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Transmittal Sheet No. 41

Subject: State Police Commission Rules 2.9(j) and 3.1(t) and Chapter 20

Effective Date: May 26, 2009

At its meeting on May 26, 2009, on motion duly made and seconded, by unanimous vote of the members present, the State Police Commission voted to revise State Police Commission Rules 2.9(j) and 3.1 and adopt Chapter 20. Attached are complete copies of Chapters 2, 3 and 20 for inclusion in your Rules.

Sincerely,

Cathy J. Derbonne

Cathy J. Derbonne
Director

Attachments (3)

CJD/jrp

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 litigation 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 (h) and (i) 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) 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.
- (f) To perform such other acts as may from time to time be required of it by the Constitution or by Statute.
- (g) 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.

- (h) 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.
- (i) To enforce its rules, regulations, and orders in the courts of this State by mandamus or injunction suits.
- (j) Ensure a yearly, independent, audit of the Commission's accounts and equipment is conducted. The Commission is authorized to hire a firm to conduct this audit or enlist the services of an outside state agency to conduct this audit. A complete report of this audit will be submitted to the Commission members upon completion of the audit.

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.

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 non-incriminating 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 the State Police Commission Rules.
- (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.

*2.15 Opportunity to Address Commission.

- (a) In order to inform itself, so as to better perform its executive and legislative functions, during regularly or specially scheduled meetings, or otherwise as determined by the Commission, the Commission may provide an opportunity for employees and/or others to address the Commission on subjects relevant to its jurisdiction.
- (b) Matters relating to specific individual circumstances, which are, may or should be the subject of an appeal to the Commission, and/or requests for specific relief for individuals shall not be heard during such proceeding.
- (c) Except as provided by Rule 2.5(a), only persons and/or issues scheduled by agenda prior to the meeting may be heard during such proceeding.
- (d) Employees and/or others wishing to be placed on the Commission's agenda for such purpose must make a written request for such, to be received by the Director at least ten days prior to the meeting at which they wish to appear.

The request to appear shall state the topic and nature of the appearance and of the information to be presented to the Commission, in the absence of which, such requests shall not be considered by the Director.

The Director or the Commission may, by policy, limit the amount of time allotted to individuals and/or the total amount of time allotted to such proceeding.

- (e) Within the Director's discretion, the Director shall determine whether a request is placed on the Commission's agenda, and the number of persons to be placed on a particular agenda.

Except where such is impracticable, at least five days prior to the Commission meeting, the Director shall mail notification to or otherwise notify the person making the request that they have been placed on the Commission's agenda and of the date, time and place of such appearance, or that the request has been declined or not considered. When a request is

declined or not considered, the Director shall state the reason for such in writing, a copy of which shall be sent to each Commission member.

CHAPTER 3

DUTIES OF THE DIRECTOR

3.1 Duties of the Director.

It shall be the duty of the Director

- (a) To serve as the executive and administrative head of the State Police Commission and direct and supervise all of the Commission's administrative and technical activities functions.
- (b) To attend all meetings of the Commission and to act as its secretary and keep minutes of its proceedings.
- (c) To establish and maintain a roster of all employees within the State Police Service, which roster shall indicate as to each employee the class title of the position held, the salary or pay, any change in class title, pay or status and any other necessary data.
- (d) To appoint and remove and otherwise discipline, under the provision of the State Police Commission Article and Rules, such employees of the State Police Commission, and such experts and special assistants as may be necessary to carry out effectively the provisions of the State Police Commission Article and Rules.
- (e) Consistent with the Article and the Rules, to formulate and prescribe procedures, and to publish them in a Personnel Manual; conduct examinations; maintain a list of eligibles; and certify qualified persons for appointment within the State Police Service.
- (f) To develop, in cooperation with the appointing authority of the Office of State Police and others, training, educational, and safety programs for all employees governed by the Article.
- (g) To make and publish annual reports regarding the work of the Commission, and such special or other reports to the Commission and the Governor as he considers desirable.
- (h) To perform any other acts or functions which are necessary or desirable to carry out the purposes of the Article or these Rules, or such acts or functions which he may be directed to perform by the Commission or its Chair.
- (i) To serve as referee in employee appeals or to appoint a member of the State Police Commission to serve as referee.

