ANNOTATIONS TO THE CIVIL SERVICE RULES
Second Edition

Louisiana Department of State Civil Service

Preface

This disc contains a compilation of my scribbled notes about published Court of Appeal and Supreme Court opinions that address civil service matters. I have also included references to opinions issued “Not Designated for Publication” (NDFP) that are published on the courts’ web sites. See URCA Rule2-16.3. The courts’ websites are:

www.lasc.org
www.lacoa2.org
www.4thcir-app.state.la.us
www.la-fcca.org
www.la3circuit.org
www.fifthcircuit.org

I have included some of the major decisions rendered by the State Civil Service Commission and its Referees. Most of the Commission and Referee decisions rendered since 1992 are searchable on the Department’s website: www.civilservice.la.gov

Wherever possible, I have listed the annotation under a particular civil service rule. Where this was not possible, I have listed the annotations under the various Sections of the Civil Service Article (Article X, Part I of the Louisiana Constitution of 1974). The rules and the Article are also on the Department’s website: www.civilservice.la.gov. I have listed Supreme Court cases first, then appellate cases, then Commission/Referee cases, from newest to oldest. Where I thought it helpful to understand the cases, I have included rule chronology information.

To the non-lawyers: The purpose of this compilation is to help the reader find cases that might be on point. All cases are fact-driven: even slight variations in facts can change the outcome. Therefore, this book is not a substitute for reading the cases.

This compilation is being distributed on CD. It is searchable using Microsoft Word ® features such as ”Find” [Ctrl + F; then type in search word]; “Go” [Ctrl + G, then type page number]; “Copy” [Ctrl + C]; and ”Paste” [Ctrl + V]. This compilation concludes with decisions rendered on February 20, 2008.

March 2008 Laura Denson Holmes

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CHAPTER 1

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Article X, Part I – Purpose of Civil Service in General

An overview of civil service: The civil service provisions in the state Constitution and the rules of the Commission are designed to protect public career employees from political discrimination by eliminating the "spoils" system. A person who has gained permanent status in the classified state civil service may be subject to disciplinary action for legal cause expressed by the appointing authority in writing, if the conduct complained of includes conduct prejudicial or detrimental to the efficient and orderly operation of the public service in which the employee is engaged. The Commission has the exclusive power and authority to hear and decide all state civil service disciplinary cases. The duty of the Commission is to independently decide from the facts presented whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. The Commission is vested with broad and general rulemaking and subpoena powers for the administration and regulation of the classified service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions. Pursuant to its rule making authority, the Commission defines cause for termination as "conduct which impairs the efficient or orderly operation of the public service." *AFSCME, Council #17 v. State, Department of Health and Hospitals,* 2001-0422 (La. 6/29/01); 789 So.2d 1263

The fundamental purpose of a merit system is to insure efficiency in governmental operations by providing security of employment. Such a system enables the state or municipality to take advantage and reap the benefits of experience gained by employees of long service. *Marks v. New Orleans Police Department,* 2006-0575 (La. 11/29/06); 943 So.2d 1028

Provisions for the civil service system were placed in the Constitution so that the system can be repealed or amended only by a vote of the people, thereby removing the system from control of a temporary majority of the legislature. The delegates to the 1973 Constitutional convention adhered to this theme by rejecting an amendment that would have allowed the legislature by a two-thirds vote to change the nature and powers of the system. *New Orleans Firefighters Association Local 632, AFL-CIO v. City of New Orleans*, 590 So.2d 1172 (La. 1991)

The principal objectives of the civil service system are to select and promote public employees competitively on the basis of merit, fitness and qualifications, to secure the tenure of public employees, and to protect public employees against discrimination, intimidation or dismissal because of political or religious beliefs, sex, race or other unjustified reasons. *New Orleans Firefighters Association Local 632, AFL-CIO v. City of New Orleans*, 590 So.2d 1172 (La. 1991)

The provisions of the State Constitution involving the civil service and the rules of the Commission are designed to secure adequate protection to public career employees

from political discrimination. They embrace the merit system, and their intent is to preclude favoritism. The purpose of the civil service rules is to guarantee the security and welfare of public service. *Sanders v. Department of Health and Human Resources,* 388 So.2d 768 (La. 1980)

The civil service was ordained and placed into the Constitution of Louisiana because political campaigns for office in the past have been regarded by the public at large as wars of conquest, wherein, the spoils belong to the victor, in which "all is fair, however flagrantly false." *Young v. Charity Hospital of Louisiana at New Orleans*, 226 La. 708, 77 So.2d 13 (1954)

In the science of government, experience is always the best teacher. The political drug store is full of panaceas, each with its trade-mark of some school of therapeutics [sic] blown in the bottle. In politics there is so often invoked the destructive concept of a practice that to the victor belongs the spoils. It is the "spoil system" that civil service desires to eradicate. If this Court knows what everybody knows, then it has knowledge that political opponents of one administration may be the governing body of the next, and the cranks of the old may become the philosophers of the new; but the value of civil service reform is wholly dependent on whether the law and the evidence, without exception, are fairly and justly applied by the Commissioners, and in the Courts with an even hand freely and fearlessly enforced. *Boucher v. Division of Employment Security,* 226 La. 227, 75 So.2d 343 (1954)

The routine operation of a civil service system by merit selection, compensation regulation, and tenure protection serves to promote efficiency by abolishing useless and unnecessary jobs, maximizing the resources invested in employees by long service, and determining salary and length of service on the basis of benefits rendered to the people rather than to the victorious party. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159; *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

Further purposes of the civil service statutes are to protect career employees from political discrimination and to guarantee the independent security and welfare of public service. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159; *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

The purpose of civil service laws is to establish a merit system, rather than a "spoils system," under which public employees are selected for employment and promotion on the basis of merit rather than as a reward for political service. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159

The purpose of the civil service rules is to promote the merit system, to guarantee the security and welfare of public service and to protect career employees from discrimination. *Department of Corrections v. Pickens,* 468 So.2d 1310 (La.App. 1 Cir. 1985)

The fundamental purpose of civil service laws and rules is to establish a merit system for selecting non-policy forming public employees on the basis of merit and providing that they can be discharged only for insubordination, incompetence, or improper conduct, and not for religious or political reasons. Civil service is designed to abrogate the “spoils system” under which public employees are not selected for employment and promotion on the basis of merit or qualifications for the position but as rewards for faithful political activity and service, so that the job holders and their families become economic slaves of a particular political organization and have to vote and work for the candidates of their faction regardless of the character or qualifications of the candidates. The routine operation of a civil service system by merit selection, compensation regulation, and tenure protection serves to promote efficiency by abolishing useless and unnecessary jobs, maximizing the resources invested in employees by long service, and determining salary and length of service on the basis of benefits rendered to the people rather than to the victorious party. *Thoreson v. Department of State Civil Service*, 433 So.2d 184, 188-192 (La.App. 1 Cir. 1983)

Because of the peculiar history of civil service in Louisiana, the inclusion of detailed provisions on civil service in the Constitution contrary to the principles of a brief charter has been deemed necessary by legal scholars. A self-operative merit system established in the Constitution so that it can be repealed or amended only by a vote of the people has been deemed essential to the protection of civil service against repeal or weakening amendments and sabotage by a temporary majority vote of a spoils-minded and partisan legislative faction. *Thoreson v. Department of State Civil Service*, 433 So.2d 184, 188-192 (La.App. 1 Cir. 1983)

The patent purpose of Section 15 [of La. Const. 1921, Article XIV] is to insure uniform treatment of all similarly classified employees in the state and municipal civil service systems provided for therein. To avoid discrimination and favoritism, to promote efficiency of governmental operation, and to encourage promotion based on merit, the electorate, by adoption of Section 15, has placed certain aspects of state and municipal classified employment beyond the pale of state and local governmental control. *Thoreson v. Department of State Civil Service*, 433 So.2d 184, 188-192 (La.App. 1 Cir. 1983)

Civil service statutes are designed to secure adequate protection to career public employees from political discrimination. They embrace the merit system and their intent is to preclude favoritism. Louisiana's civil service system is set forth in Art. XIV, Sec. 15, La. Const. of 1921. It provides among many things for promotions, lay-offs, discrimination, political activities, fraud, violations, and disciplinary action. It also sets forth a method of appeal and judicial review. The purpose of civil service laws is to guarantee the independent security and welfare of public service. The purpose of the Amendment is to insure efficiency in governmental operations by providing security of employment thus enabling the state to take advantage and reap the benefits of experience gained by those employees of long service. The purpose of the Civil Service Amendment is to secure governmental employees in their positions, free from

discrimination of political, religious or other nature. *Thoreson v. Department of State Civil Service*, 433 So.2d 184, 188-192 (La.App. 1 Cir. 1983)

The purpose of the Civil Service Amendment is to insure efficiency in governmental operations by providing security of employment thus enabling the state to take advantage and reap the benefits of experience gained by those employees of long service. In addition, the Amendment removes state classified positions from the evil effects of the "spoils system" thus inculcating a sense of devotion to duty, promoting honesty, loyalty and interest on the part of the classified employee. *Vidrine v. State Parks and Recreation Commission*, 169 So.2d 641 (La.App. 1 Cir. 1964)

The Commission must be as zealous in disciplinary actions as it must be diligent and alert to protect employees' rights. *Vidrine v. State Parks and Recreation Commission* 169 So.2d 641 (La.App. 1 Cir. 1964)

The former Civil Service Amendment and the current Civil Service Article were embedded in our state Constitution to create a career state workforce that is free from political interference – a career workforce comprised of employees who are selected based on their merit, efficiency, fitness and length of service and not upon how much political support they can muster. It is as inappropriate for classified employees to solicit political help in their attempts to secure appointments and promotions in the classified service as it is for elected officials to involve themselves in the selection process. *Holliday v. Department of Social Services*, CSC Docket No. 10302; 7/5/94 [CSC decision]

Article X, Section 1 – Civil Service Systems: Who Is Included?

The factors to be considered to determine if an entity is an instrumentality of the state are: how the legislature characterizes the entity; where the enabling law is placed in the Revised Statutes; the entity's jurisdiction and scope; the degree to which the state has control and oversight; and whether the legislature intended the entity to be subject to civil service. England Economic and Industrial Development District is not an instrumentality of the state. It was created as "a unit of local government" in Title 33 of the Revised Statutes, is limited to Rapides Parish, and is emancipated from state control. The legislature did not create it as an instrumentality of the state or indicate that its employees should be subject to state civil service. *Slowinski v. England Economic and Industrial Development District,* 2002-0189 (La. 10/15/02); 828 So.2d 520

The Casino Corporation is an instrumentality of the state. It is authorized to adopt statewide rules and is accountable to the governor, the legislature and the people through a system of audits, reports, and financial disclosure. Its board is appointed by the governor and confirmed by the Senate. It is subject to the Procurement Code and the Administrative Procedure Act. *Polk v. Edwards,* 626 So.2d 1128 (La. 1993)

If an office or agency is created by the legislature or is established by the Constitution, it is considered a state office or agency. *Mullins v. State,* 387 So.2d 1151, 1152 (La. 1980)

The State Licensing Board for Contractors, created by statute to license contractors and regulate the practice of contracting, was a "state board" or "state agency" and, as such, the board was subject, under the Constitution, to civil service regulations with respect to employment of personnel. *State Licensing Board for Contractors v. State Civil Service Commission*, 240 La. 331, 123 So.2d 76 (La. 1960)

Because they are created by state statute, public housing authorities are state agencies or, alternatively, instrumentalities of the state. *Department of State Civil Service v. Housing Authority of East Baton Rouge*, 95-1959 (La.App. 1 Cir. 5/10/96; 673 So.2d 726

Article X, Section 2 – Classified vs. Unclassified Status

See annotations under Rule 4.1.

Article X, Sec. 3 – Quorum

See annotations under Rule 2.6.

Article X, Section 7 – Promotions and Appointments

Length of service is not a primary factor in the promotional decision. *Garrett v. Louisiana Office of Student Finance,* 2006-0826 (La.App. 1 Cir. 2/9/07); NDFP

An appointing authority (Assistant Secretary) who appoints himself to a classified fall-back position (Deputy Assistant Secretary) with no intention of serving in the latter position violates Article X, Section 7 of the Civil Service Article and Rule 14.1(j). *Williams v. Department of State Civil Service*, 96-0497 (La.App. 1 Cir. 12/20/96); 686 So.2d 159

Promotions do not take place as a matter of right. The appointing authority has much discretion in choosing employees properly certified as eligible and the appointing authority may pass over a name on the list. *Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993); *Blake v. Giarrusso* 263 So.2d 392 (La.App. 4 Cir. 1972)*; Sewell v. New Orleans Police Department,* 221 So.2d 621 (La.App. 4 Cir. 1969)

Length of service is but one of the elements to be used by the civil service departments in compiling the certificates of eligibility. *Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993) See also *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992), in which the employee failed to prove that length of service was not considered.

The vacancy to be filled was on Unit 8 and it was reasonable for the selection committee to be comprised of present and former staff members from that unit, such as the Program Director of that unit and the Mental Health Nursing Director. There was no showing that, because of their association with Unit 8, these panel members favored an employee of Unit 8 over the plaintiff. As such, the employee failed to establish that the interview panel was biased in favor of her opponent. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992)

A promotion is constitutionally mandated to be based on merit, efficiency, fitness, and length of service. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

An appointment from a department preferred reemployment list is not a promotion. It is not based on the factors set forth in the Constitution, but rather is based strictly upon length of state service. The argument that the employee was on the department preferred re-employment list for the higher position because she had previously met this constitutional requirement must be met with the argument that she has already been compensated for such promotion. That is, her recent move was not a re-promotion, but a preferential appointment based on seniority only. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

Article X, Sections 7, 10, and 12, read together, mean that the Commission has the power to remove a public employee from a position to which he has been promoted when it is proven that the promotion was accomplished by the Department of State Civil Service (or any other legal person) in violation of the civil service rules. *Mott v. Department of State Civil Service,* 506 So.2d 713 (La.App. 1 Cir. 1987)

Section 7 of the Civil Service Article requires DSCS to certify applicants for appointment and promotion under a general system based upon merit, efficiency, fitness, and length of service. Subject to certain exceptions, Rule 7.4(a) requires an appointee to meet the minimum qualifications for the job. However, neither the Civil Service Article nor any civil service rule defines levels of experience. Likewise, neither the Article nor any rule dictates under what circumstances an applicant will be credited with experience. Instead, Rule 3.1(e) authorizes DSCS to establish procedures for doing business. DSCS has done so. It has defined levels of work. It has also established and published procedures for determining if an applicant has the required level of experience. The procedures recognize the realities of the workplace. Generally, employees perform duties within the scope of their jobs, in which case job title is an accurate indicator of the level of experience. However, some applicants have never worked for the state and sometimes, state employees are assigned higher-level work. In both of these cases, job title is not an accurate indicator of the level of experience gained. DSCS's procedure allows an applicant in the latter situation to get credit for experience actually gained. Giving an applicant credit for experience actually gained does not violate either Section 7 of the Article or Rule 7.4. *Whitehead v. Department of Wildlife and Fisheries,* CSC Docket No. 15607; 9/2/05 [CSC decision]

Where the employee was not allowed to compete for a promotion to Associate 4 because the agency incorrectly believed she was not qualified for the job, the employee was not entitled to have the Associate 4 position vacated and reopened for competition. Section 7 of the Civil Service Article requires the Department of State Civil Service to establish a system for merit-based selection, founded generally upon competitive examination. However, this provision does not confer upon an employee an absolute right to compete for any particular position. More significantly, this provision does not give an excluded employee a general right to oust a qualified, eligible appointee from a position. *Valyan v. Department of Health and Hospitals*, CSC Docket Nos. 11303 and 11361; 10/9/96 [CSC decision]

Article X, Section 8(A) – Property Right to Employment

A classified state employee enjoys a property right in continued employment that cannot be deprived without due process of law. *Cleveland Board of Education v. Loudermill,* 470 U.S. 532 (1985); *Hudson v. Department of Public Safety and Corrections,* 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314; *Brown v. Housing Authority of New Orleans,* 590 So.2d 1258 (La.App. 1 Cir. 1991); *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989); *Martin v. Department of Revenue and Taxation,* 525 So.2d 268 (La.App. 1 Cir. 1988); *Maurello v. Department of Health and Human Resources,* 510 So.2d 458 (La.App. 1 Cir. 1987); *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

Explicit contractual provisions or other agreements implied from the promisor's words or conduct in light of the surrounding circumstances may also create property interests. *Perry v. Sindermann,* 408 U.S. 593, 601, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); *Morehouse v. Southern University, Baton Rouge Campus,* 2006-1481 (La.App. 1 Cir. 5/4/07); 961 So.2d 473

Tenure or classified civil service status is a property right within the meaning of Article I, Section 2 of the Constitution. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. I Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

A probationary employee has no property right to his job and may be removed for any non-discriminatory reason. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center,* 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389

Because a permanent classified employee has a property interest in retaining his job, his position may not be changed or abolished without due process of law. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Article X, Section 8(A) creates a property interest in public employment. An employee has a definable and defensible interest in continued employment. *Maurello v. Department of Health and Human Resources,* 510 So.2d 458 (La.App. 1 Cir. 1987); *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

The constitutional protection favors employees as to whom there exists no reasonable ground for discharge. It is not intended to hamstring the administrative officer charged with operating his department efficiently. *Morrell v. Department of Welfare*, 266 So.2d 559 (La.App. 4 Cir. 1972)

Article X, Section 8(A) – Property Right to Benefits

Explicit contractual provisions or other agreements implied from the promisor's words or conduct in light of the surrounding circumstances may also create property interests. *Perry v. Sindermann,* 408 U.S. 593, 601, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); *Morehouse v. Southern University, Baton Rouge Campus,* 2006-1481 (La.App. 1 Cir. 5/4/07); 961 So.2d 473

Compensatory time granted pursuant to the civil service rules is not a property right. *Jackson v. Department of Public Safety*, 675 F.Supp. 1025 (M.D. La. 1985), affirmed at 800 F.2d 1143 (C.A. 5 1986)

A valid contract cannot be formed as a result of a legally unauthorized employer policy and consequently, an invalid contract cannot create a vested property right. Because the practice of "running out" sick leave was in direct contravention of applicable city civil service rules, we find a valid contract was not formed between police officers and the City. Consequently, the legally unauthorized practice of "running out" sick leave prior to retirement cannot serve to create in plaintiffs' favor a vested right to be compensated for accumulated sick leave earned between July 10, 1970 and July 10, 1980, on a one-to-one basis*. Lafleur v. City of New Orleans*, 2001-3224 (La. 12/4/02); 831 So.2d 941

The Court cannot fashion a remedy for the officers who had an expectation that they would receive the benefit of "running out" sick leave at retirement based on the fact that some officers were able to receive one-for-one compensation by taking advantage of this legally unauthorized policy*. Lafleur v. City of New Orleans*, 2001-3224 (La. 12/4/02); 831 So.2d 941

Once an employee worked overtime pursuant to the compensatory leave policy, a bilateral contract was complete and the Board was obligated to grant paid leave. The Board's consent was implied by: the existence of a written executive order and a set of procedures whereby the employees earned, accrued, and took paid leave in accordance with the executive order and received monthly accountings of their leave balances. *Knecht v. Board of Trustees for State Colleges and Universities,* 591 So.2d 690 (La. 1991)

When an employer promises a benefit to employees and employees accept by their actions in meeting the conditions, the result is not a mere gratuity or illusory promise but a vested right in the employee to the promised benefit. *Knecht v. Board of Trustees for State Colleges and Universities,* 591 So.2d 690 (La. 1991)

If an employee is promised an hour of paid leave in return for an hour of overtime work for which he received no pay in wages, the paid leave is a form of deferred compensation, in lieu of wages. Once services are rendered, the right to receive the promised remuneration vests. *Knecht v. Board of Trustees for State Colleges and Universities,* 591 So.2d 690 (La. 1991)

Where civil service reallocated the employee's position in error and the error was detected and corrected before the change was implemented, the employee gained no vested right to the perpetuation of a mistake. The retroactive detail gave the employee all he was entitled to as a result of the mistake. *Bartholomew v. LSU Health Sciences Center, Health Care Services Division, Medical Center of Louisiana at New Orleans*, CSC Docket No. 13397; 12/23/02 [CSC decision]

Article X, Section 8(B) – Discrimination

Unless associated with a removal or disciplinary case, the Commission's jurisdiction over discrimination claims is limited to the four factors listed in Article X, Section 8(B) [religious or political beliefs, sex, and race]. *Louisiana Department of Agriculture and Forestry v. Sumrall*, 1998-1587 (La. 3/2/99); 728 So.2d 1254 [**tacitly overruling** *Department of Health and Human Resources v. Payton*, 498 So.2d 181 (La.App. 1 Cir. 1986)]

An employee cannot be disciplined for political or religious reasons. *King v. Department of Public Safety,* 234 La. 409, 100 So.2d 217 (1958); *Cormier v. State Department of Institutions*, 212 So.2d 143 (La.App. 1 Cir. 1968); *Hays v. Louisiana Wild Life and Fisheries Commission*, 165 So.2d 556 (La.App. 1 Cir. 1964)

Dismissal was not arbitrary where, despite any personality problems between the employee and her supervisor, the disciplinary actions, including the termination, were legitimate responses to documented work problems that disrupted the efficiency of the employer. *Turner v. Housing Authority of Bunkie,* 2004-2062, 2004-2063, 2004-2064, and 2004-2065 (La.App. 1 Cir. 9/23/05); 923 So.2d 702

The use of a racial slur does not qualify as an expression of political belief. *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103

The burden of proof in a discrimination case is on the employee, by a preponderance of *evidence*. *Hargrove v. New Orleans Police Department,* 2001-0659 (La.App. 4 Cir. 5/22/02); 822 So.2d 629; *King v. Department of Health and Human Resources,* 506 So.2d 832 (La.App. 1 Cir. 1987)

It is not prohibited discrimination to treat employees who are arrested for a felony differently from employees who plead guilty to a felony. *Bailey v. LSU Health Care Services Division,* 99-1981 (La.App. 1 Cir. 9/22/00); 767 So.2d 946

The Commission does not have exclusive jurisdiction over all discrimination claims of classified civil service employer-employee disputes that are employment related. *Smith v. Lorch*, 98-0319 (La.App. 1 Cir. 4/1/99), 730 So.2d 530

Where black applicant was the top candidate on the certificate, had filled the position on an acting basis, was interviewed by an all white panel, and the position was identified in the Affirmative Action plan as underutilizing minorities, but the applicant failed to show any racial bias in the selection process or any predisposition against him, he failed to bear his burden of proving racial discrimination. *Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993)

There can be little doubt but that Section 15(N)(1) [of the Louisiana Constitution of 1921] was intended to prevent discrimination in any manner or form whatsoever. That certain matters rest within the sound discretion of the various appointing authorities neither excuses, justifies, permits nor condones discrimination. It is obvious that an appointing authority may discriminate in the exercise of a purely discretionary function by denying or withholding benefits or advantages to a particular employee or group of employees for improper motives such as bias, prejudice or personal animosity. To hold otherwise is but to give appointing authorities the opportunity to circumvent the constitutional prohibition against discriminatory practices by the simple expedient of ingenious and imaginative exercise of their discretion. It is equally obvious, we believe, that if the exercise of one's discretion is motivated by or results in discrimination against a given employee, without cause or justification, it constitutes an abuse of discretion and is nothing more than prohibited discrimination. *Hays v. Louisiana Wild Life and Fisheries Commission,* 165 So.2d 556, 562 (La.App. 1 Cir. 1964)

Article X, Section 10(A)(1) – Rule Making Power of the Commission

The Commission's rulemaking authority over areas specified in Article X, Section 10(A)(1) is to the exclusion of the legislature. *State Civil Service Commission v. Department of Public Safety Director,* 2003-1702 (La. 4/14/04); 873 So.2d 636

State supplemental pay is compensation, subject to the Commission's exclusive authority to regulate. *State Civil Service Commission v. Department of Public Safety Director,* 2003-1702 (La. 4/14/04); 873 So.2d 636

The discrimination factors listed in Article X, Section 8(B) are exclusive and the Commission cannot, by rule, expand its jurisdiction to include additional factors. *Louisiana Department of Agriculture and Forestry v. Sumrall, 19*98-1587 (La. 3/2/99); 728 So.2d 1254

A civil service commission has the exclusive power to adopt rules regulating the classified service in the areas specifically enumerated in Section 10(A)(1) and the governing authority cannot constitutionally infringe on the Commission's exercise of this power. However, in areas of power affecting public employees which are not enumerated in Section 10(A)(1), a commission's powers should not be expanded

beyond those necessary to effectuate the objectives and purposes of the civil service. *New Orleans Firefighters Association Local 632, AFL-CIO v. City of New Orleans*, 590 So.2d 1172 (La. 1991)

"Employment" refers in context to the selection and hiring of employees, and "promotion" and "demotion" refer to the raising or lowering in position of employees after employment. "Suspension" refers to the temporary removal of a public employee from service and "removal" refers to the permanent separation from employment. "Qualifications" for employment refer to requirements as to education, experience or similar factors. "Compensation" and "reduction in pay" are related to a commission's express power to adopt a uniform pay and classification plan. Regulation of "political activities" involves the power of a commission not only to limit the political activities of public employees but also conversely to protect public employees from discrimination and intimidation on the basis of political beliefs. Regulation of "employment conditions" concerns safety, hours of work, freedom from intimidation and the like. *New Orleans Firefighters Association Local 632, AFL-CIO v. City of New Orleans*, 590 So.2d 1172 (La. 1991)

The legislature has no power to supplement the powers of the Commission. *Civil Service Commission, City of New Orleans, v. Guste*, 428 So.2d 457 (La. 1983); *Appeal of Brisset*, 436 So.2d 654 (La.App. 1 Cir. 1983)

The legislature cannot adopt a statute nullifying a civil service rule. *Smith v. Department of Health and Human Resources*, 416 So.2d 94 (La. 1982); *Frazier v. Department of State Civil Service*, 449 So.2d 95 (La.App. 1 Cir. 1984)

The determination of what constitutes a disciplinary action is within the authority of the Commission through its rule-making power. *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544; *Rudloff v. Chief Administrative Office*, 413 So.2d 550 (La.App. 4 Cir. 1982)

LSA-R.S. 42:1451, which allowed for the award of reasonable attorney's fees under certain circumstances, is an unconstitutional infringement on the exclusive power granted to the Commission under Article X, Section 10(A). *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991); *Johnson v. Southern University,* 551 So.2d 1348 (La.App. 1 Cir. 1988); *Department of Health and Human Resources v. Toups*, 451 So.2d 1126 (La.App. 1 Cir. 1984); *Pierre v. Department of Natural Resources,* 449 So.2d 596 (La.App. 1 Cir. 1984); *Appeal of Brisset,* 436 So.2d 654 (La.App. 1 Cir. 1983)

An administrative agency has only the power and authority expressly granted by the Constitution or statutes. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989); *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989)

Article X, Section 10 vests the Commission with rule-making power for regulation of the classified service. This section of the Constitution also grants the Commission the power to investigate an employee of the classified service who has violated a civil

service rule. However, the Constitution does not vest the Commission with rule-making or investigatory powers for regulation of the unclassified service. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989)

The civil service rules have the effect of law and prevail over acts of the legislature that are in conflict with them. *Frazier v. Department of State Civil Service*, 449 So.2d 95 (La.App. 1 Cir. 1984)

The Commission's rule making power concerning matters of classified employment is exclusive. *Appeal of Brisset*, 436 So.2d 654 (La.App. 1 Cir. 1983)

The constitutional provisions are limitations on the power of the legislature; thus, the legislature may enact any legislation that the Constitution does not prohibit. To declare a state statute unconstitutional, there must be a particular constitutional provision limiting the power of the legislature to enact the statute. *Appeal of Brisset*, 436 So.2d 654 (La.App. 1 Cir. 1983)

The legislature cannot impose upon the Commission an additional standard of review not imposed upon it by the Constitution. *Appeal of Brisset*, 436 So.2d 654 (La.App. 1 Cir. 1983), concurring opinion

The Commission cannot, by rule, curtail its constitutionally established jurisdiction. *Head v. Department of Highways,* 166 So.2d 346 (La.App. 1 Cir. 1964)

Article X, Section 10(A)(1) – Interpretation of the Civil Service Rules

Generally, statutes using mandatory language prescribe the result to follow (a penalty) if the required action is not taken. If the terms of the statute are limited to what is required to be done, *i.e.,* procedural rules, then the statute is considered directory even though mandatory language is employed. Provisions designed to secure order, system, and dispatch by guiding the discharge of duties are usually construed as directory even if worded in the imperative. *Marks v. New Orleans Police Department,* 2006-0575 (La. 11/29/06); 943 So.2d 1028

It is not the province of the judicial branch in a civilian legal system to legislate by inserting penalty provisions into statutes where the legislature has not done so. *Marks v. New Orleans Police Department,* 2006-0575 (La. 11/29/06); 943 So.2d 1028

Whether a statute is directory or mandatory depends on the legislative intent. If the purpose of the statute would be frustrated by noncompliance, then the statute is mandatory. S*anders v. Department of Health and Human Resources*, 388 So.2d 768 (La. 1980); *Department of Corrections v. Pickens,* 468 So.2d 1310 (La.App. 1 Cir. 1985)

The civil service rules have the effect of law and should be construed according to the rules of interpretation applicable to legislation in general. *Adikema v. Department of Public Safety and Corrections, Office of Youth Development,* 2006-1854 (La.App. 1 Cir.

9/14/07); 971 So.2d 1071; *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544; *Hudson v. Department of Public Safety and Corrections,* 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314; *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992); *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992); *Department of Corrections v. Pickens,* 468 So.2d 1310 (La.App. 1 Cir. 1985); *Department of Health and Human Resources v. Perry*, 423 So.2d 1266 (La.App. 1 Cir. 1982); *Hamilton v. Louisiana Health & Human Resources Administration*, 341 So.2d 1190 (La.App. 1 Cir. 1976)

Rules for statutory construction: 1) it is presumed that every provision of a law was intended to serve some useful purpose; 2) it is not presumed that the lawmaker intended for any part of the law to be meaningless; 3) the lawmaker is presumed to have enacted the law with full knowledge of all other laws pertaining to the same subject matter; 4) it is the duty of the courts to interpret a provision of law in a manner which harmonizes and reconciles it with other provisions pertaining to the same subject matter; and 5) when a law is susceptible to two or more interpretations, that which affords a reasonable and practical effect to the entire act is preferred to one that renders part of the act nugatory. *Adikema v. Department of Public Safety and Corrections, Office of Youth Development,* 2006-1854 (La.App. 1 Cir. 9/14/07); 971 So.2d 1071

An administrative agency can interpret its own rules and the interpretation becomes part of the rules. *Hudson v. Department of Public Safety and Corrections,* 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314; *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992); *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991); *Casse v. Department of Health and Hospitals,* 592 So.2d 1366 (La.App. 1 Cir. 1991); *Hill v. Department of Health and Human Resources*, 457 So.2d 781 (La.App. 1 Cir. 1984); *Department of Health and Human Resources v. Perry*, 423 So.2d 1266 (La.App. 1 Cir. 1982); *Department of Corrections v. Cage*, 418 So.2d 3 (La.App. 1 Cir. 1982); *McNeely v. Department of Health and Human Resources*, 413 So.2d 594 (La.App. 1 Cir. 1982)

The civil service rules should be interpreted in light of their true intent and also to avoid absurd results. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992); *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991); *Department of Health and Human Resources v. Perry*, 423 So.2d 1266 (La.App. 1 Cir. 1982)

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. LSA-C.C. art. 9; *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

When a rule is broad enough to be applied both validly and invalidly, the valid interpretation should be used when it conforms to the legislative intent or purpose of the statutes. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

The word “shall” is generally mandatory. It can be interpreted as directory only when it relates to some immaterial matter where compliance is a matter of convenience rather than of substance. *Orleans Levee District v. Glenn,* 577 So.2d 336 (La.App. 1 Cir. 1991)

The Commission's interpretation of its rules will only be disturbed if the interpretation is unjust or unreasonable. *McNeely v. Department of Health and Human Resources*, 413 So.2d 594 (La.App. 1 Cir. 1982)

It is to be presumed that a law (in this case a rule of the Commission) was enacted to serve some legitimate purpose and was not a vain and useless gesture. *Hays v. Wild Life and Fisheries Commission*, 136 So.2d 559 (La.App. 1 Cir. 1961)

Article X, Section 10(A)(1) – Pay Plan in General

State supplemental pay is compensation, subject to the Commission’s exclusive authority to regulate. *State Civil Service Commission v. Department of Public Safety Director,* 2003-1702 (La. 4/14/04); 873 So.2d 636

A pay plan becomes effective only when approved by the governor in its entirety; the governor does not have the right to amend or modify the plan, but merely to approve or disapprove it. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159; *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

The Commission has a constitutional trust to establish and implement a uniform classification and pay plan. Part of this duty is to effectuate equitable distribution among all classified employees in accordance with the basic purposes of a merit system. *Gaspard v. Department of State Civil Service,* 93-0311 (La.App. 1 Cir. 3/11/94); 634 So.2d 14

Establishing pay for classified employees is within the exclusive authority of the Commission and the governor has no authority to issue implementation instructions. The governor must either approve or disapprove the pay plan in its entirety. *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

Gubernatorial implementation instructions modifying a pay plan are unconstitutional. *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

Article X, Section 10(A)(1) – Uniformity of the Pay Play

Uniformity in a pay plan requires the application of the same schedule of pay to all persons in the same class. *Gaspard v. Department of State Civil Service,* 93-0311 (La.App. 1 Cir. 3/11/94); 634 So.2d 14; *Clark v. State*, 434 So.2d 1276 (La.App. 1 Cir. 1983)

Uniformity in a pay plan requires that there be equal pay for equal work. *Gaspard v. Department of State Civil Service,* 93-0311 (La.App. 1 Cir. 3/11/94); 634 So.2d 14; *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

The Commission is not mandated to pay individuals within the same class the exact same pay because this would conflict with Article X, Section 7, which requires a system based on merit, efficiency, fitness, and length of service. *Gaspard v. Department of State Civil Service,* 93-0311 (La.App. 1 Cir. 3/11/94); 634 So.2d 14

Uniform pay arguments are only applicable when members of the same civil service class are paid differently. There is no prohibition against computing different overtime pay for different classes. *Marie v. City of New Orleans,* 612 So.2d 244 (La.App. 4 Cir. 1992)

Uniformity does not give an employee the right to the perpetuation of a pay error. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

There is no vested right to retain "parity" with a given class. It is a valid function of the Commission to establish two classifications out of one class, so long as no discrimination has occurred. *Latona v. Department of State Civil Service*, 492 So.2d 27 (La.App. 1 Cir. 1986)

Uniformity of a pay plan does not require that all classifications be treated equally at all times or that all classifications retain their relative salary differentiation forever. A uniform pay plan does not require such consistency. *Clark v. State*, 434 So.2d 1276 (La.App. 1 Cir. 1983)

Partial implementation of a general pay plan and allowing some departments to fully implement the pay plan while other departments were unable to do so violated the constitutional trust to establish a uniform classification and pay plan. *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

Article X, Section 10(A)(1) – Allowable Pay Differences

Enhanced recruitment and retention of new employees as well as improved morale and productivity of senior employees are rationally related to the legitimate government purposes of promoting a merit system for public service and maintaining the integrity of the civil service system. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159

The Commission may treat individuals differently in class and pay matters so long as there is a rational basis for the differentiation that is reasonably related to a valid governmental purpose. *Ramirez v. Department of Social Services,* 96-1448 (La.App. 1 Cir. 5/9/97); 694 So.2d 1157; *Latona v. Department of State Civil Service*, 492 So.2d 27 (La.App. 1 Cir. 1986)

It does not violate the requirement for a uniform pay plan when employees with masters' degrees enter the job at a higher rate than employees who do not have masters' degrees. *Ramirez v. Department of Social Services,* 96-1448 (La.App. 1 Cir. 5/9/97); 694 So.2d 1157

A college degree is objective evidence of a given amount of educational experience and attainment. Advanced education enhances the attributes of employees in a civil service classification and thus forms a rational basis for pay differentiation among employees in the same classification. *Ramirez v. Department of Social Services,* 96-1448 (La.App. 1 Cir. 5/9/97); 694 So.2d 1157

There is a rational basis for the Commission to create a class requiring professional licensure with a higher pay level than a class with similar duties not requiring professional licensure. The state has an interest in recruiting employees with a higher educational caliber and with a greater capacity to render a greater and more varied service. *Latona v. Department of State Civil Service*, 492 So.2d 27 (La.App. 1 Cir. 1986)

The state has an interest in recruiting employees and in making positions attractive enough to retain those employees. *Clark v. State*, 434 So.2d 1276 (La.App. 1 Cir. 1983)

Among the factors that can be considered in setting pay are recruitment problems, market rates, turnover, special entrance rate data, and federal pay schedules. *Clark v. State*, 434 So.2d 1276 (La.App. 1 Cir. 1983)

Article X, Section 10(A)(1) – Miscellaneous Pay Plan Issues

As to a pay plan, the constitutional right at issue is not seniority but the preservation of the merit system to ensure public service free from political favoritism. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159

Experience cannot always be substituted for academic credits. That experience is allowed to substitute for formal education for purposes of meeting minimum qualifications does not mean that experience must be allowed as a substitute for formal education for pay purposes. *Ramirez v. Department of Social Services,* 96-1448 (La.App. 1 Cir. 5/9/97); 694 So.2d 1157

Choosing an effective date was a valid exercise of the Commission's power and using the date the Department of State Civil Service received the request for a pay adjustment as the effective date was not arbitrary. *Gaspard v. Department of State Civil Service,* 93-0311 (La.App. 1 Cir. 3/11/94); 634 So.2d 14

Upon review of the entire record, the Court of Appeal set pay for a classified employee. *Carleton v. Department of State Civil Service,* 430 So.2d 670 (La.App. 1 Cir. 1982)

Art. X, Sec. 10(A)(4) – Effect of the Civil Service Rules

The civil service rules have the effect of law and must be recognized and enforced by the courts as long as they are reasonable and do not violate constitutional rights. *Rocque v. Department of Health and Human Resources,* 505 So.2d 726 (La. 1987); *Hudson v. Department of Public Safety and Corrections,* 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314; *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992); *Latona v. Department of State Civil Service*, 492 So.2d 27 (La.App. 1 Cir. 1986); *Frazier v. Department of State Civil Service*, 449 So.2d 95 (La.App. 1 Cir. 1984); *Paisant v. University of New Orleans*, 391 So.2d 1238 (La.App. 1 Cir. 1980); *Legros v. Department of Public Safety, Division of State Police*, 364 So.2d 162 (La.App. 1 Cir. 1978); *Shelfo v. LHHRA, Pinecrest State School*, 361 So.2d 1268 (La.App. 1 Cir. 1978); *Hamilton v. Louisiana Health & Human Resources Administration*, 341 So.2d 1190 (La.App. 1 Cir. 1976); *Sutton v. Department of Public Safety, Division of State Police*, 340 So.2d 1092 (La.App. 1 Cir. 1976); *Pelletier v. Executive Department, Division of State Buildings and Grounds*, 331 So.2d 72 (La.App. 1 Cir. 1976); *Heinberg v. Department of Employment Security*, 256 So.2d 747 (La.App. 1 Cir. 1971); *Waldroup v. Louisiana State University*, 255 So.2d 413 (La.App. 1 Cir. 1971)

The court cannot superimpose its procedures in face of civil service rules to the contrary. *Young v. Charity Hospital of Louisiana at New Orleans*, 226 La. 708, 77 So.2d 13 (1954)

An unclassified employee is not bound by the civil service rules. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989)

To have the effect of law, the governor must approve the rules regarding hours of work, but he does not have to approve any individual's hours of work. *Meaux v. Department of Highways*, 228 So.2d 680 (La.App. 1 Cir. 1969)

Article X, Section 10(B) – Investigatory Powers of the Commission

See annotations under Chapter 16.

