

# State Police Commission



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March 20, 1996

Transmittal Sheet No. 15

To: State Police Commission Members, Colonel William R. Whittington, Personnel, Legal, Retirement, LSTA, LSTA Affiliate Presidents, Floyd Falcon, Walter L. Smith, III and Court of Appeal, First Circuit Judges

From: Debra L. Johnson

Re: Adoption, Revision and Repeal of Rules in Chapters 2, 9, 12 and 13 of the State Police Commission Rules.

At its March 18, 1996 meeting, on motion duly made and seconded, by unanimous vote of the members present, the State Police Commission adopted, revised and repealed the following rules:

Rule 2.11.1 - Adopted  
Rule 9.1(a) - Revised  
Rule 9.1(c) - Repealed  
Rules 9.3(e) and (f) - Adopted  
Rule 12.10(a) and (b) - Revised  
Rule 12.10(c) - Adopted  
Rule 13.21(i) - Adopted

These revisions were effective March 18, 1996.

If you have any questions, please contact me.

Sincerely,

*Debra L. Johnson*

Debra L. Johnson  
Director

Attachments (4)

## CHAPTER 2

### ORGANIZATION, RULES, PROCEDURES AND POWERS OF THE STATE POLICE COMMISSION

#### 2.1 Election of the Chairman and Vice-Chairman.

- (a) The members of the Commission shall meet and organize by electing one of its members Chairman and one of its members Vice-Chairman. In case of a vacancy in either office, the Commission shall elect a replacement from among its members.
- (b) The Chairman and Vice-Chairman shall be elected at the first meeting held following December 31 of each year.

#### 2.2 The Commission shall meet at such time and place as may be fixed by the Commission, the Chairman, or the Director. Notice of each meeting shall be given to all members of the Commission.

#### 2.3 Rules of Order.

The Commission shall not be bound by rules of order, evidence, or procedure in its meetings, hearings, or investigations except such as it may itself establish.

#### 2.4 Meetings Open to the Public.

- (a) All meetings and hearings of the Commission shall be open to the public except executive meetings.
- (b) The Commission may hold an executive meeting upon affirmative vote of two-thirds of its constituent members present, taken at an open meeting for which notice has been given pursuant to Rule 2.5. No final or binding action shall be taken during an executive meeting except as provided herein.
- (c) The Commission may hold an executive meeting for one or more of the following reasons:
  - (1) Discussion of the character, professional competence, or physical or mental health of a person, provided that such person may require that such discussion be held at an open meeting.
  - (2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on



the bargaining or litigating position of the Commission.

- (3) Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices.
- (4) Investigative proceedings regarding allegations of misconduct.
- (5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances or other matters of similar magnitude.
- (6) Discussion of any matter deemed confidential by these Rules, or State or Federal Law or Regulation.
- (7) Consideration and discussion of the merits of any appeal filed pursuant to these Rules. Final and binding action may be taken during an executive meeting held to discuss and decide such an appeal.

## 2.5 Notice of Meetings.

- (a) The Commission shall give written public notice of any regular, special, or rescheduled meeting no later than 24 hours before that meeting. Such notice shall include the agenda, date, time, and place of the meeting, provided that upon the approval of two-thirds of the members present at a meeting of the Commission, the Commission may take up a matter not on the agenda. In cases of extraordinary emergency, such notice shall not be required; however, the Commission shall give such notice of the meeting as it deems appropriate and circumstances permit.
- (b) Written public notice shall include:
  - (1) Posting a copy of the notice at the office of the director no less than 24 hours before the meeting.
  - (2) Mailing a copy of the notice to any member of the news media who requests notice of meetings of the Commission.

## 2.6 Quorum and Voting.

- (a) Four (4) members of the Commission shall constitute a quorum for the transaction of business.
- (b) The concurrence of a majority of the members present shall constitute a ruling upon an item of business then before the Commission.

- (c) In the event of a tie vote the Commission may, in its discretion,
  - 1. Refer a transcript of the record of the matter under consideration to one or more absent members, who shall then vote; or
  - 2. Continue the matter for consideration at a later meeting.
- (d) Temporary absence during the consideration of an item of business shall not disqualify a member from voting on said item.

