

# State Police Commission



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December 20, 1995

Transmittal Sheet No. 13

To: State Police Commission Members, Colonel Paul Fontenot, Major William Whittington, Russell Culotta, Foye Lowe, Walt Smith, William Spencer, Baxter Welch, Floyd Falcon, LSTA Affiliate Presidents and Court of Appeal, First Circuit Judges

From: Debra L. Johnson

Re: Revision, Adoption and Repeal of Rules in Chapter 13 of the State Police Commission Rules

At its December 18, 1995 meeting, on motion duly made and seconded, by unanimous vote of the members present, the State Police Commission adopted and revised the following rules:

Rules 13.14(a), (b), (c), (d), (e), 13.15(a), (b), 13.19(e), (l), (m), (n), 13.20(a), (c), 13.22(a), (b), 13.36(a), (b), (c) and (d) - **REVISED**

Rule 13.14(a)8 - **ADOPTED**

Rule 13.14(f) - **REPEALED**

These revisions were effective December 18, 1995. Attached for your convenience is a complete copy of Chapter 13 for inclusion in your rules.

If you have any questions, please contact me.

Sincerely,

*Debra L. Johnson*

Debra L. Johnson  
Director

Attachment

## 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) Whether on motion of a party or on its own motion, the Commission may summarily dispose of an appeal on the following grounds or in accordance with the provisions of Rule 13.19(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 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 claim of discrimination and/or the violation of a rule.
- (b) Every written request for summary disposition shall contain a certificate, signed by the person filling such, which shall state that the request has been served by certified mail on the adverse party and the date of such service.
- (c) A Referee, 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 Director its written decision thereon.

(f) Repealed effective December 18, 1995.

#### 13.15 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.

#### 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.

#### 13.18.1 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 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, the pre-hearing conference referred to in Section (a) above may be held in person or by telephone.
- (c) In any appeal, whether before or after a pre-hearing conference, on its or his own initiative, or on the written request of a party made in conformity with the requirements of State Police Commission Rule 13.21(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 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 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, such failure may cause the continuance of a hearing, and if the failure is attributable to him, the denial to appellant of back pay or other benefits during the period after the failure and prior to the hearing of the appeal.

### 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 or her sworn testimony before hearing any other evidence and, if at the conclusion of the appellant's testimony, the Commission or the Referee finds that the appeal is not supported by any just or legal ground, the Commission or the

Referee 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 may receive stipulations of undisputed facts from the parties. In the absence of the offering of such, the Commission or the Referee may state for the record such facts which the Commission or the Referee find to be undisputed and, subject to appropriate review, such will be deemed to be proven. Thereafter, the Commission or the Referee may refuse to receive further evidence thereon.
- (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) Upon the request of any party, or on its or his or her own motion, the Commission or the Referee may order the sequestration of witnesses.

Notwithstanding such sequestration, the appointing authority may designate, in addition to its counsel, any one person to be its representative during the hearing. The appellant shall also have the right to be present at all times during the hearing.

Except as provided in the immediately preceding paragraph, both the representative of the appointing authority and the appellant shall otherwise be subject to the order of sequestration.

- (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 manage an appeal, to hear and decide preliminary and interlocutory issues, claims and/or requests and to hold a hearing and take testimony in an appeal.
- (b) A referee shall have subpoena power and power to administer oaths as well as the powers granted in this Chapter.
- (c) After hearing an appeal, a Referee shall prepare written findings of fact and conclusions of law, which shall be submitted as a recommendation to the Commission. As appropriate, in all determinations, a Referee shall file a written decision, order or memorandum of his or her action.
- (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 Action Upon The Non-Appearance Of A Party.

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

### 13.36 Application for Review of a Referee's Decision or Action.

- (a) Within fifteen days after the filing of the Referee's written decision, order or memorandum of action, or by the date of the hearing of the appeal by the Commission, whichever is earlier, any party may file with the Commission a written application requesting review of the decision, order or action of a Referee.

Such application shall contain a certificate, signed by the person filing such, which shall state that the application has been served personally or by mail on the adverse party and the date of such service.

- (b) Subject to the general supervisory jurisdiction of the Commission of its Referees, if an application for review of the decision, order or action of a Referee is not timely filed, such decision, order or action shall become the final decision of the Commission as of the date of that the Referee's decision, order or memorandum of action was filed with the Director.
- (c) An application for review may not be amended or supplemented after the expiration of the delay provided for by Subsection (a).

- (d) Upon application for review, the Commission may, in its discretion, receive evidence on the application and thereafter or summarily, without further evidence, affirm, reverse or modify the decision, order or action of the Referee. If the application has not been timely filed as provided by Subsection (a), the Commission may decline to act on the application for review.
- (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 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 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.