Article X, Section 10(C) – Wages and Hours

A pay plan becomes effective only when approved by the governor in its entirety; the governor does not have the right to amend or modify the plan, but merely to approve or disapprove it. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159; *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

Establishing pay for classified employees is within the exclusive authority of the Commission and the governor has no authority to issue implementation instructions.

The governor must either approve or disapprove the pay plan in its entirety. *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983)

To have the effect of law, the governor must approve the rules regarding hours of work, but he does not have to approve any individual's hours of work. *Meaux v. Department of Highways*, 228 So.2d 680 (La.App. 1 Cir. 1969)

Article X, Section 11 – Penalties

The Commission has no authority to impose the criminal sanctions in Article X, Section 11. This power is reserved exclusively to the courts. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989); *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989); *In re Coon*, 141 So.2d 112 (La.App. 1 Cir. 1962)

Article X, Section 12(A) – Judicial Power of the Commission, Exclusive Nature

Because of Article X, Section 12(A)'s grant of exclusive jurisdiction, LSA-R.S. 23:967 (the "whistleblower" statute) does not apply to employment-related disputes of classified state civil service employees. The district court had jurisdiction to award damages, attorney's fees, and costs, but no jurisdiction to address issues that would have been addressed by the Commission – reinstatement, back pay, and merit increases. *Goldsby v. State, Department of Corrections,* 2003-0343 (La.App. 1 Cir. 11/7/03); 861 So.2d 236

Article X evinces an intent to grant exclusive jurisdiction to the Commission in those areas in which the Commission has exercised its "broad and general rule-making power." *Akins v. Housing Authority of New Orleans,* 2003-1086 (La.App. 4 Cir. 9/10/03); 856 So.2d 1220; *Hawkins v. State, Department of Health and Hospitals,* 613 So.2d 229 (La.App. 1 Cir. 1992)

If jurisdiction over matters in which the Commission has exercised its rule-making power were not exclusive, the orderly fashion of resolving employer-employee disputes would be disrupted if employees were allowed to forum shop between the Commission and the courts. *Akins v. Housing Authority of New Orleans,* 2003-1086 (La.App. 4 Cir. 9/10/03); 856 So.2d 1220; *Strickland v. State, through Office of the Governor*, 525 So.2d 740 (La.App. 1 Cir. 1988), **writ granted** 526 So.2d 1122 (La. 1998), **dismissed as moot** 534 So.2d 956 (La. 1988)

The Commission's exclusive jurisdiction is not defeated by styling the matter as one of contract. *Bass v. Department of Public Safety and Corrections,* 94-1974 (La.App. 1 Cir. 5/5/95)

To determine subject matter jurisdiction, the issue is whether the disciplinary action taken is fairly attributable to the state agency (as opposed to a private organization). *Board of Commissioners, Port of New Orleans v. Livingston,* 546 So.2d 259 (La.App. 1 Cir. 1989)

Whether the proscribed conduct occurred on or off duty is irrelevant to the issue of jurisdiction. *Board of Commissioners, Port of New Orleans v. Livingston,* 546 So.2d 259 (La.App. 1 Cir. 1989)

The entire thrust of the exclusive jurisdiction grant is to preclude district courts from having concurrent jurisdiction with the Commission over classified civil service employer-employee disputes that are employment related. *Foreman v. Falgout*, 503 So.2d 517 (La.App. 1 Cir. 1987) [suit for intentional interference with employment rights dismissed for district court's lack of jurisdiction]

The Commission's exclusive jurisdiction is not defeated by styling the matter as one in tort. *Foreman v. Falgout,* 503 So.2d 517 (La.App. 1 Cir. 1986)

The quasi-judicial power vested in the Commission under Article X, Section 12(A) is exclusive in nature with respect to all aspects of the classified service listed therein. This includes appeals to the Commission against disciplinary actions. *Appeal of Brisset*, 436 So.2d 654 (La.App. 1 Cir. 1983)

The Commission is a quasi-judicial body. *Legros v. Department of Public Safety, Division of State Police*, 364 So.2d 162 (La.App. 1 Cir. 1978)

Article X, Section 12(A) – Jurisdiction, Specific Cases

The Commission has jurisdiction over a complaint that a transfer was in retaliation for having been successful in prior appeal. *Noya v. Department of Fire,* 609 So.2d 827 (La. 1992) **NOTE: The Court did not mention *Louisiana Department of Agriculture and Forestry v. Sumrall*, 1998-1587 (La. 3/2/99); 728 So.2d 1254.**

The Commission has jurisdiction when the Ethics Commission subjects a classified employee to disciplinary action, even if that action is not one listed in Rule 12.2(b). LSA-R.S. 42:1142C; *Villanueva v. Commission on Ethics for Public Employees,* 96-1912 (La. 5/20/97); 693 So.2d 154

A suit for an accounting and payment of time and one-half for all hours worked in excess of forty per week and for a declaration that the employees are entitled to be paid overtime wages is within the Commission's exclusive jurisdiction. *Akins v. Housing Authority of New Orleans,* 2003-1086 (La.App. 4 Cir. 9/10/03); 856 So.2d 1220, **writ denied** 2003-2281 (La. 12/19/03); 861 So.2d 574 **NOTE: This case was decided after *Louisiana Department of Agriculture and Forestry v. Sumrall*, 1998-1587 (La. 3/2/99); 728 So.2d 1254, and even mentioned *Agriculture,* but nonetheless held that this rule violation case was within the Commission's exclusive jurisdiction.**

The subject matter of the complaint (that an employee failed to get a promotion in violation of the union contract) is within the Commission's jurisdiction. *Bass v. Department of Public Safety and Corrections,* 94-1974 (La.App. 1 Cir. 5/5/95); 655 So.2d 455, appeal after remand *Bass v. Department of Public Safety and Corrections,*

95-2499 (La.App. 1 Cir. 6/28/96); 676 So.2d 1178; *Barenis v. Gerace,* 357 So.2d 892 (La.App. 1 Cir. 1978) **NOTE: May not be good law after *Louisiana Department of Agriculture and Forestry v. Sumrall*, 1998-1587 (La. 3/2/99); 728 So.2d 1254.**

The Commission has exclusive jurisdiction to decide all disciplinary cases even when the cause is the violation of a criminal statute. *Department of Public Safety and Corrections v. Hooker,* 558 So.2d 676 (La.App. 1 Cir. 1990)

The Commission has exclusive jurisdiction over a complaint that the employer intentionally interfered with an employee's job. *Foreman v. Falgout,* 503 So.2d 517 (La.App. 1 Cir. 1986)

If an appeal is cognizable under Rule 13.10(c), the Commission has jurisdiction over a challenge to the validity of a union contract. *Department of Labor, Office of Employment Security v. Leonards*, 498 So.2d 178 (La.App. 1 Cir. 1986)

The district court is without jurisdiction to render a declaratory judgment or an injunction to prevent an employee's removal for failure to provide notarial services. *Raborn v. Louisiana Health and Human Resources Administration*, 349 So.2d 903 (La.App. 1 Cir. 1977) **writs granted** 351 So.2d 175 (La. 1977); **then settled.**

Article X, Section 12(A) – Limits on Jurisdiction

The Commission's judicial power is limited to that conveyed by the Constitution. *Louisiana Department of Agriculture and Forestry v. Sumrall*, 1998-1587 (La. 3/2/99); 728 So.2d 1254

Unless associated with a removal or disciplinary case, the Commission's jurisdiction over discrimination claims is limited to the four factors listed in Article X, Section 8(B) – political or religious beliefs, sex, or race. *Louisiana Department of Agriculture and Forestry v. Sumrall*, 1998-1587 (La. 3/2/99); 728 So.2d 1254

The Commission has no authority to address claims of deprivation of due process. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

The Commission lacks jurisdiction over a "needs improvement" rating. *Berry v. Department of Public Safety and Corrections*, 2001-2186 and 2001-2187 (La.App. 1 Cir. 9/27/02); 835 So.2d 606 [State Police Commission case]

The Commission lacks authority to determine the constitutionality of its procedures. *Teeter v. Louisiana Department of Culture, Recreation and Tourism-Office of State Museum,* 2007-0578 (La.App. 1 Cir. 2/20/08); NDFP

The Commission lacks the power to rule on the constitutionality of its own rules. However, the Commission is not precluded from recognizing that, in the face of a

conflict between its rules and certain constitutional provisions, the constitutional provisions prevail. The Constitution is the supreme law, to which all legislative acts, ordinances, rules, and regulations must yield. *Berry v. Department of Public Safety and Corrections*, 2001-2186 and 2001-2187 (La.App. 1 Cir. 9/27/02); 835 So.2d 606 [State Police Commission case]

The State Board of Ethics is vested with exclusive jurisdiction to review and investigate complaints pertaining to state ethical violations by public employees. The City Civil Service Commission is without authority to determine if the Code of Ethics is violated; that determination must be made by the Board of Ethics. *Scott v. Office of Housing and Urban Affairs,* 1999-2446 (La.App. 4 Cir. 4/26/00); 759 So.2d 1002

The Commission has no jurisdiction to hear an employee's claim that he was denied a promotion in retaliation for successfully appealing a disciplinary action and for filing a suit against his superiors for age discrimination. *Flanagan v. Department of Environmental Quality,* 99-1332 (La.App. 1 Cir. 12/28/99); 747 So.2d 763

The Commission does not have jurisdiction over a claim under LSA-R.S. 23:631 seeking a money judgment for past due wages. (This statute requires payment of wages to separated employees within fifteen days or on the next regular pay day.) *Hawkins v. State, Department of Health and Hospitals,* 613 So.2d 229 (La.App. 1 Cir. 1992)

The Commission does not have jurisdiction to award damages. *Greenleaf v. DHH, Metropolitan Developmental Center,* 594 So.2d 418 (La.App. 1 Cir. 1991)

The Commission does not have jurisdiction to determine the constitutionality of its own rules and pay schedules. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989); *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986); *Clark v. Department of Transportation and Development*, 413 So.2d 573 (La.App. 1 Cir. 1982)

An employee does not have to exhaust administrative remedies before challenging the constitutionality of a civil service rule. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

An administrative agency has only the power and authority expressly granted by the Constitution or statutes. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989); *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989)

Constitutional provisions that delegate judicial authority to the Commission are narrowly construed because they are exceptions to the general rule that district courts have jurisdiction over all civil matters. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989); *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989); *Department of Labor, Office of Employment Security v. Leonards,* 498 So.2d 178 (La.App. 1 Cir. 1986)

The Commission's judicial power is limited to that conveyed by the Constitution. The Commission can neither extend nor limit it. *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989); *Head v. Department of Highways,* 166 So.2d 346 (La.App. 1 Cir. 1964)

The Commission does not have jurisdiction over a suspension from a "special detail" during off-duty hours when the special detail is essentially private employment. *Sterling v. Board of Commissioners, Port of New Orleans,* 527 So.2d 1122 (La.App. 1 Cir. 1988)

The Commission lacks jurisdiction to enforce monetary obligations and therefore cannot order recoupment of salary paid in error. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

The Commission does not have jurisdiction over a complaint that an agency allegedly breached a contract to pay an employee a certain salary upon transfer. *Wheeler v. Department of Public Safety and Corrections,* 500 So.2d 786 (La.App. 1 Cir. 1986)

The Commission cannot declare a state statute unconstitutional. *Appeal of Brisset*, 424 So.2d 1040 (La.App. 1 Cir. 1982), reversed 430 So.2d 79 and 81 (La. 1983), appeal after remand 436 So.2d 654 (La.App. 1 Cir. 1983)

It is beyond the jurisdiction of the Commission to pass upon or sit in judgment of the character and reputation of a person who is no longer in state service. Such action would clearly be beyond the scope of the operation of the Commission, and would go beyond the authority and duty conferred upon it by the Constitution. (Before the employee was dismissed, he had appealed his service ratings; after the employee's dismissal was upheld, the Commission dismissed the service rating appeals as moot.) *Danna v. Commissioner of Insurance*, 207 So.2d 377 (La.App. 1 Cir. 1968)

Article X, Section 12(A) – Immunity

Persons who, while sitting on an administrative board, make judicial or quasi-judicial decisions in their official capacities are absolutely immune from tort suits for monetary damages. *Lee v. East Baton Rouge Parish School Board,* 2003-0711 (La.App. 1 Cir. 6/30/04); 887 So.2d 1

A qualified immunity has been recognized that limits the circumstances under which testimony can be compelled from a quasi-judicial officer and/or limits the scope of such testimony. There are two tests for determining when to allow testimony from a quasi-judicial officer, depending on which of two types of information is sought. If the information sought concerns relevant matters of fact that do not probe into or compromise the mental processes employed in formulating the judgment in question, the testimony should be allowed. However, if the inquiry concerns whether the officer had some predisposition or pre-commitment as to the judgment, the testimony should be allowed only if the party seeking the information has demonstrated some

extraordinary circumstance that might justify such an inquiry. *Lee v. East Baton Rouge Parish School Board,* 2003-0711 (La.App. 1 Cir. 6/30/04); 887 So.2d 1

As a general rule, when an official performs a function integral to the judicial process or a traditional legislative function, the official is absolutely immune from § 1983 damage liability for acts performed in those capacities, and a qualified immunity applies to most acts of governmental officials. The general rule of qualified immunity is intended to provide government officials with the ability to "reasonably anticipate when their conduct may give rise to liability for damages." Where that rule is applicable, officials can know that they will not be held personally liable as long as their actions are reasonable in light of current law. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

There is a two-part test for qualified immunity. First, the court must look to the currently applicable law and determine whether the law was clearly established at the time the action in question occurred. If the court determines that the law was clearly established at the time the action occurred, then the public official claiming immunity must show that, because of extraordinary circumstances, he neither knew nor should have known of the relevant legal standard. The question of whether a defendant asserting qualified immunity may be personally liable turns on the objective legal reasonableness of the defendant's actions assessed in light of clearly established law. Thus, if a defendant's conduct actually violated a plaintiff's constitutional rights, the defendant is entitled to qualified immunity only if the conduct was objectively reasonable. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Kyle v. Civil Service Commission,* 588 So.2d 1154 (La.App. 1 Cir. 1991)

Equitable remedies are not barred by judicial or prosecutorial immunity. *Kyle v. Civil Service Commission,* 588 So.2d 1154 (La.App. 1 Cir. 1991)

The purposes of the immunity defense are effectively eviscerated when a plaintiff is allowed to state a claim with vague, broadly worded complaints that are unsupported by material facts. *Kyle v. Civil Service Commission,* 588 So.2d 1154 (La.App. 1 Cir. 1991)

Article X, Section 12(A) – Appointment of a Referee

See annotations under Rule 13.20.

Article X, Section 12(A) – Application for Review of a Referee's Decision.

See annotations under Rules 13.36 and 13.37.

CHAPTER 2

THE CIVIL SERVICE ARTICLE – APPEALS TO THE COURT OF APPEAL

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Article X, Section 12(A) – Appeals to the Court of Appeal

NOTE: Before 1958, Commission decisions were appealable to the Supreme Court. See La. Const. 1921 Art. XIV, Sec. 15(O)(1) and the 1958 amendment to La. Const. 1921, Art. 7, Sec. 10; *Hughes v. Department of Police*, 131 So.2d 99 (La.App. 4 Cir. 1961)

There are no formal requisites for an application for appeal to the Court of Appeal other than notice of the desire to appeal. *Smith v. Department of Health and Human Resources,* 416 So.2d 94 (La. 1982); however, URCA Rule 3-1.1 provides:

> 3-1.1. Application for Appeal
>
> Every application for appeal from a final decision of any administrative body shall be filed with the appropriate administrative body in writing as required by law and shall include an assignment of errors, which shall set out separately and particularly each error asserted and a designation of the portions of the record desired to be incorporated into the transcript. Within 5 days after the filing of an application for appeal, any other party to the appeal may file a designation of additional portions of the record to be included for a proper review of the questions comprised within the assignment of errors. The administrative body shall transmit to a Court of Appeal, as a transcript of the record, only the portions of the record so designated. Costs for the inclusion of any unnecessary part of the record in any transcript may be assessed against the party requiring such inclusion. If by written stipulation filed with the administrative body, all parties agree on the portions of the record to be included in the transcript, only such portions shall be included. In all cases the application for appeal, the assignment of errors and the designation of the record shall be copied into the transcript. The administrative body shall certify the correctness of the transcript of the record.

The denial of a motion for summary disposition is interlocutory and therefore not appealable as a final judgment. *Teeter v. Louisiana Department of Culture, Recreation and Tourism-Office of State Museum,* 2007-0578 (La.App. 1 Cir. 2/20/08); NDFP; *Spencer v. Department of Health and Human Resources,* 392 So.2d 149 (La.App. 1 Cir. 1980)

Any claim of the unconstitutionality of the Commission's action in taking too long to render a decision on application for review must be properly asserted in a district court. *Teeter v. Louisiana Department of Culture, Recreation and Tourism-Office of State Museum,* 2007-0578 (La.App. 1 Cir. 2/20/08); NDFP; *Clark v. Department of Transportation and Development,* 413 So.2d 573 (La.App. 1 Cir. 1982)

When the appellant does not state what he believes to be included in the minutes or transcript of a pre-hearing conference that might be admissible or helpful to his cause,

there is no basis for ordering amendment of the record. *Augustine v. Department of Public Safety and Corrections,* 2006-1847 (La.App. 1 Cir. 6/8/07); NDFP

If only a partial record is designated by the appellant, the court will decide the case based on the record submitted and will determine if error was committed in that portion. *Williams v. State, Department of Economic Development,* 94-1919 (La.App. 1 Cir. 5/5/95); 655 So.2d 498; *Division of Administration v. Powers*, 423 So.2d 51 (La.App. 1 Cir. 1982)

A motion to strike is well founded when a party attaches to its brief an EEOC decision that is not part of the proceeding being reviewed. *Fisher v. Department of Social Services,* 600 So.2d 1368 (La.App. 1 Cir. 1992)

A decision dismissing portions of an appeal is appealable to the Court of Appeal. *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992)

Inadequacy of a record is imputable to the appellant. *Department of Health and Human Resources v. Payton,* 498 So.2d 181 (La.App. 1 Cir. 1986)

A person who could have intervened in the trial court can appeal a decision of the Commission to the Court of Appeal. *Department of Labor, Office of Employment Security v. Leonards,* 498 So.2d 178 (La.App. 1 Cir. 1986); *Donchess v. DHHR, Office of Management and Finance*, 457 So.2d 833 (La.App. 1 Cir. 1984)

A subsequent appeal to the Court of Appeal cannot be used as a vehicle to attack the fact-findings in a previous appeal, when no appeal was taken from the previous decision. *Department of Health and Human Resources v. Toups*, 451 So.2d 1126 (La.App. 1 Cir. 1984)

OLD LAW: Where the hearing was conducted before a Referee and the Commission's opinion did not indicate that the Commission had read and examined the transcript, but the transcript was lodged and the issues were primarily legal issues, the Court of Appeal will not remand the matter. *Carbonell v. Department of Health and Human Resources*, 444 So.2d 151 (La.App. 1 Cir. 1983); *Wollerson v. Department of Agriculture*, 436 So.2d 1241 (La.App. 1 Cir. 1983); *Department of Health and Human Resources v. Perry*, 423 So.2d 1266 (La.App. 1 Cir. 1982) **BUT SEE:** *Cartwright v. Department of Revenue and Taxation*, 442 So.2d 552 (La.App. 1 Cir. 1983)

The Director of the Department of State Civil Service is an indispensable party when a decision of the Commission is appealed to the Court of Appeal. *Duhe v. Department of Revenue and Taxation*, 432 So.2d 280 (La.App. 1 Cir. 1983); *Dunn v. Department of Health and Human Resources*, 421 So.2d 437 (La.App. 1 Cir. 1982); *Paisant v. University of New Orleans*, 391 So.2d 1237 (La.App. 1 Cir. 1980); *In re Roberts*, 263 So.2d 452 (La.App. 1 Cir. 1972); *Meaux v. State Department of Highways*, 223 So.2d 186 (La.App. 1 Cir. 1969); *In re Boudreaux*, 193 So.2d 416 (La.App. 1 Cir. 1966)

The burden of proving error on the part of the lower court rests with the appellant. *Division of Administration v. Powers,* 423 So.2d 51 (La.App. 1 Cir. 1982)

Where an appellant designates only a partial record, the deleted portions are deemed to support the lower court's conclusions. *Division of Administration v. Powers*, 423 So.2d 51 (La.App. 1 Cir. 1982)

The denial of a request for summary disposition is not a final decision and is not appealable to the Court of Appeal. *Spencer v. Department of Health and Human Resources*, 392 So.2d 149 (La.App. 1 Cir. 1980)

The Court of Appeal can take judicial notice of the civil service rules. *Duncan v. L.H.H.R.A., Division of Family Services*, 341 So.2d 1217 (La.App. 1 Cir. 1976)

The record must contain the testimony on which the decision is reached. Incomplete records will be remanded. *State Parks and Recreation Commission v. Walker*, 315 So.2d 905 (La.App. 1 Cir. 1975)

If the filing fee is not timely paid, the appeal can be dismissed as not timely perfected. *In re Wingate,* 189 So.2d 1 (La.App. 1 Cir. 1965); LSA-C.C.P. art. 2126

Article X, Section 12(A) – Nature of Appeal

Appeals of decisions of the Commission are not suspensive. *Tally v. St. Tammany Fire Protection District No. 1,* 1997-0569 (La.App. 1 Cir. 5/15/98); 713 So.2d 709; *Major v. Louisiana Department of Highways*, 327 So.2d 515 (La.App. 1 Cir. 1976)

Although the Constitution grants a right of appeal from a Commission's decision, it does not grant a suspensive appeal or suspension of the execution of a Commission's decision. After the decision of the Commission and pending the appeal, the parties affected by the Commission's decision must comply with that decision. Such a decision is final and not subject to rehearing under the civil service rules. See Rules 13.28 and 13.33. It is only by means of a stay order, which is discretionary, from the appellate court that the execution of a Commission's decision can be suspended. Hence, there was no legal method by which the Department could definitely suspend the execution of the judgment of the Commission; therefore, the Department was compelled to comply with the judgment or subject itself to penalty for contempt. *Major v. Department of Highways,* 327 So.2d 515 (La.App. 1 Cir. 1976)

URCA Rule 3-1.4 provides:

> 3-1.4. Stay of Execution.
> A stay pending review by the court of appeal of any ruling or decision of an administrative body, may be granted either by that body or by the court of appeal only in those matters where the authority is expressly granted by law or in exercise of supervisory jurisdiction by the court of appeal.

NOTE: There is no express authority in the Constitution for the Commission to stay its own rulings or decisions; therefore, only the Court of Appeal can issue a stay.

Article X, Section 12(A) – Time for Appeal to the Court of Appeal

When the delay for filing an appeal to the Court of Appeal falls on a legal holiday, article 5059 of the Code of Civil Procedure applies and extends the delay to the next working day. *Guillory v. Department of Transportation and Development*, 450 So.2d 1305 (La. 1984)

Filing in the wrong court does not interrupt delays. *Cottrell v. City of New Orleans*, 2004-1772 (La.App. 4 Cir. 5/11/05); 904 So.2d 43

Postmark does not constitute filing. *Triplett v. State Civil Service Commission,* 521 So.2d 716 (La.App. 1 Cir. 1988); *Poole v. Department of Transportation and Development*, 439 So.2d 659 (La.App. I Cir. 1983); *Johnson v. Louisiana State University,* 431 So.2d 447 (La.App. 1 Cir. 1983); *Thomas v. Department of Corrections*, 430 So.2d 1153 (La.App. 1 Cir. 1983) **NOTE: These cases may have been superseded by the amendment to URCA Rule 2-13; BUT SEE: LSA-R.S. 1:60B.**

If an application for review of a Referee's decision is untimely, the thirty-day delay for appealing to the Court of Appeal commences the day following the day the Referee's decision was rendered. If the application for review is timely, the thirty-day delay for appealing commences the day following the day the order denying review was filed with the Director of Civil Service. *Department of Culture Recreation and Tourism v. Fontenot*, 518 So.2d 1067 (La.App. 1 Cir. 1987)

The delay for filing an application for appeal to the Court of Appeal is jurisdictional. *Thomas v. Department of Corrections*, 430 So.2d 1153 (La.App. 1 Cir. 1983)

To be timely, an application for appeal to the Court of Appeal must be filed with the Commission within thirty calendar days after the Commission's decision is filed with the Director. *Dunn v. Department of Health and Human Resources*, 421 So.2d 437 (La.App. 1 Cir. 1982); *Toups v. Department of Health and Human Resources*, 421 So.2d 936 (La.App. 1 Cir. 1982); *Cross v. Delgado Junior College*, 331 So.2d 599 (La.App. 1 Cir. 1976); *In re Boudreaux,* 193 So.2d 416 (La.App. 1 Cir. 1966)

"Within" as used in the Constitution includes the terminal date but excludes any period beyond that limit. *Toups v. Department of Health and Human Resources*, 421 So.2d 936 (La.App. 1 Cir. 1982); *Cross v. Delgado Junior College*, 331 So.2d 599 (La.App. 1 Cir. 1976)

Article X, Section 12(A) – Scope of Appellate Review

NOTE: Before 1974, Commission decisions were subject to review of law only. The 1974 Constitution subjected Commission decisions to review of fact and law. Compare La. Const. Art. XIV, Sec. 15 (O)(1) with La. Const. Art. X., Sec. 12(A).

If an alleged deficiency in the letter of disciplinary action is not raised before the Commission, it cannot be raised for the first time on appeal. *Domas v. Division of Employment Security*, 227 La. 490, 79 So.2d 857 (1955); *Toms v. Louisiana Health and Human Resources Administration*, 349 So.2d 941 (La.App. 1 Cir. 1977); *Duncan v. L.H.H.R.A., Division of Family Services*, 341 So.2d 1217 (La.App. 1 Cir. 1976); *Bonnette v. Louisiana State Penitentiary*, *Department of Institutions,* 148 So.2d 92 (La.App. 1 Cir. 1962) **BUT SEE:** *Bennett v. Division of Administration,* 307 So.2d 118 (La.App. 1 Cir. 1974)

The court will usually not consider an issue raised for the first time at the appellate level which was not pleaded, urged, or addressed in the court below. While the Court possesses a broad supervisory jurisdiction granted by the State Constitution a Court of Appeal generally will not act on the merits of a claim not yet raised or acted upon by a lower tribunal. *Bishop v. Department of Health and Hospitals, Southeast Louisiana Hospital,* 2005-1750 (La.App. 1 Cir. 12/28/06); NDFP

To seek an increase in attorney's fees, the party must file an answer to the appeal. *Stewart v. Office of Student Financial Assistance,* 1998-2057 (La.App. 1 Cir. 11/5/99); 757 So.2d 17; LSA-C.C.P. art. 2133

The Court of Appeal may not consider evidence that is not part of the record developed before the Commission or Referee. *Fisher v. Department of Social Services, Office of Community Services,* 600 So.2d 1368 (La.App. 1 Cir. 1992)

Issues not briefed on appeal are deemed abandoned and are not considered. *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992); URCA Rule 2-12.4

The Court of Appeal will only review issues presented to the trial court unless the interest of justice clearly requires otherwise. *Maurello v. Department of Health and Human Resources,* 510 So.2d 458 (La.App. 1 Cir. 1987); *Murray v. Department of Revenue and Taxation,* 504 So.2d 561 (La.App. 1 Cir 1986); *Wheeler v. Department of Public Safety and Corrections*, 500 So.2d 786 (La.App. 1 Cir. 1986) (In *Murray* and *Maurello*, the court considered due process issues that were raised for the first time on appeal.)

The issue of the constitutionality of the civil service rules will not be considered if raised for the first time on appeal. *Wheeler v. Department of Public Safety and Corrections,* 500 So.2d 786 (La.App. 1 Cir. 1986); *Department of Health and Human Resources v.*

Payton, 498 So.2d 181 (La.App. 1 Cir. 1986); *Dent v. Department of Corrections*, 460 So.2d 57 (La.App. 1 Cir. 1984)

An issue not raised before the Commission cannot be raised for the first time on appeal. *Rocque v. Department of Health and Human Resources,* 490 So.2d 352 (La.App. 1 Cir. 1986); *Michel v. Department of Public Safety,* 341 So.2d 1161 (La.App. 1 Cir. 1977)

For an appellee to raise an issue, he must either appeal or answer the appeal. *Department of Culture, Recreation and Tourism v. Peak*, 423 So.2d 718 (La.App. 1 Cir. 1982); LSA-C.C.P. art. 2133

Argument will not be considered by the Court of Appeal on matters outside of the record. *Finley v. Department of Corrections*, 351 So.2d 811 (La.App. 1 Cir. 1977)

If a party fails to object to the refusal to issue interrogatories at the hearing before the Commission, he waives the objection and cannot complain at the Court of Appeal. *Goudeau v. Department of Public Safety*, *Division of State Police,* 349 So.2d 887 (La.App. 1 Cir. 1977)

If an issue is raised before the Commission, but is not reargued before the Court of Appeal, it is deemed abandoned. *Hays v. Louisiana Wild Life and Fisheries Commission*, 165 So.2d 556 (La.App. 1 Cir. 1964)

If evidence is not objected to before the Commission, a party cannot claim error in the introduction of that evidence. *Foster v. Department of Public Welfare*, 159 So.2d 515 (La.App. 1 Cir. 1963); *Bonnette v. Louisiana State Penitentiary*, *Department of Institutions,* 148 So.2d 92 (La.App. 1 Cir. 1962)

Article X, Section 12(A) – Standard of Review on Appeal

NOTE: La. Const. Art. X, Sec. 12 was amended effective October 15, 1982, to give Referees decisional authority.

The standard of review for determining whether there was cause for disciplinary action is whether the finding was arbitrary, capricious or an abuse of discretion. For a factual finding, the standard is whether the finding was clearly wrong or manifestly erroneous. For procedural issues and issues concerning the interpretation of laws or civil service rules, the court has plenary power to review. *Bannister v. Department of Streets,* 95-0404 (La. 1/16/96); 666 So.2d 647; *Walters v. Department of Police of City of New Orleans*, 438 So.2d 577 (La. 1983) amended 454 So.2d 106 (La. 1984); *Adikema v. Department of Public Safety and Corrections, Office of Youth Development,* 2006-1854 (La.App. 1 Cir. 9/14/07); 971 So.2d 1071; *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103; *Wopara v. State Employees' Group Benefits Program,* 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67; *Marcantel v. Department of Transportation and Development*, 590 So.2d 1253 (La.App. 1 Cir. 1991); *Smith v. Department of Public Safety and Corrections*, 500 So.2d 779 (La.App. 1 Cir.

1986); *Department of Health and Human Resources v. Payton,* 498 So.2d 181 (La.App. 1 Cir. 1986)

To reverse a factual finding made by a trier of fact, the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court and must determine from the record that the finding is clearly wrong. *Stobart v. State, Department of Transportation and Development,* 617 So.2d 880 (La. 1993); *Burst v. Board of Commissioners, Port of New Orleans,* 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955

The standard of review for the Commission is the same as for district courts. The fact findings of the trial court should not be disturbed in the absence of manifest error. *Walters v. Department of Police of City of New Orleans,* 454 So.2d 106 (La. 1984); *Dunlap v. Louisiana State University Health Sciences Center,* 2005-1605 (La.App. 1 Cir. 6/9/06); 938 So.2d 109; *Marsellus v. Department of Public Safety and Corrections,* 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656; *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103; *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491; *Stewart v. Office of Student Financial Assistance,* 1998-2057 (La.App. 1 Cir. 11/5/99); 757 So.2d 17; *Dent v. Department of Corrections*, 413 So.2d 920 (La.App. 1 Cir. 1982); *Arnold v. New Orleans Police Department*, 383 So.2d 810 (La.App. 4 Cir. 1980); *Herbert v. Department of Police*, 362 So.2d 1190 (La.App. 4 Cir. 1978); *Armant v. Housing Authority of New Orleans*, 351 So.2d 1262 (La.App. 1 Cir. 1977)

When evaluating the Commission's determination as to whether the disciplinary action taken by the appointing authority is based on legal cause and commensurate with the offense, the reviewing court should not modify or reverse the Commission order unless it is arbitrary, capricious, or characterized by an abuse of discretion. *Walters v. Department of Police of City of New Orleans*, 454 So.2d 106 (La. 1984); *Norbert v. LSU Health Sciences Center, University Medical Center*, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___; *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103; *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491; *McGee v. Department of Transportation and Development, 1999-2628* (La.App. 1 Cir. 12/22/00); 774 So.2d 1280; *Sterling v. Department of Public Safety and Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448; *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987); *Brumfield v. Department of Transportation and Development*, 498 So.2d 153 (La.App. 1 Cir. 1986); *Department of Corrections v. Morgan*, 440 So.2d 785 (La.App. 1 Cir. 1983)

"Arbitrary" implies a disregard of evidence or the proper weight thereof. A conclusion is "capricious" when there is no substantial evidence to support it or the conclusion is contrary to substantiated competent evidence. *Norbert v. LSU Health Sciences Center, University Medical Center*, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___; *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295

(La.App. 1 Cir. 2/14/03); 845 So.2d 491; *Sterling v. Department of Public Safety and Corrections,* 97-1960 (La.App. 1 Cir. 9/25/98); 723 So.2d 448; *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147; *Khosravanipour v. Department of Transportation and Development,* 93-2041, 93-2042, 93-2043, 93-2044, and 93-2045 (La.App. 1 Cir. 10/7/94); 644 So.2d 823

Where a Referee hears the testimony and decides the appeal, the standard of review is the same as for the district court. Factual findings will only be reversed if manifestly erroneous or clearly wrong. *Norbert v. LSU Health Sciences Center, University Medical Center*, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___; *Claverie v. L.S.U. Medical Center in New Orleans,* 553 So.2d 482 (La.App. 1 Cir. 1989); *Juneau v. Louisiana Board of Elementary and Secondary Education,* 506 So.2d 756 (La.App. 1 Cir. 1987); *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984)

When the issue is a procedural one involving a determination of the sufficiency of an allegation rather than a factual finding, the deferential standard of review afforded to factual findings is inapplicable to a review of the Commission's decision for legal error. *Adikema v. Department of Public Safety and Corrections, Office of Youth Development,* 2006-1854 (La.App. 1 Cir. 9/14/07); 971 So.2d 1071; *Shortess v. Department of Public Safety & Corrections,* 2006-2313 (La.App. 1 Cir. 9/14/07); 971 So.2d 1051; *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544; *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1996); *Marcantel v. Department of Transportation and Development,* 590 So.2d 1253 (La.App. 1 Cir. 1991)

The standard of review for credibility determinations is manifest error. *Hammork v. Department of Health and Hospitals,* 2006-0951 (La.App. 1 Cir. 3/23/07); NDFP

Findings of fact by the Commission are accorded much weight and will only be overturned for manifest error. *Dunlap v. Louisiana State University Health Sciences Center,* 2005-1605 (La.App. 1 Cir. 6/9/06); 938 So.2d 109; *Allen v. DHHR, Ruston State School*, 426 So.2d 234 (La.App. 1 Cir. 1983); *Williams v. Housing Authority of New Orleans*, 425 So.2d 1310 (La.App. 1 Cir. 1983); *Department of Culture, Recreation and Tourism v. Peak,* 423 So.2d 718 (La.App. 1 Cir. 1982)

It is not the Court of Appeal's job to reweigh the evidence or make its own credibility calls. Its function is to determine whether a reasonable factual basis exists in the record to support the Referee's determination that it was more likely than not that the incident occurred as detailed by the appointing authority. *Brown v. Department of Health & Hospitals,* 2004-2348 (La.App. 1 Cir. 11/4/05); 917 So.2d 522

In civil service appeals, the Commission stands in the position of a district court. *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103; *Carleton v. Department of State Civil Service*, 430 So.2d 670 (La.App. 1 Cir. 1982); *Division of Administration v. Powers*, 423 So.2d 51 (La.App. 1 Cir. 1982); *Herbert v. Department of Police*, 362 So.2d 1190 (La.App. 4 Cir. 1978); *Cilano v. Department of*

Employment Security, 356 So.2d 458 (La.App. 1 Cir. 1977); *Dore v. LHHRA, Division of Family Services*, 344 So.2d 418 (La.App. 1 Cir. 1977); Mi*chel v. Department of Public Safety*, 341 So.2d 1161 (La.App. 1 Cir. 1977)

Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. *Foreman v. LSU Health Sciences Center,* 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103; *Department of Social Services v. Schneeweiss,* 588 So.2d 1185 (La.App. 1 Cir. 1991)

Even though an appellate court may feel its own evaluations and inferences are more reasonable than the fact finder's, reasonable evaluation of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. *Wopara v. State Employees' Group Benefits Program,* 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67

The Court of Appeal must decide the case based on the law existing at the time of its decision. *Walther v. Department of State Civil Service,* 98-2485 (La.App. 1 Cir. 12/28/99); 747 So.2d 790; *Maurello v. Department of Health and Human Resources,* 510 So.2d 458 (La.App. 1 Cir 1987); *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

In reviewing the Commission's imposition of discipline following an investigation, the same standard of review applies as when the Commission hears a case in which the agency imposed the disciplinary action – *i.e.,* to determine whether the action is based on legal cause and the punishment is commensurate with the infraction. The court should not modify the Commission's order unless it is arbitrary, capricious or characterized by an abuse of discretion. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

The standard of review is not that imposed by LSA-R.S. 49:964(G)6 of the Administrative Procedure Act. *Ward v. Department of Public Safety and Corrections,* 97-1110 (La.App. 1 Cir. 9/18/98); 718 So.2d 1042 **overruling** *Blackwell v. Sumrall,* 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147 and *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984)

The Court of Appeal is required to independently review the record to determine if the conclusion was arbitrary, capricious or manifestly wrong. *Housing Authority of the City of Morgan City v. Gibson*, 598 So.2d 545 (La.App. 1 Cir. 1992)

The standard of review by the Court of Appeal in discrimination cases is the same as for disciplinary cases. The standard of review for a Referee's decision after Referees were empowered to decide appeals [October 15, 1982] is the same as the standard of review for decisions of the Commission. *Marcantel v. Department of Transportation and Development*, 590 So.2d 1253 (La.App. 1 Cir. 1991); *Department of Health and Human Resources v. Payton,* 498 So.2d 181 (La.App. 1 Cir. 1986)

The standard for reviewing findings of fact when a Referee heard and decided the appeal is manifest error. The role of the appellate court is not to substitute its judgment for the trier of fact, but to reverse only if it finds that the judgment is clearly wrong. *Claverie v. L.S.U. Medical Center in New Orleans,* 553 So.2d 482 (La.App. 1 Cir. 1989); *Louisiana State University Medical Center, Shreveport v. Dickey*, 448 So.2d 214 (La.App. 1 Cir. 1984)

When testimony is in conflict, reasonable evaluations of credibility and findings of fact found by the trier of fact should not be disturbed on appeal. *Fields v. State of Louisiana, Department of Corrections*, 498 So.2d 174 (La.App. 1 Cir. 1986); *Dundy v. Louisiana State University in Baton Rouge*, 394 So.2d 650 (La.App. 1 Cir. 1980)

Where the key issue is credibility, even more deference is given to the trier of fact, because the trier of fact can observe first hand the demeanor and character of the witnesses. *Sample v. Department of Corrections*, 434 So.2d 1211 (La.App. 1 Cir. 1983)

CHAPTER 3

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Rule 1.1 – Abandonment of Position

If an employee does not return to work on the first working day after his leave without pay has expired, the employee has abandoned his job. The fact that the absence was involuntary due to physical disability is immaterial. *Hill v. Department of Health and Human Resources*, 457 So.2d 781 (La.App. 1 Cir. 1984)

An employee cannot be charged with abandonment of position when the absence from duty is involuntary. (The employee was incarcerated.) *Brown v. L.H.H.R.A., Lake Charles Mental Health Center*, 346 So.2d 758 (La.App. 1 Cir. 1977)

Rule 1.11 – Demotion

Unless an employee alleges that a reclassification resulted in a lower minimum rate of pay, he cannot contend that he was demoted and cannot prevail in his appeal to the Commission on that basis. *Frazier v. Department of State Civil Service*, 449 So.2d 95 (La.App. 1 Cir. 1984) **NOTE: When this case was decided, range minimums determined whether an action was a demotion. Since 8/6/03, range maximums have been used.**

Where the appointing authority learned about irregularities in the promotional process and stopped the promotions before they had been approved by anyone with appointing authority, the employees were not promoted. As such, the transaction which returned them to the duties of Police Officer 2 was not a demotion. However, even if the employees had been promoted, the demotion that results from the recision of a promotion is not a disciplinary action. Therefore, cause is not required and Chapter 12 does not apply. *Skelly v. Board of Commissioners, Port of New Orleans,* CSC Docket Nos. 12902 and 12907; 1/21/99 [CSC decision]

Rule 1.14.1 – Discrimination

NOTE: Although "discrimination" is defined as including "any other non-merit factor," the Commission does not have jurisdiction over non-merit factor discrimination claims other than those associated with a removal or disciplinary action. *Louisiana Department of Agriculture and Forestry v. Sumrall*, 1998-1587 (La. 3/2/99); 728 So.2d 1254

Retaliation as a result of a successful civil service appeal can be a form of non-merit factor discrimination. *Fisher v. Department of Social Services,* 600 So.2d 1368 (La.App. 1 Cir. 1992); see also *Noya v. Department of Fire,* 609 So.2d 827 (La. 1992)

Reprisal for demanding a departmental investigation can be a form of non-merit factor discrimination. *Department of Transportation and Development v. Gabour*, 468 So.2d 1301 (La.App. 1 Cir. 1985)

Personal animosity is a type of non-merit factor discrimination. *Golphin v Division of Administration,* 314 So.2d 498 (La.App. 1 Cir. 1975)

Rule 1.39.2 – State Service for Layoff Purposes

When a settlement reinstates an employee without back pay, without past merit increases, and without earning leave between the termination and the reinstatement, the employee is in leave without pay status. This period of time does not count as state service for layoff purposes. *Maradiaga v. University of New Orleans*, 546 So.2d 579 (La.App. 1 Cir. 1989)

Rule 2.6 – Quorum and Voting [See also La. Const. Art. X, Sec. 3.]