#### 2.7 Secretary to the Commission.

The Director shall act as Secretary of the Commission and shall keep adequate records and minutes of its business and official actions.

#### 2.8 Minutes of the Proceedings.

The minutes of the proceedings of the Commission shall be prepared and maintained by the Director on behalf of and subject to the approval of the Commission.

#### 2.9 Powers of the Commission.

The Commission is empowered:

- (a) To represent the public interest in the improvement of personnel administration in the departments whose personnel practices are governed by the Article and the State Police Commission Rules.
- (b) To appoint and remove and otherwise discipline the Director.
- (c) To conduct investigations whenever it has reason to believe the provisions of the State Police Commission Article or Rules are being violated or have been violated by any person or department; and to hold public hearing when charges of such violations have been filed with it. The Commission may issue appropriate orders in any such case, in addition to those orders provided for in Subsections (k) and (l) of this Rule.
- (d) To make, alter, amend and promulgate Rules as authorized by the Article and otherwise to provide for the establishment and maintenance of a Civil Service system in departments of State government.
- (e) Repealed, effective January 1, 1975.
- (f) To hear appeals from employees and others who claim their rights under



these Rules and the State Police Commission Article have been violated and to issue appropriate orders in such cases.

- (g) Repealed, effective January 1, 1975.
- (h) Repealed, effective June 30, 1972.
- (i) To perform such other acts as may from time to time be required of it by the Constitution or by Statute.
- (j) To take such steps as may be necessary to maintain proper order and decorum during the course of its hearings and other proceedings consistent with judicial resolution of matters coming before it for consideration.
- (k) To issue orders withholding compensation from any person who, after investigations by public hearings, has been found by the Commission to be employed or paid by the State contrary to the provisions of the Constitution or the Rules adopted thereunder. Such orders may be directed to the officer having authority to approve the payroll or assign the paycheck for such employee; and the officer to whom it is directed and any other person to whom such order is directed shall make no payment of compensation or authorize the making of any such payment to such person until authorized by the Commission upon penalty of personal liability for the sum so paid contrary to the order of the Commission and such other penalties as are otherwise provided by the Constitution and/or the Rules.
- (l) To enforce its rules, regulations, and orders in the courts of this State by mandamus or injunction suits.

#### 2.10 Adoption, Amendment or Repeal of Rules; Emergency Rule Changes.

- (a) Except as provided for herein in Rule 2.10(b), the adoption, amendment or repeal of any rule shall be approved by the Commission only upon thirty (30) days written notice and approval after a public hearing, and such adoption, amendment or repeal of any rule shall become effective upon approval of the Commission, unless the Commission specifically provides for another effective date.
- (b) If the Commission finds that an imminent peril to the public health, safety or welfare or another emergency requires adoption of a rule change without compliance with Rule 2.10(a), the adoption, amendment or repeal of any rule may be approved by the Commission.
- (c) Repealed, November 20, 1995.



(d) Repealed, November 20, 1995.

(e) Repealed, November 20, 1995.

## 2.11 Contempt of the Commission.

A contempt of the Commission or its Referee is an act or omission tending to obstruct or interfere with the orderly discharge of the responsibilities and duties of the Commission or its Referee, or to impair the dignity of the Commission or its Referee or respect for their authority.

A contempt of the Commission includes, but is not limited to, any of the following acts:

- (a) Wilful failure to comply with a subpoena or summons to appear before the Commission or its Referee, proof of service of which appears of record.
- (b) Wilful violation of an order excluding, separating, or sequestering a witness.
- (c) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a nonincriminating question when ordered to do so by the Commission or its Referee.
- (d) Insolent or disorderly behavior toward the Commission or an attorney or other officer or Referee of the Commission, tending to interrupt or to interfere with the business of the Commission or its Referee or to impair its dignity or respect for its authority.
- (e) Breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or to interfere with the business of the Commission or its Referee or to impair its dignity or respect for its authority.
- (f) Use of insulting, abusive or discourteous language by an attorney or other person before the Commission or its Referee, or in a motion, plea, brief or other document filed with the Commission or its Referee in irrelevant criticism of the Commission, a Commissioner, an attorney, The Director or his staff, or an officer or Referee of the Commission.
- (g) Action by any person taken or ordered to be taken without approval of the Commission when such approval for the actions is required by either the State Constitution or by State Police Commission Rule.
- (h) Failure of any person to comply with any order or directive of the Commission unless otherwise stayed by a Court of proper jurisdiction or unless within the time limits for such compliance provided by applicable rule.



or law.

