may reinstate such employee under such conditions as it deems proper and subject to Rule 13.18 may order full pay for lost time.

13.29 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 his objection thereto and the grounds therefor, and same 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.

13.30 Repealed, effective March 15, 1966.

13.31 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 or a Referee, shall constitute a final disposition of the appeal

13.32 Recusation of Commission or Referee.

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

13.33 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 or from a final decision of a referee. Final decisions of a referee shall be subject to review as is provided in Rule 13.36.

13.34 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 said Plans or Rules.

13.35 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 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.

13.36 Application for Review of a Referee's Decision.

- (a) Any party may file with the Commission an application requesting the Commission to review a decision of a referee on any question of law or fact.
- (b) To be effective, an application for review of a referee's decision must:
 - 1. Be in writing; and
 - 2. Be filed in the Commission's office within fifteen (15) calendar days after the date that the referee's decision was filed with the Director; and
 - 3. Contain the name and docket number of the appeal sought to be reviewed; and
 - 4. Specify which factual findings and/or which conclusions of law are believed to be wrong. A general statement that the opinion is wrong or that the evidence does not support the findings will not be considered sufficient; and
 - 5. Specify which pleadings and exhibits offered into evidence are to be submitted to the Commission with the application for review. A transcript of the proceedings before the referee may not be specified as a pleading or exhibit under this rule. If no pleadings or exhibits are specified, only the referee's decision, the request for appeal and the notice of disciplinary or other action will be submitted to the Commission with the application for review; and
 - 6. Contain a certificate that a copy of the application for review has been sent to the opposing party.
- (c) The provisions of Rule 13.37 are applicable to the filing of an application for review of a referee's decision.
- (d) An application for review may be accompanied by written argument.
- (e) If the application for review is not timely filed, the decision of the referee shall become the final decision of the Commission as of the date that the referee's decision was filed with the Director.
- (f) A quorum of the Commission shall review every timely application for review as well as the pleadings and

exhibits specified in Subsection (b)(5) of this Rule. Thereafter, the Commission may:

1. Issue an order denying the application for review, which order shall be filed with the Director, at which time, the decision of the referee will become the final decision of the Commission. On the same date that the order denying the application for review is filed with the Director, the Director shall mail a copy of the order to the parties; or
 2. Issue an order granting the application for review, specifying on what points the review is granted, which order shall be filed with the Director.
- (g) If the Commission grants the review, it shall listen to the pertinent portions of the sound recordings of the proceedings conducted before the referee, and thereafter, it may:
1. Remand the appeal with instructions to the referee; or
 2. Affirm, reverse or modify the referee's decision based on the record developed before the referee; or
 3. Hold new hearings or take additional evidence or both and render its own decisions thereon.

13.37 Delay for Filing an Application for Review of a Referee's Decision.

- (a) No application for review of a Referee's decision shall be effective unless a written notice complying with the requirements of Rule 13.36 is received in the office of the Director of the State Police Commission (located at 1885 Wooddale Boulevard, Suite 1111, Baton Rouge, Louisiana) within fifteen (15) calendar days after the date that the Referee's decision was filed with the Director. Applications for review of a referee's decision may be mailed to the Commission at P.O. Box 66555, Baton Rouge, Louisiana 70896, but to be considered timely, the application must be properly addressed with proper postage affixed and must be postmarked by the United States Postal Service within fifteen (15) calendar days after the date that the Referee's decision was filed with the Director.
- (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 Subsection (a) hereof.

- (c) No application for review of a referee's decision shall be supplemented or amended following the expiration of the delay period stipulated by Subsection (a) hereof.
- (d) Proof of the timeliness of mailing an application for review 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 application for review is received in the Director's office shall determine whether the application was timely filed.

13.38 Action Required Following Commission or Referee'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 himself ready for work at the time and place of his employment as it existed prior to the termination, shall be returned by the appointing authority to the regular payroll at that time, and shall, at that time or as soon thereafter as possible, present to his employer satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of Appellant's termination, or, if no wages or unemployment compensation have been so received, Appellant shall present a written and signed statement to that effect to his employer upon his return. Further, within fifteen (15) days following receipt of such information the appointing authority shall deliver to the office responsible for the actual disbursement of the funds representing the back pay due a request for such disbursement which office shall promptly cause such disbursement, and 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 check representing the back pay due, the Appellant, at his sole option, may repurchase all or part of the annual leave balance held by him at his termination the value of which was paid to him at his 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 his employer

satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of suspension, or, if no wages or unemployment compensation have been received, the Appellant shall present to his employer a signed statement to that effect. Within fifteen (15) days from receipt of such proof of written statement, appointing authority shall deliver to the office responsible for the actual disbursement of the funds representing the back pay due a request for such disbursement, which office shall promptly cause such disbursement, and the appointing authority shall otherwise comply with the orders contained in the decision, all unless otherwise stayed by a court of competent jurisdiction.

- (c) In the event that a timely application for review of a Referee's decision is filed with the Commission, the Appellant shall be notified immediately by a direct mailing by the appointing authority of the application for review to his last known address, in addition to any mailing of that application to Appellant's counsel of record, if any. In such event, the time limits referred to in (a) and (b), above, shall begin to run from the date of the mailing of the decision of the Commission denying the application for review or the rendering of a decision on the merits of an appeal following consideration of the application for review. In the event of a remand by the Commission following consideration of an application for review, the time limits mentioned in (a) and (b), above, shall not begin to run until the date of the mailing to all parties of the subsequent decision of the Referee.
- (d) In the event all or part of 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.