Decisions must be signed by a quorum of the members of the Commission who are in office on the date the decision is rendered. *Johnson v. Louisiana State University*, 418 So.2d 667 (La.App. 1 Cir. 1982)

If four members of the seven-member Commission are present and the decision is three to one, the decision is valid. *Toms v. Louisiana Health and Human Resources Administration*, 349 So.2d 941 (La.App. 1 Cir. 1977)

If three members of the five-member Commission are present and the decision is two to one, the decision is valid. *Alonzo v. Louisiana Department of Highways*, 268 So.2d 52 (La.App. 1 Cir. 1972) **NOTE: Before 1974, the Commission had five members. See La. Const. 1921, Art. XIV, Sec. 15(C).**

Rule 2.6(c)(1), which states that when the decision is tied a transcript may be sent to the absent Commissioner for his decision is constitutional. *Bryan v. Department of Corrections*, 374 So.2d 155 (La.App. 1 Cir. 1979)

For decisions by successors in office, see LSA-R.S. 13:4209.

Rule 2.9 – Powers of the Commission, Specific Cases

Rule 2.9(f) does not create a separate right of appeal, but rather is merely a declaration of the general powers of the Commission. *Latona v. Department of State Civil Service,* 492 So.2d 27 (La.App. 1 Cir. 1986)

The Commission can order employees reinstated under such conditions as it deems appropriate. *Westrope v. Department of Health and Human Resources*, 489 So.2d 1024 (La.App. 1 Cir. 1986)

Rule 2.11 – Contempt

Failure of an agency to timely comply with a reinstatement and back pay order may support a contempt proceeding. *James v. LSU Health Sciences Center,* 2001-1853 (La.App. 1 Cir. 11/8/02); 834 So.2d 470

Appellant's failure to appear at any of the three hearings, despite having been subpoenaed for two, was an act of contempt. Under the civil service rules, great discretion is accorded to the Commission and its Referees in determining an appropriate sanction for an act of contempt. However, it was an abuse of discretion for the Referee or the Commission to refuse to impose a sanction on a litigant who flagrantly and willfully, without justification, violates a subpoena issued by the Referee. At a minimum, the appeal should have been dismissed. *Cheaton v. Louisiana Public Service Commission*, 94-1358 and 94-1359 (La.App. 1 Cir. 12/15/95); 690 So.2d 46

It is the appellant's conduct in failing to appear at the hearings that should have been the Referee's focus in determining whether he was in fact in contempt of the proceedings, rather than whether his testimony would have been taken on the days he was absent. *Cheaton v. Louisiana Public Service Commission*, 94-1358 and 94-1359 (La.App. 1 Cir. 12/15/95); 690 So.2d 46

The Commission cannot punish, by contempt or otherwise, an unclassified employee. *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989)

The employee failed to comply with a subpoena that he admits he received. His conduct was willful, because it was without reasonable excuse. Loosing track of the days (essentially, the same thing as forgetting) is not an acceptable reason for failing to comply with a subpoena. In a previous case, we ordered forty-five day suspensions for employees who defiantly refused to appear. See *Investigation of Moreau and Gathe*, CSC Docket No. 4463; 10/15/84 [CSC decision]. Here, the employee testified that he intended to appear. Giving him the benefit of the doubt, his conduct, albeit willful, was not defiant. *In Re: Contempt Charges against Thomas*, CSC Docket No. 15367; 5/13/04 [CSC decision] 15-day suspension

Rule 4.1 – Classified and Unclassified Positions [See also La. Const. Art. X, Sec. 2.]

Rank and file employees of the Division of Administration are classified employees. *Smith v. Division of Administration,* 362 So.2d 1101 (La. 1978)

The legislature cannot by resolution or statute exempt positions from the classified service. *State Licensing Board of Contractors v. State Civil Service Commission*, 110 So.2d 847 (La.App. 1 Cir. 1959), affirmed 240 La. 331, 123 So.2d 76 (1960) **BUT SEE: *Slowinski v. England Economic and Industrial Development District*, 2002-0189 (La. 10/15/02); 828 So.2d 520, regarding how the legislature can exempt a governmental entity from civil service coverage.**

Employees of housing authorities (except board members, the executive director, and one other employee) are classified state employees. *Department of State Civil Service v. Housing Authority of East Baton Rouge,* 95-1959 (La.App. 1 Cir. 5/10/96); 673 So.2d 726; see also LSA-R.S. 40:956(6).

An associate county agent employed by the Louisiana Cooperative Extension Service, Center for Agricultural Services and Rural Development of LSU is a teacher and therefore unclassified. *Wilkinson v. Louisiana State University*, 316 So.2d 482 (La.App. 1 Cir. 1975)

Employees of voting machine custodians are classified employees. *Cain v. Fowler,* 158 So.2d 631 (La.App. 1 Cir. 1963)

Rule 5.2 – Allocation of Positions; Assignment of Duties

Work assignments cannot be handed out on a discriminatory basis. *Dore v. Louisiana Health and Human Resources Administration,* 361 So.2d 229 (La.App. 1 Cir. 1978)

An employer may not manipulate assignments so as to fabricate cause for dismissal when no reason for dismissal otherwise exists. *Johnson v. State Department of Institutions,* 198 So.2d 159 (La.App. 1 Cir. 1967)

An employee can be adversely affected if his position is under-allocated. Therefore, he has a right of appeal under Rule 13.10(c), if the alleged facts support a conclusion that DSCS violated Rule 5.2(b) as to his allocation. To support a conclusion that Rule 5.2(b) has been violated, the employee must allege facts that show that the same work is allocated to different jobs. *Distefano v. Department of State Civil Service*, CSC Docket No. 15683; 11/3/05 [CSC decision]

An agency may change an employee's duties to better fulfill the agency's mission. An employee is not entitled to any particular duties, but rather to duties that, in the aggregate, support the employee's allocation. Or, if the remaining duties do not support the employee's allocation, there must be a legitimate business reason for the change. *Diel v. Office of Group Benefits*, CSC Docket No. 15070; 10/22/03 [CSC decision]

To establish a right to appeal the Director's allocation decision, an employee must allege facts supporting a conclusion that the Director violated Rule 5.2(b) or (d). Rule 5.2(b) is violated when the classification plan has not been uniformly applied - *i.e.,* when the same work is allocated to different jobs. Rule 5.2(d) is violated when an allocation is based on something other than the position description. *Simpson v. Department of Social Services and Department of State Civil Service,* CSC Docket No. 13196; 6/15/01 [CSC decision]

An appointing authority's broad discretion to assign duties has the following limits: 1) the appointing authority may not reduce an employee's duties to the extent that the remaining duties no longer support the employee's allocation unless a *bona fide* state

interest is served thereby and 2) the appointing authority may not strip an employee of his functions when such action is motivated by prohibited discrimination. *Westmoreland v. Department of Health and Hospitals,* CSC Docket No. 12952; 10/14/99 [CSC decision]

An agency is free to change duty assignments so long as the remaining duties support the employee's allocation and the change in duties is not motivated by a prohibited factor. *Barlow v. Department of Health and Hospitals,* CSC Docket No. 11770; 8/12/98 [CSC decision]

Rule 5.3 – Review of Classifications

The denial of a reallocation is not a disciplinary action. *London v. Department of State Civil Service,* 1999-0755 (La.App. 1 Cir. 5/22/00); 798 So.2d 123; *Sterne v. Department of State Civil Service,* 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

Truthful position descriptions are essential to the allocation process. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

Where Civil Service reallocated the employee's position in error and the error was detected and corrected before the change was implemented, the employee gained no vested right to the perpetuation of a mistake. The retroactive detail gave the employee all he was entitled to as a result of the mistake. *Bartholomew v. LSU Health Sciences Center, Health Care Services Division, Medical Center of Louisiana at New Orleans*, CSC Docket No. 13397; 12/23/02 [CSC decision]

Rule 5.2(a) authorizes the Director of DSCS to allocate and reallocate positions. Rule 5.2(d) requires allocation decisions to be based on those duties being actually certified as true by the appointing authority as stated on the official position description form. DSCS's policy is to make upward reallocations effective the date DSCS receives a complete official position description form that supports the upward allocation. We have specifically approved this policy as a reasonable method of implementing Rule 5.2. *Taylor v. Department of State Civil Service and Department of Health and Hospitals*, CSC Docket No. 11931; 2/1/9/98 [CSC decision]

When an allocation mistake is discovered and there is no change in the job specifications, or the allocation criteria, or the duties of the position, the employee is not entitled to a red circle rate when his or her allocation is corrected. *Morgan v. Department of Public Safety and Corrections and Department of State Civil Service*, CSC Docket No. 11851; 6/12/97 [CSC decision]

Rule 5.3 – Reallocation Downward ["Reallocation" defined in Rule 1.32]

A reallocation downward is not a disciplinary action; an employee who is reallocated is not entitled to a pre-reallocation notice or hearing. *Bell v. Department of Health and*

Human Resources, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986) **overruling** *Perkins v. Director of Personnel*, 220 So.2d 253 (La.App. 1 Cir. 1969)

A classified employee's position may not be changed or abolished without due process of law. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

There is no requirement that there be cause for reallocation downward. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

Reallocations of positions in the civil service classification plan are not disciplinary actions. Reallocations are based on an analysis of inherent duties, not competency. Thus, notice required for disciplinary actions is not required, nor is notice of appeal rights. *Sterne v. Department of State Civil Service,* 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

Chapter 6 – Pay in General [“Compensation” defined in Rule 1.9.02]

An employee’s pay is established by Chapter 6 of the civil service rules. An employee does not acquire a right to pay that does not comply with the requirements of Chapter 6. *Leger v. Louisiana State University Agricultural Center,* 607 So.2d 744 (La.App. 1 Cir. 1992)

Bockrath [below] stands only for the proposition that overpayments cannot be withheld from an employee’s paycheck without a legal demand through the judicial system. *Bockrath* does not hold that an employer is not entitled to demand money, wrongfully acquired, from an employee. *Housing Authority of the City of Morgan City v. Gibson*, 598 So.2d 545 (La.App. 1 Cir. 1992)

When an employee’s pay is erroneously calculated, the employee’s pay may be reduced. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

An agency’s decision to discontinue an employee’s premium pay is not a disciplinary reduction in pay; the rules governing disciplinary actions are inapplicable. *Samuels v. Department of Public Safety and Corrections, WCI*, CSC Docket No. 12470; 3/12/98 [CSC decision]

Rule 6.3(b) – Implementation of a Pay Plan

Former Rule 6.28(c) [also former Rule 6.12(e)] is unconstitutional if different agencies implement a pay plan in different degrees. *Thoreson v. Department of State Civil Service,* 433 So.2d 184 (La.App. 1 Cir. 1983)

Rule 6.3.1 – Other Compensation

For an employee to receive pay that exceeds the amount set forth in the pay plan, the compensation must be in accordance with the civil service rules or must be approved by the Commission. Otherwise, the employee has no right to the compensation (in this case, a house and utilities allotment). *Leger v. Louisiana State University,* 601 So.2d 20 (La.App. 1 Cir. 1992)

Rule 6.7 – Pay on Promotion

An appointment from a department preferred re-employment list is not a promotion. Therefore, the employee is not entitled to promotional pay. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991) **NOTE: While this case was pending at the Court of Appeal, the Commission adopted Rule 6.5.1 on 1/10/90 (on an emergency basis) and on 2/7/90 (on a regular basis) to clarify pay on appointment from a department preferred re-employment list.**

The fact that two other employees received promotional pay upon appointment from a department preferred re-employment list did not entitle this employee to pay that the Commission later determined was in error. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

Rule 6.14 – Merit Increases [defined in Rule 1.20.002]

It is not double jeopardy when an employee is disciplined and denied a merit increase for the same offense because the denial of a merit increase is not a disciplinary action. *Malone v. Department of Corrections,* 468 So.2d 839 (La.App. 1 Cir. 1985)

Giving all employees merit increases because all employees are underpaid violates the purpose of the merit system. *Stiles v. Department of Public Safety*, 361 So.2d 267 (La.App. 1 Cir. 1978)

The purpose of step increases is to reward satisfactory performance; the denial of a step increase is not a disciplinary action. *Smith v. LSU Medical Center*, 365 So.2d 599 (La.App. 1 Cir. 1978); *Rodgers v. Department of Public Welfare,* 250 So.2d 163 (La.App. 1 Cir. 1971) **NOTE: Before 5/5/87, each pay range had a minimum, a maximum and a number of fixed steps in between; hence the name "step" increases.**

Where employee proved that, while he was terminated, all other employees received step increases, employee was entitled to a step increase as part of reinstatement. *Hays v. Louisianan Wild Life and Fisheries Commission,* 165 So.2d 556 (La.App. 1 Cir. 1964)

Rule 6.15 – Red Circle Rates [defined in Rule 1.33.01]

When an employee is demoted in lieu of layoff, Rule 6.15 only applies if something other than a budget cut requires the layoff. (For example, this rule would apply if an agency that was not faced with a budget cut elected to reorganize for programmatic reasons.) Rule 6.15(f) is an all-or-nothing rule. Either the layoff is budgetary, in which case no employee's pay can be red circled, or the layoff is non-budgetary, in which case every employee's pay can be red circled. *Carbo v. Department of Health and Hospitals, Office of Public Health*; CSC Docket No. 14180; 10/11/02 [CSC decision]

When an allocation mistake is discovered and there is no change in the job specifications, or the allocation criteria, or the duties of the position, the employee is not entitled to a red circle rate when his or her allocation is corrected. *Morgan v. Department of Public Safety and Corrections and Department of State Civil Service*, CSC Docket No. 11851; 6/12/97 [CSC decision]

Rule 6.28 – On-Call Pay

Absent consideration of appellant's political or religious beliefs, sex, or race, no right of appellant would have been violated had his appointing authority removed him from on-call status at any time. Therefore, an employee who is suspended pending investigation is not entitled to the on-call pay he would have received. *Juneau v. LSU Health Sciences Center*, *W. O. Moss Regional Medical Center*, CSC Docket No. 14980; 12/10/03 [CSC decision on application for a review]

Rule 6.29 – Corrective Pay Actions

Bockrath [below] stands only for the proposition that overpayments cannot be withheld from an employee's paycheck without a legal demand through the judicial system; *Bockrath* does not hold that an employer is not entitled to demand money, wrongfully acquired, from an employee. *Housing Authority of the City of Morgan City v. Gibson,* 598 So.2d 545 (La.App. 1 Cir. 1992)

When an employee's pay is erroneously calculated, the employee's pay may be reduced. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

Due process does not require a hearing before pay incorrectly calculated is reduced. The appeal process adequately safeguards the employee's rights. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

Rule 7.1 – Examinations

The passing score set by civil service is not arbitrary unless it is unreasonable and without reference to relevant questions and, absent arbitrariness or discrimination, the

courts should not intrude into civil service examinations. *Graffeo v. City of New Orleans*, 351 So.2d 1311 (La.App. 4 Cir. 1977)

Rule 7.4 – Minimum Qualifications

An agency's training requirements are not unauthorized minimum qualifications for the job. In its classification plan, the Commission has established the minimum qualifications for every job in the classified service. The operative word is "minimum." Thus, any person who possesses the minimum qualifications may apply for the job. However, mere possession of the minimum qualifications does not guarantee that the applicant will be selected or even considered for the job. The state is better served when the applicant pool contains (and the agency selects) a more-than-minimally qualified applicant. Therefore, in making its selection from among the applicants civil service has certified as eligible, an agency is free to use selection criteria that exceed the minimum qualifications set forth in the classification plan, including completion of specified training. *Allwell v. Department of Transportation and Development*, CSC Docket Nos. 10763 and 10788; 11/29/95 [CSC decision]

Section 7 of the Civil Service Article requires DSCS to certify applicants for appointment and promotion under a general system based upon merit, efficiency, fitness, and length of service. Subject to certain exceptions, Rule 7.4(a) requires an appointee to meet the minimum qualifications for the job. However, neither the Civil Service Article nor any civil service rule defines levels of experience. Likewise, neither the Article nor any rule dictates under what circumstances an applicant will be credited with experience. Instead, Rule 3.1(e) authorizes DSCS to establish procedures for doing business. DSCS has done so. It has defined levels of work. It has also established and published procedures for determining if an applicant has the required level of experience. The procedures recognize the realities of the workplace. Generally, employees perform duties within the scope of their jobs, in which case job title is an accurate indicator of the level of experience. However, some applicants have never worked for the state and sometimes, state employees are assigned higher-level work. In both of these cases, job title is not an accurate indicator of the level of experience gained. DSCS's procedure allows an applicant in the latter situation to get credit for experience actually gained. Giving an applicant credit for experience actually gained does not violate either Section 7 of the Article or Rule 7.4. *Whitehead v. Department of Wildlife and Fisheries,* CSC Docket No. 15607; 9/2/05 [CSC decision]

Chapter 8 – Appointment in General [defined in Rule 1.5]

An appointment is made upon the designation of the employee to a certain office and his acceptance thereof. *In re Bienvenu*, 155 So.2d 225 (La.App. 1 Cir. 1963), appeal after remand 158 So.2d 213 (La.App. 1 Cir. 1963)

The former Civil Service Amendment and the current Civil Service Article were embedded in our state Constitution to create a career state workforce that is free from political interference – a career workforce comprised of employees who are selected

based on their merit, efficiency, fitness and length of service and not upon how much political support they can muster. It is as inappropriate for classified employees to solicit political help in their attempts to secure appointments and promotions in the classified service as it is for elected officials to involve themselves in the selection process. *Holliday v. Department of Social Services*, CSC Docket No. 10302; 7/5/94 [CSC decision]

Rule 8.10 – Restricted Appointment [defined in Rule 1.38.1]

Even if a restricted appointment that extends beyond the permitted three-month period converts to a probationary appointment [which it does not], the employee was separated before she could possibly have become permanent. (The employee's restricted appointment was to have ended on August 28, 1990; she remained employed through December 11, 1990.) *Rollins v. Housing Authority of New Orleans,* 93-1810 (La.App. 1 Cir. 10/7/94); 644 So.2d 837

Rule 8.11 – Provisional Appointment [defined in Rule 1.29]

A provisional employee is not a permanent employee. *Owen v. New Orleans City Civil Service Commission*, 371 So.2d 364 (La.App. 4 Cir. 1979)

Rule 8.14 – Job Appointment [defined in Rule 1.18]

Although employee had been employed for nearly three years (on six job appointments and a brief probationary appointment), he could not, based on years of employment, acquire permanent status. *Pope v. New Orleans City Park,* 95-1634 (La.App. 1 Cir. 4/4/96); 672 So.2d 388

A person who served for more than two years continuously in the same position must be considered a probationary employee and an employee who completes a six-month probationary period is entitled to permanent status. (The employee served on three successive job appointments.) *Finley v. Department of Corrections*, 351 So.2d 811 (La.App. 1 Cir. 1977) **NOTE: Rule 9.2 was amended effective 7/2/86, to eliminate acquisition of permanent status by default, rendering this case obsolete.**

Rule 8.15 – Transfer [defined in Rule 1.41]

A probationary employee can transfer to another agency, but only a permanent employee can be transferred with a promotion. *Robinson v. Natchitoches Parish Housing Authority,* 554 So.2d 1384 (La.App. 1 Cir. 1989)

Rule 8.16(a) – Reassignment [defined in Rule 1.33]

An employee who alleges facts supporting the conclusion that a detail to special duty/reassignment was a disciplinary action has a right of appeal. *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544

To determine whether a reassignment to special duty is a disciplinary reassignment, the focus is the reason for the action. *Adams v. Department of Health and Hospitals,* 1997-0750 (La.App. 1 Cir. 4/8/98); 710 So.2d 1176

Rule 8.16(b) – Change in Work Hours

An appointing authority cannot use Rule 8.16(b) to avoid compliance with an order of the Commission specifically reinstating an employee to a particular shift. *Department of Health and Human Resources v. Toups,* 451 So.2d 1126 (La.App. 1 Cir. 1984)

Rule 8.16(c) – Change in Duty Station

A change in duty station may only be directed by an appointing authority. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

An employee's duty station may not be changed on the basis of discrimination. *Department of Transportation and Development v. Gabour,* 468 So.2d 1301 (La.App. 1 Cir. 1985)

Rule 8.16(c) has a reasonable basis because it prevents appointing authorities from gerrymandering certificates of eligibles by hiring in one area and then immediately transferring the employee to an area where he could not have been reached on a certificate. *Carbonell v. Department of Health and Human Resources,* 444 So.2d 151 (La.App. 1 Cir. 1983)

Rule 8.16(c) does not violate equal protection. *Carbonell v. Department of Health and Human Resources*, 444 So.2d 151 (La.App. 1 Cir. 1983)

There is no right to appeal a change in duty station. *Bayhi v. Department of Health and Human Resources,* 408 So.2d 395 (La.App. 1 Cir. 1981); *Hunsinger v. Louisiana Department of Highways,* 271 So.2d 692 (La.App. 1 Cir. 1972); *Villemarette v. Department of Public Safety,* 129 So.2d 835 (La.App. 1 Cir. 1961)

An employee's application for employment is not a contract preventing the agency from changing the employee's duty station. *Bayhi v. Department of Health and Human Resources,* 408 So.2d 395 (La.App. 1 Cir. 1981)

A change of duty station is not a demotion – even if it is in a less desirable area, is farther from home, and has longer hours as long as there is no change in the employee's classification or pay. *Bayhi v. Department of Health and Human Resources,* 408 So.2d 395 (La.App. 1 Cir. 1981)

The Commission cannot grant hearings simply to allow an employee to complain about the tactless manner in which a transfer was handled. *Bayhi v. Department of Health and Human Resources,* 408 So.2d 395 (La.App. 1 Cir. 1981)

There is no requirement that an employee be given written reasons for a change in duty station. *Hunsinger v. Louisiana Department of Highways,* 271 So.2d 692 (La.App. 1 Cir. 1972)

Employee failed to show that his change in duty station was the result of political or union activities or an attempt to force him to resign. *Hunsinger v. Louisiana Department of Highways,* 271 So.2d 692 (La.App. 1 Cir. 1972)

Rule 8.16(d) – Detail to Special Duty [defined in Rule 1.13.1]

An employee who alleges facts supporting the conclusion that a detail to special duty/reassignment was a disciplinary action has a right of appeal. *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544

Rule 8.16(d) grants discretion to an appointing authority to use an employee temporarily in another position. While the appointing authority has failed to prove by a preponderance of the evidence that it had cause for disciplining appellant, an appointing authority is not held to the same standard in exercising its discretion. There appears to be a rational basis for the action of the appointing authority in ending the detail, and the appellant has not proven that he was a victim of discrimination or that any rule has been violated. *Shaw v. Dept. of Public Safety and Corrections - LTI, Monroe*, CSC Docket No. 12193; 12/8/98 [CSC decision on application for review]

Rule 8.20 – Promotion [defined in Rule 1.27]

The denial of a promotion is not a disciplinary action. *London v. Department of State Civil Service,* 1999-0755 (La.App. 1 Cir. 5/22/00); 798 So.2d 123

Promotions do not take place automatically or of right; the appointing authority has much discretion in choosing employees properly certified as eligible. *Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993); *Dauser v. Department of Public Utilities (Water)*, 428 So.2d 1176 (La.App. 5 Cir. 1983*); Lechler v. City Civil Service Commission for Parish of Orleans,* 357 So.2d 41 (La.App. 4 Cir. 1978); *Blake v. Giarrusso,* 263 So.2d 392 (La.App. 4 Cir. 1972); *Sewell v. New Orleans Police Department*, 221 So.2d 621 (La.App. 4 Cir. 1969)

An appointment from a department preferred re-employment list is not a promotion. Promotion covers the situation where an employee in a job at a lower pay grade who is actually receiving pay at the lower grade changes position to a job at a higher pay grade so that his pay increases to that of the higher pay grade. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

If the Department of State Civil Service either willfully or negligently fails to include an eligible person's name on a promotion certificate, the Commission has the power to remove the person who was appointed to the position. *Mott v. Department of State Civil Service,* 506 So.2d 713 (La.App. 1 Cir. 1987)

Where the Commission proceeds to rescind the promotion of an employee, that employee must have been made a party to that proceeding, as required by the Commission's own rules and procedural due process. *Donchess v. DHHR, Office of Management and Finance*, 457 So.2d 833 (La.App. 1 Cir. 1984)

Where the appointing authority learned about irregularities in the promotional process and stopped the promotions before they had been approved by anyone with appointing authority, the employees were not promoted. As such, the transaction that returned them to the duties of Police Officer 2 was not a demotion. However, even if the employees had been promoted, the demotion that results from the recision of a promotion is not a disciplinary action. Therefore, cause is not required and Chapter 12 does not apply. *Skelly v. Board of Commissioners, Port of New Orleans,* CSC Docket Nos. 12902 and 12907; 1/21/99 [CSC decision]

Even where the employee did nothing wrong and had no reason to suspect that his promotion was not valid, an appointment made by someone without appointing authority cannot be given effect, especially an appointment that carries permanent status, such as a promotion. To conclude otherwise is to make an unauthorized appointment irrevocable. *Braddock v. Department of Labor, Office of Workers' Compensation*, CSC Docket Nos. 12250, 12275, and 12361; 11/25/98 [CSC decision]

Where the employee was not allowed to compete for a promotion to Associate 4 because the agency incorrectly believed she was not qualified for the job, the employee was not entitled to have the Associate 4 position vacated and reopened for competition. Section 7 of the Civil Service Article requires the Department of State Civil Service to establish a system for merit-based selection, founded generally upon competitive examination. However, this provision does not confer upon an employee an absolute right to compete for any particular position. More significantly, this provision does not give an excluded employee a general right to oust a qualified, eligible appointee from a position. *Valyan v. Department of Health and Hospitals*, CSC Docket Nos. 11303 and 11361; 10/9/96 [CSC decision]

Rule 9.1 – Probationary Period

A probationary employee has no right to appeal. *St. Romain v. State*, *Department of Wildlife and Fisheries,* 2003-0291 (La.App. 1 Cir. 12/11/03); 863 So.2d 577 [**NOTE: LDH disagrees with this case: *Lee v. LSU Health Sciences Center-New Orleans*, CSC Docket No. S-15298; 3/29/05.]**

A probationary employee has no property right to his job and may be removed for any non-discriminatory reason. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center,* 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389

Article X, Section 8(B) appears to give a probationary employee the right to appeal only when he has been discriminated against because of political or religious beliefs, sex or race. Accordingly, the employee was required to establish some discriminatory reason

for his removal to be entitled to reinstatement. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center,* 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389

A probationary employee may be removed for any reason so long as the reason is expressed to the Civil Service Director in writing. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center,* 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389; *King v. Department of Health and Human Resources,* 506 So.2d 832 (La.App. 1 Cir. 1987); *Courtney v. Louisiana Department of Highways*, 282 So.2d 721 (La.App. 1 Cir. 1973); *Pembrick v. Charity Hospital of Louisiana at New Orleans,* 268 So.2d 265 (La.App. 1 Cir. 1972); *Wlochowicz v. Forbes*, 248 So.2d 69 (La.App. 1 Cir. 1971); *Maggio v. Department of Public Safety*, 234 So.2d 844 (La.App. 1 Cir. 1970) **NOTE: The requirement in former Rule 9.1(e) that the Director be given a reason was repealed effective 12/3/97.**

The failure to give the true reason does not justify reinstatement where a legitimate, non-discriminatory reason existed for separation. (The stated reason was performance below acceptable standards, but the real reason was budget cuts.) Characterizing this as a good faith technical failure to follow the rules, the court distinguished *Thornton* [below]. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center,* 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389

To remove a probationary employee, the dismissal must be based on the results of the examination process and the reasons stated for dismissal must be the true reasons. *Department of Public Safety and Corrections v. Thornton,* 625 So.2d 713 (La.App. 1 Cir. 1993); *Department of Culture, Recreation and Tourism v. Peak*, 423 So.2d 718 (La.App. 1 Cir. 1982); *Duckett v. Louisiana Wildlife & Fisheries Commission,* 175 So.2d 723 (La.App. 1 Cir. 1965)

Where the employee proved that the reason given (failure to meet expected requirements during the extended probationary period) was not true because no input was solicited from his supervisor during the extended probationary period, his separation was reversed on a rule violation basis. (The real reason appeared to be either racial or political beliefs vis-a-vis the candidacy of David Duke, although the case does not so hold.) *Department of Public Safety and Corrections v. Thornton,* 625 So.2d 713 (La.App. 1 Cir. 1993)

The probationary period begins on the first day of work, not on the date of acceptance of the position. *Maggio v. Department of Public Safety,* 234 So.2d 844 (La.App. 1 Cir. 1970)

Rule 9.2 – Attainment of Permanent Status

An employing entity's actions or conduct may confer upon an employee a property interest in the procedural rights of permanent status for due process purposes. Here, the department head had recommended permanent status after six months; a series of

internal difficulties and civil service compliance problems plagued the human resources department during the time at issue; a department head's recommendation that an employee receive permanent status was normally approved by the human resources department and signed by the chancellor as a matter of course; some error occurred in the human resources department's usual processes to keep the employee from obtaining permanent status upon his department chief's recommendation; and at the time of the employee's termination, he was treated like a permanent employee, *i.e.,* fired for cause, provided with a formal letter of termination, and given due process rights to appeal or respond that would not have been afforded to a probationary employee. In light of the foregoing and pursuant to the *Roth* and *Perry* jurisprudence, the court concluded that the agency's "words or conduct in light of the surrounding circumstances" amounted to an implied or tacit understanding that Mr. Morehouse had achieved permanent status such that a property interest or right attached for procedural due process purposes. *Morehouse v. Southern University, Baton Rouge Campus,* 2006-1481 (La.App. 1 Cir. 5/4/07); 961 So.2d 473

Although employee had been employed for nearly three years (on six job appointments and a brief probationary appointment), he could not, based on years of employment, acquire permanent status. *Pope v. New Orleans City Park,* 95-1634 (La.App. 1 Cir. 4/4/96); 672 So.2d 388

Even if a restricted appointment that extends beyond the permitted three-month period converts to a probationary appointment [which it does not], the employee was separated before she could possibly have become permanent. (The employee served on a restricted appointment that was to have ended on August 28, 1990; she remained employed through her separation on December 11, 1990.) *Rollins v. Housing Authority of New Orleans,* 93-1810 (La.App. 1 Cir. 10/7/94); 644 So.2d 837

A probationary employee who is reinstated can be reinstated with permanent status. *Department of Public Safety and Corrections v. Thornton,* 625 So.2d 713 (La.App. 1 Cir. 1993)

A provisional employee is not a permanent employee. *Owen v. New Orleans City Civil Service Commission*, 371 So.2d 364 (La.App. 4 Cir. 1979)

A person who served for more than two years continuously in the same position must be considered a probationary employee and an employee who completes a six-month probationary period is entitled to permanent status. (The employee served on three successive job appointments.) *Finley v. Department of Corrections*, 351 So.2d 811 (La.App. 1 Cir. 1977) **NOTE: Rule 9.2 was amended effective 7/2/86, to eliminate acquisition of permanent status by default, rendering this case obsolete.**

Granting permanent status is the single most significant action an appointing authority can take. It is the action that converts an at-will employee to a protected one. The initial hiring decision is of less importance because new hires serve a probationary period, during which they can be separated for any reason. Therefore, although the employee

considered granting permanent status a routine personnel action, the 1986 amendment to Rule 9.2 compels a contrary conclusion. *Varnado v. LSU, Health Sciences Center, Health Care Services Division, W. O. Moss Regional Medical Center,* CSC Docket No. 14588; 12/17/02 [Referee decision; application for review denied 2/12/03]

Permanent status is a unilateral event. It becomes effective, not upon acceptance by the employee, but only after the requirements of Rule 9.2 have been satisfied: 1) certification by the appointing authority and 2) completion of the required probationary period. *Varnado v. LSU, Health Sciences Center, Health Care Services Division, W. O. Moss Regional Medical Center,* CSC Docket No. 14558; 12/17/02 [Referee decision; application for review denied 2/12/03]

NOTE: Before 1986, Rule 9.4 required an appointing authority to request an extension of the probationary period before it expired or the employee automatically became permanent. Rule 9.4 was repealed effective 7/2/86.

Chapter 10 – Performance Planning and Review

NOTE: Before 7/1/97, less than satisfactory ratings were appealable to the Commission. Since 7/1/97, ratings have only been appealable to the Commission on the basis of discrimination.

