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**GENERAL CIRCULAR NUMBER 2016-045**

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**DATE: December 15, 2016**

**TO: Heads of State Agencies and Human Resources Directors**

**SUBJECT: Adoption of State Civil Service Rules Chapter 26**

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At its General Business meeting held on December 14, 2016, the State Civil Service Commission adopted proposed Chapter 26 of the Civil Service Rules with amendments.

The rules will be effective on December 14, 2016 and will read as follows.

Sincerely,

s/Byron P. Decoteau, Jr.

Director

## Chapter 26 – Special Hearings

### 26.1 Applicability

This Chapter applies to the State Examiner and the Deputy State Examiner of the Municipal Fire and Police Civil Service in accordance with La. Const. 1921, Art. XIV, Section 15.1, (9) made statutory by La. Const. 1974, Art. X, Sec. 18.

### 26.2 Written Charges

- a) Any municipal fire and police civil service board or any qualified elector of this state hereafter, complainant, may file written charges with the Commission, through the Appeals Division, asserting cause for removal or discipline of the State Examiner or the Deputy State Examiner, hereafter, respondent.
- b) Written charges shall:
  1. Contain the name, title, mailing address, and daytime telephone number of the complainant and of its/his attorney, if any;
  2. Contain the name and mailing address of the respondent;
  3. Describe in detail the conduct asserted as cause including, where pertinent, dates, times, places, and names of persons directly involved in or affected by such conduct (unless their identities are protected by law, in which case, identification may be made as permitted by law);
  4. Describe the evidence to prove the charges; and
  5. Be signed by the complainant or its/his attorney, certifying that based on information, belief, and reasonable inquiry, the facts asserted in the written charges are true.
- c) Written charges shall not be a public record.

### 26.3 Commission Action on Written Charges

- a) Written charges shall be considered by the Commission in executive session to determine if the charges, if proved, would constitute cause for removal or discipline. If the Commission concludes there is no reason to proceed, it may dismiss the charges and so notify the complainant or it may offer the complainant an opportunity to amend the charges.
- b) If the Commission concludes there is reason to proceed on some or all charges, it shall so notify the complainant and offer it/him an opportunity to prove the charges at a public hearing. Complainant shall respond in writing within thirty calendar days; failure to do so shall be construed as electing to proceed. If the complainant elects to proceed, the Commission shall order a public hearing on the charges to be heard and the case shall be docketed and heard in accordance with this Chapter.

- c) If the complainant declines to proceed, it shall so notify the Commission in writing. If the Commission determines that the public interest so requires, the Commission shall order the Director to represent the public interest and to investigate the charges privately.

**26.4 Investigation; Cooperation with Investigation; Charges; Commission Action**

- a) If the Commission orders the Director to investigate, the complainant and its staff, if any, and the respondent and his staff shall fully cooperate in the investigation. Failure to do so shall be a violation of these Rules, punishable accordingly.
- b) After the investigation, the Director shall either file written charges under Rule 26.2 as a qualified elector or a written request to dismiss the charges. The charges filed by the Director may include conduct disclosed during the investigation that was not described in the written charges filed by a Municipal Fire and Police Civil Service Board or qualified elector. The written charges or request to dismiss shall be considered by the Commission in executive session.
- c) The Commission may dismiss the charges or order a public hearing on some or all charges. The charges to be heard shall be listed in or attached to the order.

**26.5 Docketing; Administrative Functions; Public Record; Parties; Filings.**

- a) If the Commission orders a public hearing, the case shall be docketed by the Appeals Division, which shall be responsible for all administrative functions in the case.
- b) The parties are the complainant(s) and the respondent(s).
- c) The case record shall include the Commission's offer to the complainant to proceed, the complainant's response, and the Commission's order(s), copies of which shall be mailed to the complainant and the respondent. After docketing, the case shall become a public record.
- d) After docketing, no paper shall be filed unless it contains a certification that a copy has been mailed to counsel and unrepresented parties.

**26.6 Answer; Discrimination**

- a) Within 30 calendar days following the issue date on the notice of docketing, the respondent shall file an answer which addresses each charge and explains his version of the incident. A general denial is not sufficient. Any charge not addressed is deemed admitted as written.
- b) If the respondent alleges discrimination in his response, he must plead it in sufficient detail to allow the complainant to prepare a defense. A conclusion of discrimination is not sufficient. The respondent must describe events, including the

dates and circumstances thereof, which lead respondent to believe that he is being discriminated against because of his religious or political beliefs, sex, or race.