- (j) Subject to review by the Commission, to prepare and submit budget requests covering the estimated costs of administering the Commission.
- (k) To act between meetings of the Commission on routine matters requiring Commission approval. Subject to the provisions of Sub-section (n) of this Rule, any such action of the Director shall be reported to the Commission at its next meeting and unless approved by the Commission at such meeting, shall terminate.
- (l) To make such investigations as may be necessary to enforce the provisions of the State Police Commission Article and Rules and to determine the qualifications and suitability of applicants for employment in the Classified Service.
- (m) To establish mandatory grievance procedures within each department to provide the means to resolve employee complaints and other personnel problems not appealable to the Director or the Commission under the State Police Commission Article.
- (n) To act between meetings on piecemeal Classification and Pay Plan matters requiring Commission approval. Any such action by the Director shall be reported to the Commission at the next public hearing called to consider Classification and Pay Plan matters and unless approved by the Commission following such hearing, shall terminate.
- (o) To review and approve or disapprove all contracts entered into between the Office of State Police and all persons, firms, corporations or other entities rendering personal services to or on behalf of the Office of State Police. Said contracts shall be submitted to the Director by the Office of State Police prior to the effective date of the contract.

Upon receipt of the contract, the Director shall approve or disapprove the contract or, where the Director finds that the contract does not provide for services within the State Police Service, the Director shall return the contract without action. In such case, the Director shall state, in writing, the basis for returning the contract.

When the Director disapproves a contract, the Director shall state in the instrument of disapproval the position to which such services are or may be assigned.

- (p) To develop and propose to the Commission uniform classification and pay plans and amendments thereto.

- (q) To develop and propose to the Commission, rules and amendments thereto governing employment conditions for employees in the Classified Service.
- (r) To require departments and agencies to establish and implement, in accordance with established policy, an affirmative action program to assure equal employment opportunity in the Classified Service of State government.
- (s) To notify the State Police Commission of any proposal which would effect the pay of jobs in the protective services concurrent with the issuance of the State Police Commission monthly agenda and supplemental agenda.
- (t) Present a monthly report to the Commission detailing all expenditures for the previous month. The Director shall also provide, if requested by any Commission member, documentation in support of this report.

3.2 Amended and re-enacted as Rule 3.1(k) effective March 15, 1966.

3.3 Amended and re-enacted as Rule 3.1(l) effective March 15, 1966.

3.4 Appointment of the Director.

- (a) Subject to the provisions of Sub-section (b) of this Rule, the Director shall be appointed by the Commission following competitive examination administered in a manner prescribed by the Commission.
- (b) The Commission shall have access to other provisions of these Rules for the temporary, interim appointment of an acting director, if such is necessary.

3.5 Status of the Director.

The Director shall be employed within the Classified Service of the State.

CHAPTER 20

PERFORMANCE PLANNING AND REVIEW FOR DIRECTOR AND COMMISSION EMPLOYEES

20.1 Performance Planning and Review System for Director and Commission Employees; Required Components.

The Commission shall use a performance planning and review system that complies with this Chapter and consists of the following components:

- (1) a performance planning and review form approved by the Commission;
- (2) a seven-level rating system; and
- (3) a performance planning and review training manual that is reasonably accessible to rating supervisors.

Other components may be incorporated upon prior approval by the Commission

20.2 Rater; Reviewer.

- (1) The rater of the Director shall be the Chairman of the Commission. The reviewer shall be the Commission.
- (2) The rater of Commission employees shall be the Director. The reviewer shall be the Chairman of the Commission.

20.3 Performance Factors to be Rated.

- (1) The Director and each employee shall be rated on the following performance factors: Work Product; Dependability; Cooperativeness; Adaptability; Communication; Customer Service; and Daily Decision Making/Problem Solving.
- (2) The Director and Supervisory employees shall be rated on the following additional performance factors: Work Group Management and Leadership; Accountability; and Performance Planning and Review.
- (3) The Director and an employee may be rated on additional performance factor(s) applicable to the employee's job.