A needs improvement rating is not a disciplinary action. *Berry v. Department of Public Safety and Corrections*, 2001-2186 and 2001-2187 (La.App. 1 Cir. 9/27/02); 835 So.2d 606 [State Police Commission case]

The mailing presumption in former Rule 12.3(b)2 did not apply to service ratings. *Faure v. Department of Health and Human Resources,* 504 So.2d 1022 (La.App. 1 Cir. 1987) **NOTE: Amendments to Rules 10.6(d) and 10.8 effective 3/1/01, make this case obsolete as to this issue.**

An agency may not dismiss an employee's appeal of an unsatisfactory rating for failure of the employee to appear where employee's attorney had requested a continuance and the employee was given short notice of the rescheduled hearing. *Faure v. Department of Health and Human Resources,* 504 So.2d 1022 (La.App. 1 Cir. 1987) **[Decided when less than satisfactory ratings were appealable to the Commission, but the concepts are probably still applicable]**

Unfavorable comments on a satisfactory rating do not give rise to an appeal. The right to appeal a rating is available from the rating itself, not the comments. *Bailey v. Department of Health and Human Resources,* 460 So.2d 39 (La.App. 1 Cir. 1984) **[Decided when less than satisfactory ratings were appealable to the Commission, but the concepts are probably still applicable]**

An employee must first appeal an unsatisfactory service rating to his appointing authority. *Hill v. Department of Health and Human Resources,* 457 So.2d 781 (La.App. 1 Cir. 1984)

When a disciplinary action is based on the same grounds as assigned for an unsatisfactory rating, the disciplinary action is directly appealable to the Commission. *Hill v. Department of Health and Human Resources,* 457 So.2d 781 (La.App. 1 Cir. 1984)

If a satisfactory service rating intervenes between two unsatisfactory service ratings, the first unsatisfactory service rating cannot be used to support a later termination. *Wall v. Community Improvement Agency,* 365 So.2d 571 (La.App. 1 Cir. 1978)

An allegation of an unsatisfactory service rating alone does not give a sufficient cause for disciplinary action. The circumstances which give rise to the rating, rather than the rating itself, are the real cause for the action, and should be alleged in detail, giving the employee the opportunity to defend against specific charges of misconduct. However, when the ratings were attached to and made part of the notice, the notice was sufficient. *Cilano v. Department of Employment Security*, 356 So.2d 458 (La.App. 1 Cir. 1977)

If an unsatisfactory service rating is reversed, a re-rating of unsatisfactory automatically falls. *Hamlett v. Division of Mental Health,* 325 So.2d 696 (La.App. 1 Cir. 1976) **[Decided when less than satisfactory ratings were appealable to the Commission, but the concepts are probably still applicable]**

A permanent employee's unchallenged sub-standard service ratings may *per se* serve as the basis of dismissal. *Heinberg v. Department of Employment Security,* 256 So.2d 747 (La.App. 1 Cir. 1971) **BUT SEE: *Cilano,* above.**

Rule 10.6 requires the rating supervisor to provide documentation to support any factor rated "needs improvement" or "poor." "Documentation" as used in Rule 10.6(a) refers to the comments by the supervisor on the PPR form made at the end of the rating period. Inherent in this definition is that the comments on the form must reference behavior that was the subject of communication through the rating period. Therefore, for a supervisor to effect a "needs improvement" or "poor" rating, the rating supervisor must be able to demonstrate that either written or verbal communication has occurred through the year which supports the documentation via comments on the PPR form for the lower rating. Without the demonstrated communication, the lower rating must fall. *Besson v. Bayou Lafourche Fresh Water District*, CSC Docket No. 14296; 1/10/02 [CSC decision on application for review]

Rule 11.1 – Hours of Work

Rule 11.1(b) is not unconstitutional, but the Commission cannot approve a method of establishing hours of work in excess of 40 hours per week that lies solely in the

agency's discretion and that will not apply equally to all positions in the affected class. *Meaux v. Department of Highways,* 228 So.2d 680 (La.App. 1 Cir. 1969)

To have the effect of law, the governor must approve the rules regarding hours of work, but he does not have to approve any individual's hours of work. *Meaux v. Department of Highways*, 228 So.2d 680 (La.App. 1 Cir. 1969)

Rule 11.9 – Enforced Annual Leave

An agency may place an employee on enforced annual leave between the date a termination is rescinded and the effective date of the re-termination. *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491

When an agency is investigating possible wrongdoing by an employee, the adoption of Rule 12.10 preempted the agency’s discretion under Rules 11.9 (enforced annual leave) and 11.29(d) [current Rule 21.6(b)] (enforced compensatory leave). *Munson v. University Medical Center, Louisiana Health Care Authority,* CSC Docket Nos. 11231 and S-11376; 8/9/00 [Referee decision; application for review denied 9/13/00]; cited with approval in *Craig v. Dept. of Public Safety & Corrections, Swanson Correctional Center for Youth*, CSC Docket No. S-15157; 1/19/05 [CSC decision on application for review]

When an appointing authority places an employee on enforced annual leave for a period that extends beyond thirty days, fundamental principles of good faith and fair dealing inherent in the rules require the appointing authority to communicate to the employee the rational basis related to a governmental interest for requiring the use of such leave. The detailed reasons or time requirements of Chapter 12 do not have to be met, but the appointing authority must share its reasons for its actions with the employee. *Clary v. Department of Health and Hospitals, Hammond Developmental Center,* CSC Docket No. 13189; 11/4/99 [CSC decision on application for review]

Rule 11.10 – Payment for Annual Leave upon Separation

A “use it or lose it” leave policy does not *per se* violate LSA-R.S. 23:631 or 634. However, the failure to pay on retirement the value of accrued annual leave that was earned under the policy violated these statutes. *Wyatt v. Avoyelles Parish School Board,* 2001-3180, 2001-0131, 2001-0259 (La. 12/4/02); 831 So.2d 906

Vacation pay is an “amount then due” for purposes of LSA-R.S. 23:631 if, according to the employer’s stated vacation policy, the employee is eligible for and has accrued the right to take vacation time with pay and the employee has not taken or been compensated for the vacation time as of the date of his resignation. (Agency policy allowed employees to use annual leave accrued during the year prior to and the year of resignation.) Thus, employees were entitled to compensation for annual leave accrued during this period. *Wyatt v. Avoyelles Parish School Board,* 2001-3180, 2001-0131, 2001-0259 (La. 12/4/02); 831 So.2d 906

The 300-hour cap on payment for annual leave is constitutional. *Heirs of Tarver v. State, Department of Health and Hospitals,* 94-1121 (La.App. 1 Cir. 4/7/95); 653 So.2d 1346

Rule 11.10 is not meant to apply to settlements wherein a resignation is substituted for a termination. In such a case the parties are simply settling their differences and there is no separation as contemplated by that rule. A separation pursuant to that rule contemplates a voluntary leaving or the involuntary removal through the application of civil service rules. The parties may agree that up to 300 hours of annual leave should be paid when a resignation is substituted for a disciplinary action, but Rule 11.10(a) does not mandate such payment where a resignation is substituted for a disciplinary action in the course of a settlement. *Young v. Department of Revenue*, CSC Docket No. S-13808; 3/29/01 [CSC decision on application for review]

Rule 11.13 – Use of Sick Leave

A valid contract cannot be formed as a result of a legally unauthorized employer policy and consequently, an invalid contract cannot create a vested property right. Because the practice of "running out" sick leave was in direct contravention of applicable city civil service rules, a valid contract was not formed between police officers and the City. Consequently, the legally unauthorized practice of "running out" sick leave prior to retirement cannot serve to create in plaintiffs' favor a vested right to be compensated for accumulated sick leave earned between July 10, 1970 and July 10, 1980, on a one-to-one basis. *LaFleur v. City of New Orleans,* 2001-3224 (La. 12/4/02); 831 So.2d 941

Although the record clearly established the existence of a departmental practice that might have constituted a benefit that vested in the form of deferred compensation had the policy been authorized by law, the fact that the policy violated express provisions of city civil service rules prevents the establishment of a vested right in favor of the plaintiffs. Accordingly, this Court cannot fashion a remedy for the officers who had an expectation that they would receive this benefit at retirement, based on the fact that some officers were able to receive one-for-one compensation by taking advantage of this legally unauthorized policy. *LaFleur v. City of New Orleans,* 2001-3224 (La. 12/4/02); 831 So.2d 941

When the employee is receiving workmen's compensation benefits, there is no need to apply for sick leave and annual leave to sustain status as an employee. *Dickson v. Department of Highways,* 234 La. 1082, 102 So.2d 464 (1958)

Using sick leave for any purpose other than those listed in Rule 11.13 is a misuse of sick leave and amounts to misconduct constituting cause for discipline. *Norbert v. LSU Health Sciences Center, University Medical Center*, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___ [working a second job while on sick leave from state job]; *Sterling v. Department of Public Safety & Corrections, Louisiana State Penitentiary*, 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448 [taking a training course while on sick leave]

It is an abuse of sick leave to take the Certified Public Accountant examination while on sick leave. *Ferguson v. Department of Health and Human Resources,* 451 So.2d 165 (La.App. 1 Cir. 1984)

An employee is entitled to use accrued sick leave when his absence from work is due to an illness or injury that prevents him from performing his usual duties. [Rule 11.13] However, Rule 11.27(g) limits this right by allowing an employee to be placed on leave without pay for the period of unapproved absence. For purposes of Rule 11.27(g), an absence is unapproved when the employee does not follow his or her agency's policy for obtaining approved leave. *Diel v. Office of Group Benefits*, CSC Docket No. 15070; 10/22/03 [CSC decision]

Rule 11.13.1 – Enforced Sick Leave

Where the employee claimed, and his physician confirmed, that the employee suffered from a permanent disability and could not: 1) stand for prolonged periods of time; 2) run in the event of an emergency; 3) work near chemical fumes or tobacco smoke or in extreme weather conditions; 4) walk more than five yards; 5) climb stairs; 6) work more than eight hours a day; 7) work shift work or on weekends or holidays; or 8) be on-call, the employee could work, but he could perform virtually none of the duties expected of a Corrections Sergeant at a prison. Under these circumstances, an agency can place an employee on enforced sick leave. An employee’s asserting a medical disability that prevents his agency from assigning him the essential functions of his job is the same as an employee’s asserting the need to be absent from work because of illness or injury. *Marsch v. Department of Public Safety and Corrections,* CSC Docket Nos. 14736 and S-14756; 11/8/02 [Referee decision; application for review denied 11/13/03]

When an employee reports to work ready, willing, and able to perform the essential functions of his job, an agency may not send the employee home on enforced sick leave. *Coates v. Department of Public Safety and Corrections, Jetson Correctional Center for Youth,* CSC Docket Nos. 12719 and 13010; 5/19/99 [CSC decision]

Rule 11.14 – Certificate Required when Sick Leave Taken

It is the employee's, not the employer's, responsibility to obtain a medical excuse for absence. *Hill v. Department of Health and Human Resources,* 457 So.2d 781 (La.App. 1 Cir. 1984)

An employer is entitled to know how long an employee will be absent so that it can make provisions for carrying out that employee's duties during his absence. *Hill v. Department of Health and Human Resources,* 457 So.2d 781 (La.App. 1 Cir. 1984)

An appointing authority can reject a suspicious medical certificate. *Ferguson v. Department of Health and Human Resources,* 451 So.2d 165 (La.App. 1 Cir. 1984)

Rule 11.21 – Workmen's Compensation Payments

Rule 11.21, which prohibits an employee from drawing both full pay and workmen's compensation, is legal and constitutional. *McNeely v. Department of Health and Human Resources,* 413 So.2d 594 (La.App. 1 Cir. 1982); *Basco v. State, Department of Corrections,* 335 So.2d 457 (La.App. 1 Cir. 1976)

To apply Rule 11.21, the employee's gross workmen's compensation benefit is to be used rather than the net compensation. An employee is not entitled to deduct the amount of attorney's fees from his gross workmen's compensation benefit for the purposes of "buying back" his sick leave. *McNeely v. Department of Health and Human Resources,* 413 So.2d 594 (La.App. 1 Cir. 1982)

Rule 11.23 – Civil, Emergency, and Special Leave

Rule 11.23(e) requires an agency to grant an employee sufficient time off to vote. *Department of Corrections v. Cage,* 418 So.2d 3 (La.App. 1 Cir. 1982)

Rule 11.27 – Leave without Pay

Rule 11.27(g) does not permit an agency to impose leave without pay on an employee whose license has expired. *Green v. Louisiana State University Health Sciences Center-Shreveport,* 2006-2437 (La.App. 1 Cir. 9/14/07); NDFP

Leave without pay is initiated by the employee unless imposed by the appointing authority for an unapproved absence. The rules do not recognize a mandatory leave without pay status. *Green v. Louisiana State University Health Sciences Center-Shreveport,* 2006-2437 (La.App. 1 Cir. 9/14/07); NDFP; *Department of Public Safety and Corrections, Office of State Police v. Temple,* 93-1899 (La.App. 1 Cir. 6/24/94); 638 So.2d 1173 [State Police Commission case]

When a settlement reinstates an employee without back pay, without past merit increases, and without earning leave between the termination and the reinstatement, the employee is in leave without pay status. This period of time does not count as state service for layoff purposes. *Maradiaga v. University of New Orleans*, 546 So.2d 579 (La.App. 1 Cir. 1989)

It is incumbent upon the employee to provide the employer with the medical information needed to consider an extension of leave without pay. *Hill v. Department of Health and Human Resources*, 457 So.2d 781 (La.App. 1 Cir. 1984)

If an employee does not return to work on the first working day after his leave without pay has expired, the employee has abandoned his job. The fact that the absence was involuntary due to physical disability is immaterial. *Hill v. Department of Health and Human Resources*, 457 So.2d 781 (La.App. 1 Cir. 1984)

If an employee abuses sick leave, he can be placed on leave without pay for his absence that was not due to illness. *Ferguson v. Department of Health and Human Resources,* 457 So.2d 781 (La.App. 1 Cir. 1984)

An employee is entitled to use accrued sick leave when his absence from work is due to an illness or injury that prevents him from performing his usual duties. [Rule 11.13] However, Rule 11.27(g) limits this right by allowing an employee to be placed on leave without pay for the period of unapproved absence. For purposes of Rule 11.27(g), an absence is unapproved when the employee does not follow his or her agency's policy for obtaining approved leave. *Diel v. Office of Group Benefits*, CSC Docket No. 15070; 10/22/03 [CSC decision]

When an employee follows the established procedure for obtaining approved sick leave, his absences are not unapproved. Therefore, leave without pay cannot be imposed. *Diel v. Office of Group Benefits*, CSC Docket No. 15070; 10/22/03 [CSC decision]

CHAPTER 4

CIVIL SERVICE RULES: CHAPTER 12

DISCIPLINE, REMOVAL, AND RESIGNATIONS

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Rule 12.1 – Appointing Authority

Disciplinary action taken by someone other than a proper appointing authority is void. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811; *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900; *Pellitteri v. Orleans Levee District*, 633 So.2d 615 (La.App. 1 Cir. 1993); *Louisiana Public Service Commission v. Cheathon,* 625 So.2d 703 (La.App. 1 Cir. 1993); *Board of Commissioners, Port of New Orleans v. Livingston,* 546 So.2d 259 (La.App. 1 Cir. 1989); *DuBois v. Department of Health and Human Resources*, 448 So.2d 230 (La.App. 1 Cir. 1984); *Caston v. Executive Department, Division of State Buildings and Grounds,* 331 So.2d 864 (La.App. 1 Cir. 1976); *Bennett v. Division of Administration*, 307 So.2d 118 (La.App. 1 Cir. 1974); *Tassin v. Louisiana Wildlife and Fisheries Commission*, 193 So.2d 812 (La.App. 1 Cir. 1966); *Miller v. State Department of Health*, 135 So.2d 570 (La.App. 1 Cir. 1961)

The requirement that the disciplinary action be issued by the appointing authority is to be strictly construed. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811; *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900; *Pellitteri v. Orleans Levee District*, 633 So.2d 615 (La.App. 1 Cir. 1993); *Louisiana Public Service Commission v. Cheathon,* 625 So.2d 703 (La.App. 1 Cir. 1993)

The appointing authority for all employees in the Office of Adult Services of the Department of Public Safety and Corrections is the Secretary. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

The fact that the Undersecretary is responsible for “personnel management” does not give the Undersecretary appointing authority for all employees of the Department of Public Safety and Corrections. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

The Commissioner of Agriculture does not have “concurrent” appointing authority with the Assistant Commissioners. The statutes are specific on the disbursement of appointing authority. *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900

The appointing authorities for the Department of Health and Human Resources are the Assistant Secretaries and the Undersecretary. *DuBois v. Department of Health and Human Resources*, 448 So.2d 230 (La.App. 1 Cir. 1984)

Where confusion existed at the hearing concerning the necessity for proving appointing authority, the interest of justice required that the agency be allowed to present additional evidence and the case was remanded to the Commission. *DuBois v. Department of Health and Human Resources,* 448 So.2d 230 (La.App. 1 Cir. 1984)

A letter of warning, counseling, or reprimand does not have to be issued by an appointing authority. *Leonard v. Department of Public Safety and Corrections,* CSC Docket No. 15491; 2/23/05 [CSC decision]; *Wilson v. Department of Health and Hospitals*, CSC Docket No. S-15118; 3/17/04 [CSC decision]

Rule 12.1 – Delegation of Appointing Authority [specifically allowed by Rule 1.4]

A delegation of power is not a surrender of power. The words “surrender” and “delegate” are not synonymous and there is a well-recognized legal distinction between them. The former means to give up, to relinquish, to yield or resign in favor of another. The latter means entrusting power to another to act for the good of the one who authorizes him. *Mouledoux v. Maestri*, 197 La. 526, 2 So.2d 11 (1941)

Appointing authority can only be delegated by someone who has that authority. *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900

The delegation from the President of the Board to the Managing Director, which delegated “authority to serve as the Appointing Authority for the Orleans Levee Board … include[ing] …making appointments to positions, reprimanding, suspending from duty without pay, or utilizing other disciplinary methods; terminating employment for cause” was sufficient. However, the re-delegation from the Managing Director to the Acting Personnel Director, which delegated authority to act as “Acting Personnel Director” … encompass[ing] those activities affecting staff which are deemed necessary for the orderly function of the agency … include[ing] initiating, processing, signing, … personnel documents and records of personnel transactions” but included no specific language concerning appointments or discipline, fell short of delegating appointing authority. *Pellitteri v. Orleans Levee District*, 633 So.2d 615 (La.App. 1 Cir. 1993)

This language was considered sufficient to delegate appointing authority: “The President, or an officer designated by her, is authorized as the appointing authority to make and approve personnel actions relating to classified personnel, including disciplinary actions required to be expressed in writing.” *Baker v. Southern University*, 604 So.2d 699 (La.App. 1 Cir. 1992)

The Board of Supervisors of Southern University can lawfully delegate appointing authority to the President of the Southern University system, notwithstanding LSA-R.S. 17:3305B, which provides that the head of each college shall appoint and fix salaries of classified employees, subject to approval by the president of the system and the board. (Here, the head of the college and the president of the system were the same person and by an amendment to the Board bylaws, the Board eliminated the need for its approval.) *Baker v. Southern University*, 604 So.2d 699 (La.App. 1 Cir. 1992)

An appointing authority can orally delegate the authority to sign a letter on his behalf. *Toms v. Louisiana Health and Human Resources Administration,* 349 So.2d 941 (La.App. 1 Cir. 1977)

Appointing authority can be delegated by resolution of a board. *Tassin v. Louisiana Wildlife and Fisheries Commission,* 193 So.2d 812 (La.App. 1 Cir. 1966)

Rule 12.1 – Re-Delegation of Appointing Authority

Appointing authority can be re-delegated. *Pellitteri v. Orleans Levee District*, 633 So.2d 615 (La.App. 1 Cir. 1993); *Appeal of Kennedy,* 442 So.2d 566 (La.App. 1 Cir. 1983)

The re-delegation from the Managing Director to the Acting Personnel Director, which delegated authority to act as "Acting Personnel Director" … encompass[ing] those activities affecting staff which are deemed necessary for the orderly function of the agency … include[ing] initiating, processing, signing, … personnel documents and records of personnel transactions" but included no specific language concerning appointments or discipline, fell short of delegating appointing authority. *Pellitteri v. Orleans Levee District*, 633 So.2d 615 (La.App. 1 Cir. 1993)

Rule 12.1 – Proof of Delegation of Appointing Authority [See also Rule 13.19(t).]

Delegation of appointing authority may be proved as any other fact, by direct or circumstantial evidence. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811; *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900; *Louisiana Public Service Commission v. Cheathon,* 625 So.2d 703 (La.App. 1 Cir. 1993)

Delegation of appointing authority can be proved by introduction of an authentic act delegating authority. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811; *Taylor v. Department of Health and Human Resources,* 491 So.2d 752 (La.App. 1 Cir. 1986)

An authentic act is a writing executed before a notary and two witnesses and signed by each party who executed it, the witnesses, and the notary. LSA-C.C. art. 1833. A memorandum and an affidavit do not qualify as authentic acts. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Rule 13.19(t) establishes what evidence is needed to prove a *prima facie* delegation of appointing authority – an authentic act or a certified copy thereof. In the absence of such evidence, the burden is on the agency to present sufficient admissible evidence to prove the alleged delegation. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Where the only evidence to prove delegation of appointing authority was a "retroactive" affidavit signed before a notary but no witnesses and a non-authenticated memo, proof was insufficient. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Delegation of appointing authority may be implied when there is sufficient evidence of past practice and custom, over time, that show intent to delegate. *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900; *Louisiana Public Service Commission v. Cheathon,* 625 So.2d 703 (La.App. 1 Cir. 1993)

The delegation from the President of the Board to the Managing Director, which delegated "authority to serve as the Appointing Authority for the Orleans Levee Board … include[ing] …making appointments to positions, reprimanding, suspending from duty without pay, or utilizing other disciplinary methods; terminating employment for cause" was sufficient. However, the re-delegation from the Managing Director to the Acting Personnel Director, which delegated authority to act as "Acting Personnel Director" … encompass[ing] those activities affecting staff which are deemed necessary for the orderly function of the agency … include[ing] initiating, processing, signing, … personnel documents and records of personnel transactions" but included no specific language concerning appointments or discipline, fell short of delegating appointing authority. Testimony from the President and the Managing Director was not sufficient. *Pellitteri v. Orleans Levee District*, 633 So.2d 615 (La.App. 1 Cir. 1993)

Where the only evidence of proof of delegation of appointing authority to the Facility Administrator was the rulebook written by the Facility Administrator, proof of the delegation is insufficient. *DuBois v. Department of Health and Human Resources*, 448 So.2d 230 (La.App. 1 Cir. 1984)

Where confusion existed at the hearing concerning the necessity for proving appointing authority, the interest of justice required that the agency be allowed to present additional evidence and the case was remanded to the Commission. *DuBois v. Department of Health and Human Resources,* 448 So.2d 230 (La.App. 1 Cir. 1984)

Rule 12.2(a) – Cause in General

The penalty must be commensurate with the infraction. *Walters v. Department of Police of City of New Orleans*, 454 So.2d 106 (La. 1984); *Brickman v. New Orleans Aviation Board,* 236 La. 143, 107 So.2d 422 (1958); *Marsellus v. Department of Public Safety and Corrections,* 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656; *Villanueva v. Commission on Ethics for Public Employees*, 98-0980 (La.App. 1 Cir. 5/18/99); 812 So.2d 1; *Juneau v. Louisiana Board of Elementary and Secondary Education*, 506 So.2d 756 (La.App. 1 Cir. 1987); *Brumfield v. Department of Transportation and Development,* 498 So.2d 153 (La.App. 1 Cir. 1986); *Taylor v. Department of Health and Human Resources,* 491 So.2d 752 (La.App. 1 Cir. 1986)

The Commission must independently determine if the punishment is commensurate with the infraction as an element of cause. *Walters v. Department of Police of the City of New Orleans,* 454 So.2d 106 (La. 1984); *Brickman v. New Orleans Aviation Board*, 236 La. 143, 107 So.2d 422 (1958); *Jackson v. Department of Health and Hospitals,* 1998-2722 (La.App. 1 Cir. 2/18/00); 752 So.2d 357 [no showing that employee's refusal to

take polygraph impaired the service]; *Addison v. L.S.U. Medical Center in Shreveport,* 551 So.2d 750 (La.App. 1 Cir. 1989); *Guillory v. Department of Transportation and Development*, 475 So.2d 368 (La.App. 1 Cir. 1985) [no showing that the confrontation threatened the operation of the fleet landing and its tugboats]; *Simmons v. Division of Employment Security,* 144 So.2d 244 (La.App. 1 Cir. 1962)

Where there is no impairment of the public service, there is no cause for disciplinary action. The cause expressed must bear a real and substantial relationship to the public service being rendered. *Jones v. Louisiana Department of Highways*, 259 La. 329, 250 So.2d 356 (1971); *Leggett v. Northwestern State College*, 242 La. 927, 140 So.2d 5 (1962); *Brickman v. New Orleans Aviation Board*, 236 La. 143, 107 So.2d 422 (1958); *King v. Department of Public Safety*, 234 La. 409, 100 So.2d 217 (1958); *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987); *Hill v. Department of Health and Human Resources*, 457 So.2d 781 (La.App. 1 Cir. 1984); *Legros v. Department of Public Safety*, *Division of State Police*, 364 So.2d 162 (La.App. 1 Cir. 1978); *Stiles v. Department of Public Safety,* 361 So.2d 267 (La.App. 1 Cir. 1978); *Brown v. L. H. H. R. A, Lake Charles Mental Health Center*, 346 So.2d 758 (La.App. 1 Cir. 1977); *Rodriguez v. Board of Commissioners, Port of New Orleans,* 344 So.2d 436 (La.App. 1 Cir. 1977); *Hamlett v. Division of Mental Health,* 325 So.2d 696 (La.App. 1 Cir. 1976)

A violation of the civil service rules need not be supported by independent evidence of impairment of the efficiency of state service, nor by independent evidence of the intent to defraud. *Jones v. Louisiana Department of Highways*, 259 La. 329, 250 So.2d 356 (La. 1971)

Cause for disciplinary action exists if there is impairment of the efficiency of the public service and the conduct bears a real and substantial relation to the efficient and orderly operation of the public service. *Leggett v. Northwestern State College,* 242 La. 927, 140 So.2d 5 (1962); *Marsellus v. Department of Public Safety and Corrections,* 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656; *Lasserre v. Louisiana Public Service Commission,* 2004-0615 (La.App. 1 Cir. 4/8/05); 903 So.2d 474; *Wopara v. State Employees' Group Benefits Program,* 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67; *McGee v. Department of Transportation and Development*, 1999-2628 (La.App. 1 Cir. 12/22/00); 774 So.2d 1280; *Jackson v. Department of Health and Hospitals,* 1998-2722 (La.App. 1 Cir. 2/18/00); 752 So.2d 357; *Department of Public Safety and Corrections v. Hooker,* 558 So.2d 676 (La.App. 1 Cir. 1990); *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987); *Fields v. State of Louisiana, Department of Corrections*, 498 So.2d 174 (La.App. 1 Cir. 1986); *Brumfield v. Department of Transportation and Development*, 498 So.2d 153 (La.App. 1 Cir. 1986); *Coleman v. Department of Health and Human Resources*, 461 So.2d 583 (La.App. 1 Cir. 1984); *Jones v. Department of Health and Human Resources,* 430 So.2d 1203 (La.App. 1 1983); W*illiams v. Housing Authority of New Orleans,* 425 So.2d 1310 (La.App. 1 Cir. 1983); *Williams v. Department of Public Safety,* 415 So.2d 543 (La.App. 1 Cir. 1982); *Dent v. Department of Corrections*, 413 So.2d 920 (La.App. 1 Cir. 1982);

Thornton v. Department of Health and Human Resources, 394 So.2d 1269 (La.App. 1 Cir. 1981)

When the impairment is not substantial, there is no cause for the ultimate penalty of dismissal. *Norbert v. LSU Health Sciences Center, University Medical Center*, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___ [The employee gave a false reason for not working nights and worked her part-time night job while on sick leave from her state job]; *Marsellus v. Department of Public Safety and Corrections,* 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656 [The only competent proof was the employee's admission that he may have nodded off for a few seconds.]

Repeated improper conduct after lesser disciplinary action has been taken, the totality of individual lesser offenses, or even a single particularly aggravated incident have all been found to constitute legal cause for dismissal. *Norbert v. LSU Health Sciences Center, University Medical Center*, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___; *Appeal of Kennedy*, 442 So.2d 566 (La.App. 1 Cir. 1983); *Ryder v. Department of Health and Human Resources*, 400 So.2d 1123 (La.App. 1 Cir. 1981)

Dismissal was not arbitrary where, despite any personality problems between employee and her supervisor, the disciplinary actions, including the termination, were legitimate responses to documented work problems that disrupted the efficiency of the employer. *Turner v. Housing Authority of Bunkie,* 2004-2062, 2004-2063, 2004-2064, and 2004-2065 (La.App. 1 Cir. 9/23/05); 923 So.2d 702

Generally, impairment of the service must be affirmatively proved. *Lasserre v. Louisiana Public Service Commission,* 2004-0615 (La.App. 1 Cir. 4/8/05); 903 So.2d 474; **writ granted** 2005-1866 (La. 3/10/06**); then settled;** *Edwards v. Department of Corrections*, 461 So.2d 678 (La.App. 1 Cir. 1984); *Department of Corrections v. Murray,* 439 So.2d 484 (La.App. 1 Cir. 1983)

A violation is a violation, whether technical or otherwise. The circumstances surrounding the violation may have some determinative effect on the discipline meted out. *Berry v. Department of Public Safety and Corrections*, 2001-2186 and 2001-2187 (La.App. 1 Cir. 9/27/02); 835 So.2d 606 [State Police Commission case]

For an employee to be disciplined, any shortcomings must primarily be attributable to that employee. *Manning v. Department of Wildlife and Fisheries*, 99-0782 and 99-0783 (La.App. 1 Cir. 5/12/00); 762 So.2d 157; *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984)

Violation of the State Ethics Code is cause for disciplinary action. *Villanueva v. Commission on Ethics for Public Employees,* 98-0980 (La.App. 1 Cir. 5/18/99); 812 So.2d 1

When part of a pervasive problem is attributable to the employee, the employee can be disciplined even if part of the problem is attributable to her supervisor. *Housing Authority of the City of Morgan City v. Gibson,* 598 So.2d 545 (La.App. 1 Cir. 1992)

Independent evidence of impairment of the public service is not necessary when the misconduct for which an employee is indicted is on-the-job. However, the appointing authority is still required to prove the occurrence of the conduct complained of. *Department of Culture, Recreation, and Tourism v. Seifert,* 560 So.2d 492 (La.App. 1 Cir. 1990); *Matter of Geiger,* 337 So.2d 549 (La.App. 1 Cir. 1976)

The violation of a criminal statute need not be supported by independent evidence of impairment of the efficiency of the public service, especially when the criminal statute demands conformance by employees to certain guidelines. *Department of Public Safety and Corrections v. Hooker,* 558 So.2d 676 (La.App. 1 Cir. 1990)

Conduct that would constitute a violation of a criminal statute may constitute cause for disciplinary action. *Department of Public Safety and Corrections v. Hooker,* 558 So.2d 676 (La.App. 1 Cir. 1990)

Acquittal or dismissal of criminal charges does not preclude disciplinary action based on the same set of facts. *Department of Public Safety and Corrections v. Hooker,* 558 So.2d 676 (La.App. 1 Cir. 1990); *Foster v. Department of Public Welfare*, 144 So.2d 271 (La.App. 1 Cir. 1962), appeal after remand 159 So.2d 515 (La.App. 1 Cir. 1963)

There must be legal cause for a reprimand. *Appeal of Brisset,* 436 So.2d 654 (La.App. 1 Cir. 1983) **NOTE: The civil service rules were amended effective 8/5/92, to eliminate reprimands as disciplinary actions. See current Rule 12.9.**

Obviously, dismissal from permanent employment is the most extreme form of disciplinary action that can be taken against a classified state employee. Thus, cause justifying some lesser form of disciplinary action might not justify a dismissal. Repeated improper conduct after lesser disciplinary action has been taken, the totality of individual lesser offenses or even a single particularly aggravated incident have all been found to constitute legal cause for dismissal. Some examples of this are: insubordination and a stated refusal to comply with regulations; severe beating of fellow employees; an employee slapping and cutting a student of L.T.I. with a pen knife. *Ryder v. Department of Health and Human Resources*, 400 So.2d 1123 (La.App. 1 Cir. 1981)

"It was also obvious that somewhere along the line, it was decided that the sate service would be better off without plaintiff's services." *Stiles v. Department of Public Safety*, 361 So.2d 267, 272 (La.App. 1 Cir. 1978)

The constitutional protection favors employees as to whom there exists no reasonable ground for discharge. It is not intended to hamstring the administrative officer charged with operating his department efficiently. *Morrell v. Department of Welfare*, 266 So.2d 559 (La.App. 4 Cir. 1972)

To constitute ground for disciplinary action an employee's conduct need not necessarily violate a promulgated rule or regulation of the employer. It suffices if the conduct is tantamount to a violation of law or moral turpitude of such gravity as to impair the efficient operation of the particular service involved. *Guillory v. State Department of Institutions*, 219 So.2d 282 (La.App. 1 Cir. 1969); *Foster v. Department of Public Welfare*, 159 So.2d 515 (La.App. 1 Cir. 1963); *Bonnette v. Louisiana State Penitentiary*, *Department of Institutions,* 148 So.2d 92 (La.App. 1 Cir. 1962); *Miller v. State Department of Health*, 135 So.2d 570 (La.App. 1 Cir. 1961) **BUT SEE:** *Lasserre v. Louisiana Public Service Commission,* 2004-0615 (La.App. 1 Cir. 4/8/05); 903 So.2d 474, **writ granted** 2005-1866 (La. 3/10/06); 925 So.2d 491; **then settled**

Following a supervisor's instructions to violate agency policy and to falsify reports is no defense to dismissal. *Collins v. Division of Administration, Office of Risk Management,* CSC Docket Nos. S-14375 and S-14378; 2/19/02 [CSC decision]

Rule 12.2(a) – Cause: Impairment of the Public Service

If all employees were to absent themselves during hurricane preparations, the loss to the State would be immeasurable. Moreover, the additional energy and effort that the employee's presence would have produced should have resulted in a quicker completion of the task of moving artifacts to secure places. *Teeter v. Louisiana Department of Culture, Recreation and Tourism-Office of State Museum,* 2007-0578 (La.App. 1 Cir. 2/20/08); NDFP

Appointing authorities are entitled to maintain discipline and decorum at the work place. Absent such discipline, decorum, or respect for basic rights a work place can neither be a conducive place to perform nor a viable environment in which to accomplish the goals of the agency. It can easily be seen that a breach of decorum will impair the efficiency of state service. *Sibley v. LSU Health Sciences Center – Earl K. Long Medical Center,* 2007-0895 (La.App. 1 Cir. 2/8/08); NDFP

When an employee writes notations on a calendar that made a co-worker fearful of the employee and unwilling to work with him, the shop's operations are impaired. *Evans v. Louisiana State University Agricultural Center,* 2006-2025 (La.App. 1 Cir. 6/8/07); 965 So.2d 418 [The remarks were: "Tom received his new A.K. 47 Via Mail order;" "Tom assembled his new A.K. 47;" "Tom gunned down All of the student workers for Fun;" "Tom sharpened his knife;" "Watched Tom Kill a Person In cold Blood."]

Leaving another officer alone with a defiant, high-risk inmate, resulting in injury to the officer and other officers' having to abandon their posts to render aid impaired the prison's operations. *Jones v. Department of Public Safety and Corrections, Louisiana Correctional Institute for Women,* 2006-2466 (La.App. 1 Cir. 9/14/07); NDFP

Common sense dictates that unprofessional, verbally abusive, and unempathetic conduct exhibited in the care of mental patients is clearly prejudicial to the public service

of caring for in-hospital patients. *Brown v. Department of Health & Hospitals,* 2004-2348 (La.App. 1 Cir. 11/4/05); 917 So.2d 522

By its very nature, the refusal to obey a direct order impairs the efficient operation of a public service. This is particularly true if the employment is in a quasi-military capacity. *Ben v. Housing Authority of New Orleans*, 2003-1664 (La.App. 1 Cir. 5/14/04); 879 So.2d 803

One of the primary missions of the State Police is law enforcement. When an officer in that service violates the law, it casts doubt upon the credibility of the service to ably conduct one of its principal functions. Moreover, since the public puts its trust in the police department as a guardian of its safety, it is essential that the appointing authority be allowed to establish and enforce appropriate standards of conduct for its employees sworn to uphold that trust. *Berry v. Department of Public Safety and Corrections*, 2001-2186 and 2001-2187 (La.App. 1 Cir. 9/27/02); 835 So.2d 606 [State Police Commission case]

The importance of a supervisor knowing the location of his subordinate is patently obvious. *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448; *Ferguson v. Department of Health and Human Resources*, 451 So.2d 165 (La.App. 1 Cir. 1984)

The primary mission of a prison is to keep the institution secure. This goal can only be reached through the employment of a particular number of personnel and the deployment of such personnel in a strict, consistent manner. The impairment lies in the fact that the prison was placed in the untenable position of being short on personnel and having to spend beyond its budget in order to maintain the required level of security. Additionally, disrespect of superior officers and failure to follow their orders in a prison setting is particularly problematic and detrimental to the regimented schedule and chain of command necessary at a prison facility. The employee's misconduct (abuse of sick leave, refusing to answer questions in an investigation, disrespect of a superior officer, and falsification of FMLA documents) impaired the public service by placing the safety of the prison personnel and inmates at increased risk of an incident occurring on the premises. *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448

His misconduct (abuse of sick leave, treating a superior with disrespect, and making false statements about FMLA absence) impaired the DPSC's ability to provide a safe and secure environment, maintain employee morale, and remain within the prison's budget. Moreover, his absence necessitated reallocation of resources and exposed the department to payment of overtime to employees called in to cover his shifts. *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-0961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448

There is no need for a showing of a particular incident or emergency to establish impairment of the public service. *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-0961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448

A failure by employees to follow prescribed policies and procedures intrinsically weakens the orderly operation of a public institution and may lead to abuses of discretion. *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-0961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448

By knowingly submitting false information on a job description form, and by certifying the accuracy of the incorrect and misleading job description, the employee and his supervisor impaired the Department of State Civil Service's ability to achieve correct classification for pay and promotional purposes. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

A person with a history of falsifying records could easily undermine the integrity of the records to the detriment of both the agency and the employees the plan is intended to serve. *Board of Trustees, State Employees Group Benefits Program v. Moncrieffe*, 93-1393 (La.App. 1 Cir. 10/7/94); 644 So.2d 679

The noticeable odor of alcohol on a security officer's breath impairs security because it increases the potential for violent acts by prisoners: they perceive the officer as weak. *Ravencraft v. Department of Public Safety and Corrections,* 608 So.2d 1051 (La.App. 1 Cir. 1992)

The service was impaired when the employee persistently refused to perform the duties for which he was being paid, resulting in supervisory personnel having to set aside their duties to deal with the employee's refusal to accept assignments. *King v. Department of Transportation and Development,* 607 So.2d 789 (La.App. 1 Cir. 1992)

An employee's refusal to obey a direct order is conduct that by its very nature, impairs the efficient operation of the public service for which he was employed, particularly at a penal institution where the chain of command and obedience to orders may mean the difference between life and death or order and disorder. *Banks v. Department of Public Safety and Corrections,* 598 So.2d 515 (La.App. 1 Cir. 1992); *Wells v. Department of Public Safety and Corrections,* 498 So.2d 266 (La.App. 1 Cir. 1986). However, the order itself must have some relationship to the operation of the public service for failure to comply, by its nature, to affect the efficient operation of the public service. *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987)

An admission by a state trooper that he used cocaine while employed by the State Police, in violation of both criminal law and the State Police Code of Conduct and Ethics is sufficient legal cause for disciplinary action. In doing so he has violated the laws he is sworn to uphold. *Department of Public Safety and Corrections, Division of State Police v. Piazza,* 588 So.2d 1218 (La.App. 1 Cir. 1991)

The Police Department is a highly visible arm of local government. Its efficient performance depends in great measure on the smoothness and tranquility of its internal operations and the public respect and confidence which it enjoys. Although the record contains no objective evidence demonstrating actual impairment of the efficiency of the department's operations, the very nature of the employee's statements are such as to disrupt the smoothness of the internal operations of the Police Department and shake the respect and confidence of the public in that department. In our view, the employer's interest in this case clearly outweighed the employee's constitutional right to freedom of speech. (The employee accused the Police Chief of setting up a council member for a narcotics arrest because the council member was investigating hiring within the police department.) *Dix v. City of Lake Charles*, 569 So.2d 1112 (La.App. 3 Cir. 1990)

Disregarding a means developed by an employer to prevent abuse of sick leave impairs the public service, even if coverage is arranged, because it hindered supervisors' ability to enforce the sick leave policy. *Claverie v. L.S.U. Medical Center in New Orleans,* 553 So.2d 482 (La.App. 1 Cir. 1989)

Failure by an employee to follow prescribed policies and procedures intrinsically weakens the orderly operation of a public institution and may lead to abuses of discretion. *Wells v. Department of Public Safety and Corrections,* 498 So.2d 266 (La.App. 1 Cir. 1986)

Conduct impaired the public service where it resulted in loss of interest on state funds and jeopardized letters of credit and where the employee failed to obtain federal reimbursement. *Brumfield v. Department of Transportation and Development,* 498 So.2d 153 (La.App. 1 Cir. 1986)

When an employee takes it upon himself to determine a policy question, the department's efficient and orderly operation is hampered. Allowing every employee to make policy determinations, such as whether an emergency exists, would result in chaos, and ultimately reduce the workload produced by the employees. The actions of the plaintiff, if not disciplined, could lead to the decline of the department's morale, and the loss of respect and leadership ability of the department's management staff. Such actions are clearly detrimental to be efficient operation of the Department of Finance, and constitute sufficient cause for disciplinary action. *Roby v. Department of Finance*, 496 So.2d 1096 (La.App. 4 Cir. 1986)

Action that threatens the integrity of the office (borrowing money from a probationer) is grounds for termination. *Thomas v. Department of Corrections*, *Office of Probation and Parole,* 442 So.2d 554 (La.App. 1 Cir. 1983)

Failure of nurse's aide in hospital to follow instructions impairs the hospital's operations. *Jones v. Department of Health and Human Resources*, 430 So.2d 1203 (La.App. 1 Cir. 1983)

Failure of tower guard to be attentive impairs the operation of a prison. *Dent v. Department of Corrections*, 413 So.2d 920 (La.App. 1 Cir. 1982)

The service is impaired when an employee initiates an argument and then devotes his undivided attention to solving his personal problems rather than doing his job. *Portis v. Department of Corrections*, 407 So.2d 435 (La.App. 1 Cir. 1981)

Respect to one's supervisor and obedience to lawful orders of those in charge are essential to the operation of an institution. *Portis v. Department of Corrections*, 407 So.2d 435 (La.App. 1 Cir. 1981)

The employee was charged with and convicted of theft of black walnut lumber from Chicot State Park, where he was employed as Park Ranger. There is an obvious connection between his conduct and the 'efficient operation of the public service' since he was found guilty of stealing from the very premises he was employed to protect. *Johnson v. State Parks and Recreation Commission,* 198 So.2d 180 (La.App. 1 Cir. 1967)

Generally, a public body has no authority to regulate or restrict its employees' activities when off duty, and regulations that may attempt to do so must be reasonable and not oppressive. An agency may discipline an employee for off-duty conduct in violation of a departmental rule, but only when the proscription against the conduct is reasonably necessary for the continued efficiency of the public service being rendered by the particular department. Prohibiting a Fire Marshall inspector from holding an outside job as a volunteer fire chief, which would require him to leave work with no forewarning, is reasonably necessary for the continued efficiency of Office of State Fire Marshall. The directive was not oppressive. It did not prohibit all outside employment. It did not even prohibit employees from engaging in fire fighting activities. It merely prohibited employees from holding jobs that could present the employee with a conflict of interest and would present the employee with a time conflict. *Crowe v. Department of Public Safety and Corrections, Public Safety Services, Office of State Fire Marshal*, CSC Docket No. S-14679; 1/27/03 [CSC decision]

The employees gave claim checks to a claims examiner in violation of agency procedure. As a result, they helped the examiner get money from bogus claims, the very situation the procedure sought to prevent. The employees falsified the Claims Payment Forms. As a result, they impeded detection of the scheme and compromised the integrity of the agency's records. Finally, the employees failed to report that their immediate supervisor had instructed them to violate agency procedures and to falsify records. As a result, they helped the scheme go undetected for as long as it did. The employees insist they knew nothing about the scheme and therefore did not knowingly participate in it. While this may have some bearing as to criminal charges, it is irrelevant here. The employees engaged in conduct that interfered with the agency's operations and cost the state a substantial amount of money. Therefore, there was cause for disciplinary action. *Collins v. Division of Administration, Office of Risk Management,* CSC Docket Nos. S-14375 and S-14378; 2/19/02 [CSC decision]

Any state employee should know that falsifying records is wrong. An employee who believes there is nothing wrong with falsifying state records is not sufficiently trustworthy to handle the state's money. *Collins v. Division of Administration, Office of Risk Managemen*t, CSC Docket Nos. S-14375 and S-14378; 2/19/02 [CSC decision]

An employee does not have to say he refuses to perform a task to be considered insubordinate. The employee is nonetheless insubordinate when he engages in tactics that amount to a passive refusal to perform the task required. By analogy, an employee does not have to refuse to take a polygraph examination before he can be charged with failing to cooperate in an investigation. The employee is just as uncooperative when he appears for a polygraph examination in no condition to be examined because of the amount of beer he had consumed that morning as he would be if he had not appeared at all. The result is the same: the investigation is impeded. *Hills v. Department of Health and Hospitals, East Louisiana State Hospital,* CSC Docket No. S-12127; 12/17/97 [CSC decision]

Rule 12.2(a) – Cause: Cumulative Disciplinary Action

Prior counseling sessions can be used to support the severity of the current disciplinary action. *Juneau v. Louisiana Board of Elementary and Secondary Education,* 506 So.2d 756 (La.App. 1 Cir. 1987); *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984)

Although prior reprimands may not be resurrected as grounds for further disciplinary action, they may be considered along with new grounds to determine if there is legal cause for the disciplinary action taken. *Murray v. Department of Revenue and Taxation,* 504 So.2d 561 (La.App. 1 Cir. 1986) **NOTE: This case was decided when reprimands were appealable disciplinary actions**.