### **26.7 Notice to Parties**

Whenever this Chapter requires notice to the parties, notice shall be given to all counsel of record and to any unrepresented party. Notice to counsel of record shall constitute notice to the party he represents.

### **26.8 Place of Hearing; Notice of Hearing**

- a) All public hearings before the Commission shall be heard in a convenient place in the state, accessible to the public.
- b) Written notice of the time and place for the public hearing shall be mailed to the parties at least 30 calendar days before the date of the hearing. With the consent of the parties, this notice and delay may be waived.

### **26.9 Continuance of Hearing**

For good cause shown or by consent of the parties, a scheduled public hearing may be continued.

### **26.10 Interrogatories; Discovery**

Interrogatories and pre-trial discovery proceedings shall not be recognized by the Commission.

### **26.11 Summary Disposition**

- a) The Commission, on its own motion or on motion of a party, may summarily dispose of the case, a charge, or an issue on any one of the following grounds or under Rule 26.16:
  1. The charges to be heard, if proved, would not constitute cause for removal or discipline.
  2. The charges to be heard have not been described in sufficient detail.
  3. The facts asserted to support a conclusion of discrimination, if proved, do not support that conclusion.
  4. The facts asserted to support a discrimination claim have not been described in sufficient detail.
  5. The case has become moot.
  6. Upon resting his case, the complainant has not carried its/his burden of proof.
- b) When the Commission summarily disposes of the case or an issue, it shall file a written decision. Notice of the decision shall be given to the parties.

### **26.12 Withdrawal of Charges; Consent Discipline**

- a) With approval of the Commission, the charges to be heard may be withdrawn upon the complainant's written request.
- b) The parties may file a Joint Motion for Consent Discipline, which shall include stipulations of fact and the discipline consented to. If approved by the Commission, this shall constitute a final disposition of the case.

**26.13 Preliminary Rulings.**

- a) When a preliminary ruling is necessary, it shall be made by the Chief Referee.
- b) The application for review process shall not apply to preliminary rulings. A party who objects to the ruling may file a written motion for reconsideration, which shall be heard and decided by a majority vote of the Commission at the hearing.

**26.14 Subpoena of Witnesses; Production of Documents**

- a) The Commission, each member thereof, and a Referee shall have subpoena power over persons, documents, records, or other items within the State.
- b) No subpoena shall be issued unless a written request therefor:
  - 1. Is received in the Appeals Division no later than fifteen (15) calendar days before the date fixed for the hearing;
  - 2. Contains the names of the witnesses, the mailing and street addresses at which the witnesses can be served, a description of the documents, records, or other items to be produced in sufficient detail for identification, and the name, mailing, and street addresses of the person who is to be required to produce the documents, records, or other items; and
  - 3. Contains a statement of the facts to be proved by each witness, document, record, or item.
- c) No subpoena shall be issued unless the request therefor complies with this Rule and a person authorized to issue the subpoena is satisfied that the testimony of the witness or the document, record, or other item is relevant to the issues before the Commission.
- d) Instead of issuing and serving formal subpoenas to persons who work for the State, a person authorized to issue the subpoena may request any appointing authority to order any employee, temporary worker, or contractor under his supervision to appear and testify at any hearing, and upon being so ordered the employee shall appear at the hearing and furnish testimony.
- e) Authentic copies of documents, records, 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 originals are subpoenaed, they must be produced and made available for inspection even though authentic copies may be subsequently introduced.

- f) 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 the State to deposit with the Appeals Division a sum sufficient to cover the mileage and witness fees authorized by Rule 26.19, pending a determination of costs by the Commission.
- g) A person authorized to issue a subpoena for cause deemed sufficient may issue an appropriate order at any time recalling any subpoena 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 documents, records, or other items shall be deemed a violation of these Rules, punishable accordingly.

