



State Police Commission

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General Circular No. 195 - Revised

Date: December 21, 2018

Subject: Public Hearing to Amend Chapters 13 and 16 of State
Police Commission Rules

Pursuant to the provisions of State Police Commission Rule 2.10(a), the State Police Commission will hold a public hearing on January 10, 2019, to consider revisions to Chapters 13 and 16 of State Police Commission Rules. The hearing will begin at 9:00 A.M. in Veterans Memorial Auditorium, Suite 1247, Dept. of Agriculture and Forestry Building, 5825 Florida Blvd., Baton Rouge, Louisiana, 70806.

Note: The promulgation of this revised General Circular 195 is the result of comments and considerations following the issuance of the original circular on October 24, 2018. The proposed revisions to Chapters 13 & 16 of the State Police Commission Rules are intended to revise outdated references, to clarify the Commission's authority, and to bring about improvements to the handling of appeals, investigations, and hearings. Numerous subparagraphs of 13.1 are proposed to be eliminated; however, it is not the intent to limit the right to appeal for classified state police employees previously provided. The scope of those rights were and are still contained in the proposed paragraphs 13.1(a)-(c).

Proposed additions appear in **blue** and omissions appear in ~~red~~.

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** ~~alleges that he has~~ 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 ~~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 **State Police** Service who **is alleged to have ~~alleges that he has~~** been ~~deprived of any right, discriminated against, or~~ adversely affected by the violation of any provision of the **State Police Commission** Article or of any **State Police Commission** Rule ~~of this Commission other than a rule in Chapter 10.~~
- ~~(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 Chapter 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.~~

13.2 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 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 13.11(b)2; and
- (c) Give the name and mailing address of the appellant, and of the his attorney or ~~designated senior~~ 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; ~~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.

In all notices of appeal, ~~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 **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, ~~7979 Independence Blvd, Suite 208,~~** 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.

~~An appeal, which is supplemented or amended under the provisions hereof, may thereafter be summarily disposed of pursuant to the provisions of Rule 13.5.~~

- (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 ~~to be noted~~ 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 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.
 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 ~~by a preponderance his/her~~ 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 shall contain a certificate, signed by the person filling ~~it~~ ~~such~~, which shall state that the request has been served ~~by certified mail~~ 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 and the date of such service.~~
2. The adverse party shall have fifteen (15) 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 on the motion or a party on his or her own~~ 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 by appellants, transcribed statements by appellants, and other evidence that the Commission deems reliable.**
- (h) **The burden of proof rests with the party requesting summary disposition.**

13.6 Assigning Appeals for Hearing.

- ~~(a) The Director shall assign appeals for hearing by the Commission or a Referee, and the Director shall fix the date, time and place for the hearing and give notice thereof in accordance with these rules.~~
- ~~(b) As far as practicable, or otherwise for good cause, appeals shall be fixed for hearing in docket number order.~~

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.

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 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) 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 ~~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 **Executive** Director, or the **appropriate** referee, and by consent of all interested parties, ~~this said~~ 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 **appropriate** referee in ~~the a-referred~~ 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 it; or him;~~ or
 3. If it is not reached for hearing.
- (b) With the approval of the Commission, the **Executive** Director, or the ~~appropriate~~ 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 ~~him~~ any compensation for that portion of time lost by reason of the continuance if ~~the his~~ appeal **is 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.

13.10 Pre-Hearing Procedures.

- (a) In any appeal, on its or his own initiative, or on the request of a party, the Commission or the **appropriate** 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 **appropriate** referee **for the case**, the pre-hearing conference referred to in Section (a) above may be held in person or by **telephone 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** ~~on its or his/her own initiative, or on the~~ written request of a party made in conformity with the requirements of State Police Commission Rule 13.13(d), ~~the Commission or the appropriate referee~~ 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 ~~appropriate~~-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 ~~appropriate~~ referee pursuant to Section (d) above shall control subsequent proceedings, including the hearing, unless modified by the Commission or the ~~appropriate~~ referee to prevent injustice.
- (f) After ordered by the Commission or the ~~appropriate~~ referee, a party or **the party's his** 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 ~~appropriate~~-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 ~~appropriate~~-referee, **this such**-failure may cause the continuance of a hearing, and if the failure is attributable to **the appellant him**, the denial to appellant of back pay or other benefits during the period **of delay caused by after**-the failure ~~and prior to the hearing of the appeal~~.

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 his~~ 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 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, ~~which shall 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 evidence and, if, at the conclusion of the appellant's testimony, the Commission finds that the appeal is not supported by any just or legal ground, the Commission may decline to hear or consider any other evidence and thereafter take appropriate action with regard to the final disposition of such 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) The Commission or the ~~Referee-referee~~ may receive stipulations of undisputed facts from the parties. ~~In the absence of the offering of such, t~~The Commission or the ~~Referee-referee~~ may also state for the record **those such** facts which the Commission or the ~~Referee-referee~~ find to be undisputed and, subject to appropriate review, **those facts such** will be deemed to be proven. Thereafter, the Commission or the ~~Referee-referee~~ may refuse to receive further evidence **on the facts deemed to be proven thereon. 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** ~~Upon the request of~~ any party, ~~or on its or his or her own motion,~~ the Commission or the ~~Referee-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 ~~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 ~~the such~~ written argument shall be **made subject to the certificate and service requirements of 13.5(b)(1).** ~~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 **or referee with the consent of the presiding Commissioner** shall rule and ~~this 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 **state police** employee alleges ~~that he has been discriminated against discrimination~~ because of ~~his that~~ **employee's** 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~~ 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 ~~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 **Article X Section 46 (A) of the Louisiana Constitution** ~~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.

