

State Police Commission



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November 17, 1995

General Circular No. 51

- To: State Police Commission Members, Colonel Paul Fontenot, Russell Culotta, Foye Lowe, Walt Smith, William Spencer, Baxter Welch, Walter Smith, Floyd Falcon and LSTA Affiliate Presidents
- Re: Adoptions and revisions of State Police Commission Rules 13.14, 13.15, 13.19, 13.20, 13.22 and 13.36

The State Police Commission will hold a public hearing on Monday, December 18, 1995, at 9:00 a.m. in the Conference Room, Eleventh Floor, Wooddale Towers Building, 1885 Wooddale Boulevard in Baton Rouge, Louisiana to consider adoption and revision of the following State Police Commission Rules.

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):
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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 filing such, which shall state that the request has been served personally or by mail on the adverse party and the date of such service.
- (c) A Referee, on the motion of a party or 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(f) Repealed

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.

13.19 Procedure for Hearing Appeals

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(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.

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(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.

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(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.

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.
- (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.

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 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.

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 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.

Please review these revisions and furnish in writing, by December 6, 1995, any comments which you consider pertinent. If you would like to appear before the Commission and present your comments orally, you are invited to do so. Please notify Gilda Russ by December 6, 1995 of your intention to address the Commission in order to be placed on the agenda.

Please post this General Circular prominently so that all employees will receive notice of this hearing.

If any special accommodations are needed, please notify us prior to the meeting date.

Sincerely,

Debra L. Johnson
Debra L. Johnson, Director