- (i) Wilful failure of an attorney to appear at the time and place set for the hearing in which he is to participate.

#### 2.11.1 Cooperation of Persons Within the State Police Service with the Department of State Civil Service

- (a) Upon request by certified letter from the Director of the Department of State Civil Service, or his representative, all persons within the State Police Service so notified shall fully cooperate with any public investigation being conducted by the Department of State Civil Service, including being interviewed and truthfully answering all questions and/or providing all requested documents.
- (b) Failure of any person within the State Police Service to fully and truthfully cooperate in public investigations being conducted by the Department of State Civil Service shall constitute contempt of the State Police Commission, and such persons shall be punished accordingly.

#### 2.12 Procedure for Punishing for Contempt.

- (a) When a person has committed a contempt of the Commission or a Referee in the presence of the Commission or a Referee, he may be found guilty and punished therefore by the Commission or Referee forthwith, without any trial other affording him an opportunity to be heard orally by way of defense or mitigation.
- (b) When a person is charged with committing a contempt outside of the presence of the Commission or a Referee, he shall be tried by the Commission or the Referee on a Rule to show cause alleging the facts constituting the contempt. The Rule may be issued by the Commission or Referee on its own motion, or on motion of the Director.
- (c) A copy of the motion and of the Rule shall be served on the person charged, in the manner of a subpoena, not less than forty-eight hours prior to the time assigned for trial of the Rule.
- (d) If a person charged with contempt is found guilty, the Commission or a Referee shall render an order reciting the facts constituting the contempt, adjudging the person charged with the contempt guilty thereof, and specifying the punishment imposed.
- (e) Should a person served in accordance with this Rule fail to appear at the time, date, and place set for the hearing on the Rule, the Commission or

Referee may order any law enforcement officer to apprehend and to bring before the Commission or Referee the person charged with contempt, to proceed with the hearing in the absence of the person charged, or to institute proceedings before the judiciary of this State as the Commission or Referee deems proper.

2.13 Penalties for Contempt.

- (a) In addition to that which is provided for in these rules, the Commission or a Referee may punish a person adjudged guilty of contempt of the Commission or the Referee by a fine of not more than five hundred dollars (\$500.00).

2.14 Commanding Immediate Presence.

In addition to that which is provided for herein, the Commission or a Referee may order any law enforcement officer to locate and bring before the Commission or the Referee any person who fails to appear at a hearing pursuant to a subpoena if proof of service appears of record and if the immediate presence of that person will facilitate the progress of the subject hearing.



## CHAPTER 9

### PROBATIONARY PERIOD

#### 9.1 Probationary Period.

- (a) A probationary period of twelve (12) months shall be served by employees following original appointment or non-competitive reemployment.

The probationary period shall be an essential part of the examination process and shall be used for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required performance standard of work.

- (b) A permanent employee who is promoted, transferred, reassigned or demoted to another position shall not serve a probationary period in the new position.
- (c) Repealed, effective March 18, 1996.
- (d) Repealed, effective January 28, 1992.
- (e) A probationary employee may be removed by the Appointing Authority at any time, provided that the Appointing Authority furnish the Director reasons therefor in writing.
- (f) A former employee who is appointed from a department preferred re-employment list is not required to serve a probationary period in the new position.
- (g) The probationary period of a part-time employee shall be computed on the same calendar basis as though he were employed full time.

#### 9.2 Permanent Appointment Action Following Probationary Period.

- (a) Permanent appointment of a probationary employee shall begin upon certification by the Appointing Authority. Certification will consist of a statement in the "remarks" section of the SF- 1, " I certify that this employee has met the required standard of work during the probationary period."
- (b) A permanent appointment must be reported on an SF-1.
- (c) The Appointing Authority shall remove employees who have not been certified as permanent at the end of the twelve-month probationary period in accordance with the provisions of Rule 9.1 (e).



9.3 Interruption of Probationary Period Because of Physical and/or Mental Disability or Condition.

- (a) A probationary employee whose physical and/or mental disability or condition prevents them from performing their duties, shall, upon their request to the appointing authority, be placed in an appropriate leave status for a period not to exceed one (1) year, which shall have the effect of interrupting their probationary period without prejudice.