13.12 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-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, ~~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 ~~the such~~-witnesses and ~~such~~-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 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 **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, ~~or~~ 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. ~~—Subpoenas previously issued shall not be reissued, except upon another request from a party, which is in compliance with the provisions of this rule. 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~~ **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** ~~his presence or the presence of his~~ 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 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 **the Commission or referee it or he** learns the reason for the absence—~~of the party and his attorney~~ and determines that the **absence of a party and or that party's his** attorney ~~were absent was~~ due to circumstances beyond their 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 such** 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 ~~by the person requesting the transcript~~ of **the such**—estimated transcription cost **thereof** as ~~may be~~ 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) ~~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.~~
- (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, a**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 and, in addition, to that which is provided for in these Rules, may be found by~~ the Commission **may find that the person has to have** forfeited **the his** office or position **held** and/or **that the person will may be found by the Commission** 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 ~~his—the~~ **office or position held.**
- (b) **In addition to any other penalties provided by law, A**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~~ referee in accordance with these Rules.

- (c) Any officer or employee required to testify shall not be subjected to any disciplinary action by ~~the his~~ appointing authority ~~of the officer or employee~~ because ~~the employee he~~ so testifies.

13.18 Costs of Appeals.

~~Subject to the provisions of 13.16(a), T~~the Commission or the referee ~~has the discretion to 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.

13.19 Witness Fees.

- (a) The travel expenses of an ~~officer or~~ 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 him~~.
- (b) The Commission or the referee may order that any person who is not an officer or employee of ~~a 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 ~~with the Director~~.
- (b) On the same date that the decision is filed ~~with the Director~~, the **Executive Director** shall mail **a copy of the decision to the all interested parties or their counsel** ~~a copy of the decision~~.
- (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~~7~~ or of a referee~~7~~ are unnecessary. At the time the ruling is made or the order is communicated, a party shall make known **any his** objection thereto and the grounds therefor, **which objection and same** shall be noted in the record.
- (b) The Commission~~7~~ or a referee~~7~~ 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 **Recusation Recusal** of **a** Commissioner or Referee.

The grounds for **recusation recusal** of a Commissioner or a **Referee-referee** shall be the same as the grounds **for of** the **recusation 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.
- (2b) 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 said** Plans or Rules.

13.26 Attorney's Fees.

- (a) When the Commission approves a settlement, **recission 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 such~~ 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 such~~ disbursement ~~to the employee.~~ The human resources office shall promptly cause ~~this such-~~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 ~~mediation~~ **nonbinding mediation** to attempt to resolve the appeal before a hearing.
- (b) Any member of the Commission or the ~~Referee-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 ~~of~~ **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 **state classified employee in state police service**~~classified employee~~ is found to have violated the State Police Commission Article or a State Police Commission Rule, the Commission may order **that employee him/her** 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 ~~filed with the Director~~. 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, on his own initiative,** 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 his/her** designee shall conduct **the such** investigation as **he/she deems** 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 **he has decided no to file** formal charges **are not being filed**. A copy of Rule 16.4 shall be attached to **this such** 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 filed ~~with the Director or the Commission~~ 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 his** attorney, if any;
 3. contain the name and mailing address of each person who is charged with committing a violation (hereafter, a respondent);
 4. ~~identify which provision of the State Police Commission Article and/or which State Police Commission Rule was violated;~~
 5. describe, ~~in sufficient detail to enable the respondent to prepare a defense,~~ the conduct **in sufficient detail to enable the Commission to determine whether the alleged conduct violates that violated** 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. ~~and~~
 7. ~~state what action the complainant wants the Commission to take as a result of the investigation.~~
- (c) When formal charges are filed by someone other than the **Executive** Director, the **Executive** Director ~~may shall be given an opportunity to~~ 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 his/her** 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 **he/she** represented**eds**.

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 ~~the Commission,~~ its Chairman or ~~its Executive the~~ 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 proved~~n~~, 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 proved~~n~~, 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 has** ~~does~~ not establish a violation as alleged ~~failed to bear his/her burden of proof.~~
- (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 his~~ 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 ~~s~~State Police Commission Rules ~~13.19~~ **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 he/she** may be deemed to have waived **their his/her** appearance and testimony may be taken in **their his/her** absence with the same effect as if **he/she were** 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 rendered** 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 ~~13.16~~ 13.7 - "Place of Hearing."
- (b) Rule ~~13.21~~ 13.13 - "Subpoena of Witnesses; Production of Documents."
- (c) Rule ~~13.24~~ 13.16 - "Transcripts of Proceedings of Appeals to the Commission."
- (d) Rule ~~13.25~~ 13.17 - "Refusal to Appear; Refusal to Testify; False Testimony."
- (e) Rule ~~13.26~~ 13.18 - "Costs of Appeals."
- (f) Rule ~~13.27~~ 13.19 - "Witness Fees."
- (g) Rule ~~13.29~~ 13.21 - "Interlocutory Rulings."
- (h) Rule ~~13.32~~ 13.23 - "~~Recusation~~ Recusal of a Commissioner or Referee."
- (i) Rule ~~13.33~~ 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.

Questions pertaining to information in this General Circular should be addressed to my attention at Jason.Hannaman@La.gov or via telephone at (225) 925-7057.

s/Jason Hannaman, PHR, SHRM-CP
Executive Director