Evidence of prior disciplinary action may be referred to in a letter of disciplinary action and may be used to evidence an employee's unreliability or indifference to the requirements of his job. Prior disciplinary action is relevant to the issues of cause and severity. *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984)

Prior disciplinary actions that did not advise the employee of his right to appeal may be cumulated and are not subject to collateral attack in the current disciplinary action. *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984)

The agency can refer to previous disciplinary action and unsatisfactory service ratings to support the severity of current disciplinary action and the Commission can refuse to hear testimony concerning the merits of the previous actions. *Smith v. Department of Health and Human Resources,* 408 So.2d 411 (La.App. 1 Cir. 1981); *Albert v. Louisiana State Penitentiary,* 396 So.2d 340 (La.App. 1 Cir. 1981); *Legros v. Department of Public Safety,* 364 So.2d 162 (La.App. 1 Cir. 1978); *Stiles v. Department of Public Safety,* 361 So.2d 267 (La.App. 1 Cir. 1978); *Rodriguez v. Board of Commissioners, Port of New*

Orleans, 344 So.2d 436 (La.App. 1 Cir. 1977); *Heinberg v. Department of Employment Security,* 256 So.2d 747 (La.App. 1 Cir. 1971) **NOTE: These cases were decided when unsatisfactory ratings were appealable to the Commission.**

While any of several minor charges against an employee, when viewed in isolation, might not justify his dismissal, the aggregation of those charges could be sufficient cause for his termination. Hence, even if appellant's culpability in the most recent incident had been equivalent to that of the other employee's misconduct, her past record in itself calls for the difference in treatment. *Smith v. Department of Health and Human Resources,* 408 So.2d 411 (La.App. 1 Cir. 1981)

The employee was not discharged solely for taking the materials. The notice of disciplinary action makes it quite clear that the employee's dismissal was the cumulative result of a long history of disciplinary measures taken against the employee and that the incident involving materials was merely "the straw that broke the camel's back." The employee's record warrants dismissal. *Legros v. Department of Public Safety,* 364 So.2d 162 (La.App. 1 Cir. 1978)

The difference between double jeopardy and cumulative disciplinary action is that in the former situation, there is no subsequent offense that prompted further disciplinary action. *Rodriguez v. Board of Commissioners, Port of New Orleans,* 344 So.2d 436 (La.App. 1 Cir. 1977)

The current agency can use prior discipline taken by previous agency-employer to support severity. *Chatman v. Division of Administration*, CSC No. S-14329; 8/14/01 [CSC decision]

Letters of warning, counseling, or reprimand may be used as an element of cumulative disciplinary action when they are based on the same or similar behavior as the behavior in the current action. The truth of the assertions in the letters of warning, counseling, or reprimand is not relevant, only that the manager had advised the employee of heightened concern in a particular area of performance. *Simien v. Office of the Governor, Office of Women's Services*, CSC Docket No. 13295; 3/11/99 [CSC decision on application for review]; *Coney v. DHH-Hammond Developmental Center,* CSC Docket No. 11550; 6/17/97 [CSC decision on application for review]

Rule 12.2(a) – Cause: Condonement, Estoppel, and Staleness

A six-month delay between the incident and the disciplinary action did not render the charge stale when extensive investigation was needed and the employee was away from work part of the time. *McGee v. Department of Transportation and* Development, 1999-2628 (La.App. 1 Cir. 12/22/00); 774 So.2d 1280

A four and one-half month delay between the infraction and notice of termination was not unreasonable, considering there was a thorough investigation, a multi-level review process within the agency, and no substantial prejudice to the employee. *Hudson v.*

Department of Public Safety and Corrections, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

An agency is not estopped from taking disciplinary action against an employee who falsifies his application, even if proper research on the agency's part would have revealed the employee's true work history at the time he was hired. His appointment to a position requiring sufficient integrity to deal with sensitive financial data was based, from its inception, on a lie. He cannot now use inefficient personnel policies or actions as a shield. *Board of Trustees, State Employees Group Benefits Program v. Moncrieffe*, 93-1393 (La.App. 1 Cir. 10/7/94); 644 So.2d 679

If an infraction is condoned in the past, or even in the present, it does not mean that it cannot give rise to disciplinary action. *Housing Authority of the City of Morgan City v. Gibson,* 598 So.2d 545 (La.App. 1 Cir. 1992)

An agency is estopped from using charges that occurred six months before termination, when the employee was assigned a satisfactory service rating after the incident occurred. *Nicholas v. Housing Authority of New Orleans*, 477 So.2d 1187 (La.App. 1 Cir. 1985)

When the appointing authority disciplines an employee, condones the action, or assigns a satisfactory service rating, the agency cannot resurrect these incidents as a basis for a later disciplinary action. *Nicholas v. Housing Authority of New Orleans*, 477 So.2d 1187 (La.App. 1 Cir. 1985)

The fact that an infraction has resulted in no disciplinary action in the past does not estop an agency from disciplining an employee for a similar infraction in the future. Nor is the agency required to put the employee on notice that the infraction will not henceforth be tolerated before disciplinary action is taken. *Goree v. Department of Corrections,* 468 So.2d 829 (La.App. 1 Cir. 1985)

A one-year lapse between the misconduct and the termination does not preclude disciplinary action. Staleness of a charge is to be decided on a case-by-case basis. *Lombas v. Department of Police,* 467 So.2d 1273 (La.App. 4 Cir. 1985)

Staleness alone is no reason to disregard charges against a classified employee. *Lombas v. Department of Police,* 467 So.2d 1273 (La.App. 4 Cir. 1985); *Bland v. City of Houma,* 264 So.2d 729 (La.App. 1 Cir. 1972); *Chassaignac v. Audubon Park Commission,* 259 So.2d 603 (La.App. 4 Cir. 1972); *Ragusa v. Department of Public Safety,* 238 So.2d 193 (La.App. 1 Cir. 1970)

An agency is not estopped by waiting five months after an incident to take disciplinary action unless the employee has already been disciplined for the incident. *Cartwright v. Department of Revenue and Taxation,* 460 So.2d 1066 (La.App. 1 Cir. 1984)

An employer does not waive its right to take action for an unauthorized payment if payment is made before a decision has been made on whether to bring charges against the employee for falsification of records. *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984)

An intervening satisfactory service rating prevents an agency from using a prior unsatisfactory rating to support discipline based on inadequate performance. *Leteff v. Department of Corrections,* 462 So.2d 254 (La.App. 1 Cir. 1984); *Wall v. Community Improvement Agency,* 365 So.2d 571 (La.App. 1 Cir. 1978)

A charge is not stale even though the misconduct occurred a long time before the disciplinary action was taken so long as the misconduct was not condoned and the charge is not raised as subterfuge for discrimination. *Chassaignac v. Audubon Park Commission,* 259 So.2d 603 (La.App. 4 Cir. 1972); *Ragusa v. Department of Public Safety,* 238 So.2d 193 (La.App. 1 Cir. 1970); *Cormier v. State Department of Institutions,* 230 So.2d 307 (La.App. 1 Cir. 1969)

Where the employee had already been disciplined for the misconduct, the charge was stale. *Hamlett v. Division of Mental Health,* 325 So.2d 696 (La.App. 1 Cir. 1976)

Where the misconduct was known to and specifically condoned by the appointing authority at the time the misconduct occurred, but was later resurrected to camouflage a politically motivated termination, the charge was stale. *Cormier v. State Department of Institutions,* 230 So.2d 307 (La.App. 1 Cir. 1969)

Where the agency was aware of the problem, but chose to transfer the employee to another area rather than discipline the employee, the charges could not later be resurrected after the employee's conduct no longer caused problems. *Robbins v. New Orleans Public Library,* 208 So.2d 25 (La.App. 4 Cir. 1968)

Letters (of counseling, warning, reprimand, and the like) are pieces of paper. They are not actions, much less disciplinary actions. They are supervisory tools. They have no immediate impact on the employee’s status, job, title, pay, or anything to which the employee has a property right. They may not be maintained in the employee’s publicly accessible personnel records. They are not appealable, but the employee has a right to respond and to have the response maintained with the letter. Typically, and in this case, line supervisors issue these letters to immediately document problems and expectations. Because these letters are not disciplinary actions, they do not prevent the appointing authority from taking disciplinary action for the conduct addressed in the letters, if discipline is warranted. The employee was not disciplined by an appointing authority for the incident. Therefore, estoppel does not apply. *Leonard v. Department of Public Safety and Corrections,* CSC Docket No. 15491; 2/23/05 [CSC decision]

Rule 12.2(a) – Cause: Double Jeopardy and *Res Judicata*

If the first attempt at disciplinary action is procedurally defective, the same charges can be used as the basis for a second disciplinary action. *Anderson v. Division of Employment Security,* 233 La. 694, 98 So.2d 155 (1957); *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491; *James v. LSU Health Sciences Center, 2001-1853* (La.App. 1 Cir. 11/8/02); 834 So.2d 470; *Appeal of Kennedy,* 442 So.2d 566 (La.App. 1 Cir. 1983); *Butler v. Department of Health and Human Resources,* 432 So.2d 1000 (La.App. 1 Cir. 1983); *Allen v. DHHR, Ruston State School,* 426 So.2d 234 (La.App. 1 Cir. 1983); *Floyd v. Louisiana Wildlife and Fisheries Commission,* 283 So.2d 537 (La.App. 1 Cir. 1973); *Louviere v. Pontchartrain Levee District,* 199 So.2d 392 (La.App. 1 Cir. 1967); *Washington v. Confederate Memorial Medical Center,* 160 So.2d 286 (La.App. 1 Cir. 1964)

The rescission of the first termination was similar to a judgment of nonsuit, to which an application of *res judicata* would be inappropriate, no determination having been made on the merits. *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491

Once an employee is disciplined for an infraction, the agency is estopped from seeking at a later date to revive the incident as ground for further disciplinary action. *Lundy v. University of New Orleans,* 1998-0054 (La.App. 1 Cir. 2/19/99); 728 So.2d 927

For an exception of *res judicata* to be sustained, there must be identity in the two suits as to the thing demanded, the cause of action, and the parties involved. *Leger v. Louisiana State University,* 601 So.2d 20 (La.App. 1 Cir. 1992)

It is not double jeopardy for an employee to be disciplined for the same reason for which he was denied a merit increase because the denial of a merit increase is not a disciplinary action. *Malone v. Department of Corrections,* 468 So.2d 839 (La.App. 1 Cir. 1985)

An employee cannot be disciplined twice for the same misconduct. *Lundy v. University of New Orleans,* 1998-0054 (La.App. 1 Cir. 2/19/99); 728 So.2d 927; *Hamlett v. Division of Mental Health,* 325 So.2d 696 (La.App. 1 Cir. 1976)

If a suspension is for the purpose of investigating a charge, the subsequent termination for the same reason is not double punishment. *Floyd v. Louisiana Wildlife and Fisheries Commission,* 283 So.2d 537 (La.App. 1 Cir. 1973)

An emergency suspension does not prevent the agency from taking additional disciplinary action for the same conduct. *Perrot v. Orleans Levee District*, CSC Docket No. S-10424; 6/15/1995 [CSC decision on application for review]

Rule 12.2(a) – Cause: "Progressive" Discipline

NOTE: The rules do not require progressive discipline; they require that each action be supported by cause.

The fact that an agency imposes a less severe penalty for a subsequent infraction of the same policy does not violate the concept of "progressive discipline" and does not provide a basis for setting aside the more severe penalty for the first infraction, when each penalty was supported by the facts surrounding the incident. *McGee v. Department of Transportation and Development*, 1999-2628 (La.App. 1 Cir. 12/22/00); 774 So.2d 1280

Rule 12.2(a) – Cause: Disparate Treatment

Similar wrongs by others cannot justify wrongful acts. *Reed v. Louisiana Wild Life and Fisheries Commission,* 235 La. 124, 102 So.2d 869 (1958); *Barnes v. Department of Highways,* 154 So.2d 255 (La.App. 1 Cir. 1963)

It is not prohibited discrimination to treat employees who are arrested for a felony differently from employees who plead guilty to a felony. *Bailey v. LSU Health Care Services Division,* 99-1981 (La.App. 1 Cir. 9/22/00); 767 So.2d 946

The disciplining of an employee who breaks the rules is obviously based at least in part upon the fact that that employee broke the rules, which is clearly a merit factor. The only non-merit factor is that other employees who broke the rules do no meet with similar disciplinary action. But it is no defense to a crime to say that others have broken the rules and are not prosecuted. Similarly, although an employee can legitimately complain that other employees were dealt with more leniently, though disciplined, an employee who is guilty cannot contend as a defense that other employees equally guilty received no disciplinary action. *Spell v. Department of Natural Resources,* 504 So.2d 1009 (La.App. 1 Cir. 1987)

Even if appellant's culpability in the most recent incident had been equivalent to that of the other employee's misconduct, her past record in itself calls for the difference in treatment. *Smith v. Department of Health and Human Resources,* 408 So.2d 411 (La.App. 1 Cir. 1981)

While the pertinence of the disciplinary treatment meted to the other employee involved in the incident to this case is highly questionable, the variance in punishments can be easily reconciled. The obvious distinction between the actions of appellant and the other employee is that appellant chose to arm herself with a dangerous weapon while the other employee did not. *Smith v. Department of Health and Human Resources,* 408 So.2d 411 (La.App. 1 Cir. 1981)

For a case involving disparate treatment among employees involved in the same incident, see *Williams v. Department of Health and Hospitals/OCDD/Pinecrest*

Development Center, CSC Docket No. 13005; 5/19/00 [CSC decision on application for review]

Rule 12.2(b) – Disciplinary Actions

In the case of a penalty imposed upon a permanent classified employee by an appointing authority, the penalties are limited by Rule 12.2(b). *Villanueva v. Commission on Ethics for Public Employees,* 96-1912 (La. 5/20/97); 693 So.2d 154

The civil service rules have a purpose and should be followed. Creative sanctions are not favored in this context. (The agency sent an employee home on leave without pay because her license had expired.) *Green v. Louisiana State University Health Sciences Center-Shreveport*, 2006-3427 (La.App. 1 Cir. 9/14/07); NDFP

The determination of what constitutes a disciplinary action is within the authority of the Commission though its rule-making power. *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544; *Rudloff v. Chief Administrative Office*, 413 So.2d 550 (La.App. 4 Cir. 1982)

The only disciplinary actions are those listed in Rule 12.2(b). *Adams v. Department of Health and Hospitals, Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

Enforced compensatory leave is not a disciplinary action, despite employee's claim that it was punitive in nature. *Adams v. Department of Health and Hospitals Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

To determine whether a reassignment is disciplinary, the focus must be on the reason for the action. *Adams v. Department of Health and Hospitals,* 1997-0750 (La.App. 1 Cir. 4/8/98); 710 So.2d 1176

Where the employee is expected to comply with state agency rules while on off-duty detail and the conduct on the off-duty detail can jeopardize the state job, and the disciplinary action has the appearance of action by the state agency, it will be treated as such. *Board of Commissioners, Port of New Orleans v. Livingston,* 546 So.2d 259 (La.App. 1 Cir. 1989)

Disciplinary action is taken not only to punish but also to instruct the wayward employee as to appropriate behavior in the workplace. *Roby v. Department of Finance*, 496 So.2d 1096 (La.App. 4 Cir. 1986)

Under the employee's interpretation of Rule 12.2(b), when an agency uses a discretionary action in an attempt to improve or correct an employee's behavior, the action becomes an appealable disciplinary action. However, Rule 12.2(b) means exactly the opposite. An agency may take any action within its authority to try to improve or correct an employee's behavior, but the action only rises to the level of discipline if it is

one listed in Rule 12.2(b) – *i.e.,* when it immediately impacts the employee's classification or current pay rate. We have repeatedly rejected the notion that an action not listed in Rule 12.2(b) can be *de* fac*t*o, constructive, or disguised discipline. The actions about which the employee complains (change of duties and cancellation of his pager, voice mail, and e-mail) are not among those listed in Rule 12.2(b). As such, Rules 12.7 and 12.8, which require a pre-deprivation procedure and prior written notice, do not apply. *Diel v. Office of Group Benefits*, CSC Docket No**.** 15070; 10/22/03 [CSC decision]

Where the appointing authority learned about irregularities in the promotional process and stopped the promotions before they had been approved by anyone with appointing authority, the employees were not promoted. As such, the transaction which returned them to the duties of Police Officer 2 was not a demotion. However, even if the employees had been promoted, the demotion that results from the recision of a promotion is not a disciplinary action. Therefore, cause is not required and Chapter 12 does not apply. *Skelly v. Board of Commissioners, Port of New Orleans,* CSC Docket Nos. 12902 and 12907; 1/21/99 [CSC decision]

An agency's decision to discontinue an employee's premium pay was not a disciplinary reduction in pay; the rules governing disciplinary actions are inapplicable. *Samuels v. Department of Public Safety and Corrections, WCI*, CSC Docket No. 12470; 3/12/98 [CSC decision]

Rule 12.2(a) and (b) – Cause for Dismissal [alphabetically, by topic]

Absence from duty station, prior discipline, broken tail light and no inspection sticker on state car, and unsatisfactory performance: *Spell v. Department of Natural Resources,* 504 So.2d 1009 (La.App. 1 Cir. 1987)

Accepting contributions from institutions the employee inspects: *Miller v. State Department of Health*, 135 So.2d 570 (La.App. 1 Cir. 1961)

Alcohol-related:

> DWI in state car: *Bailey v. Department of Public Safety and Corrections,* 2005-2474 (La.App. 1 Cir 12/6/06); 951 So.2d 234 [State Police Commission case; employee was off duty, but in state car]; *Antoine v. Department of Public Safety and Corrections,* 95-2558 (La.App. 1 Cir. 9/27/96); 681 So.2d 1282 [State Police Commission case]; *Floyd v. Louisiana Wildlife and Fisheries Commission*, 283 So.2d 537 (La.App. 1 Cir. 1973)
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> Intoxication on the job: *Antoine v. Department of Public Safety and Corrections*, 95-2558 (La.App. 1 Cir. 9/27/96); 681 So.2d 1282; *Book v. Louisiana Wild Life & Fisheries Commission*, 194 So.2d 768 (La.App. 1 Cir. 1967); *Spruill v. Louisiana Wildlife and Fisheries Commission*, 183 So.2d 141 (La.App. 1 Cir. 1966)

Reporting for a mandated polygraph examination in no condition to be examined because of the amount of beer consumed that morning: *Hills v. Department of Health and Hospitals, East Louisiana State Hospital,* CSC Docket No. S-12127; 12/17/97 [CSC decision]

Reporting to work at a prison with odor of alcohol on breath: *Ravencraft v. Department of Public Safety and Corrections,* 608 So.2d 1051 (La.App. 1 Cir. 1992)

Automobile-related:

Broken tail light and no inspection sticker on state car, absence from duty station, prior discipline, and unsatisfactory performance: *Spell v. Department of Natural Resources,* 504 So.2d 1009 (La.App. 1 Cir. 1987)

Failing to report accident in state car and running off road: *Walker v. State Parks and Recreation Commission*, 341 So.2d 1203 (La.App. 1 Cir. 1976)

Improper use of state car: *Burst v. Board of Commissioners, Port of New Orleans,* 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955 [using state car for personal hauling on state time]; *Book v. Louisiana Wild Life & Fisheries Commission*, 194 So.2d 768 (La.App. 1 Cir. 1967)

Communication-related:

Accusing the Police Chief of setting up a councilman for a narcotics arrest because the councilman was investigating hiring practices at the police department: *Dix v. City of Lake Charles*, 569 So.2d 1112 (La.App. 3 Cir. 1990)

Calling the media and engaging in a tense verbal exchange with the appointing authority while the cameras rolled: *Williams v. Orleans Levee District, Board of Commissioners,* 2000-0297 (La.App. 1 Cir. 3/28/01); 784 So.2d 657

Disrespectful communication: *Brickman v. New Orleans Aviation Board*, 236 La. 143, 107 So.2d 422 (1958) [complaints about agency procedure carried to the point of sabotage]; *Barclay v. Department of Commerce and Industry,* 228 La. 779, 84 So.2d 188 (1955) [name calling]; *Addison v. L.S.U. Medical Center in Shreveport,* 551 So.2d 750 (La.App. 1 Cir. 1989) [belligerence as to assignments]; *Tanner v. City of Baton Rouge*, 422 So.2d 1263 (La.App. 1 Cir. 1982) [public criticism of agency policy by someone whose job it was to enforce those policies – "This is a rip off. It's unconstitutional and they are stealing your money."]; *Dumez v. Houma Municipal Fire and Police Civil Service,* 408 So.2d 403 (La.App. 1 Cir. 1981) [telling superior, "F___ you" in public]; *Johnson v. Department of Finance,* (La.App. 4 Cir. 1977) [shouting and using profanity]

Disregarding the established procedures for an employee to pursue his grievance by using legal counsel and television media to interrogate and expose the appointing authority to embarrassment and ridicule: *Williams v. Orleans Levee District, Board of Commissioners,* 2000-0297 (La.App. 1 Cir. 3/28/01); 784 So.2d 657

Diverting federal funds to state use: *Barnes v. Department of Highways,* 154 So.2d 255 (La.App. 1 Cir. 1963)

Drug-related conduct:

> Failing drug test: *Murray v. Department of Police*, 97-2650 (La.App. 4 Cir. 5/27/98); 713 So.2d 838; M*ontegue v. City of New Fire Department,* 95-2166 (La.App. 4 Cir. 5/29/96); 675 So.2d 810
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> Refusing to submit to drug test when there was reasonable suspicion: *Banks v. Department of Public Safety and Corrections,* 598 So.2d 515 (La.App. 1 Cir. 1992)
>
> Drug use: *Department of Public Safety and Corrections v. Piazza,* 588 So.2d 1218 (La.App. 1 Cir. 1991) [State trooper admitted using cocaine, while employed, in violation of criminal law and the state police code of conduct]; *Sutton v. Department of Public Safety, Division of State Police*, 340 So.2d 1092 (La.App. 1 Cir. 1976) [officer smoked marijuana at a party while off duty]

Excessive leave and poor work: *Hoover v. Department of Finance*, 283 So.2d 298 (La.App. 4 Cir. 1973)

Failing polygraph test: *Evans v. DeRidder Municipal Fire and Police Civil Service Board,* 2001-2466 (La. 4/3/02); 815 So.2d 61

Failing to report to work within fifteen days following date of reinstatement order: *Orleans Levee District v. Glenn,* 577 So.2d 336 (La.App. 1 Cir. 1991) [Employee presented himself for work three and one-half months after the Commission denied the application for review.]

Falsifications:

> Employment applications: *Cottingham v. Department of Revenue*, 232 La. 546, 94 So.2d 662 (1957) [felony convictions]; *Board of Trustees, State Employees Group Benefits Program v. Moncrieffe,* 93-1393 (La.App. 1 Cir. 10/7/94); 644 So.2d 679 [separations from prior jobs]
>
> Filing false civil and criminal claims against appointing authority. *Rougeau v. Department of Social Services,* CSC Docket No. S-15882; 9/21/07 [Referee decision]

Records and reports: *Jones v. Louisiana Department of Highways,* 259 La. 329, 250 So.2d 356 (1971) [time and attendance and expense reports]; *Reed v. Louisiana Wild Life and Fisheries Commission,* 235 La. 124, 102 So.2d 869 (1958) [claimed mileage that had already been reimbursed by the federal government]; *Domas v. Division of Employment Security,* 227 La. 490, 79 So.2d 857 (1955) [travel expenses]; *Dunlap v. Louisiana State University Health Sciences Center*, 2005-1605 (La.App. 1 Cir. 6/9/06); 938 So.2d 109 [certification of mandatory continuing education]; *Department of Social Services v. Schneeweiss,* 588 So.2d 1185 (La.App. 1 Cir. 1991) [case records]; *Martin v. Department of Revenue and Taxation,* 525 So.2d 268 (La.App. 1 Cir. 1988) [odometer readings]; *Licausi v. Department of Health and Human Resources,* 458 So.2d 148 (La.App. 1 Cir. 1984) [site inspection reports]; *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984) [time and attendance reports]; *Dore v. Louisiana Health and Human Resources Administration,* 361 So.2d 229 (La.App. 1 Cir. 1978) [inspection reports]; *Michel v. Department of Public Safety, Alcoholic Beverage Control,* 341 So.2d 1161 (La.App. 1 Cir. 1976) [inspection reports]; *Harmon v. Louisiana Wild Life and Fisheries Commission,* 244 So.2d 922 (La.App. 1 Cir. 1970) [time sheets]; *Suire v. Louisiana State Board of Cosmetology,* 224 So.2d 7 (La.App. 1 Cir. 1969) [inspection reports]; *Collins v. Division of Administration, Office of Risk Management*, CSC Docket Nos. S-14375 and S-14378; 2/19/02 [CSC decision; claim records]

Statements: *Celestine v. Department of Public Safety & Corrections*, 2006-1481 (La.App. 1 Cir. 5/4/07); NDFP [lying about articles in his possession and how he obtained them]; *Bailey v. Department of Public Safety and Corrections,* 2005-2474 (La.App. 1 Cir 12/6/06); 951 So.2d 234 [State Police Commission case; lying about alcohol consumption]; *Sterling v. Department of Public Safety & Corrections, Louisiana State Penitentiary*, 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448 [lying about reason for FMLA]; *Sanders v. Department of Health and Human Resources*, 394 So.2d 629 (La.App. 1 Cir. 1980) [lying about attempted theft when questioned about it]; *Rodriguez v. Board of Com'rs, Port of New Orleans*, 344 So.2d 436 (La.App. 1 Cir. 1977) [giving false reasons for various actions] **BUT SEE:** *Barquet v. Department of Welfare*, 620 So.2d 501 (La.App. 4 Cir. 1993)

Immoral conduct:

Watchman operating a house of ill repute: *Leggett v. Northwestern State College*, 242 La. 927, 140 So.2d 5 (1962) [Employee brought such discredit on his character that he was no longer useful to the college]

Youth counselor with two husbands: *Broussard v. State Industrial School for Colored Youths*, 231 La. 24, 90 So.2d 73 (1956)

Improper financial transactions with inmates or probationers: *Thomas v. Department of Corrections, Office of Probation and Parole*, 442 So.2d 554 (La.App. 1 Cir. 1983) [borrowing money from a probationer]; *Speegle v. State Department of Institutions*, 198 So.2d 154 (La.App. 1 Cir. 1967)

Inability to perform job: *Dickson v. Department of Highways,* 234 La. 1082, 102 So.2d 464 (1958); *Heinberg v. Department of Employment Security,* 256 So.2d 747 (La.App. 1 Cir. 1971); *Guillory v. State Department of Institutions,* 219 So.2d 282 (La.App. 1 Cir. 1969); *Johnson v. State Parks and Recreation Commission,* 198 So.2d 159 (La.App. 1 Cir. 1967)

Incompetence/ Poor Performance: *Marsch v. LSU Health Sciences Center-Earl K. Long Medical Center,* 2007-1272 (La.App. 1 Cir. 2/8/08); NDFP [failing to enter trauma chart information into the computer promptly and admitting the wrong patient]; *Turner v. Housing Authority of Bunkie,* 2004-2062, 2004-2063, 2004-2064, and 2004-2065 (La.App. 1 Cir. 9/23/05); 923 So.2d 702 [failing to perform duties, attempting to blame others, and prior discipline]; *Housing Authority of the City of Morgan City v. Gibson,* 598 So.2d 545 (La.App. 1 Cir. 1992) [Budget overruns, failing to maintain records, failing to properly perform duties, and overpayments]; *Brumfield v. Department of Transportation and Development,* 498 So.2d 153 (La.App. 1 Cir. 1986); *Williams v. Housing Authority of New Orleans,* 425 So.2d 1310 (La.App. 1 Cir. 1983); *Alonzo v. Louisiana Department of Highways,* 268 So.2d 52 (La.App. 1 Cir. 1972); *Cunningham v. Caddo-Shreveport Health Unit*, 141 So.2d 142 (La.App. 1 Cir. 1962)

Insubordination:

> Refusing to answer employer's questions in investigation: *Lemoine v. Department of Police,* 348 So.2d 1281 (La.App. 4 Cir. 1977)
>
> Refusing to obey orders: *King v. Department of Public Safety of Louisiana,* 236 La. 602, 108 So.2d 524 (1959) [having filling cabinets repaired contrary to instructions]; *Teeter v. Louisiana Department of Culture, Recreation and Tourism-Office of State Museum,* 2007-0578 (La.App. 1 Cir. 2/20/08); NDFP [refusing to report for work for hurricane preparations]; *Ben v. Housing Authority of New Orleans*, 2003-1664 (La.App. 1 Cir. 5/14/04); 879 So.2d 803 [refusing to turn over a radio as ordered by supervisor]; *Housing Authority of the City of Morgan City v. Gibson,* 598 So.2d 545 (La.App. 1 Cir. 1992) [refusing to comply with order to repay money wrongfully acquired]; *Malone v. Department of Corrections, Louisiana Training Institute – Ball,* 468 So.2d 839 (La.App. 1 Cir. 1985) [tearing up the only copy of a statement after he was told he could not keep the statement in his possession]; *Carbonell v. Department of Health and Human Resources*, 444 So.2d 151 (La.App. 1 Cir. 1983) [refusing to change duty station based on her interpretation of the civil service rules]; *Department of Corrections v. Cage,* 418 So.2d 3 (La.App. 1 Cir. 1982) [refusing to report to work as ordered based on her interpretation of the civil service rules]; *Portis v. Department of Corrections,* 407 So.2d 435 (La.App. 1 Cir. 1981) [refusing to

return to work after twice being ordered to do so]; *Mauboules v. Louisiana Wild Life and Fisheries Commission,* 312 So.2d 899 (La.App. 1 Cir. 1975); *Book v. Louisiana Wild Life & Fisheries Commission,* 194 So.2d 768 (La.App. 1 Cir. 1967); *Crowe v. Department of Public Safety and Corrections, Public Safety Services, Office of State Fire Marshal*, CSC Docket No. S-14679; 1/27/03 [CSC decision; refusing to quit outside job as volunteer fire chief] **BUT**, for an employee to be disciplined for failing to follow a direct order, the order must be given in a manner that will be understood by the employee as an order. *Department of Corrections v. Murray,* 439 So.2d 484 (La.App. 1 Cir. 1983)

Refusing to perform tasks or performing tasks untimely: *Brown v. Department of Health & Hospitals,* 2004-2348 (La.App. 1 Cir. 11/4/05); 917 So.2d 522 [refusing to give client requested and warranted medication]; *Addison v. L.S.U. Medical Center in Shreveport,* 551 So.2d 750 (La.App. 1 Cir. 1989) [protracted insubordination with regard to assigned projects, failing to follow agency policy]; *Duncan v. Department of Public Safety*, 468 So.2d 797 (La.App. 1 Cir. 1985); *McKeller v. Louisiana State University*, 461 So.2d 585 (La.App. 1 Cir. 1984); *Jones v. Dept. of Health and Human Resources*, 430 So.2d 1203 (La.App. 1 Cir. 1983) [refusing to assist with burn patient and to deliver lab work immediately]; *Thornton v. DHHR, Earl K. Long Memorial Hospital,* 394 So.2d 1269 (La.App. 1 Cir. 1981) [refusing to transport patients to nuclear medicine]; *Hamilton v. Louisiana Health & Human Resources Administration,* 341 So.2d 1190 (La.App. 1 Cir. 1976) [refusing to bag laundry]

Refusing to take physical examination: *Yates v. Manale,* 377 F. 2d 888 (C.A. La. 1967); *Mays v. United States Civil Service Commission,* 230 F.Supp. 659 (D.C. La. 1963)

Refusing to take polygraph test: *Jones v. Department of Public Safety and Corrections,* 2004-1766 (La.App. 1 Cir. 9/23/05); 923 So.2d 699; *Creadeur v. Department of Public Safety,* 364 So.2d 155 (La.App. 1 Cir. 1978); *Dieck v. Department of Police,* 266 So.2d 500 (La.App. 4 Cir. 1972) [failure to comply with order to take polygraph; employee was suspected of criminal activity and refused to comply based on advice of counsel] **BUT SEE**: *Jackson v. Department of Health and Hospitals,* 1998-2722 (La.App. 1 Cir. 2/18/00); 752 So.2d 357; *Jefferson Levee District v. Lanza,* 459 So.2d 26 (La.App. 1 Cir. 1984)

Reporting for a polygraph examination after having consumed too much beer to be examined: *Hills v. Department of Health and Hospitals, East Louisiana State Hospital,* CSC Docket No. S-12127; 12/17/97 [CSC decision]

Leave-related:

Abuse of FMLA, coupled with prior discipline: *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448 [working for a local police department while ostensibly caring for new baby]

Abuse of sick leave: *Danna v. Commissioner of Insurance,* 194 So.2d 753 (La.App. 1 Cir. 1967) [to go to Kentucky Derby]; *Brown v. L.H.H.R.A., Lake Charles Mental Health Center,* 346 So.2d 758 (La.App. 1 Cir. 1977) [claiming to be ill while in jail] **NOTE**: Misuse of sick leave does not constitutive payroll fraud. *State v. Amato*, 1996-0606 (La.App. 1 Cir. 6/30/97); 698 So.2d 972.