In the event no other leave status is available to the employee, he or she may be placed on Leave Without Pay during the interruption of their probationary period.

- (b) Upon the resumption of their duties, such employee shall be returned to duty in a probationary status at the point in the probationary period he or she reached before being so absent.
- (c) After a probationary employee has been absent from duty because of such a physical and/or mental disability or condition for one year, the appointing authority shall, for this reason, remove such employee and shall report such removal, and the reasons therefor, to the Director.
- (d) Such physical and/or mental disability or condition which results from an employee's willful misconduct shall not be the basis of the interruption provided for in Subsection (a) herein, nor shall such physical and/or mental disability or condition resulting from the employee's willful misconduct prevent the termination of such probationary employee as provided for by Rule 9.1(a) and (e).
- (e) The provisions of Rule 12.10 and, except as hereinafter provided, the provisions of Rule 9.1(e) shall not be effective during the period of interruption provided for by Rule 9.3(a) and Rule 9.4.
- (f) A probationary employee whose physical and/or mental disability or condition prevents them from performing their duties, or a probationary employee who is absent from duty for military training or military active duty, may be removed by the Appointing Authority under the provisions of Rule 9.1(e) only after certification to the Director of the reasons for the removal and approval by the Director of that removal.

Should the Director disapprove such removal, the employee shall continue in their probationary employment, pursuant to the provisions of Rules 9.3(a) through (c) or Rule 9.4.



9.4 Interruption of Probationary Period for Military Purposes.

A probationary employee who is absent from duty for military training or military active duty, without regard to the length of time of such absence, shall be returned to duty in a probationary status at the point in the probationary period he or she reached before being so absent.

9.5 An employee cannot attain permanent status or acquire other rights and benefits of permanent appointment for more than one full-time equivalent position in State service.

## CHAPTER 12

### DISCIPLINARY ACTIONS AND SEPARATIONS

#### 12.1 Disciplinary Actions.

An appointing authority may take appropriate action to remove, suspend, demote, reduce in pay, reassign or reprimand an employee for cause.

#### 12.2 Suspensions.

- (a) Any permanent employee who is suspended without pay shall be so notified by his appointing authority or his authorized agent on or before the effective time and date of the commencement of the suspension. Each permanent employee so suspended shall be furnished detailed reasons therefor in writing prior to or within fifteen (15) calendar days following the effective date of the suspension. A copy of such detailed reasons shall be furnished to the Director. For each permanent employee so suspended, the notice containing the detailed reasons for the suspension shall contain the notification of the right to appeal required by Rule 12.3(a)2 below. The written notice containing detailed reasons for the suspension referred to in this paragraph shall be deemed furnished to the employee under the circumstances specified in Rule 12.3(b) below.
- (b) No suspension shall exceed ninety (90) calendar days without the approval of the Commission.
- (c) If the employee's conduct, ability, or performance is found after investigation to be such as not to warrant the suspension levied, a written report of the outcome of the investigation shall be furnished to the Director. With the approval of the Director, the suspension, or a portion thereof, shall be rescinded and the employee shall be paid for the time lost as a result of the unwarranted suspension.
- (d) For purposes of this Rule, "detailed reasons" shall include, at least a description of the misconduct for which the suspension is being levied and shall include the date, time and place of such misconduct, the names of persons directly involved in or directly affected by the misconduct unless their identities are protected by state or federal statute or regulation, in which case, identification shall be made as permitted by such statute or regulation) and such other information as will fully inform the employee of the charge against him and will enable him to prepare a defense. If a suspension is levied for the purpose of investigating suspected misconduct, "detailed reasons" shall include at least a description of the nature of the misconduct suspected, a



general time frame in which the conduct is suspected to have occurred, the names of persons directly involved in or directly affected by the suspected misconduct (unless their identifies are protected by state or federal statute or regulation, in which case, identification shall be made as permitted by such statute or regulation) and such other information that is available to the appointing authority that will inform the employee what misconduct is being investigated.