### **26.15 Procedure for Hearing**

- a) All hearings shall be open to the public.
- b) Legal representation
  1. Except as is provided below, a party may be represented by an attorney licensed to practice law in Louisiana or by a law student who has satisfied the requirements of Rule 20 of the Rules of the Supreme Court of Louisiana.
  2. No attorney or law student who is a classified state employee may represent another state employee in a public hearing.
  3. When a party is represented by more than one attorney/law student, only one such representative shall be permitted to examine the same witness.
- c) The burden of proof, as to the facts supporting cause for removal or discipline, shall be on the complainant. The burden of proof, as to the facts supporting a discrimination claim, shall be on the respondent.
- 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 the Commission.
- e) Evidence shall not be received from the complainant to supplement or enlarge the charges and evidence shall not be received from the respondent to supplement or enlarge the facts alleged in support of a claim of discrimination.
- f) 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.
- g) Parties and witnesses shall be subject to cross-examination as in civil trials before the courts of the State and the Commission and each member of the Commission may examine and cross-examine any witness.
- h) The Commission may require the parties to stipulate all undisputed facts.

- i) The Commission may limit corroborative evidence.
- j) 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.
- k) The Commission, on request of any party, or on its own motion, may sequester the witnesses. In applying this Rule, if the complainant is a board, only one person, in addition to counsel, shall represent the complainant.
- l) The Commission, 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, only one attorney shall be permitted to present oral argument for any party.
- m) The Commission 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.
- n) When during 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.

#### **26.16 Failure of Parties to Appear at Hearing**

- a) If the complainant, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public hearing, the Commission may order the charges dismissed.
- b) If the respondent without having been granted a continuance, is not present at the place and time fixed for a public hearing, he may be deemed to have waived his appearance and testimony may be taken in its/his absence with the same effect as if it/he were present.
- c) This Rule shall not prevent the Commission from continuing the case if it learns that reason for the absence(s) was beyond the parties' or their attorneys' control.

#### **26.17 Witnesses; Refusal to Appear; Refusal to Testify; False Testimony**

- a) Any person who willfully refuses or fails to appear before the Commission in response to a subpoena or a request under Rule 26.14(d), 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 documents, records, or other items ordered may be found by the Commission to be guilty of contempt in accordance with Rules 2.11 through 2.13.

- b) Any officer or employee in the state classified service who engages in such conduct may also 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 state classified service for a period not to exceed ten years or be subject to a suspension from his position.
- c) Any officer or employee required to testify shall not be subjected to any disciplinary action by his appointing authority because he so testifies.

**26.18 Decision; Rehearing; Appeal**

- a) When, after a public hearing, the Commission determine there is no cause for removal or discipline, it shall issue an order dismissing the complaint. If the Commission determines there is cause, it may remove, suspend without pay, reduce in pay, demote, or dismiss the State Examiner or Deputy State Examiner and it shall issue a written decision containing findings of fact, conclusions of law, the action being taken, the date and time the action shall become effective. The Commission's decision shall be final on the day it is rendered. Notice of the decision shall be given to the parties.
- b) No rehearing shall be granted from a final decision of the Commission.
- c) The final decision of the Commission shall be subject to review on any question of law or fact upon appeal to the Court of Appeal, First Circuit upon application filed with the Commission within thirty calendar days after its decision becomes final.

**26.19 Attorney Fees**

When the complainant or Director does not bear its/his burden of proving the charge(s) and the Commission finds there is no reasonable basis for the charges, the Commission may order it/him to pay reasonable attorney's fees in an amount not to exceed \$1,500 per respondent.

**26.20 Witness Fees**

- a) The travel expenses of an officer or employee of the State who is required to appear before the Commission in a hearing shall be paid by the department which employs him.
- b) The Commission may order that any person who is not an officer or employee of the State 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 District Court for the Parish of East Baton Rouge.

- c) Witness fees and travel expenses may be taxed to either party, in the Commission's discretion.

**26.21 Transcripts of Proceedings; Record**

- a) The proceedings of all public hearings before the Commission shall be recorded, but shall be transcribed only upon order of the Commission and upon payment of estimated costs by the person requesting the transcript.
- b) If not contained in the Commission's written decision, any portion of the Commission's Rules, Classification Plan, or Pay Plan material to the decision shall be copied into the record on appeal.

**26.22 Recusation of Commissioner**

- a) If a Commissioner files written charges against the State Examiner or Deputy State Examiner, that Commissioner shall recuse himself from participating in any process that may come before the Commission because of those charges.
- b) All other grounds for recusation of a Commission shall be the same as the grounds for the recusation of judges of the courts of the State of Louisiana, provided, a quorum of the Commission cannot be recused.