Leaving inmates unattended: *Fields v. State of Louisiana, Department of Corrections,* 498 So.2d 174 (La.App. 1 Cir. 1986)

Misconduct even though it is not prohibited by agency rules: *Foster v. Department of Public Welfare,* 159 So.2d 515 (La.App. 1 Cir. 1963) **BUT SEE:** *Lasserre v. Louisiana Public Service Commission,* 2004-0615 (La.App. 1 Cir. 4/8/05); 903 So.2d 474; **writs granted** 2005-1866 (La. 3/10/06); 925 So.2d 491; **then settled.**

Misuse of position: *Bailey v. Department of Public Safety and Corrections,* 2005-2474 (La.App. 1 Cir 12/6/06); 951 So.2d 234 [State Police Commission case; trooper using position to try to get out of a DWI ticket]

Mistreatment of subordinates: *Burst v. Board of Commissioners, Port of New Orleans,* 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955 [slamming window on fingers and laughing about it; stepping on toes, resulting in bruises; putting electrical strap around neck]

Negligence in performing duties: *Department of Corrections v. Morgan*, 440 So.2d 785 (La.App. 1 Cir. 1983) appeal after remand 469 So.2d 13 (La.App. 1 Cir. 1985); *Burnett v. Department of Health and Human Resources*, 425 So.2d 245 (La.App. 1 Cir. 1982); *Maher v. Criminal Sheriff Department*, 298 So.2d 924 (La.App. 4 Cir. 1974)

Pattern of misconduct: *Martin v. Department of Revenue and Taxation,* 525 So.2d 268 (La.App. 1 Cir. 1988) [Excessive tardiness, false odometer readings, and failing to provide home address]

Personality problems:

Failing to work effectively with others: *Addison v. L.S.U. Medical Center in Shreveport*, 551 So.2d 750 (La.App. 1 Cir. 1989); *Parrino v. Louisiana State University,* 207 So.2d 800 (La.App. 1 Cir. 1968)

Loud, disruptive behavior: *Barclay v. Department of Commerce and Industry*, 228 La. 779, 84 So.2d 188 (1955); *Licausi v. Department of Health and Human Resources,* 458 So.2d 148 (La.App. 1 Cir. 1984); *Williams v. Department of Health and Human Resources*, 422 So.2d 1258 (La.App. 1 Cir. 1982); *Portis v. Department of Corrections*, 407 So.2d 435 (La.App. 1 Cir. 1981); *Johnson v. Department of Finance*, 354 So.2d 766 (La.App. 4 Cir. 1977)

Poor supervision: *Burst v. Board of Commissioners, Port of New Orleans*, 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955; *Stiles v. Department of Public Safety,* 361 So.2d 267 (La.App. 1 Cir. 1978); *Butler v. Department of Corrections, Louisiana State Penitentiary*, 271 So.2d 651 (La.App. 1 Cir. 1972); *Alonzo v. Department of Highways*, 268 So.2d 52 (La.App. 1 Cir. 1972); *Cunningham v. Caddo-Shreveport Health Unit*, 141 So.2d 142 (La.App. 1 Cir. 1962)

Sexual activity with resident, client, inmate: *Coulter v. Department of Health and Human Resources,* 421 So.2d 305 (La.App. 1 Cir. 1982)

Sleeping on duty: *Searcy v. Louisiana Department of Corrections,* 484 So.2d 773 (La.App. 1 Cir. 1986); *Sample v. Department of Corrections,* 434 So.2d 1211 (La.App. 1 Cir. 1983); *Dent v. Department of Corrections,* 413 So.2d 920 (La.App. 1 Cir. 1982); *Guillory v. State Department of Institutions,* 219 So.2d 282 (La.App. 1 Cir. 1969); *Bonnette v. Louisiana State Penitentiary Department of Institutions,* 148 So.2d 92 (La.App. 1 Cir. 1962). **BUT SEE:** M*arsellus v. Department of Public Safety and Corrections,* 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656 [Employee admitted that he might have nodded off; dismissal held too severe]

Striking or abusing resident, client, or inmate: *Juneau v. Louisiana Board of Elementary and Secondary Education*, 506 So.2d 756 (La.App. 1 Cir. 1987); *Department of Corrections v. Barrere*, 431 So.2d 782 (La.App. 1 Cir. 1983); *Coulter v. Department of Health and Human Resources*, 421 So.2d 305 (La.App. 1 Cir. 1982); *Geystand v. Louisiana Special Education Center*, 415 So.2d 409 (La.App. 1 Cir. 1982); *Shelfo v. LHHRA, Pinecrest State School*, 361 So.2d 1268 (La.App. 1 Cir. 1978); *Williams v. Department of Corrections*, 316 So.2d 411 (La.App. 1 Cir. 1978)

Theft or donation of state property or funds or conversion of state property to personal use: *Bourque v. Department of Transportation and Development*, 457 So.2d 828 (La.App. 1 Cir. 1984) [loading state property onto personal property]; *Sanders v. Department of Health and Human Resources*, 394 So.2d 629 (La.App. 1 Cir. 1980) [attempted theft of eggs and bread from kitchen]; *Goudeau v. Department of Public Safety*, *Division of State Police*, 349 So.2d 887 (La.App. 1 Cir. 1977); *Bennett v. Division of Administration,* 307 So.2d 118 (La.App. 1 Cir. 1974) [misconduct occurred before employee entered classified service and was later discovered]; *Johnson v. State Parks and Recreation Commission,* 198 So.2d 180 (La.App. 1 Cir. 1967) [employee convicted of theft from the park in which he worked]; *Barnes v. Department of Highways,* 154 So.2d 255 (La.App. 1 Cir. 1963) [employee diverted federal funds to state use]; *Lee v. Department of Highways*, 138 So.2d 36 (La.App. 1 Cir. 1962)

Use of agency time for personal business: *Burst v. Board of Commissioners, Port of New Orleans,* 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955; *Butler v. Department of Health and Human Resources*, 432 So.2d 1000 (La.App. 1 Cir. 1983)

Use of confidential information for personal enrichment: *Coleman v. Department of Health and Human Resources,* 461 So.2d 583 (La.App. 1 Cir. 1984)

Violating agency policy: *Williams v. Orleans Levee District, Board of Commissioners,* 2000-0297 (La.App. 1 Cir. 3/28/01); 784 So.2d 657 [disregarding the established procedures for an employee to pursue his grievance by using legal counsel and television media to interrogate and expose the appointing authority to embarrassment and ridicule]; *Allen v. DHHR, Ruston State School*, 426 So.2d 234 (La.App. 1 Cir. 1983); *Bonnette v. Louisiana State Penitentiary, Department of Institutions*, 162 So.2d 21 (La.App. 1 Cir. 1964)

Violating department policies, civil service rules, and criminal law: *Department of Public Safety and Corrections v. Hooker,* 558 So.2d 676 (La.App. 1 Cir. 1990)

Violence:

Attacking a child with a hatchet while off duty: *Foster v. Department of Public Welfare*, 159 So.2d 515 (La.App. 1 Cir. 1963)

Initiating a fight with a subordinate: *Sutherland v. Board of Commissioners, Port of New Orleans,* 459 So.2d 1282 (La.App. 1 Cir. 1984)

Pursuing a fellow employee while armed with a knife: *Smith v. Department of Health and Human Resources,* 408 So.2d 411 (La.App. 1 Cir. 1981)

Striking a resident: *Shelfo v. LHHRA, Pinecrest State School*, 361 So.2d 1268 (La.App. 1 Cir. 1978); *Williams v. Department of Corrections*, 316 So.2d 411 (La.App. 1 Cir. 1978); *Geystand v. Department of Health and Human Resources,* 415 So.2d 409 (La.App. 1 Cir. 1982)

Threatening a supervisor: *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491; *Flowers v. Department of Revenue and Taxation*, 507 So.2d 240 (La.App. 1 Cir. 1987*); Elliott v. Department of Public Safety, Division of State Police*, 346 So.2d 839 (La.App. 1 Cir. 1977); *Morris v. State Department of Highways*, 274 So.2d 924 (La.App. 1 Cir. 1973)

Writing threatening remarks on a calendar: *Evans v. Louisiana State University Agricultural Center,* 2006-2025 (La.App. 1 Cir. 6/8/07); 965 So.2d 418 [The remarks were: "Tom received his new A.K. 47 Via Mail order; Tom assembled his new A.K. 47; Tom gunned down All of the student workers for Fun;Tom sharpened his knife; Watched Tom Kill a Person In cold Blood."]

Rule 12.2(a) and (b) – Cause for Demotion [alphabetically, by topic]

Communication-related:

Making a racially offensive comment to a co-worker during a break: *Foreman v. LSU Health Sciences Center,* 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103

Failing to allow subordinates to assist city policemen: *Fontenot v. Department of Public Safety*, 468 So.2d 1319 (La.App. 1 Cir. 1985)

Failing to follow program guidelines: *Schneider v. Department of Health and Hospitals,* 552 So.2d 796 (La.App. 1 Cir. 1989)

Failing to report income from off-duty details, failing to report income on taxes, and failing to get approval for outside employment: *Berry v. Department of Public Safety and Corrections*, 2001-2186 and 2001-2187 (La.App. 1 Cir. 9/27/02); 835 So.2d 606 [State Police Commission case]

Falsifications:

> Records and Reports: *Gandolfo v. Department of Police*, 357 So.2d 568 (La.App. 4 Cir. 1978) [time sheets]

Improper use of firearm: *Department of Corrections v. Freeman*, 470 So.2d 962 (La.App. 1 Cir. 1985)

Inability to perform job: *Brouillette v. Sewerage and Water Board*, 367 So.2d 9 (La.App. 4 Cir. 1978)

Insubordination:

> Refusing to obey orders: *Wells v. Department of Public Safety*, 498 So.2d 266 (La.App. 1 Cir. 1986) [to report absences directly to the major]

Poor supervision: *Gandolfo v. Department of Police*, 357 So.2d 568 (La.App. 4 Cir. 1978) [allowing subordinates to play cards on duty]

Rule 12.2(a) and (b) – Cause for Suspension [alphabetically, by topic]

Automobile-related:

> Excessive speed and wreck in state car: *Williams v. Department of Public Safety*, 415 So.2d 543 (La.App. 1 Cir. 1982)

Communication-related:

> Disrespectful conduct toward superior officer (telling a warden that he needed an “attitude adjustment”: *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448; 30-day suspension
>
> Inviting his superior “to go out back and end it once and for all:” *Bouterie v. Department of Fire,* 410 So.2d 340 (La.App. 4 Cir. 1982); three-week suspension reduced to one-week suspension

Producing and circulating cartoons that were racially and sexually derogatory to protest hiring and promotional practices: *Normand v. City of Baton Rouge, Police Dept.* 572 So.2d 1123 (La.App. 1 Cir. 1990); 90-day suspension

Exceeding lunch break: *Department of Health and Human Resources v. Perry*, 423 So.2d 1266 (La.App. 1 Cir. 1982); 10-day suspension

Falsifications:

Position description: *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147; 45-day suspension

Records and reports (reports and time sheets): *Wollerson v. Department of Agriculture*, 436 So.2d 1241 (La.App. 1 Cir. 1983); 30-day suspension; *Gandolfo v. Department of Police*, 357 So.2d 568 (La.App. 4 Cir. 1978); demotion and 30-day suspension

Improper performance (failing to ensure that his order to have an inmate's clothes removed did not exceed twenty-four hours): *Wells v. Department of Public Safety and Corrections,* 498 So.2d 266 (La.App. 1 Cir. No. 1986); 3-day suspension

Insubordination:

Failing to perform duties: *King v. Department of Transportation and Development,* 607 So.2d 789 (La.App. 1 Cir. 1992) [persistent refusal to accept assignments from a supervisor who held the same rank]; 60-day suspension; *Hamlett v. Division of Mental Health*, 325 So.2d 696 (La.App. 1 Cir. 1976) [refusing to answer pager]; 3-day suspension

Refusing to answer questions during the agency's investigation: *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448; 20-day suspension; *Walker v. Department of Corrections,* 428 So.2d 1105 (La.App. 1 Cir. 1983) [refusing requests of supervisor for information]; 10-day suspension; *Hamlett v. Division of Mental Health*, 325 So.2d 696 (La.App. 1 Cir. 1976) [refusing to answer pager and to answer questions about it]; 3-day suspension

Leave-related:

Abuse of sick leave: *Sterling v. Department of Public Safety & Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448 [taking training class while claiming to be sick and refusing to answer questions about it]; 20-day suspension; *Ferguson v. Department of Health and Human Resources*, 451 So.2d 165 (La.App. 1 Cir. 1984) [taking the CPA exam while claiming to be sick]; 45-day suspension

Unauthorized use of annual leave (Employee asked for annual leave despite rule that private practice could not be pursued during office hours): *Murray v. Department of Revenue and Taxation,* 504 So.2d 561 (La.App. 1 Cir. 1986); 28-day suspension

Leaving duty post without authorization: *McGee v. Department of Transportation and* Development, 1999-2628 (La.App. 1 Cir. 12/22/00); 774 So.2d 1280; 1-day suspension

Playing cards on duty: *Gandolfo v. Department of Police*, 357 So.2d 568 (La.App. 4 Cir. 1978); demotion and 30-day suspension

Poor supervision (allowing subordinates to play cards on duty): *Gandolfo v. Department of Police*, 357 So.2d 568 (La.App. 4 Cir. 1978); demotion and 30-day suspension

Using state time for personal business in state car and leaving co-worker unsupervised: *McGee v. Department of Transportation and Development*, 1999-2628 (La.App. 1 Cir. 12/22/00); 774 So.2d 1280; 1-day suspension

Violating agency policy: *Claverie v. L.S.U. Medical Center in New Orleans*, 553 So.2d 482 (La.App. 1 Cir. 1989) [sick leave policy]; 5-day suspension; *Bernard v. Louisiana Health and Human Resources Administration*, 336 So.2d 55 (La.App. 1 Cir. 1976) [smoking in unauthorized area]; termination reduced to a 15-day suspension

Rule 12.2(a) and (b) – Cause for Reduction in Pay [alphabetically, by topic]

Failing to disclose interest in companies doing business with employer: *Wopara v. State Employees' Group Benefits Program,* 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67; reduction in pay equal to a 5-day suspension

Leaving another officer alone with a defiant, high-risk inmate, resulting in injury to the officer and other officers' having to abandon their posts to render aid: *Jones v. Department of Public Safety and Corrections, Louisiana Correctional Institute for Women,* 2006-2466 (La.App. 1 Cir. 9/14/07) NDFP; reduction in pay equal to a 1-day suspension

Violating agency policy: *Wopara v. State Employees' Group Benefits Program,* 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67; reduction in pay equal to a 5-day suspension

OLD LAW: Former Rule 12.1 – Cause for Reprimand
NOTE: Until 8/5/92, a reprimand was listed as a disciplinary action.

Violating agency policy: *Goree v. Department of Corrections*, 468 So.2d 829 (La.App. 1 Cir. 1985); *Appeal of Brisset*, 436 So.2d 654 (La.App. 1 Cir. 1983)

Rule 12.4 – Emergency Suspension

An emergency suspension does not prevent the agency from taking additional disciplinary action for the same conduct. *Perrot v. Orleans Levee District*, CSC Docket No. S-10424; 6/15/1995 [CSC decision on application for review]

Rule 12.6(a)1 – Non-disciplinary Removal for Inability to Work [former Rule 12.10]

Rule 12.10 [current Rule 12.6(a)1], which allows the removal of an employee who has exhausted sick leave and is still ill, is legal and constitutes cause for removal, but the action must be taken in good faith. *Bradford v. Department of Hospitals,* 255 La. 888, 233 So.2d 553 (1970); *Dickson v. Department of Highways,* 234 La. 1082, 102 So.2d 464 (1958); *Shortess v. Department of Public Safety & Corrections,* 2006-2313 (La.App. 1 Cir. 9/14/07); 971 So.2d 1051; *Broussard v. Department of Corrections,* 405 So.2d 1219 (La.App. 1 Cir. 1981); *Burton v. Department of Highways,* 135 So.2d 588 (La.App. 1 Cir. 1961); *Villemarette v. Department of Public Safety,* 129 So.2d 835 (La.App. 1 Cir. 1961)

If an employee has two days of sick leave, Rule 12.10 [current Rule 12.6(a)1] cannot be used, nor can the rule be used if the employee is able to return to work before he is removed. *Dickson v. Department of Highways,* 234 La. 1082, 102 So.2d 464 (1958); *Newbrough v. Department of Highways,* 280 So.2d 646 (La.App. 1 Cir. 1973) **NOTE: When these cases were decided, Rule 12.10 provided that the employee could be removed if on the effective date of removal, the employee could not work and had exhausted sick leave. Former Rule 12.10 was amended effective 1/9/02, to allow its use when the employee had fewer than eight hours of sick leave. Rule 12.6(a)1 was amended effective 12/12/07, to change the determinative date to the date the pre-removal notice was mailed or hand delivered.**

When an employee suffers from a birth defect that causes an unpleasant working environment, the employee is appropriately removed under Rule 12.6(b), rather than dismissed under Rule 12.2. *Sibley v. LSU Health Sciences Center-Earl K. Long Medical Center,* 2007-0895 (La.App. 1 Cir. 2/8/08); NDFP

Because a Rule 12.6(a)1 termination is expressly subject to the ADA, the ADA accommodation requirement is incorporated therein as an element by which the propriety of the termination must be determined by the Commission. A termination under Rule 12.6(a)1 is authorized if the employee is unable to perform the essential functions of his job with or without reasonable accommodation, the employee has less than eight hours of sick leave, and the employee is working at a job that must be performed without interruption. The accommodation issue requires the Commission to make a number of factual determinations including whether there are reasonable accommodations available and whether accommodating the employee would impose an undue hardship on the employer. By urging that his employer failed to reasonably accommodate his disabilities, the employee squarely put the merits of his Rule 12.6 termination at issue before the Commission. *Shortess v. Department of Public Safety &*

Corrections, 2006-2313 (La.App. 1 Cir. 9/14/07); 971 So.2d 1051 **NOTE: Rule 12.6(a)1 was amended effective 12/12/07, to delete the references to the ADA and the FMLA. Also, the requirement that the agency prove that the duties be carried on without further interruption was deleted from the rule, effective 12/12/07, as unnecessary. See *Bradford v. Department of Hospitals,* 255 La. 888, 233 So.2d 553 (1970).**

Rule 12.6(a)1 plainly and unambiguously subjects terminations based on an employee's inability to perform a job due to illness or disability to the provisions of the ADA. The ADA makes it unlawful for employers to discriminate against a "qualified individual with a disability," defined as a person who "with or without accommodation, can perform the essential functions of the employment position that such individual holds or desires." The ADA imposes upon employers a duty to provide reasonable accommodations for known disabilities of its employees unless doing so would result in an undue hardship to the employer. *Shortess v. Department of Public Safety & Corrections,* 2006-2313 (La.App. 1 Cir. 9/14/07); 971 So.2d 1051 **NOTE: Rule 12.6(a)1 was amended effective 12/12/07, to delete the references to the ADA and the FMLA**

Where an appellant does not deny or otherwise put at issue any of the facts underlying a separation under Rule 12.10 [current Rule 12.6], the appeal may be summarily dismissed. *Dent v. Department of Corrections,* 460 So.2d 57 (La.App. 1 Cir. 1984); *Broussard v. Department of Corrections,* 405 So.2d 1219 (La.App. 1 Cir. 1981)

Because sick leave can only be taken in thirty-minute intervals, exhaustion of sick leave occurs when an employee has fewer than thirty minutes of accrued sick leave. *Pierre v. Department of Natural Resources,* 449 So.2d 596 (La.App. 1 Cir. 1984) **NOTE: Rule 12.10 was amended effective 1/9/02, to allow its use when the employee had fewer than eight hours of sick leave; the change was incorporated into current Rule 12.6(a)1.**

Where a temporary employee is hired to fill the job, the appointing authority must affirmatively prove that the duties of an employee's position must be carried on without further interruption to support a separation under Rule 12.10. *Pierre v. Department of Natural Resources*, 449 So.2d 596 (La.App. 1 Cir. 1984) **NOTE: The requirement that the agency prove that the duties be carried on without further interruption was deleted from the rule, effective 12/12/07, as unnecessary. See *Bradford v. Department of Hospitals,* 255 La. 888, 233 So.2d 553 (1970).**

A pre-deprivation procedure is required before removing an employee for exhaustion of sick leave and inability to work. *Brumfield v. Department of Fire,* 488 So.2d 1181 (La.App. 4 Cir. 1986)

When the position is left vacant, a prolonged absence undoubtedly interferes with the smooth operation of the service and no additional evidence of impairment is required. *Pierre v. Department of Natural Resources*, 449 So.2d 596 (La.App. 1 Cir. 1984)

For purposes of this rule, an employee's annual leave balance is irrelevant. *Pierre v. Department of Natural Resources,* 449 So.2d 596 (La.App. 1 Cir. 1984)

An employee can be removed even if his inability to work is due to a job-related injury. *Thorne v. Sewerage and Water Board,* 393 So.2d 870 (La.App. 4 Cir. 1981)

The classified service of the State is not a sinecure or a haven for the sick and ailing. It is designed to provide efficient public service, and it is the duty of every appointing authority to take appropriate legal action when the conduct or performance of an employee is inconsistent with the efficiency of the service. [Rule 12.1] The rules make allowance for sick leave with pay for employees in the classified service [Rule 11.11 et seq.] But there is no law or rule that entitles one who has become incapacitated by illness or accident to continue indefinitely in the service; and, after the allowance of the sick leave prescribed by the rules has been exhausted, it is a matter of administrative discretion as to how much longer the employee shall be allowed to retain his position in the classified service. *Villemarette v. Department of Public Safety,* 129 So.2d 835, 838 (La.App. 1 Cir. 1961)

Rule 12.6(a)3 – Non-disciplinary Removal for Loss of Required License [former Rule 12.6(b)]

When a registered nurse fails to have her nursing license renewed, she may be removed. *Bishop v. Department of Health and Hospitals, Southeast Louisiana Hospital,* 2005-1750 (La.App. 1 Cir. 12/28/06); NDFP

When an employee who is required to possess a special officer's commission loses that commission, he may be removed under Rule 12.6(b). *Bailey v. LSU Health Care Services Division,* 99-1981 (La.App. 1 Cir. 9/22/00); 767 So.2d 946

Rule 12.2(a) – No Cause for Action [alphabetically, by topic]

Arrest *per se* is not cause for dismissal. Factors to be considered are the validity and ultimate disposition of the charge, length or possible length of incarceration, and degree of resulting notoriety. *Caldwell v. Caddo Levee District,* 554 So.2d 1245 (La.App. 1 Cir. 1989); *Brown v. L.H.H.R.A., Lake Charles Mental Health Center*, 346 So.2d 758 (La.App. 1 Cir. 1977) **NOTE:** In *Caldwell*, at the time of termination, the employee's conviction was on appeal. By the time the Court of Appeal considered the termination, the conviction had been reversed.

Communication-related:

> Critical remarks concerning department's policies and concerning the employee's own rating, made by an employee during a private conversation with his supervisor: *Callaghan v. Department of Fire*, 385 So.2d 25 (La.App. 4 Cir. 1980)

Threatening to sue a supervisor over a rating, without any accusation that the threat was intended to coerce or intimidate: *Danna v. Commissioner of Insurance,* 194 So.2d 753 (La.App. 1 Cir. 1967)

Failing to apply for sick leave while off work drawing workmen's compensation: *Dickson v. Department of Highways*, 234 La. 1082, 102 So.2d 464 (1958)

Failing to call in when employee has emergency: *Scallon v. Department of Institutions,* 143 So.2d 160 (La.App. 1 Cir. 1962)

Failing to refund overpayment on an expense account, absent an agency rule or policy requiring an employee to refund an overpayment or to submit a revised expense account and absent proof of specific impairment: (After agency reimbursed employee for travel expenses, hotel credited employee with room charges because room was inadequate.) *Lasserre v. Louisiana Public Service Commission,* 2004-0615 (La.App. 1 Cir. 4/8/05); 903 So.2d 474; **writs granted** 2005-1866 (La. 3/10/06); 925 So.2d 491; **then settled.**

Indictment for job-related conduct, standing alone: *Department of Culture, Recreation, and Tourism v. Seifert,* 560 So.2d 492 (La.App. 1 Cir. 1990)

Insubordination:

Failing to follow orders when the order-giver acted so unprofessionally that the employees were uneasy to follow the demands: *Lopez v. LSU Health Sciences Center-Shreveport,* 2006-2059 and 2006-2060 (La.App. 1 Cir. 9/14/07); NDFP [A doctor, who was screaming, yelling, and cursing, demanded subordinates to give him a knife; doctor was described as being in a "complete blind rage" and people overhearing the commotion thought a mental patient was causing the chaos.]

Failing to follow orders without showing impairment to the service: *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987) [The employee refused to issue a waiver she believed was illegal]; *Department of Corrections v. Murray*, 439 So.2d 484 (La.App. 1 Cir. 1983) [The order, if given, did not have to be repeated and did not interfere with inmate processing.]

Failing to work overtime without showing impairment to the service: *Edwards v. Department of Corrections*, 461 So.2d 678 (La.App. 1 Cir. 1984)

Refusing to take a polygraph test when the employee was not accused of abuse or witnessing it, there was an unexplained delay between the refusal to take the test and follow-up by the agency, the agency failed to ascertain why the employee initially refused to be tested, the agency failed to attempt to allay employee's fears of the test, and the investigation was completed without the

necessity of the employee's taking the test: *Jackson v. Department of Health and Hospitals,* 1998-2722 (La.App. 1 Cir. 2/18/00); 752 So.2d 357

Refusing to take a polygraph test when the order is unreasonable or when legitimate reason exists for refusing to obey such order: If releasing the polygrapher and the employer is a condition to the administration of the polygraph examination, the employee may refuse to take the polygraph test and the employee may not be disciplined for his refusal. *Jefferson Levee District v. Lanza*, 459 So.2d 26 (La.App. 1 Cir. 1984)

Leaving a post-delivery patient alone for approximately ten minutes, where the nurse was unaware of the patient's need for post-delivery care and was taking care of a patient in critical condition: *Department of Health and Hospitals v. Jeffress,* 593 So.2d 680 (La.App. 1 Cir. 1991)

Personality problems without showing impairment to service: *Brickman v. New Orleans Aviation Board,* 236 La. 143, 107 So.2d 422 (1958); *Nicholas v. Housing Authority of New Orleans*, 477 So.2d 1187 (La.App. 1 Cir. 1985); *Stiles v. Department of Public Safety*, 361 So.2d 267 (La.App. 1 Cir. 1978)

Playing poker while off-duty and out of uniform: *Lombas v. Department of Police*, 467 So.2d 1273 (La.App. 4 Cir. 1985)

Poor administrative judgment when no standards were given and problems were beyond employee's control: *Weckel v. LHHRA, Charity Hospital of Louisiana at New Orleans*, 353 So.2d 337 (La.App. 1 Cir. 1977)

Reaching mandatory retirement age: *Morrison v. Department of Highways*, 229 La. 116, 85 So.2d 51 (1956)

Refusing to follow supervisor's suggestions: *Hamlett v. Division of Mental Health*, 325 So.2d 696 (La.App. 1 Cir. 1976)

Responding automatically to inexcusable physical provocation and degrading, obscene, ethnic, verbal provocation by a professional who continued to prolong the confrontation: *Theodore v. Department of Health and Human Resources,* 515 So.2d 454 (La.App. 1 Cir. 1987)

Suspected impropriety: *Branighan v. Department of Police*, 362 So.2d 1221 (La.App. 4 Cir. 1978)

Testifying at a civil service hearing: *Hays v. Louisiana Wild Life and Fisheries Commission*, 136 So.2d 559 (La.App. 1 Cir. 1961)

Using a procedure approved by a supervisor: *Appeal of Brisset*, 436 So.2d 654 (La.App. 1 Cir. 1983)

Violating the Code of Ethics: The State Board of Ethics is vested with exclusive jurisdiction to review and investigate complains pertaining to state ethical violations by public employees. The City is without authority to impose disciplinary action for that violation. *Scott v. Office of Housing and Urban Affairs,* 1999-2446 (La.App. 4 Cir. 4/26/00); 759 So.2d 1002

Rule 12.2(a) – Action too Severe [alphabetically, by topic]

Abuse of sick leave: Employee with twenty-two years service worked part-time night job while on sick leave from state job and gave a false reason for not working at night; night job was a desk job; state job required moving throughout the hospital. *Norbert v. LSU Health Sciences Center, University Medical Center*, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___; termination reversed; remanded for appropriate penalty

Changing the language in a proposed rule contrary to the Secretary's instructions, when there was no effort on employee's part to conceal the change and several other persons were also responsible for the rule's failure to contain the desired language: *Manning v. Department of Wildlife and Fisheries*, 99-0782 and 99-0783 (La.App. 1 Cir. 5/12/00); 762 So.2d 157; demotion reversed; remanded for appropriate penalty

Creating an unpleasant work environment caused by a birth defect: *Sibley v. LSU Health Sciences Center-Earl K. Long Medical Center,* 2007-0895 (La.App. 1 Cir. 2/8/08); NDFP; dismissal reduced to removal

Embarrassing a superior by unprofessional conduct, standing alone, does not support termination: *Appeal of Kennedy*, 442 So.2d 566 (La.App. 1 Cir. 1983); remanded for appropriate penalty

Falsifications:

> Lying about an accident: *Barquet v. Department of Welfare,* 620 So.2d 501 (La.App. 4 Cir. 1993); termination reduced to a 120-day suspension

Perceived conflict of interest: When the employee disclosed his wife's interest in a company that did business with his agency, and the employee was guilty of no actual wrongdoing, the maximum fine allowed under the Ethics Code ($5000) was too harsh. *Villanueva v. Commission on Ethics for Public Employees,* 98-0980 (La.App. 1 Cir. 5/18/99); 812 So.2d 1; fine reduced to $2500

Poor job performance: A painter with twenty-two years of service with no prior unsatisfactory service rating and only one prior reprimand and one prior suspension inadvertently got paint on surfaces not to be painted and failed to use a drop cloth on one occasion. *Taylor v. Department of Health and Human Resources*, 491 So.2d 752 (La.App. 1 Cir. 1986); dismissal reversed; remanded for appropriate penalty

Sleeping on duty for a few seconds: *Marsellus v. Department of Public Safety and Corrections,* 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656; dismissal reversed; remanded for appropriate penalty

Smoking in unauthorized area and excessive leave: *Bernard v. Louisiana Health and Human Resources Administration*, 336 So.2d 55 (La.App. 1 Cir. 1976); termination reduced to a 15-day suspension
Verbal abuse of a resident: A single incident is not cause for dismissal. *Ryder v. Department of Health and Human Resources,* 400 So.2d 1123 (La.App. 1 Cir. 1981)

Violence:

> A single incident of aggressive behavior in an unblemished record will not support termination. *Guillory v. Department of Transportation and Development*, 475 So.2d 368 (La.App. 1 Cir. 1985); remanded for appropriate penalty; *Cartwright v. Department of Revenue and Taxation*, 460 So.2d 1066 (La.App. 1 Cir. 1984); remanded for appropriate penalty
>
> Inviting superior "to go out back and end it once and for all:" *Bouterie v. Department of Fire,* 410 So.2d 340 (La.App. 4 Cir. 1982); three-week suspension reduced to one-week suspension

Rule 12.2(a) Cause – Employees' Responsibilities

Had appellant followed the proper grievance procedures he might have avoided this entire conflict. However, appellant chose "to draw a line in the sand" which ultimately led to his suspension. *King v. Department of Transportation and Development,* 607 So.2d 789 (La.App. 1 Cir. 1992)

An employee can be ordered to return money wrongfully acquired. *Housing Authority of the City of Morgan City v. Gibson,* 498 So.2d 545 (La.App. 1 Cir. 1992)

A state does not violate due process when it has made procedural protections available and the employee has refused to avail himself of them. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

Employee must follow agency rules, so long as there is a rational basis for the rule. *Claverie v. L. S. U. Medical Center in New Orleans,* 553 So.2d 482 (La.App. 1 Cir. 1989)

An employee should review the pay plan to assure that all pay rules are complied with. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

An employee is not allowed to substitute his or her judgment for that of the supervisor as to priorities. *Roby v. Department of Finance,* 496 So.2d 1096 (La.App. 4 Cir. 1986);

Jones v. Department of Health and Human Resources, 430 So.2d 1203 (La.App. 1 Cir. 1983)

It is an employee's duty (and not the employer's obligation) to learn the effects of the medication she ingests. *Searcy v. Louisiana Department of Corrections,* 484 So.2d 773 (La.App. 1 Cir. 1986)

An employee must comply with reasonable requests of his supervisor. *Nicholas v. Housing Authority of New Orleans,* 477 So.2d 1187 (La.App. 1 Cir. 1985)

Policemen have a duty to render assistance to fellow law enforcement officers whenever necessary to protect life and property. *Fontenot v. Department of Public Safety,* 468 So.2d 1319 (La.App. 1 Cir. 1985)

It is the employee's, not the employer's, responsibility to obtain a medical excuse for absence. *Hill v. Department of Health and Human Resources,* 457 So.2d 781 (La.App. 1 Cir. 1984)

Failing to read instructional memos does not relieve employee of responsibility for complying with them. *Bourque v. Department of Transportation and Development*, 457 So.2d 828 (La.App. 1 Cir. 1984); *Department of Corrections v. Cage*, 418 So.2d 3 (La.App. 1 Cir. 1982)

An employee, taking it upon herself to interpret the civil service rules, does so at her own risk. *Carbonell v. Department of Health and Human Resources,* 444 So.2d 151 (La.App. 1 Cir. 1983); *Department of Corrections v. Cage,* 418 So.2d 3 (La.App. 1 Cir. 1982)

An employee must follow an agency directive as long as it is not illegal, immoral, unethical, or in dereliction of the employee's duties. *Department of Corrections v. Cage*, 418 So.2d 3 (La.App. 1 Cir. 1982)

Fundamental to all management systems is the duty of the subordinate to report to his immediate superior any material information. *Stiles v. Department of Public Safety,* 361 So.2d 267 (La.App. 1 Cir. 1978)

The delegation of a task does not relieve the supervisor of the ultimate responsibility of ensuring that the job is completed timely. *Stiles v. Department of Public Safety*, 361 So.2d 267 (La.App. 1 Cir. 1978)

Even if the employee is suspected of criminal activity, this would not relieve him of the duty to submit to the polygraph examination as directed. *Dieck v. Department of Police,* 266 So.2d 500 (La.App. 4 Cir. 1972)

An employee is expected to read her position description before signing it. She cannot merely trust that her supervisor accurately reported her duties. *Public Investigation of*

LeBlanc, CSC Docket No. 14656; 5/20/02 [CSC decision; pay reduced to correct rate and 10-day suspension]

Any state employee should know that falsifying records is wrong. An employee who believes there is nothing wrong with falsifying state records is not sufficiently trustworthy to handle the state's money. *Collins v. Division of Administration, Office of Risk Management*, CSC Docket Nos. S-14375 and S-14378; 2/19/02 [CSC decision]

It is incumbent upon the employee to exercise "due diligence" to obtain facts supporting a discrimination claim. *Russell v. Division of Administration*, State Buildings, CSC Docket No. 13314; 3/11/99 [CSC decision on application for review]; *Turner v. Department of Transportation and Development*, CSC Docket No. S-12682; 9/16/98 [CSC decision on application for review]

Classified employees are expected to familiarize themselves with the rules governing their employment, particularly the rules governing prohibited political activity. Employees who do not, act at their peril. *Public Investigation of Verma*, CSC Docket No. 10297; 7/21/93 [CSC decision; 30-day suspension]

Rule 12.7 – Pre-Removal/Pre-Discipline Procedure [adopted 8/5/92, as a result of *Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)]

NOTE: Former Rule 12.3 was declared unconstitutional as violative of due process because it failed to require notice and an opportunity to be heard prior to termination. *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

Procedural due process requires oral or written notice to the employee, an explanation of the evidence against him, and an opportunity to respond to the charges prior to termination. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985); *Maurello v. Department of Health and Human Resources*, 510 So.2d 458 (La.App. 1 Cir. 1987); *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

Due process does not require a pre-deprivation hearing before an employee is reallocated downward. *Bell v. Department of Health and Human Resources,* 483 So.2d 945 (La. 1986)

The employee was not given an opportunity to respond when she did not receive the pre-deprivation notice until after the time for responding had run. *Morgan v. Louisiana State University, Health Sciences Center,* 2006-0570 (La.App. 1 Cir. 4/4/07); 960 So.2d 1002 **NOTE**: The court pretermitted ruling on whether the seven-day mailing presumption in Rule 12.8(d)2 applies to a pre-discipline notice.

Enforced compensatory leave does not require a pre-deprivation procedure. *Adams v. Department of Health and Hospitals Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

Notice to employee that he is the subject of an investigation for charges of insubordination before being suspended with pay was not sufficient pre-termination notice because the agency did not explain the evidence supporting the charge, review the charges with the employee, give him a meaningful opportunity to be heard, or even take his statement until after the appointing authority had already made the decision to terminate. *Cannon v. City of Hammond,* 1997-2660 (La.App. 1 Cir. 12/28/98); 727 So.2d 570

The pre-deprivation notice need not be in writing. *Abel v. City of Kenner Municipal Fire and Police Civil Service*, 97-1086 (La.App. 5 Cir. 7/28/98); 716 So.2d 451; *Brown v. Housing Authority of New Orleans,* 590 So.2d 1258 (La.App. 1 Cir. 1991)

An employee is not entitled to a contradictory hearing before termination. *Abel v. City of Kenner Municipal Fire and Police Civil Service*, 97-1086 (La.App. 5 Cir. 7/28/98); 716 So.2d 451

The employee must receive notice of the charges against him before the pre-termination hearing. *Riggins v. Department of Sanitation,* 617 So.2d 112 (La.App. 4 Cir. 1993)

When employee was put on notice that his conduct (refusing to accept assignments from an employee in the same classification who was designated his supervisor) was unacceptable and that further insubordination could result in serious disciplinary action and was allowed to explain his position, whatever due process rights he had were satisfied. Appellant was clearly warned and fully apprised of his situation and chose to disregard his orders. *King v. Department of Transportation and Development,* 607 So.2d 789 (La.App. 1 Cir. 1992) **[decided post-*Loudermill*, but pre-Rule 12.7]**

Due process does not require a pre-deprivation hearing during the departmental investigation or prior to an order to submit to a drug test. *Banks v. Department of Public Safety and Corrections,* 598 So.2d 515 (La.App. 1 Cir. 1992) **[decided post-*Loudermill*, but pre-Rule 12.7]**

A pre-termination hearing at which the employee is given notice of the charges against him, an explanation of the evidence against him, and an opportunity to explain his side of the story meets due process requirements. *Brown v. Housing Authority of New Orleans,* 590 So.2d 1258 (La.App. 1 Cir. 1991) **[decided post-*Loudermill*, but pre-Rule 12.7]**

The pre-deprivation notice need not be in the detail required for the written notice of disciplinary action. (Here, the pre-deprivation notice charged the employee with "mismanagement of fund and total disregard of the Housing Authority's rent collection

policy" without any dates, times, or amounts of money). *Brown v. Housing Authority of New Orleans,* 590 So.2d 1258 (La.App. 1 Cir. 1991) **[decided post-*Loudermill*, but pre-Rule 12.7; I think it risky to rely on this – LDH.]**

A pre-suspension hearing was not required before suspending an employee for one day. *Frye v. L. S. U. Medical Center in New Orleans,* 584 So.2d 259 (La.App. 1 Cir. 1991) **NOTE: This case was superseded by the adoption of Rule 12.7.**

Notice is sufficient if it apprises the employee of the nature of the charges and the general substance of the evidence against him. Failure to respond to employee's attorney's request for additional information did not make the notice defective when the information was sufficient to allow the attorney to prepare a three page response. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990) **[decided post-*Loudermill*, but pre-Rule 12.7]**

To satisfy due process, the employee's responses need not necessarily be forwarded to the appointing authority, especially where there is an internal rule providing the employee an opportunity to request a hearing before the appointing authority and the employee has refused to avail himself of that opportunity. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990) **[decided post-*Loudermill*, but pre-Rule 12.7]**

A state does not violate due process when it has made procedural protections available and the employee has refused to avail himself of them. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990) **[decided post-*Loudermill*, but pre-Rule 12.7]**

Due process is satisfied when the employee is apprised of the nature of the charges against him and the general substance of the evidence against him and is given an opportunity to respond to his immediate supervisor and to a regional supervisor. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990) **[decided post-*Loudermill*, but pre-Rule 12.7]**

When an elaborate post-termination procedure is in place, only the barest of pre-termination procedure is required. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990) **[decided post-*Loudermill*, but pre-Rule 12.7]**

Due process was satisfied where agency discussed the charges with the employee on three occasions and allowed the employee to respond but did not record the employee's responses or forward them to the decision maker. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990) **[decided post-*Loudermill*, but pre-Rule 12.7; I think it risky to rely on this – LDH.]**

A pre-disciplinary procedure is required before suspending an employee, without pay, for an indefinite period. *Ayio v. Parish of West Baton Rouge School Board,* 569 So.2d 234 (La.App. 1 Cir. 1990) **[decided post-*Loudermill*]**

Exactly what process is due is dependent upon the peculiar facts involved. Due process is not a technical concept with a fixed content unrelated to time, place and circumstances. It is a flexible standard which requires such procedural safeguards as a particular situation demands. However, the fundamental requirements of due process are notice and the opportunity to be heard at a meaningful time and in a meaningful manner. The primary purpose of the required notice is to apprise the affected individual of, and permit adequate preparation for the required hearing. *Casse v. Sumrall*, 547 So.2d 1381 (La.App. 1 Cir. 1989)

If employees have a right to a pre-deprivation hearing, a mass meeting does not afford them any meaningful protection of their rights. Only in individual hearings could the full facts and circumstances relevant to each employee's position be considered. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Due process does not require that employees who are to be laid off, demoted, or reassigned for financial reasons be given a pre-deprivation hearing where there is an opportunity for a post-deprivation hearing before a neutral decision maker. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

A post-termination hearing does not cure the constitutional defect of failing to provide a pre-termination hearing. *Murray v. Department of Revenue and Taxation,* 543 So.2d 1150 (La.App. 1 Cir. 1989)

Due process was satisfied when an employee was previously disciplined, was warned that failure to correct behavior would result in disciplinary action, and was afforded an opportunity to ask questions about the letter of termination when it was handed to him. *Martin v. Department of Revenue and Taxation*, 525 So.2d 268 (La.App. 1 Cir. 1988) **[decided post-*Loudermill*, but pre-Rule 12.7; I think it risky to rely on this – LDH.]**

Due process does not require a hearing before pay incorrectly calculated is reduced. The appeal process adequately safeguards the employee's rights. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

To determine whether due process rights have been violated, the court must balance the employee's interest in retaining employment against the agency's interest in expeditious removal of unsatisfactory employees, the avoidance of administrative burdens, and the risk of an erroneous termination. *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

The pre-termination hearing need not definitively resolve the propriety of the action. It need not be an evidentiary hearing. It should be an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to

believe that the charges against the employee are true and support the proposed action. *Murray v. Department of Revenue and Taxation,* 504 So.2d 561 (La.App. 1 Cir. 1986)