### 12.3 Procedure in Removals, Demotions and Reductions in Pay of Permanent Employees.

- (a) In every case of removal, demotion, or reduction in pay for cause of a permanent employee, the appointing authority or his authorized agent shall:
1. Furnish to the employee at the time such action is taken, or prior thereto, a statement in writing giving detailed reasons for such action.
  2. In such cases, the appointing authority or his duly authorized agent shall, commencing January 1, 1991, include in the written notice the following provision: "You may appeal this action to the State Police Commission within 30 days. The appeal must conform to the provisions of Chapter 13 of the State Police Commission Rules."
  3. The appointing authority shall furnish the Director a copy of such statement within fifteen calendar days of the date the employee is notified.
- (b) A written statement to which reference is made in the preceding paragraph shall be deemed furnished to the employee
1. Upon actual receipt by, or manual delivery to, the employee or to any resident of suitable age and discretion of the employee's domicile, or
  2. On the seventh day subsequent to the day on which an appointing authority establishes that it was deposited in the United States Mail, with proper postage affixed, and addressed to the employee at his last known address as furnished to the appointing authority at the time of employment, or as changed by the employee in writing.
- (c) For purposes of this Rule, "detailed reasons" shall include at least a description of the misconduct for which the disciplinary action is being levied, the date, time and place of such misconduct, the names of persons directly involved in or directly affected by the misconduct (unless their identifies are protected by



state or federal statute or regulation, in which case, identification shall be made as permitted by such statute or regulation) and such other information as will fully inform the employee of the charge against him and will enable him to prepare a defense.

12.4 Repealed effective January 14, 1983, and incorporated into Chapter 17.

12.5 Repealed effective January 14, 1983, and incorporated into Chapter 17.

12.6 Repealed effective January 14, 1983, and incorporated into Chapter 17.

12.7 Amended and re-enacted effective October 1, 1954 as Rule 1.39.

12.8 Voluntary Resignations.

(a) Whenever the services of a permanent or probationary employee are terminated by voluntary resignation, the appointing authority shall request that the employee submit a letter of resignation or complete other appropriate agency forms. Where it is impossible to secure the letter or form, the appointing authority shall prepare and maintain a written explanation of the reason(s), if known, and why the letter or form was not obtained.

(b) An employee's resignation, submitted orally or in writing, shall become an accomplished fact upon

1. Its acceptance by his appointing authority, notwithstanding that it may include a prospective effective date; or

2. The occurrence of the effective date and time specified by him in his statement of intention to resign.

(c) The preparation of a personnel status change form for the purpose of reporting an employee's resignation to the Director shall constitute one type of acceptance of his resignation, when signed by the appointing authority.

(d) An employee may not rescind or withdraw his resignation:

1. Subsequent to its acceptance by his appointing authority unless such appointing authority agrees thereto.

2. Subsequent to the effective date and time specified in his statement of intention to resign.



3. Subsequent to the terminal date and hour specified in sub-section (c) hereof.
  - (e) By mutual agreement between an employee and his appointing authority an accepted resignation may be withdrawn and rescinded at any time prior to the effective date and time specified by the employee in his notice of intention to resign.
  - (f) When an employee submits a resignation his appointing authority shall, if such is the case, indicate on the personnel action form reporting the transaction that the employee submitted his resignation to escape possible disciplinary action, and a copy of said personnel action form shall be given the affected employee.

12.9 Repealed, effective March 15, 1966.

#### 12.10 Special Separation of Sick or Disabled Employees.

- (a) A permanent employee absent from duty because of a physical and/or mental disability or condition which prevents performance of their usual duties, shall, upon their request to the appointing authority, be placed in an appropriate leave status for a period not to exceed one (1) year.

In the event no other leave status is available to the employee, he or she may be placed on Leave Without Pay during the one (1) year period referred to in the preceding paragraph.

- (b) After such employee has been absent from duty because of such physical and/or mental disability or condition for one (1) year, and the employee has exhausted all of his or her sick leave, the appointing authority, shall, for this reason, remove such employee and shall report such removal, and the reasons therefor, to the Director. Such removal shall not disqualify the former employee from non-competitive reemployment, as provided for by Rule 8.18.
- (c) Notice of the removal of an employee under the provisions of subsection (b) shall be given pursuant to the provisions of Rule 12.3.