20.4 Ratings.

- (1) The rater shall rate the employee on each applicable performance factor, using the following ratings and points:
 1. Outstanding = 5 points
 2. Very Good – 4 points

3. Good = 3 points
4. Needs Improvement = 2 points
5. Poor = 1 point

(2) The performance factor ratings shall then be averaged and the employee's overall rating shall be assigned based upon the following scale:

1. Outstanding = 4.50 – 5.00
2. Very Good = 3.50 – 4.49
3. Good = 2.50 – 3.49
4. Needs Improvement = 1.50 – 2.49
5. Poor = 1.00 – 1.49

20.5 Performance Planning Session.

- (1) The rater shall conduct a performance planning session, during which the rater shall discuss with the employee the factors upon which the employee will be rated, and the performance that will be expected during the coming rating period. Thereafter, the rater and the employee shall sign and date the performance planning and review form to document the session.
- (2) A performance planning session shall be conducted no later than 30 calendar days after the appointment of a new employee, or the anniversary date of a current employee, or the assignment of an employee into a different position or when the employee is given significantly different duties.
- (3) A performance planning session may be conducted when an employee is assigned a new supervisor or when performance expectations change due to changes in work.

20.6 Rating Process.

- (1) The rater shall complete the performance planning and review form and shall provide the form and any documentation to support a rating of "Needs Improvement" or "Poor" to the reviewer. The reviewer, if satisfied, shall sign the form and return it to the rater who shall then give a copy to the employee and discuss the rating.
- (2) For new employees, the provisions of subsection (1) shall occur within 45 calendar days prior to the employee's eligibility for a merit increase.
- (3) For current employees, the provisions of subsection (1) shall occur within 45 calendar days before the employee's anniversary date.

20.7 Re-Ratings.

An employee whose official overall rating is "Needs Improvement" or "Poor" shall be re-rated no earlier than 3 nor later than 6 months after the employee's anniversary date.

20.8 When a Rating or a Re-Rating Becomes Official.

A rating or re-rating becomes official upon the employee's receipt of the performance planning and review form. Receipt is governed by Rule 12.8(b).

20.9 Employee's Refusal to Sign Form.

If an employee refuses to sign any part of the form, the rater shall note on the form that the employee was given the form, refused to sign, and the date.

20.10 Effects of "Needs Improvement" or "Poor" Rating or Re-Rating.

- (1) An employee whose official overall rating or re-rating is "Needs Improvement" or "Poor" is ineligible for merit increases or promotion.

20.11 Effects of Absence of Official Rating or Re-Rating.

- (1) If the Commission neglects to rate the Director or if the Director neglects to rate an employee prior to his/her anniversary date, the Director or employee shall be considered as having a rating of "Good." If the Commission fails to timely re-rate the Director or if the Director neglects to re-rate the employee rated "Needs Improvement" or "Poor," the Director or employee shall be deemed to have a re-rating of "Good," as of six (6) months after the Director's or employee's anniversary date.
- (2) If a performance rating or re-rating has not been possible because of the excused absence of the Director or employee due to medical reasons, the rating or re-rating shall be delayed until no earlier than 3 nor later than 6 months after the Director or employee's return to duty on a full time basis. Under such circumstances, the rating existing prior to the Director's or employee's absence shall continue in effect in the interim.

20.12 Record-keeping and Reporting Requirements.

- (1) Completed performance planning and review forms shall not be part of the official personnel file and shall not be accessible to the public.
- (2) Each official overall rating of "Needs Improvement" and "Poor" and each official re-rating shall be reported to the Commission within thirty (30) days after a copy of the performance planning and review form has been given to the Director or employee.

20.13 Review of Ratings and Re-Ratings.

Ratings and re-ratings are subject to review as follows:

- (1) The Director or an employee who disagrees with and desires a review of an official overall rating or re-rating of "Needs Improvement" or "Poor" must

present a written request to the Commission for review of the rating or re-rating.

The request for review must conform to the following:

1. Include a copy of the Performance Planning and Review Form, and any documentation provided to the Director or employee with the form, to request the review.
 2. Attach any other documentation supporting the request for review.
 3. List the performance factor ratings that are in dispute and for each factor explain why they believe a higher rating was deserved.
 4. Be postmarked or received by the Chairman of the Commission within thirty (30) calendar days following receipt by the Director or employee of the Performance Planning and Review Form.
- (2) Upon receipt of a timely request for review, the Commission shall:
1. Review the Director's or employee's request (including any attachments) and the official Performance Planning and Review Form (including the attached documentation) if any.
 2. Within sixty (60) days after receipt of the request for review, provide the Director or employee with written notice of the outcome of the review.