A pre-deprivation procedure is required before removing an employee for exhaustion of sick leave and inability to work. *Brumfield v. Department of Fire,* 488 So.2d 1181 (La.App. 4 Cir. 1986)

The actions about which the employee complains (change of duties and cancellation of his pager, voice mail, and e-mail) are not among those listed in Rule 12.2(b). As such, Rules 12.7 and 12.8, which require a pre-deprivation procedure and prior written notice, do not apply. *Diel v. Office of Group Benefits*, CSC Docket No**.** 15070; 10/22/03 [CSC decision]

We know of no requirement that an employee be given an opportunity to consult with an attorney before speaking with her appointing authority regarding work related matters, nor do we believe that such a requirement would be proper. Because of the Commission's authority to reinstate a separated state classified employee with all back pay and emoluments, the court has recognized that only the barest of pre-termination procedures are required. The procedures used here, however, were not the "barest" of procedures, but constituted full and complete compliance with the requirements of Rule 12.7 and *Loudermill.* *Green v. Department of Transportation and Development*, CSC Docket No. S-11229; 4/12/96 [CSC decision on application for review]

OLD LAW: Prior to *Loudermill*, procedural due process did not require a pre-termination hearing. Adequate hearings afterwards with a right to judicial review satisfied due process. *Allen v. DHHR, Ruston State School*, 426 So.2d 234 (La.App. 1 Cir. 1983); *Burnett v. Department of Health and Human Resources*, 425 So.2d 245 (La.App. 1 Cir. 1982); *Hamilton v. Louisiana Health & Human Resources Administration*, 341 So.2d 1190 (La.App. 1 Cir. 1976); *Foster v. Department of Public Welfare*, 159 So.2d 515 (La.App. 1 Cir. 1963)

Rule 12.8(a) – Prior Notice [former Rule 12.2(a) as to suspensions and former Rule 12.3(a)1 as to other actions]

A retroactive removal is void. *Day v. Department of institutions*, 228 La. 105, 81 So.2d 826 (1955); Y*oung v. Charity Hospital of Louisiana at New Orleans*, 226 La. 708, 77 So.2d 13 (1955); *Boucher v. Division of Employment Security*, 226 La. 227, 75 So.2d 343 (1954)

Notice that dismissal was "effective immediately" provided prior notice when it was received by the employee on October 26, 2006, and the employee was not removed from the agency's payroll until October 28, 2006. *Marsch v. LSU Health Sciences Center-Earl K. Long Medical Center,* 2007-1272 (La.App. 1 Cir. 2/8/08); NDFP

Rule 12.3(a)(1) [current Rule 12.8(a)], which requires prospective notice of termination, is to be strictly construed. Fairness and due process require prospective notice. The possibility of prejudice to the employee occasioned by retroactive notice – economic detriment, loss of job market time, and emotional trauma – is significant enough to require strict compliance. *Sidney N. Collier Memorial Vocational-Technical School v. Caulfield,* 460 So.2d 54 (La.App. 1 Cir. 1984)

A suspension is fatally defective if the appointing authority cannot prove that the letter of suspension was ever mailed. *Johnson v. Department of Health and Human Resources,* 458 So.2d 137 (La.App. 1 Cir. 1984)

Rule 12.2 [current Rule 12.8(a)] contemplates prior or concurrent notice to an employee of a suspension. *Department of Health and Human Resources v. Perry,* 423 So.2d 1266 (La.App. 1 Cir. 1982)

Where notice is a few minutes after the effective time of the suspension and the employee performs no work prior to receiving notice of the suspension, the notice is deemed concurrent. *Department of Health and Human Resources v. Perry*, 423 So.2d 1266 (La.App. 1 Cir. 1982) **NOTE: This case was decided before former Rule 12.2(a) was amended effective 3/2/82, to require notice before the effective time and date of the commencement of the suspension.**

A suspension taken retroactively is totally ineffective. It is not effective as to that portion which occurred after proper notice was given. *Louviere v. Pontchartrain Levee District,* 199 So.2d 392 (La.App. 1 Cir. 1967)

The actions about which the employee complains (change of duties and cancellation of his pager, voice mail, and e-mail) are not among those listed in Rule 12.2(b). As such, Rules 12.7 and 12.8, which require a pre-deprivation procedure and prior written notice, do not apply. *Diel v. Office of Group Benefits*, CSC Docket No**.** 15070; 10/22/03 [CSC decision]

Rule 12.8(a)2 – Detailed Reasons

Detailed reasons include a recitation of the time, date and place of misconduct and the name of witnesses where appropriate. *Hays v. Louisiana Wild Life and Fisheries Commission,* 243 La. 278, 143 So.2d 71 (1962); *University of New Orleans v. Pepitune,* 460 So.2d 1191 (La.App. 1 Cir. 1984); *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984); *Burnett v. Department of Health and Human Resources,* 425 So.2d 245 (La.App. 1 Cir. 1982); *Department of Public Safety v. Rigby,* 401 So.2d 1017 (La.App. 1 Cir. 1981); *Powell v. City of Winnfield,* 370 So.2d 109 (La.App. 2 Cir. 1979); *Shelfo v. LHHRA, Pinecrest State School,* 361 So.2d 1268 (La.App. 1 Cir. 1978); *Patrick v. Lake Charles Municipal Fire and Police,* 344 So.2d 1121 (La.App. 3 Cir. 1977); *Michel v. Department of Public Safety, Alcoholic Beverage Control Board,* 341 So.2d 1161 (La.App. 1 Cir. 1976); *Sutton v. Department of Public Safety, Division of State Police,* 340 So.2d 1092 (La.App. 1 Cir. 1976); *Major v.*

Louisiana Department of Highways, 333 So.2d 316 (La.App. 1 Cir. 1976); *Paulin v. Department of Safety and Permits,* 308 So.2d 817 (La.App. 4 Cir. 1975); *Hoover v. Department of Finance,* 283 So.2d 298 (La.App. 4 Cir. 1973)

The purpose of providing detailed reasons is to afford due process so the employee can know what charges he might be called upon to rebut and to limit the scope of the hearing. *Juneau v. Louisiana Board of Elementary and Secondary Education,* 506 So.2d 756 (La.App. 1 Cir. 1987); *University of New Orleans v. Pepitune,* 460 So.2d 1191 (La.App. 1 Cir. 1984); *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984); *Department of Public Safety v. Rigby,* 401 So.2d 1017 (La.App. 1 Cir. 1981); *Powell v. City of Winnfield,* 370 So.2d 109 (La.App. 2 Cir. 1979); *Lemoine v. Department of Police,* 348 So.2d 1281 (La.App. 4 Cir. 1977); *Major v. Louisiana Department of Highways,* 333 So.2d 316 (La.App. 1 Cir. 1976)

Reallocations of positions in the civil service classification plan are not disciplinary actions. Reallocations are based on an analysis of inherent duties, not competency. Thus, notice required for disciplinary actions is not required, nor is notice of appeal rights. *Sterne v. Department of State Civil Service,* 98-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

The purpose of Rule 12.2(a) [current Rule 12.8(a)2] is to apprise the employee, in detail, of the charges and to limit any subsequent proceedings to the stated reasons. *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987)

The purpose of Rule 12.3(c) [current Rule 12.8(a)2] is to apprise the employee of the charges against her and to enable her to prepare a defense. *Alexander v. Department of Health and Human Resources,* 484 So.2d 722 (La.App. 1 Cir. 1986)

Employee's timely receipt of a written incident report which contained a description of the charge, of the incident giving rise to the charge, and the sanction to be imposed is sufficient to comply with Rule 12.2 [current Rule 12.8(a)2]. *Louisiana State University Medical Center in Shreveport v. Boyd*, 432 So.2d 330 (La.App. 1 Cir. 1983)

The fundamental right of due process requires the detailing and specification of charges sufficient to apprise the disciplined employee of the nature of the charges against him. We deem it obvious that to prepare his defense, the charged employee must know with reasonable particularity the facts and circumstances he may be called upon to rebut in the event his employer makes out a *prima facie* case against him. *Major v. Louisiana Department of Highways,* 333 So.2d 316 (La.App. 1 Cir. 1976)

Even before the 1992 amendment to Rule 12.8, the determination of whether or not an employee has sufficient facts in a letter of disciplinary action to enable him or her to prepare a defense could be a question of fact. The circumstances of each case had to be considered when determining whether or not an employee had been given reasonable notice. In 1992, Rule 12.8 was amended to make it less rigid and to

recognize that what information would be necessary for adequate notice would depend on each case. When Rule 12.8 was amended, Rule 12.7, which requires a pre-deprivation procedure, was also adopted. Therefore, when the employee receives a letter of disciplinary action, it is not the first time the employee learns of the charges. The employee has already been advised of the charges and given an opportunity to respond to those charges. Among other things, the pre-deprivation process reduces the likelihood that an employee is genuinely unaware of the charges against him or her. *Guillory v. Department of Health and Hospitals,* CSC Docket No. 13616; 3/13/01 [CSC decision on application for review]

Rule 12.8(a)2 – Defects in Detailed Reasons

Misconduct on "numerous occasions" is not sufficient. *University of New Orleans v. Pepitune,* 460 So.2d 1191 (La.App. 1 Cir. 1984)

Minor errors in a letter of disciplinary action are immaterial. (The letter contained erroneous references to the first person and stated that a witness was present when he was not.) *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984)

Failure to name a witness to the misconduct does not render notice ineffective. *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984); *Coulter v. Department of Health and Human Resources,* 421 So.2d 305 (La.App. 1. Cir. 1982)

An improper labeling or classification of the misconduct does not render the action fatal so long as the misconduct itself is sufficiently described. *Appeal of Kennedy,* 442 So.2d 566 (La.App. 1 Cir. 1983); *Woodruff v. Department of Fire,* 364 So.2d 1341 (La.App. 4 Cir. 1978)

Where letter recites wrong date of misconduct by one day but error was caused by appellant, error is not fatal to disciplinary action. *Brook v. Louisiana State University,* 405 So.2d 1216 (La.App. 1 Cir. 1981)

Where letter recites wrong date of misconduct by one month, defect is fatal as to that charge. *Department of Public Safety v. Rigby,* 401 So.2d 1017 (La.App. 1 Cir. 1981)

Where letter describes incident of misconduct, but cites wrong procedural order allegedly violated, error is not fatal to disciplinary action. *Woodruff v. Department of Fire,* 364 So.2d 1341 (La.App. 4 Cir. 1978)

"Conduct occurring systematically over at least a fourteen-month period on a weekly basis from approximately February of 1973 through March of 1974" is not sufficient. *Major v. Louisiana Department of Highways,* 333 So.2d 316 (La.App. 1 Cir. 1976)

Where employee was charged with making errors in records, but the records could not be made available to the employee for reasons of confidentiality, the charges

concerning the records were dismissed. *Hamlett v. Division of Mental Health,* 325 So.2d 696 (La.App. 1 Cir. 1976)

Failure of the dismissal notice to set forth in detail the manner in which appellant's alleged misconduct rendered her further employment detrimental to the efficient operation of the service is a matter of no moment. *Foster v. Department of Welfare,* 159 So.2d 515 (La.App. 1 Cir. 1963)

Rule 12.8(a) 3 and 4 Notification of Appeal Rights and Location of Rules [former Rules 12.2(a) and 12.3(a)(2)]

Reallocations of positions in the civil service classification plan are not disciplinary actions. Reallocations are based on an analysis of inherent duties, not competency. Thus, notice required for disciplinary actions is not required, nor is notice of appeal rights. *Sterne v. Department of State Civil Service,* 98-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

Not all appealable cases require notice, much less notice of appeal rights. *Sterne v. Department of State Civil Service,* 98-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

Restricted appointees are not required to be given notice of appeal rights; they have none. *Roberts v. Department of Health and Hospitals,* 1997-0855 (La.App. 1 Cir. 5/15/98); 712 So.2d 696

Because a reprimand does not either temporarily or permanently affect any substantial employee rights, there is a rational basis for differentiating reprimands from other disciplinary actions for the purpose of requiring notice of appeal rights. An employee who is reprimanded is not entitled to notice of his right to appeal as a matter of equal protection. *Smith v. Department of Health and Human Resources*, 461 So.2d 1243 (La.App. 1 Cir. 1984) **NOTE: When this case was decided, a reprimand was a disciplinary action; reprimands were eliminated as disciplinary actions effective 8/5/92.**

If the employee is not advised of her appeal rights on a suspension letter, it merely prevents the running of the thirty-day delay period for filing an appeal. It does not affect the validity of the suspension. *Appeal of Kennedy,* 442 So.2d 566 (La.App. 1 Cir. 1983)

Failure to provide notice of right to appeal does not render action defective but extends the delay for appealing. *Spears v. Department of Corrections,* 402 So.2d 203 (La.App. 1 Cir. 1981)

Rule 12.8(d) – Furnishing Notice to the Employee [former Rules 12.2(a) and 12.3(b)]

Notice mailed on October 20, 2006, that dismissal was “effective immediately” provided prior notice when the employee was not removed from the agency’s payroll until

October 28, 2006. *Marsch v. LSU Health Sciences Center-Earl K. Long Medical Center,* 2007-1272 (La.App. 1 Cir. 2/8/08); NDFP

Although the employee may not have been as prompt in collecting the letter from the post office as the agency may have hoped, there was no evidence presented that she deliberately ignored the notice or delayed retrieving the letter. Thus, we find no basis for holding that the employee's due process rights relative to the termination of her employment should be forfeited just because no one happened to be available to take delivery of the April 21, 2005 certified letter on the first attempted delivery by the United States Postal Service. *Morgan v. Louisiana State University, Health Sciences Center,* 2006-0570 (La.App. 1 Cir. 4/4/07); 960 So.2d 1002

Due process requires the government to provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Thus, although the actions of the agency may have been reasonably calculated to provide notice in the ordinary case, the notice was clearly inadequate in this case, especially considering that the government is required to consider unique information about an intended recipient. Notice was properly not presumed in this case in light of compelling evidence that it was not timely received. The inadequacy of the notice is even more obvious in this case, where the agency had proof that the recipient received the notice untimely, than in *Jones* where the notice letter was simply returned unclaimed. *Morgan v. Louisiana State University, Health Sciences Center,* 2006-0570 (La.App. 1 Cir. 4/4/07); 960 So.2d 1002 **NOTE:** The court pretermitted ruling on whether the seven-day mailing presumption in Rule 12.8(d)2 applies to a pre-discipline notice.

Proof of deposit in the mail creates a *prima facie* presumption of delivery, which may be rebutted by positive evidence of lack of delivery or receipt. (The court applied the seven-day mailing presumption created by Rule 12.8(d)2.) *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491

Where the facts demonstrate a litigant chose to ignore notice of a certified letter, and refused to claim the letter at the post office, that conduct is tantamount to a refusal of service and cannot defeat otherwise valid service. *McFarland v. Dippel,* 99-0584 (La.App. 1 Cir. 3/31/00); 756 So.2d 618

To invoke the mailing presumption in Rule 12.3(b) [current Rule 12.8(d)2], the agency must prove when notice was mailed. *Faure v. Department of Health and Human Resources,* 504 So.2d 1022 (La.App. 1 Cir. 1987)

Domicile is that place where a man has his true, fixed and permanent home and to which, whenever he is absent, he has the intention of returning or the parish of his habitual residence. *Department of Corrections v. Pickens,* 468 So.2d 1310 (La.App. 1 Cir. 1985)

Rules 12.3(b)(1) and (b)(2) [current Rule 12.8(d)1] are not ambiguous and are not to be read interchangeably. Residence and domicile are not synonymous. The purpose of these rules is to provide an employee with prospective or concurrent notice. *Department of Corrections v. Pickens*, 468 So.2d 1310 (La.App. 1 Cir. 1985)

Rule 12.3(b) [current Rule 12.8(d)], concerning acceptable methods of delivering a letter of removal or discipline is mandatory because noncompliance would frustrate the statutory purpose and would result in lack of notice. *Department of Corrections v. Pickens,* 468 So.2d 1310 (La.App. 1 Cir. 1985)

An appointing authority must act in good faith when furnishing notice to an employee. *Department of Corrections v. Pickens,* 468 So.2d 1310 (La.App. 1 Cir. 1985)

Former Rules 12.2(a) and 12.3(a)(3), which required that the Director of Personnel be furnished a copy of the notice of disciplinary action, are directory and not mandatory; non-compliance does not render disciplinary actions fatally defective. *Sanders v. Department of Health and Human Resources,* 388 So.2d 768 (La. 1980) **NOTE: The requirement that notice be furnished to the Director was eliminated effective 8/5/92.**

Rule 12.8 – Corrected Notices

A corrected notice of termination is not viewed as illegal where the employee is paid for the time between the two terminations. *Dent v. Department of Corrections,* 413 So.2d 920 (La.App. 1 Cir. 1982); *Washington v. Confederate Memorial Medical Center,* 147 So.2d 923 (La.App. 1 Cir. 1962)

Rule 12.9 – Letters of Warning, Counseling, Reprimand

NOTE: Before 8/5/92, reprimands were appealable disciplinary actions.

Letters (of counseling, warning, reprimand, and the like) are pieces of paper. They are not actions, much less disciplinary actions. They are supervisory tools. They have no immediate impact on the employee's status, job, title, pay, or anything to which the employee has a property right. They may not be maintained in the employee's publicly accessible personnel records. They are not appealable, but the employee has a right to respond and to have the response maintained with the letter. Typically, and in this case, line supervisors issue these letters to immediately document problems and expectations. Because these letters are not disciplinary actions, they do not prevent the appointing authority from taking disciplinary action for the conduct addressed in the letters, if discipline is warranted. The employee was not disciplined by an appointing authority for the incident. Therefore, estoppel does not apply. *Leonard v. Department of Public Safety and Corrections,* CSC Docket No. 15491; 2/23/05 [CSC decision]; *Wilson v. Department of Health and Hospitals*, CSC Docket No. S-15118; 3/17/04 [CSC decision]

A verbal reprimand is not an action, much less a disciplinary action. It has no impact on the employee's status, job, title, pay, or anything to which the employee has a property right. Because it is verbal, it is not even part of an employee's record. A verbal reprimand issued by a line supervisor who is not the appointing authority does not prevent the appointing authority from taking disciplinary action, if discipline is warranted. *Leonard v. Department of Public Safety and Corrections,* CSC Docket No. 15491; 2/23/05 [CSC decision]

The grievance procedure is not to be used for letters of warning, counseling, or reprimand. *Simien v. Office of the Governor/ Office of Women's Services*, CSC Docket No. 13295; 3/11/99 [CSC decision on application for review]

Letters of warning, counseling, or reprimand may be used as an element of cumulative disciplinary action when they are based on the same or very similar behavior as the behavior in the current action. The truth of the assertions in the letters of warning, counseling, or reprimand is not relevant, only that the manager had advised the employee of heightened concern in a particular area of performance. *Simien v. Office of the Governor, Office of Women's Services*, CSC Docket No. 13295; 3/11/99 [CSC decision on application for review]; *Coney v. DHH-Hammond Developmental Center,* CSC Docket No. 11550; 6/17/97 [CSC decision on application for review]

Rule 12.10 – Suspension Pending Investigation [former Rule 12.2(a)]

NOTE: Former Rule 12.2(b) allowed the appointing authority to suspend an employee pending investigation for up to 90 calendar days <u>without</u> pay. With the Commission's approval this suspension could extend beyond 90 days. Current Rule 12.10, adopted effective 8/5/92, requires investigatory suspensions to be <u>with</u> pay.

To support a suspension pending investigation, the agency must actually be conducting its own investigation. The agency cannot sit back and do nothing and rely on criminal proceedings to support an indefinite suspension of the employee. *Department of Culture, Recreation, and Tourism v. Seifert,* 560 So.2d 492 (La.App. 1 Cir. 1990) **NOTE: This case was decided under former Rule 12.2(b).**

A suspension for investigative purposes requires investigation on the part of the appointing authority; otherwise, it should be considered a disciplinary action. *Department of Culture, Recreation and Tourism v. Seifert,* 560 So.2d 492 (La.App. 1 Cir. 1990)

Absent consideration of appellant's political or religious beliefs, sex, or race, no right of appellant would have been violated had his appointing authority removed him from on-call status at any time. Therefore, an employee who is suspended pending investigation is not entitled to the on-call pay he would have received. *Juneau v. LSU Health Sciences Center*, *W. O. Moss Regional Medical Center*, CSC Docket No. 14980; 12/10/03 [CSC decision on application for a review]

When an agency is investigating possible wrongdoing by an employee, the adoption of Rule 12.10 preempted the agency's discretion under Rule 11.9 (enforced annual leave) and 11.29(d) [current Rule 21.6(b)] (enforced compensatory leave). *Munson v. University Medical Center, Louisiana Health Care Authority,* CSC Docket Nos. 11231 and S-11376; 8/9/00 [Referee decision; application for review denied 9/13/00]; cited with approval in *Craig v. Dept. of Public Safety & Corrections, Swanson Correctional Center for Youth*, CSC Docket No. S-15157; 1/19/05 [CSC decision on application for review]

Rule 12.11 – Resignations [former Rule 12.8]

Resignations are generally not appealable unless the employee denies resigning or alleges that the resignation was not voluntary. *Flanagan v. Department of Environmental Quality,* 2007-0044 (La.App. 1 Cir. 11/2/07); NDFP; *Stern v. New Orleans City Planning Commission,* 2003-0817 (La.App. 4 Cir. 9/17/03); 859 So.2d 696; *Pugh v. Department of Culture, Recreation and Tourism,* 597 So.2d 38 (La.App. 1 Cir. 1992); *Peterson v. Department of Streets*, 369 So.2d 235 (La.App. 4 Cir. 1979); *Cortez v. Department of Public Safety*, 292 So.2d 876 (La.App. 1 Cir. 1974); *Duczer v. State Banking Department*, 277 So.2d 453 (La.App. 1 Cir. 1973); *Carpenter v. Confederate Memorial Medical Center*, 250 So.2d 161 (La.App. 1 Cir. 1971); *Pilcher v. Mourad,* 187 So.2d 183 (La.App. 2 Cir. 1966)

In the absence of written acceptance of a resignation, circumstances can indicate acceptance. *Flanagan v. Department of Environmental Quality,* 2007-0044 (La.App. 1 Cir. 11/2/07); NDFP [agency double-encumbered the position after the employee resigned]; *Stern v. New Orleans City Planning Commission,* 2003-0817 (La.App. 4 Cir. 9/17/03); 859 So.2d 696; [agency gathered employee's files and assigned them to other employees]

A resignation cannot be withdrawn after its acceptance by an appointing authority without the agency's consent. *Flanagan v. Department of Environmental Quality,* 2007-0044 (La.App. 1 Cir. 11/2/07); NDFP

The validity of a resignation is not affected by the failure of the appointing authority to give the employee a copy of the resignation form. *Pugh v. Department of Culture, Recreation and Tourism,* 597 So.2d 38 (La.App. 1 Cir. 1992)

To constitute an oral resignation, the words must express an immediate intention to cease employment. *Board of Jury Commissioners of Orleans Parish v. Goins*, 423 So.2d 25 (La.App. 1 Cir. 1982)

An oral resignation cannot be rescinded or withdrawn once it is accepted by the appointing authority. *Board of Jury Commissioners of Orleans Parish v. Goins,* 423 So.2d 25 (La.App. 1 Cir. 1982)

To render a resignation involuntary, it must be obtained by fraud, mistake, duress or other vices of consent. *Sanderson v. Department of Public Safety*, 351 So.2d 813 (La.App. 1 Cir. 1977)

Giving an employee the option of resigning or being fired is not coercion *per se*. *Sanderson v. Department of Public Safety*, 351 So.2d 813 (La.App. 1 Cir. 1977); *Cortez v. Department of Public Safety*, 292 So.2d 876 (La.App. 1 Cir. 1974)

A resignation is appealable if the employee denies having resigned. *Carpenter v. Confederate Memorial Medical Center*, 250 So.2d 161 (La.App. 1 Cir. 1971)

Rule 12.11(f) – Resignations to Avoid Dismissal [former Rule 12.8(f)]

Rule 12.11(f) is obviously designed to prevent an employee, who knows that his dismissal is imminent, from attempting to resign before the formal disciplinary process can be initiated in order to avoid the consequences of a resignation to avoid dismissal. *Adikema v. Department of Public Safety and Corrections, Office of Youth Development,* 2006-1854 (La.App. 1 Cir. 9/14/07); 971 So.2d 1071

Rule 12.11(f) requires an employee to have notice that his dismissal has been proposed before his resignation is designated as one to avoid dismissal, but is silent as to what type notice is required. Therefore, a resignation can be designated as one to avoid dismissal when the employee has actual or constructive notice that his appointing authority is in the process of dismissing him, and he in fact resigns to avoid the impending dismissal. *Adikema v. Department of Public Safety and Corrections, Office of Youth Development,* 2006-1854 (La.App. 1 Cir. 9/14/07); 971 So.2d 1071 **NOTE: This was a 3:2 decision.** The dissent states: "Nothing in this record supports a finding that prior to or at the time he was arrested, when he was given the incomplete VR-1 – which failed to specify any comments in the 'Recommended Action' portion of the document – appellant had received notice that his *dismissal* had been proposed… the record simply is devoid of any evidence that appellant had actual notice that he would be dismissed as a result of the charges leading to his arrest."

The following constituted constructive notice that dismissal had been proposed: 1) the agency suspended the employee while it investigated him of suspected theft of state property; 2) the agency had the employee arrested for theft, handcuffed, and taken to jail; 3) the agency furnished the employee with a form initiating disciplinary action and a letter notifying him that a pre-disciplinary hearing had been scheduled; and 4) the employee was an administrative director and had to know that the consequences of being charged with theft of state property would be dismissal. *Adikema v. Department of Public Safety and Corrections, Office of Youth Development,* 2006-1854 (La.App. 1 Cir. 9/14/07); 971 So.2d 1071 **NOTE: This was a 3:2 decision. See quote from dissent above.**

A resignation to avoid dismissal is not the same as a dismissal under Rule 12.2. Inclusion of a resignation to avoid possible disciplinary action under the rule which

pertains to voluntary resignations, rather than the rule which deals with involuntary terminations clearly categorizes the action as a voluntary resignation. *Pugh v. Department of Culture, Recreation and Tourism,* 597 So.2d 38 (La.App. 1 Cir. 1992) **NOTE: Before 8/5/92, adverse consequences attached to a resignation to avoid "possible disciplinary action." The rule was amended to restrict the adverse consequences to resignations to avoid dismissal.**

HAPTER 5

CIVIL SERVICE RULES: CHAPTER 13

APPEALS AND HEARINGS

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Rule 13.10 – Right to Appeal in General

Not every action within the jurisdiction of the Commission results in the right to an appeal of that action. *Bass v. Department of Public Safety and Corrections*, 95-2499 (La.App. 1 Cir. 6/28/96); 676 So.2d 1178

Where the employee has not been given an unsatisfactory rating, nor has he been demoted, dismissed, or subjected to disciplinary action, and he has alleged no adverse effect to himself whatsoever, except to allege generally that his supervisor's continued employment endangers the public health, he has failed to allege any basis permitted under Rule 13.10 for an appeal. *Rader v. Department of Health and Hospitals, Office of Public Health,* 94-0763 (La.App. 1 Cir. 3/3/95); 652 So.2d 644

Class action appeals are generally inconsistent with the civil service rules. *Casse v. Department of Health and Hospitals,* 592 So.2d 1366 (La.App. 1 Cir. 1991)

A classified employee does not have to exhaust his remedy before the Commission before challenging the constitutionality of a civil service rule. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Rule 13.10(a) – Right to Appeal Disciplinary Actions and Removals [former Rule 13.10(b)]

When an employee pleads facts to support a conclusion that she has been subjected to a disciplinary reassignment, she has established a right of appeal. *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544

Characterizing a non-disciplinary action (here, enforced compensatory leave) as punitive in nature does not convert it to an appealable disciplinary action. *Adams v. Department of Health and Hospitals, Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

A demotion is appealable under Rule 13.10(b), but to appeal a demotion, the employee must plead that he was demoted – that the reclassification resulted in a lower minimum rate of pay. *Frazier v. Department of State Civil Service*, 449 So.2d 95 (La.App. 1 Cir. 1984) **NOTE**: **When this case was decided, range minimums determined whether an action was a demotion. Since 8/6/03, range maximums have been used.**

Rule 13.10(b) – Right to Appeal Discrimination [former Rule 13.10(a)]

Unless associated with a removal or disciplinary case, the Commission's jurisdiction over discrimination claims is limited to the four factors listed in Article X, Section 8(B) – political or religious beliefs, sex, or race. *Louisiana Department of Agriculture and Forestry v. Sumrall,* 1998-1587 (La. 3/2/99); 728 So.2d 1254

Rule 13.10(c) – Right to Appeal Article and Rule Violations [former Rule 13.10(c)]

NOTE: Notwithstanding *Louisiana Department of Agriculture and Forestry v. Sumrall*, 98-1587 (La. 3/2/99); 728 So.2d 1254, the First Circuit has alluded to the Commission's authority to hear rule violation claims. *Adams v. Department of Health and Hospitals, Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943; *Flanagan v. Department of Environmental Quality*, 99-1332 (La.App. 1 Cir. 12/28/99); 747 So.2d 763

The Commission has exclusive jurisdiction over employees' overtime claims. *Akins v. Housing Authority of New Orleans*, 2003-1086 (La.App. 4 Cir. 9/10/03); 856 So.2d 1220

An allegation that an employee was improperly deprived of his right to be considered for a promotion and was adversely affected by DSCS's violation of the civil service rules when it excluded his name from a promotional certificate is within the purview of Rule 13.10(c). *Mott v. Department of Health and Human Resources,* 506 So.2d 713 (La.App. 1 Cir. 1987)

Allegations by an employee that he has been adversely affected by compliance with a union contract and that the contract violates a civil service rule are within the purview of Rule 13.10(c*). Department of Labor, Office of Employment Security v. Leonards*, 498 So.2d 178 (La.App. 1 Cir. 1986)

Rule 13.10(c), which allows an employee who is adversely affected by the violation of a civil service rule or the Civil Service Article to appeal, is within the Commission's rule making power. *Department of Labor, Office of Employment Security v. Leonards,* 498 So.2d 178 (La.App. 1 Cir. 1986); **BUT SEE:** *Louisiana Department of Agriculture and Forestry v. Sumrall*, 98-1587 (La. 3/2/99); 728 So.2d 1254

An employee can be adversely affected if his position is under-allocated. Therefore, he has a right of appeal under Rule 13.10(c) if he alleges facts to support a conclusion that DSCS violated Rule 5.2(b) as to his own allocation. To support a conclusion that Rule 5.2(b) has been violated, the employee must allege facts that show that the same work is allocated to different jobs. *Distefano v. Department of State Civil Service*, CSC Docket No. 15683; 11/3/05 [CSC decision]

To establish a right to appeal the Director's allocation decision under Rule 5.3, an employee must allege facts to support a conclusion that the Director violated Rule 5.2(b) or (d). Rule 5.2(b) is violated when the classification plan has not been uniformly applied - *i.e.,* when the same work is allocated to different jobs. Rule 5.2(d) is violated when an allocation is based on something other than the position description. *Simpson v. Department of Social Services,* CSC Docket No**.** 13196; 6/15/01 [CSC decision]

To establish a right of appeal under Rule 13.10(c), there must be a causal connection between the alleged violation and the adverse affect. *Cain v. Department of State Civil Service*, CSC Docket No. 10764; 11/23/94 [CSC decision]

Former Rule 13.10(d) – Appeal of Allocations and Reallocations [repealed 3/1/01, in response to *Agriculture*]

Decisions on reallocations are not appealable absent a plea of discrimination. *Bell v. Department of Health and Human Resources,* 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986); *Frazier v. Department of State Civil Service,* 449 So.2d 95 (La.App. 1 Cir. 1984)

To appeal the denial of a reallocation, the employee must plead facts to support the conclusion that the Director of Civil Service (as opposed to the employing agency) discriminated against the employee because of race. *London v. Department of State Civil Service,* 1999-0755 (La.App. 1 Cir. 5/22/00); 798 So.2d 123

Former Rule 13.10(e) – Appeal of Discrimination in the Pay Plan [declared unconstitutional in *Agriculture*; repealed 3/1/01

NOTE: Certain pay actions may still be appealable under Rule 13.10(c), based on a violation of Article X, Section 10(A)(1)'s requirement for a uniform pay plan. See annotations under Pay Plan.

The Commission lacks jurisdiction to hear an appeal challenging the denial of a reallocation. *Walther v. Department of State Civil Service,* 98-2485 (La.App. 1 Cir. 12/28/99); 747 So.2d 790

Rule 13.10(e) applies where an employee alleges that other employees in the same class are being paid differently. *Ramirez v. Department of Social Services*, 603 So.2d 795 (La.App. 1 Cir. 1992); *Easley v. Department of State Civil Service*, 572 So.2d 1101 (La.App. 1 Cir. 1990); *Gandy v. State Civil Service Commission*, 498 So.2d 765 (La.App. 1 Cir. 1986); *Clark v. Department of Transportation and Development*, 413 So.2d 573 (La.App. 1 Cir. 1982)

Rule 13.10(e) envisions a situation where an employee alleges that he is not earning the same pay as another employee filling the same position. *Ramirez v. Department of Social Services*, 603 So.2d 795 (La.App. 1 Cir. 1992); *Gandy v. State Civil Service Commission,* 498 So.2d 765 (La.App. 1 Cir. 1986); *Thoreson v. Department of State Civil Service*, 433 So.2d 184 (La.App. 1 Cir. 1983); *Mayeaux v. Department of State Civil Service*, 421 So.2d 948 (La.App. 1 Cir. 1982)

Where an employee alleges that the application or interpretation of a civil service rule governing pay results in pay discrepancies between members of the same classification and that the pay discrepancies were caused by distinctions based on non-merit factors, the employee has a right to appeal to the Commission under Rule 13.10(e). *Ramirez v. Department of Social Services*, 603 So.2d 795 (La.App. 1 Cir. 1992); *Gandy v. State Civil Service Commission*, 498 So.2d 765 (La.App. 1 Cir. 1986)

Whether an appeal is allowed under Rule 13.10(e) or barred by Rule 13.34 depends on what is being challenged. *Ramirez v. Department of Social Services*, 603 So.2d 795 (La.App. 1 Cir. 1992); *Easley v. Department of State Civil Service*, 572 So.2d 1101 (La.App. 1 Cir. 1990)

It is not every variance in salary that gives the employee a right to challenge the pay plan. *Latona v. Department of State Civil Service,* 492 So.2d 27 (La.App. 1 Cir. 1986); *Clark v. Department of Transportation and Development*, 413 So.2d 573 (La.App. 1 Cir. 1982); *Hollingsworth v. State, Department of Public Safety*, 354 So.2d 1058 (La.App. 1 Cir. 1977)

Rule 13.10(e) does not apply when employees question the legitimate decisions made by the Commission concerning the inclusion or exclusion of certain classes from the pay plan. *Clark v. Department of Transportation and Development*, 413 So.2d 573 (La.App. 1 Cir. 1982)

To establish a right to appeal the Director's allocation decision under Rule 13.10(c), an employee must allege facts to support a conclusion that the Director violated Rule 5.2(b) or (d). Rule 5.2(b) is violated when the classification plan has not been uniformly applied - *i.e.*, when the same work is allocated to different jobs. Rule 5.2(d) is violated when an allocation is based on something other than the position description. *Simpson v. Department of Social Services,* CSC Docket No. 13196; 6/15/01 [CSC decision]

Former Rule 13.10(f) – Appeal of Discrimination in the Examining Process [declared unconstitutional in *Agriculture*; repealed 3/1/01]

Former Rule 13.10(h) – Appeal of Discrimination Based on Non-Merit Factors [declared unconstitutional (when coupled with Rule 1.14.1) in *Agriculture*; repealed 3/1/01]

The discrimination factors listed in Article X, Section 8(B) of the Constitution are not exclusive. The Commission can, by rule, prohibit other types of discrimination. *Department of Health and Human Resources v. Payton*, 498 So.2d 181 (La.App. 1 Cir. 1986). **NOTE: Tacitly overruled by *Agriculture.***

The criterion for adjudication of a distinction asserted to be a non-merit factor is whether a disadvantaged class shows that the distinction does not suitably further any appropriate state interest. *Latona v. Department of State Civil Service*, 492 So.2d 27 (La.App. 1 Cir. 1986)

Retaliation against an employee for having asked for an investigation can be a form of non-merit factor discrimination. *Department of Transportation and Development v. Gabour*, 468 So.2d 1301 (La.App. 1 Cir. 1985)

Personal animosity is a type of non-merit factor discrimination. *Golphin v. Division of Administration*, 314 So.2d 498 (La.App. 1 Cir. 1975)

Former Rule 13.10(i) – Appeal of Discrimination by the Director [repealed 3/1/01]

For an appeal under Rule 13.10(i), it is not sufficient to merely recite that a particular action of the Director is discriminatory. *Mayeaux v. Department of State Civil Service*, 421 So.2d 948 (La.App. 1 Cir. 1982)

Former Rule 13.10(j) and (k) – Appeal of Unsatisfactory Ratings [repealed 3/1/01 and replaced with Rules 10.13 and 10.14]

Unfavorable comments on a satisfactory service rating do not give rise to an appeal. The right to appeal is available from the rating itself, not the comments on the rating form. *Bailey v. Department of Health and Human Resources*, 460 So.2d 39 (La.App. 1 Cir. 1984)

Rule 13.10(k) can be interpreted as meaning that when a disciplinary action is based on the same grounds as assigned for an unsatisfactory rating, the disciplinary action is directly appealable to the Commission. *Hill v. Department of Health and Human Resources*, 457 So.2d 781 (La.App. 1 Cir. 1984)

Rule 13.10 – Right to Appeal, Unusual Cases

A classified employee who was disciplined by the Ethics Commission has a right of appeal to the State Civil Service Commission. LSA-R.S. 42:1142C; *Villanueva v. Commission on Ethics for Public Employees*, 96-1912 (La. 5/20/97); 693 So.2d 154

An employee has a right to appeal a transfer allegedly in retaliation for having been successful in prior appeal. *Noya v. Department of Fire*, 609 So.2d 827 (La. 1992)

An employee who contended that compliance with the terms of a union contract resulted in his being denied an opportunity for a demotion into a better career field and that the union contract violated the Article and the civil service rules has a right to appeal. *Department of Labor, Office of Employment Security v. Leonards*, 498 So.2d 178 (La.App. 1 Cir. 1986)

Alleged failure to promote in violation of a union contract is within the jurisdiction of the Commission. *Barenis v. Gerace,* 357 So.2d 892 (La.App. 1 Cir. 1978) **NOTE: Probably no longer good law.**

A job appointee who served on three successive job appointments has a right to appeal. *Finley v. Department of Corrections*, 351 So.2d 811 (La.App. 1 Cir. 1977) **NOTE: Superseded by the amendment to Rule 9.2 effective 7/2/86; *Pope v. New Orleans City Park*, 95-1634 (La.App. 1 Cir. 4/4/96); 672 So.2d 388**

Rule 13.10 – Right to Appeal, Corrected Notices

An employee is not required to appeal a corrected notice of termination where the employee filed an appeal after receiving the first notice of termination and was misled into believing that a new appeal was unnecessary. *Dent v. Department of Corrections*, 413 So.2d 920 (La.App. 1 Cir. 1982); *Washington v. Confederate Memorial Medical Center*, 147 So.2d 923 (La.App. 1 Cir. 1962)

Rule 13.10 – No Right to Appeal

Restricted employees have no right of appeal. *Roberts v. Department of Health and Hospitals,* 1997-0855 (La.App. 1 Cir. 5/15/98); 712 So.2d 696; *Rollins v. Housing Authority of New Orleans*, 93-1810 (La.App. 1 Cir. 10/7/94); 676 So.2d 1178