#### 12.11 Special Provision for Separation of an Employee Having More Than One Permanent Appointment

- (a) When an agency determines that an employee has been permanently appointed to more than one position in State Service, thereby causing the agency to be liable for overtime payments under the Fair Labor Standards Act, such employee may be removed by the appointing authority upon certification to the Director that such a dual

employment situation exists and is not in the best interest of the agency, and that the employee has been offered the opportunity to resign from one of the positions and has refused to do so. Such removal shall not disqualify the former employee for noncompetitive reemployment as provided for in Rule 8.18.

- (b) Notice of such action shall be given pursuant to the provisions of Rule 12.3.



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.
- (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.

#### 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.

# State Police Commission



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March 25, 1996

## CORRECTED TRANSMITTAL SHEET NO. 15

To: State Police Commission Members, Colonel William R. Whittington, Personnel, Legal, Retirement, LSTA, LSTA Affiliate Presidents, Floyd Falcon, Walter L. Smith, III and Court of Appeal, First Circuit Judges

From: Debra L. Johnson

Re: Correction of Chapter 12 of the State Police Commission Rules

Transmittal Sheet No. 15, dated March 20, 1996, contained an error in Rule 12.2(b). Attached please find a corrected copy of Chapter 12 for inclusion in your Rules. I apologize for any inconvenience this error may have caused.

Sincerely,

*Debra L. Johnson*

Debra L. Johnson  
Director

Attachment



## CHAPTER 12

### DISCIPLINARY ACTIONS AND SEPARATIONS

#### 12.1 Disciplinary Actions.

An appointing authority may take appropriate action to remove, suspend, demote, reduce in pay, reassign or reprimand an employee for cause.

#### 12.2 Suspensions.

- (a) Any permanent employee who is suspended without pay shall be so notified by his appointing authority or his authorized agent on or before the effective time and date of the commencement of the suspension. Each permanent employee so suspended shall be furnished detailed reasons therefor in writing prior to or within fifteen (15) calendar days following the effective date of the suspension. A copy of such detailed reasons shall be furnished to the Director. For each permanent employee so suspended, the notice containing the detailed reasons for the suspension shall contain the notification of the right to appeal required by Rule 12.3(a)2 below. The written notice containing detailed reasons for the suspension referred to in this paragraph shall be deemed furnished to the employee under the circumstances specified in Rule 12.3(b) below.
- (b) No suspension shall exceed five hundred twenty (520) working hours without the approval of the Commission.
- (c) If the employee's conduct, ability, or performance is found after investigation to be such as not to warrant the suspension levied, a written report of the outcome of the investigation shall be furnished to the Director. With the approval of the Director, the suspension, or a portion thereof, shall be rescinded and the employee shall be paid for the time lost as a result of the unwarranted suspension.
- (d) For purposes of this Rule, "detailed reasons" shall include, at least a description of the misconduct for which the suspension is being levied and shall include the date, time and place of such misconduct, the names of persons directly involved in or directly affected by the misconduct unless their identities are protected by state or federal statute or regulation, in which case, identification shall be made as permitted by such statute or regulation) and such other information as will fully inform the employee of the charge against him and will enable him to prepare a defense. If a suspension is levied for the purpose of investigating suspected misconduct, "detailed reasons" shall include at least a description of the nature of the misconduct suspected, a

general time frame in which the conduct is suspected to have occurred, the names of persons directly involved in or directly affected by the suspected misconduct (unless their identifies are protected by state or federal statute or regulation, in which case, identification shall be made as permitted by such statute or regulation) and such other information that is available to the appointing authority that will inform the employee what misconduct is being investigated.

12.3 Procedure in Removals, Demotions and Reductions in Pay of Permanent Employees.

- (a) In every case of removal, demotion, or reduction in pay for cause of a permanent employee, the appointing authority or his authorized agent shall:
  - 1. Furnish to the employee at the time such action is taken, or prior thereto, a statement in writing giving detailed reasons for such action.
  - 2. In such cases, the appointing authority or his duly authorized agent shall, commencing January 1, 1991, include in the written notice the following provision: "You may appeal this action to the State Police Commission within 30 days. The appeal must conform to the provisions of Chapter 13 of the State Police Commission Rules."
  - 3. The appointing authority shall furnish the Director a copy of such statement within fifteen calendar days of the date the employee is notified.
- (b) A written statement to which reference is made in the preceding paragraph shall be deemed furnished to the employee
  - 1. Upon actual receipt by, or manual delivery to, the employee or to any resident of suitable age and discretion of the employee's domicile, or
  - 2. On the seventh day subsequent to the day on which an appointing authority establishes that it was deposited in the United States Mail, with proper postage affixed, and addressed to the employee at his last known address as furnished to the appointing authority at the time of employment, or as changed by the employee in writing.
- (c) For purposes of this Rule, "detailed reasons" shall include at least a description of the misconduct for which the disciplinary action is being levied, the date, time and place of such misconduct, the names of persons directly involved in or directly affected by the misconduct (unless their identifies are protected by



state or federal statute or regulation, in which case, identification shall be made as permitted by such statute or regulation) and such other information as will fully inform the employee of the charge against him and will enable him to prepare a defense.

12.4 Repealed effective January 14, 1983, and incorporated into Chapter 17.

12.5 Repealed effective January 14, 1983, and incorporated into Chapter 17.

12.6 Repealed effective January 14, 1983, and incorporated into Chapter 17.

12.7 Amended and re-enacted effective October 1, 1954 as Rule 1.39.

12.8 Voluntary Resignations.

(a) Whenever the services of a permanent or probationary employee are terminated by voluntary resignation, the appointing authority shall request that the employee submit a letter of resignation or complete other appropriate agency forms. Where it is impossible to secure the letter or form, the appointing authority shall prepare and maintain a written explanation of the reason(s), if known, and why the letter or form was not obtained.

(b) An employee's resignation, submitted orally or in writing, shall become an accomplished fact upon

1. Its acceptance by his appointing authority, notwithstanding that it may include a prospective effective date; or

2. The occurrence of the effective date and time specified by him in his statement of intention to resign.

(c) The preparation of a personnel status change form for the purpose of reporting an employee's resignation to the Director shall constitute one type of acceptance of his resignation, when signed by the appointing authority.

(d) An employee may not rescind or withdraw his resignation:

1. Subsequent to its acceptance by his appointing authority unless such appointing authority agrees thereto.

2. Subsequent to the effective date and time specified in his statement of intention to resign.

3. Subsequent to the terminal date and hour specified in sub-section (c) hereof.

- (e) By mutual agreement between an employee and his appointing authority an accepted resignation may be withdrawn and rescinded at any time prior to the effective date and time specified by the employee in his notice of intention to resign.
- (f) When an employee submits a resignation his appointing authority shall, if such is the case, indicate on the personnel action form reporting the transaction that the employee submitted his resignation to escape possible disciplinary action, and a copy of said personnel action form shall be given the affected employee.

12.9 Repealed, effective March 15, 1966.

12.10 Special Separation of Sick or Disabled Employees.

- (a) A permanent employee absent from duty because of a physical and/or mental disability or condition which prevents performance of their usual duties, shall, upon their request to the appointing authority, be placed in an appropriate leave status for a period not to exceed one (1) year.

In the event no other leave status is available to the employee, he or she may be placed on Leave Without Pay during the one (1) year period referred to in the preceding paragraph.

- (b) After such employee has been absent from duty because of such physical and/or mental disability or condition for one (1) year, and the employee has exhausted all of his or her sick leave, the appointing authority, shall, for this reason, remove such employee and shall report such removal, and the reasons therefor, to the Director. Such removal shall not disqualify the former employee from non-competitive reemployment, as provided for by Rule 8.18.
- (c) Notice of the removal of an employee under the provisions of subsection (b) shall be given pursuant to the provisions of Rule 12.3.

12.11 Special Provision for Separation of an Employee Having More Than One Permanent Appointment

- (a) When an agency determines that an employee has been permanently appointed to more than one position in State Service, thereby causing the agency to be liable for overtime payments under the Fair Labor Standards Act, such employee may be removed by the appointing authority upon certification to the Director that such a dual



employment situation exists and is not in the best interest of the agency, and that the employee has been offered the opportunity to resign from one of the positions and has refused to do so. Such removal shall not disqualify the former employee for noncompetitive reemployment as provided for in Rule 8.18.

- (b) Notice of such action shall be given pursuant to the provisions of Rule 12.3.