An employee who served on several job appointments has no right to appeal. *Pope v. New Orleans City Park*, 95-1634 (La.App. 1 Cir. 4/4/96); 672 So.2d 388

There is no right to appeal a voluntary resignation. *Pugh v. Department of Culture, Recreation and Tourism,* 597 So.2d 38 (La.App. 1 Cir. 1992); *Carpenter v. Confederate Memorial Medical Center,* 250 So.2d 161 (La.App. 1 Cir. 1971)

There is no right to appeal the constitutionality of a civil service rule. Therefore, a classified employee does not have to exhaust his remedy before the Commission before challenging the constitutionality of a civil service rule. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

A probationary employee has no right to appeal absent a properly alleged foundation for discrimination. *King v. Department of Health and Human Resources,* 506 So.2d 832 (La.App. 1 Cir. 1987); *Toney v. Department of Public Safety and Corrections*, 496 So.2d 460 (La.App. 1 Cir. 1986); *Courtney v. Louisiana Department of Highways*, 282 So.2d 721 (La.App. 1 Cir. 1973); *Wlochowicz v. Forbes*, 248 So.2d 69 (La.App. 1 Cir. 1971)

There is no right to appeal the unconstitutionality of a civil service rule. *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

There is no right to appeal an agency's failure to follow its own internal procedures relative to disciplinary action. *Lombas v. Department of Police*, 467 So.2d 1273 (La.App. 4 Cir. 1985)

Unfavorable comments on a satisfactory service rating are not appealable. *Bailey v. Department of Health and Human Resources*, 460 So.2d 39 (La.App. 1 Cir. 1984)

There is no right to appeal a change in duty station absent a properly alleged foundation for discrimination. *Bayhi v. Department of Health and Human Resources*, 408 So.2d 395 (La.App. 1 Cir. 1981); *Villemarette v. Department of Public Safety,* 129 So.2d 835 (La.App. 1 Cir. 1961)

The Commission cannot grant hearings simply to allow an employee to complain about the tactless manner in which a transfer was handled. *Bayhi v. Department of Health and Human Resources*, 408 So.2d 395 (La.App. I Cir. 1981)

There is no right to appeal the denial of a merit increase absent a properly pleaded discrimination claim. *Smith v. LSU Medical Center,* 365 So.2d 599 (La.App. 1 Cir. 1978); *Rodgers v. Department of Public Welfare*, 250 So.2d 163 (La.App. 1 Cir. 1971)

An employee who has resigned has no right to appeal the denial of leave. *Krasnoff v. City of New Orleans,* 209 So.2d 149 (La.App. 4 Cir. 1968)

An employee is not entitled to a higher allocation because other employees' positions may be misallocated. As such, he has no protectable, tangible, or personal interest in the allocation of others. His interest is the same as that of the general public – that the classification plan be correctly and uniformly applied. As such, he has not been adversely affected by the alleged violation and therefore, has no right of appeal under Rule 13.10(c). *Distefano v. Department of State Civil Service*, CSC Docket No. 15683; 11/3/05 [CSC decision]

A probationary employee has no right to appeal. *St. Romain v. State, Department of Wildlife and Fisheries*, 2003-0291 (La.App. 1 Cir. 12/11/03); 863 So.2d 577 **NOTE: I think this misinterprets the rules – LDH.** See *Lee v. LSU Health Sciences Center – New Orleans,* CSC Docket No. S-15298; 3/29/05 [Referee decision]

An employee has no right to appeal the agency's failure to discipline other employees. *Sandres v. Division of Administration, Office of Risk Management*, CSC Docket No. 15257; 12/2/04 [Referee decision]

Rule 13.11(d) – Statement of Basis of Appeal in General

The purposes of Rule 13.11(d) are to apprise the agency and the Commission of the material facts in dispute and, therefore, to establish the scope of the evidentiary hearing and to enable the Commission to gauge the amount of time needed for the hearing. *Rocque v. Department of Health and Human Resources*, 505 So.2d 726 (La. 1987); *Fisher v. Department of Social Services, Office of Community Services*, 600 So.2d 1368 (La.App. 1 Cir. 1992); *Shelton v. Southeastern Louisiana University*, 431 So.2d 437 (La.App. 1 Cir. 1983)

Rule 13.11(d) should be given mandatory effect because its violation could result in the frustration of the legislative intent of the rule. To hold otherwise would require a pre-hearing conference. *Wheeler v. Department of Public Safety and Corrections,* 500 So.2d 786 (La.App. 1 Cir. 1986); *Dent v. Department of Corrections,* 460 So.2d 57 (La.App. 1 Cir. 1984); *Shelton v. Southeastern Louisiana University*, 431 So.2d 437 (La.App. 1 Cir. 1983)

The overall purpose of Rule 13.11 is to give notice. When the Director of Civil Service actually receives a copy of a letter from an employee to his agency, it should be considered a request for appeal. *Daley v. Department of Health and Human Resources*, 461 So.2d 613 (La.App. 1 Cir. 1984)

Rule 13.11(d) – Statement of Basis of Appeal: Discipline and Removal Cases

Rule 13.11(d), insofar as it requires an employee who has been disciplined to state a basis for appeal and allows summary disposition if the appeal is insufficient, is unreasonable and imposes an unduly onerous responsibility on employees when the employee cannot amend the appeal after she learns that the appeal was insufficient. *Rocque v. Department of Health and Human Resources*, 505 So.2d 726 (La. 1987)

An appeal cannot be dismissed for non-compliance with Rule 13.11(d). *Rocque v. Department of Health and Human Resources,* 505 So.2d 726 (La. 1987); *Theard v. Louisiana Health and Human Resources Administration*, 354 So.2d 663 (La.App. 1 Cir. 1977), reversed 356 So.2d 433 (La. 1978); *Roussell v. Louisiana Health and Human Resources Administration*, 354 So.2d 661 (La.App. 1 Cir. 1977), reversed 356 So.2d 1014 (La. 1978); *Carter v. Department of Revenue and Taxation*, 563 So.2d 920 (La.App. 1 Cir. 1990)

There is no need for the notice of appeal to deny the allegations of misconduct *seriatim.* Although the complaint lacked substantial detail, it was sufficient. The fair import of the notice is that the dismissal was unfounded and erroneous. *Smith v. Board of Commissioners*, 262 La. 96, 262 So.2d 383 (1972)

Although Rule 13.11(d) requires a clear and concise statement of the basis of the appeal, it does not require the employee to set forth, in detail, the evidence in support of the stated basis of appeal. *Wheeler v. Department of Public Safety and Corrections*, 500 So.2d 786 (La.App. 1 Cir. 1986)

Rule 13.11(d) does not require specific language or precise pleading of defenses. Where the tenor of the letter suggests a denial of the cause for the termination, the letter is sufficient. *Wheeler v. Department of Public Safety and Corrections,* 500 So.2d 786 (La.App. 1 Cir. 1986)

Where the employee does not deny or otherwise put at issue any of the facts underlying a separation under Rule 12.10 [current Rule 12.6(a)1], the appeal may be summarily dismissed. *Dent v. Department of Corrections*, 460 So.2d 57 (La.App. 1 Cir. 1984); *Broussard v. Department of Corrections*, 405 So.2d 1219 (La.App. 1 Cir. 1981)

Rule 13.11(d) – Statement of Basis of Appeal: Discrimination Cases

A conclusion that the Director applied a disparate standard in deciding a request for review of an allocation under Rule 5.3 does not satisfy Rule 13.11(d). *Bell v.*

Department of Health and Human Resources, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

To be heard on a race discrimination claim, the employee must plead facts to support a conclusion that the person who took the action did so because of the employee's race. *London v. Department of State Civil Service*, 1999-0755 (La.App. 1 Cir. 5/22/00); 798 So.2d 123

An allegation of "discrimination by many means including but not limited to possible collusion, possible conspiracy, possible intent to defraud, and possible malfeasance, without any facts to support any of these claims, is insufficient." *Rader v. Department of Health and Hospitals, Office of Public Health*, 94-0763 (La.App. 1 Cir. 3/3/95); 652 So.2d 644

Allegations that the appellant is more qualified than the applicant selected, that there was a deviation from the standard interview process, and that there was a nineteen-year age difference between appellant and the applicant selected are not sufficient to be heard on a claim of age discrimination. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital*, 610 So.2d 936 (La.App. 1 Cir. 1992) **NOTE: After *Agriculture*, this case would have been dismissed for lack of jurisdiction over an age discrimination claim.**

Allegations that three named employees were receiving a housing and utilities emolument and that to deprive appellant of the same would impermissibly discriminate against him is insufficient to be heard on a discrimination claim. *Leger v. Louisiana State University*, 601 So.2d 20 (La.App. 1 Cir. 1992)

The requirement for specificity is reasonable in that it relieves the agency of the disadvantage of having to defend against vague and unspecified charges of discrimination and thereby clearly defines the scope of the hearing. *Fisher v. Department of Social Services, Office of Community Services*, 600 So.2d 1368 (La.App. 1 Cir. 1992); *Legros v. Department of Public Safety, Division of State Police*, 364 So.2d 162 (La.App. 1 Cir. 1978)

Rule 13.11(d), requiring a notice of appeal to allege in detail facts in support of discrimination is reasonable, constitutional, jurisdictional and enforceable by summary disposition of the claim. *Toney v. Department of Public Safety and Corrections*, 496 So.2d 460 (La.App. 1 Cir. 1986); *Bailey v. Department of Health and Human Resources*, 460 So.2d 39 (La.App. 1 Cir. 1984); *Frazier v. Department of State Civil Service*, 449 So.2d 95 (La.App. 1 Cir. 1984); *Onesta v. Department of State Civil Service*, 434 So.2d 1153 (La.App. 1 Cir. 1983); *Mayeaux v. Department of State Civil Service*, 421 So.2d 948 (La.App. 1 Cir. 1982); *Clark v. Department of Transportation and Development*, 413 So.2d 573 (La.App. 1 Cir. 1982); *Newton v. Louisiana Training Institute-Monroe, Department of Corrections,* 376 So.2d 1032 (La.App. 1 Cir. 1979); *Legros v. Department of Public Safety, Division of State Police,* 364 So.2d 162 (La.App. 1 Cir. 1978); *Goins v. DHHR, E. A. Conway Memorial Hospital*, 361 So.2d 306 (La.App.

1 Cir. 1978); *Toms v. Louisiana Health and Human Resources Administration,* 349 So.2d 941 (La.App. 1 Cir. 1977); *Davenport v. Department of Corrections, LTI-New Orleans*, 315 So.2d 407 (La.App. 1 Cir. 1975)
Vague and conclusory allegations are not sufficient to state a basis for appeal in discrimination cases. *Toney v. Department of Public Safety and Corrections*, 496 So.2d 460 (La.App. 1 Cir. 1986*); Goree v. Department of Corrections,* 468 So.2d 829 (La.App. 1 Cir. 1985)

Where the appellant names three other employees who were alleged to have been treated differently, the appellant must also plead facts tending to show how these other employees were similarly situated with respect to appellant, such as their status, length of service, or duties. *Toney v. Department of Public Safety and Corrections*, 496 So.2d 460 (La.App. 1 Cir. 1986)

The employee's failure to allege specific facts that would tend to show that the Commission's action on a pay plan was discriminatory or unreasonable resulted in dismissal of the appeal. *Latona v. Department of State Civil Service*, 492 So.2d 27 (La.App. 1 Cir. 1986)

A mere conclusion of discrimination is not sufficient. *Onesta v. Department of State Civil Service,* 434 So.2d 1153 (La.App. 1 Cir. 1983); *Clark v. Department of Transportation and Development,* 413 So.2d 573 (La.App. 1 Cir. 1982); *Goins v. DHHR, E. A. Conway Memorial Hospital,* 361 So.2d 306 (La.App. 1 Cir. 1978)

For an appeal under Rule 13.10(i), it is not sufficient to merely recite that a particular action of the Director is discriminatory. *Mayeaux v. Department of State Civil Service*, 421 So.2d 948 (La.App. 1 Cir. 1982)

It is incumbent upon the employee to exercise "due diligence" to obtain facts supporting a discrimination claim. *Russell v. Division of Administration, State Buildings*, CSC Docket No. 13314; 3/11/99 [CSC decision on application for review]

For cases meeting the specificity required, see *Department of Public Safety and Corrections v. Thornton*, 625 So.2d 713 (La.App. 1 Cir. 1993*); Ramirez v. Department of Social Services,* 603 So.2d 795 (La.App. 1 Cir. 1992); *Fisher v. Department of Social Services, Office of Community Services,* 600 So.2d 1368 (La.App. 1 Cir. 1992); *Marcantel v. Department of Transportation and Development*, 590 So.2d 1253 (La.App. 1 Cir. 1991); *Gandy v. State Civil Service Commission*, 498 So.2d 765 (La.App. 1 Cir. 1986); *Department of Transportation and Development v. Gabour*, 468 So.2d 1301 (La.App. 1 Cir. 1985); *Didier v. Department of State Civil Service*, 446 So.2d 886 (La.App. 1 Cir. 1984); *Department of Culture, Recreation, and Tourism v. Peak*, 423 So.2d 718 (La.App. 1 Cir. 1982)

Rule 13.11(d) – Statement of Basis of Appeal: Article and Rule Violation Cases

To challenge the denial of a promotion on a rule violation basis, the employee must allege facts supporting any alleged violation of the promotion rules. The employee must allege more than that he has more seniority, a higher grade, and equal or greater experience than the person selected. *Flanagan v. Department of Environmental Quality*, 99-1332 (La.App. 1 Cir. 12/28/99); 747 So.2d 763

A notice of appeal does not have to state what rules were violated as long as it alleges facts that support a conclusion that a rule was violated. *Stewart v. Office of Student Financial Assistance*, 1998-2057 (La.App. 1 Cir. 11/5/99); 757 So.2d 17

An appeal asserting rule violations without sufficient factual detail may be summarily dismissed. *Casse v. Department of Health and Hospitals*, 597 So.2d 547 (La.App. 1 Cir. 1992)

When the facts pleaded in a rule violation appeal, if proved, would not constitute a violation of the rules, the appeal may be summarily dismissed. *Casse v. Department of Health and Hospitals*, 597 So.2d 547 (La.App. 1 Cir. 1992)

Rule 13.11(f) – Statement of Date Notice Was Received

Where timeliness is not at issue, failure to comply with Rule 13.11(f), which requires a notice of appeal to state the date on which the employee received the written notification of disciplinary action, does not render the appeal ineffective. *Newbrough v. State, Department of Highways*, 257 So.2d 461 (La.App. 1 Cir. 1972)

Rule 13.11(g) – Statement of Relief Sought

In civil service appeals, interest on back pay must be prayed for to be awarded. *Johnson v. Southern University*, 551 So.2d 1348 (La.App. 1 Cir. 1988)

The letter of appeal must be construed as a whole to determine the relief sought. *Perkins v. Director of Personnel*, 220 So.2d 253 (La.App. 1 Cir. 1969)

Failure to comply with Rule 13.11(g), which requires a notice of appeal to state the relief sought, does not render the appeal ineffective. The whole letter must be considered to glean the relief sought. *Bryant v. Young Memorial Vocational-Technical School,* 197 So.2d 158 (La.App. 1 Cir. 1967)

Rule 13.12(a) – Time for Filing Appeal

It is undisputed that the employee mailed her notice of appeal within the thirty-day period and that the notice was delivered to the Commission the following day. Notice was therefore timely, even though the Commission refused to accept the letter with postage due, and the employee was required to re-mail the returned letter. Appeals are

favored in law, and the employee's appeal should not be dismissed under these circumstances. *Turner v. Department of Health and Hospitals, Office of Charity Hosp. of Louisiana at New Orleans*, 561 So.2d 721 (La. 1990)

If the letter of disciplinary action is sufficient, an employee cannot avoid the thirty-day delay period for filing an appeal by alleging that the action was void *ab initio*. *Chadwick v. Department of Highways*, 238 La. 661, 116 So.2d 286 (1959)

The thirty-day delay for appealing begins to run from receipt of written notice of a disciplinary action, not from oral notice or awareness of the action. *Day v. Department of Institutions*, 228 La. 105, 81 So.2d 826 (1955); *Pailet v. Office of Health Services and Environmental Quality,* 387 So.2d 1274 (La.App. 1 Cir. 1980); *Ducote v. Louisiana Department of Health and Human Resources,* 369 So.2d 179 (La.App. 1 Cir. 1979); *Carpenter v. Confederate Memorial Medical Center,* 250 So.2d 161 (La.App. 1 Cir. 1971); *Cain v. Fowler,* 158 So.2d 631 (La.App. 1 Cir. 1963); *Bedgood v. Wildlife and Fisheries Commission*, 128 So.2d 267 (La.App. 1 Cir. 1961)

The filing of an internal grievance does not suspend or interrupt the delays provided in Rule 13.12(a). *Pilson v. Metropolitan Human Service District,* 2005-2253 (La.App. 1 Cir. 9/27/06); 944 So.2d 622; *Butler v. Charity Hospital of New Orleans*, 442 So.2d 531 (La.App. 1 Cir. 1983); *White v. Department of Health and Human Resources*, 385 So.2d 400 (La.App. 1 Cir. 1980)

A hearing is not required before dismissing an appeal as untimely when the untimeliness is apparent on the face of the appeal and the response to the show cause raises no questions necessitating a hearing. *Sterne v. Department of State Civil Service,* 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

When written notice is required, appeal delays do not begin to run until the employee receives proper notice. *Adams v. Department of Health and Hospitals*, 1997-0750 (La.App. 1 Cir. 4/8/98); 710 So.2d 1176

The mere fact that an employee is aware that a change of some kind has occurred is not sufficient notice. The employee must be properly notified or aware that he is being adversely affected; he needs to understand that a disciplinary action is being taken. *Adams v. Department of Health and Hospitals*, 1997-0750 (La.App. 1 Cir. 4/8/98); 710 So.2d 1176

The thirty-day period begins to run from receipt of written notice, not from the effective date of the action. *Hudson v. Department of Public Safety and Corrections*, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

Rule 13.12 establishing the thirty-day delay period within which to file an appeal is reasonable and constitutional and summary disposition is appropriate for appeals that are not timely filed. *Hudson v. Department of Public Safety and Corrections*, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314; *Onesta v. Department of State Civil Service*,

434 So.2d 1153 (La.App. 1 Cir. 1983); *Paisant v. University of New Orleans*, 391 So.2d 1238 (La.App. 1 Cir. 1980); *Dore v. LHHRA, Division of Family Services,* 344 So.2d 418 (La.App. 1 Cir. 1977) appeal after remand *Dore v. Louisiana Health and Human Resources Administration,* 361 So.2d 229 (La.App. 1 Cir. 1978); *Sutton v. Department of Public Safety*, *Division of State Police*, 340 So.2d 1092 (La.App. 1 Cir. 1976); *Gordon v. Louisiana State Board of Education,* 313 So.2d 605 (La.App. 1 Cir. 1975); *In re: Owens*, 236 So.2d 229 (La.App. 1 Cir. 1970)

The choice of the triggering event that begins the running of an appeal delay does not involve due process concerns unless it affects a litigant's rights of notice and an opportunity to be heard. Rule 13.12 provides for both of these rights – the delay does not begin to run until the employee receives notice of the challenged action and the employee is given thirty days from such notice to perfect his appeal. *Hudson v. Department of Public Safety and Corrections*, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

Although due process must be afforded, no one has a vested right in any given mode of procedure. The procedural aspects of an appeal are primarily an administrative rule-making function. So long as the administratively established procedure provides reasonable time and opportunity for taking and perfecting an appeal the constitutional requirement of due process is satisfied. *Hudson v. Department of Public Safety and Corrections*, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

An appeal that complains solely of prospective actions is premature. *Rader v. Department of Health and Hospitals, Office of Public Health*, 94-0763 (La.App. 1 Cir. 3/3/95); 652 So.2d 644

The fact that the action complained of is continuous does not prevent the tolling of the delays provided in Rule 13.12(a) and (c). *Rader v. Department of Health and Hospitals, Office of Public Health*, 94-0763 (La.App. 1 Cir. 3/3/95); 652 So.2d 644; *Ream v. Department of Health and Human Resources*, 461 So.2d 1217 (La.App. 1 Cir. 1984); *Butler v. Charity Hospital of New Orleans*, 442 So.2d 531 (La.App. 1 Cir. 1983)

When the agency retroactively changes the effective date of the employee's merit increase, the employee's delay for appealing begins when the employee learns of the change in effective dates. (In December 1991, the agency told the employee he would receive a merit increase retroactive to March 1991 and then in February 1992, told the employee that the increase would only be retroactive to December 1991.) *Mautemps v. Port of South Louisiana*, 93-0900 (La.App. 1 Cir. 3/11/94); 634 So.2d 30

While the appeal of a layoff action has to be filed within thirty days of receipt of notice thereof, violations that later occurred during implementation of the layoff would constitute another action from which an appeal might be taken. *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992)

The operative fact that triggers the thirty-day appeal period applicable to a resignation to avoid dismissal is knowledge that the action complained of occurred, rather than knowledge that the action can be challenged through appeal. *Pugh v. Department of Culture, Recreation and Tourism*, 597 So.2d 38 (La.App. 1 Cir. 1992), distinguishing *Butler* [below].

An employee has thirty days from the date of resignation to file an appeal challenging the voluntariness of that resignation. *Pugh v. Department of Culture, Recreation and Tourism*, 597 So.2d 38 (La.App. 1 Cir. 1992)
When a second letter of proposed layoff that contains a different job offer from the first offer is given to an employee, the delay for appealing commences from receipt of the second letter. *Lascala v. New Orleans City Park*, 535 So.2d 478 (La.App. 1 Cir. 1989)

Rule 13.12(a) establishing the delay for filing an appeal may be a preemptive period, rather than a prescriptive period. *Johnson v. Southern University*, 551 So.2d 1348 (La.App. 1 Cir. 1988)

If the employee is not advised of her appeal rights on a suspension letter, it prevents the running of the thirty-day delay period for filing an appeal. *Appeal of Kennedy,* 442 So.2d 566 (La.App. 1 Cir. 1983)

The purpose of Rule 13.12 is to provide a time limit on the right to appeal. Due process does not give an employee an interminable length of time in which to appeal. It is not unreasonable to require an employee to appeal within thirty days of the date he receives actual knowledge of some adverse action by the appointing authority or of some violation of the rules giving rise to an appeal. *Butler v. Charity Hospital of New Orleans*, 442 So.2d 531 (La.App. 1 Cir. 1983)

Where the action complained of is not one for which written notice is required under the rules, the delay period for filing an appeal begins on the date the employee actually learned of the alleged rule violation and of her right to appeal. *Butler v. Charity Hospital of New Orleans,* 442 So.2d 531 (La.App. 1 Cir. 1983) **BUT SEE:** *Sterne v. Department of State Civil Service*, 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505, which erodes the impact of the "and of her right to appeal" language.

Where the appointing authority misleads the employee as to the status of his removal and sends a second letter of termination and keeps the employee on the payroll after the effective date of the first termination, the delay for appealing runs from receipt of the second letter of termination. *Wollerson v. Department of Agriculture*, 436 So.2d 1241 (La.App. 1 Cir. 1983)

Failure to provide notice of right to appeal extends the delay for appealing. *Spears v. Department of Corrections,* 402 So.2d 203 (La.App. 1 Cir. 1981)

Rule 13.12 is jurisdictional. *Acosta v. Department of Health and Human Resources*, 423 So.2d 104 (La.App. 1 Cir. 1982); *Baloney v. DHHR, Office of Family Services*, 364 So.2d 203 (La.App. 1 Cir. 1978)

Where the appointing authority sent a corrected letter of termination using the same charges as the initial termination and the employee had already filed a timely appeal of the initial termination, the initial appeal was deemed timely as to both actions. *Dent v. Department of Corrections*, 413 So.2d 920 (La.App. 1 Cir. 1982); *Washington v. Confederate Memorial Medical Center*, 160 So.2d 286 (La.App. 1 Cir. 1964)

The delays in Rule 13.12 were suspended where the employee could not have legally filed the appeal within the prescribed delays because she was an unclassified employee when the action complained of occurred. *Stafford v. Division of Administration*, 407 So.2d 87 (La.App. 1 Cir. 1981)

The thirty-day delay for appealing begins to run from receipt of written reasons for a suspension not from oral notice or awareness of the action. *Pailet v. Office of Health Services and Environmental Quality,* 387 So.2d 1274 (La.App. 1 Cir. 1980)
If the employee is not given notice, there is no basis for commencing the tolling of the thirty-day delay period. *Ducote v. Louisiana Department of Health and Human Resources*, 369 So.2d 179 (La.App. 1 Cir. 1979)

Rule 13.12(a)2 does not apply to the dismissal of a permanent employee. A permanent civil service employee who receives no written notice of discharge does not lose his right of appeal within thirty days of oral notification, because the discharge is totally ineffective. Until such notice of dismissal is given in writing, the appeal delays do not begin to run. *Carpenter v. Confederate Memorial Medical Center*, 250 So.2d 161 (La.App. 1 Cir. 1971)

Rule 11.27(g) governs leave without pay. It does not require written notice to the employee. Therefore, Rule 13.12(a)2 establishes the delay for appeal. Under this rule, the delay for appeal runs from "the date when appellant learned or was aware that the action complained of **had occurred**." [Emphasis added.] We have repeatedly held that the use of the past tense (i.e., "had occurred" instead of "will occur") in this rule means that when written notice is not required, the action must occur before the delay for appealing begins to run. *Diel v. Office of Group Benefits*, CSC Docket No. 15070; 10/22/03 [CSC decision]

Each paycheck does not constitute an independent "action complained of." Once the decision is made not to pay for the higher duties, the uniform pay and classification plan and its attendant rules are then applied. It is the decision to maintain a particular level that must be considered as the "action complained of" and not the natural effects of that decision. *Keys v. LSU Health Sciences Center - Medical Center of LA at New Orleans*, CSC Docket Nos. 13222, 14722, and 14775; 1/9/05 [CSC decision on application for review]

When the employee is suspended and later dismissed for exactly the same reasons and the employee files an appeal of the suspension in which he addresses the reasons given for the actions, the Commission treats the appeal of the suspension as also including the dismissal. *Kennedy v. Louisiana School for the Deaf*, CSC Docket No. 11184; 10/11/95 [CSC decision]; *Wertz v. DPSC, Alcoholic Beverage Control,* CSC Docket No. 10226; 11/30/94 [CSC decision on application for review]

Rule 13.12(d) – Amendments to Appeals

The requirements of Rule 13.11(d), when applied in conjunction with Rule 13.14, requiring summary dismissal when a notice of appeal does not comply with Rule 13.11, together with Rule 13.12, disallowing supplementation or amendment of an appeal beyond the thirty-day period for filing an appeal is unreasonable and imposes an unduly onerous responsibility on employees. *Rocque v. Department of Health and Human Resources,* 505 So.2d 726 (La. 1987); *Carter v. Department of Revenue and Taxation,* 563 So.2d 920 (La.App. 1 Cir. 1990)

The referee's decision to disallow the employee’s second amending petition did not terminate or dismiss her appeal, nor did it exclude any of her claims. She was not seeking to amend a defective appeal that would otherwise be subject to summary dismissal. Indeed, the employee had already raised the claim of disparate treatment and had been allowed to file a first supplemental and amending petition to allege facts to support that claim. The second amending petition merely sought to further bolster that claim with factual allegations concerning an event that occurred well within the time limits imposed by Rule 13.12(d). The amendment was properly disallowed. *Brown v. Department of Health & Hospitals*, 2004-2348 (La.App. 1 Cir. 11/4/05); 917 So.2d 522, distinguishing *Rocque* and *Carter* [above]

For cases referring to orders to amend to avoid dismissal of an appeal, see *Khosravanipour v. Department of Transportation and Development*, 93-2041, 93-2042, 93-2043, 93-2044, and 93-2045 (La.App. 1 Cir. 10/7/94); 644 So.2d 823; *Department of Public Safety and Corrections v. Thornton,* 625 So.2d 713 (La.App. 1 Cir. 1993)

A second appeal filed more than one year after the first appeal was not filed within a reasonable time of the first appeal and therefore, the second appeal cannot be considered as an amendment to the first. *Johnson v. Southern University*, 551 So.2d 1348 (La.App. 1 Cir. 1988)

OLD LAW: Rule 13.12(d); which prohibits amending an appeal after the original thirty days have run, is constitutional. *Toney v. Department of Public Safety and Corrections,* 496 So.2d 460 (La.App. 1 Cir. 1986); *Onesta v. Department of State Civil Service,* 434 So.2d 1153 (La.App. 1 Cir. 1983); *Goins v. DHHR, E. A. Conway Memorial Hospital,* 361 So.2d 306 (La.App. 1 Cir. 1978); *Dore v. LHHRA, Division of Family Services,,* 344 So.2d 418 (La.App. 1 Cir. 1977) appeal after remand *Dore v. Louisiana Health and Human Resources Administration* 361 So.2d 229 (La.App. 1 Cir. 1978)

Rule 13.12(e) – Proof of Timely Mailing of Appeal

To be timely, an appeal must be postmarked timely, not merely delivered to the post office timely. *Acosta v. Department of Health and Human Resources*, 423 So.2d 104 (La.App. 1 Cir. 1982)

Rule 13.13 – Notice of the Filing of an Appeal; Parties

Where the validity of a union contract is at issue, the union is an indispensable party and must be notified of the appeal. *Department of Labor, Office of Employment Security v. Leonards*, 498 So.2d 178 (La.App. 1 Cir. 1986)

Where the issue is whether another employee is qualified for promotion to the position sought by appellant, the person who was promoted must be made a party to the appeal. *Donchess v. DHH, Office of Management and Finance*, 457 So.2d 833 (La.App. 1 Cir. 1984)

Plaintiffs have also sought to have the promotions of those who benefited illegally from the veterans' preference points declared null and void, but these individuals were not made parties to these proceedings. To adversely affect their rights under the circumstances would be an injustice and an infringement on their constitutional right to due process. *Lechler v. City Civil Service Commission for Parish of Orleans,* 357 So.2d 41 (La.App. 4 Cir. 1978)

Rule 13.14 – Summary Disposition in General

Summary disposition of the disciplinary action is not mandated where LSA-R.S. 40:2531(B)(7) provides no penalty for failing to complete the investigation within sixty days and where no prejudice has been demonstrated. *Marks v. New Orleans Police Department*, 2006-0575 (La. 11/29/06); 943 So.2d 1028
Appeals are favored and should not be dismissed for mere technicalities. *Odom v. City of Minden*, 300 So.2d 462 (La. 1974); *Smith v. Board of Commissioners*, 262 La. 96, 262 So.2d 383 (1972); *Duncan v. L.H.H.R.A., Division of Family Services*, 341 So.2d 1217 (La.App. 1 Cir. 1976)

If an employee has no right of appeal, it is error to dismiss the appeal as untimely. *Roberts v. Department of Health and Hospitals*, 1997-0855 (La.App. 1 Cir. 5/15/98); 712 So.2d 696; *Rollins v. Housing Authority of New Orleans*, 93-1810 (La.App. 1 Cir. 10/7/94); 644 So.2d 837

Rule 13.14(a) allows written motions for summary disposition prior to the hearing as well as oral motions during the hearing. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital*, 610 So.2d 936 (La.App. 1 Cir. 1992); *Greenleaf v. DHH, Metropolitan Developmental Center*, 594 So.2d 418 (La.App. 1 Cir. 1991)

The Commission may summarily dispose of an appeal on its own motion. Therefore, the dispositions apply to a moving party as well as to a non-moving party. *Casse v. Department of Health and Hospitals*, 597 So.2d 547 (La.App. 1 Cir. 1992)

Where an employee disputes his status as probationary, summary disposition is not appropriate. *Toney v. Department of Corrections*, 448 So.2d 194 (La.App. 1 Cir. 1984)

Failure to object to an oral request for summary disposition waives the right to object to it. *Shelton v. Southeastern Louisiana University*, 431 So.2d 437 (La.App. 1 Cir. 1983)

Failure of subpoenaed witnesses to appear is not grounds for summary disposition. *Fleming v. Louisiana Department of Education*, 293 So.2d 658 (La.App. 1 Cir. 1974)

Summary disposition is properly denied where there is a serious dispute as to underlying facts. *Harmon v. Louisiana Wild Life and Fisheries Commission*, 244 So.2d 922 (La.App. 1 Cir. 1970)

Where a motion is raised for the first time at a hearing on the merits, the opposing party, is entitled to a meaningful opportunity to gather facts to rebut the allegations of such a motion or to rebut a *prima facie* showing of a moving party. *Valentine v. Office of Economic Development, Office of Financial Institutions,* CSC Docket No. S-9633; 1/1/93 [CSC decision on application for review]

Rule 13.14(a)(2) – Summary Disposition: No Right of Appeal

For other cases involving no right of appeal, see cases listed under Rule 13.10 – No Right of Appeal.

For the purpose of deciding a request for summary disposition on the ground of no right of appeal, all well pleaded allegations of fact in the request for appeal are to be taken as true. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

A request for summary disposition on the ground of no right of appeal is analogous to a peremptory exception of no cause of action. If the petition states any cause of action as to any ground, the exception must be overruled and all doubt must be resolved in favor of the employee. *King v. LSU Health Sciences Center,* 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544; *Roberts v. Department of Health and Hospitals*, 1097-0855 (La.App. 1 Cir. 5/15/98); 712 So.2d 696; *Bass v. Department of Public Safety and Corrections*, 95-2499 (La.App. 1 Cir. 6/28/96); 676 So.2d 1178; *Ramirez v. Department of Social Services,* 603 So.2d 795 (La.App. 1 Cir. 1992); *Kyle v. Civil Service Commission,* 588 So.2d 1154 (La.App. 1 Cir. 1991); *Department of Labor, Office of Employment Security v. Leonards,* 498 So.2d 178 (La.App. 1 Cir. 1986*); Didier v. Department of State Civil Service*, 446 So.2d 886 (La.App. 1 Cir. 1984)

If the petition states a cause of action as to any ground or portion of the demand, an exception raising the objection of no cause of action must be overruled. Therefore, if a classified employee has alleged grounds upon which appeals are allowed, he has the right to appeal. *King v. LSU Health Sciences Center*, 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544

The issue of whether an employee has a right to appeal is analogous to whether a plaintiff has stated a cause of action. *Department of Labor, Office of Employment Security v. Leonards*, 498 So.2d 178 (La.App. 1 Cir. 1986)

An appeal by a job appointee who had served on three successive job appointments could not be summarily dismissed for no right of appeal. (The court concluded the employee was permanent. It interpreted Rule 8.14 as converting a job appointment to a probationary appointment after two years with automatic permanent status six months thereafter.) *Finley v. Department of Corrections*, 351 So.2d 811 (La.App. 1 Cir. 1977) **NOTE: Subsequent amendments to the rules make this case obsolete.**

Rule 13.14(a)(3) – Summary Disposition: No Basis for Appeal

The requirements of Rule 13.11(d), when applied in conjunction with Rule 13.14, requiring summary dismissal when a notice of appeal does not comply with Rule 13.11, together with Rule 13.12, disallowing supplementation or amendment of an appeal beyond the thirty-day period for filing an appeal is unreasonable and imposes an unduly onerous responsibility on employees. Therefore, an appeal that fails to state a basis for appeal may not be summarily dismissed. *Rocque v. Department of Health and Human Resources,* 505 So.2d 726 (La. 1987); *Marcantel v. Department of Transportation and Development*, 590 So.2d 1253 (La.App. 1 Cir. 1991); *Carter v. Department of Revenue and Taxation,* 563 So.2d 920 (La.App. 1 Cir. 1990)

NOTE: In response to *Rocque, Marcantel*, *Carter*, and several unpublished decisions, the Appeals Division developed a show cause procedure that notices the employee of the defect and gives the employee an opportunity to amend the appeal to cure the defect. This has apparently passed court muster: *Sterne v. Department of State Civil Service,* 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505; *Khosravanipour v. Department of Transportation and Development*, 93-2041, 93-2042, 93-2043, 93-2044, and 93-2045 (La.App. 1 Cir. 10/7/94); 644 So.2d 823; *Department of Public Safety and Corrections v. Thornton,* 625 So.2d 713 (La.App. 1 Cir. 1993)

An appeal asserting rule violations without sufficient factual detail may be summarily dismissed. *Casse v. Department of Health and Hospitals*, 597 So.2d 547 (La.App. 1 Cir. 1992)

When the facts pleaded in a rule violation appeal, if proved, would not constitute a violation of the rules, the appeal may be summarily dismissed. *Casse v. Department of Health and Hospitals*, 597 So.2d 547 (La.App. 1 Cir. 1992)

Where the employee does not deny or otherwise put at issue any of the facts underlying a separation under Rule 12.10 [current Rule 12.6(a)1], the appeal may be summarily dismissed. *Dent v. Department of Corrections*, 460 So.2d 57 (La.App. 1 Cir. 1984); *Broussard v. Department of Corrections*, 405 So.2d 1219 (La.App. 1 Cir. 1981)

Rule 13.14(a)(3) – Summary Disposition: Untimely Appeals

An appeal is properly dismissed if it is untimely. See annotations under Rule 13.12.

A hearing is not required before dismissing an appeal as untimely when the untimeliness is apparent on the face of the appeal and the response to the show cause raises no questions necessitating a hearing. *Sterne v. Department of State Civil Service,* 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

The party asserting untimeliness has the burden of proving when the delays commenced. *Faure v. Department of Health and Human Resources*, 504 So.2d 1022 (La.App. 1 Cir. 1987)

Rule 13.14(a)(4) – Summary Disposition: Mootness

A moot case is one which, when rendered, can give no practical relief. Courts will not rule on questions of law that have become moot because their decree will serve no useful purpose. *James v. LSU Health Sciences Center*, 2001-1853 (La.App. 1 Cir. 11/8/02); 834 So.2d 470; *Khosravanipour v. Department of Transportation and Development*, 93-2041, 93-2042, 93-2043, 93-2044, and 93-2045 (La.App. 1 Cir. 10/7/94); 644 So.2d 823

An appeal challenging the agency's failure to pay back wages becomes moot when the agency pays the wages. *James v. LSU Health Sciences Center*, 2001-1853 (La.App. 1 Cir. 11/8/02); 834 So.2d 470

Involuntary retirement does not moot appeal of termination. *Department of Public Safety and Corrections, Office of State Police v. Mensman,* 94-1073 (La.App. 1 Cir. 6//30/95); 671 So.2d 360 [State Police Commission case]

A case is moot when there is no reasonable expectation that the alleged violation will recur and when interim relief or events have completely and irrevocably eradicated the effects of the alleged violation. When both of the above conditions are satisfied, it may be said that the case is moot because neither party has a legally cognizable interest in the final determination of the underlying questions of fact or law. *Khosravanipour v. Department of Transportation and Development,* 93-2041, 93-2042, 93-2043, 93-2044, and 93-2045 (La.App. 1 Cir. 10/7/94); 644 So.2d 823

An employee's claim of discrimination becomes moot when, after transferring to a different agency he returns to his former agency but is no longer under the supervision and control of the persons who allegedly were discriminating against him.

Khosravanipour v. Department of Transportation and Development, 93-2041, 93-2042, 93-2043, 93-2044, and 93-2045 (La.App. 1 Cir. 10/7/94); 644 So.2d 823

The Department's appeal from the Commission's decision requiring that two discharged employees of Department be reinstated with back pay was moot with regard to the employee who retired with approval of Department after he had been reinstated. *Major v. Louisiana Department of Highways*, 327 So.2d 515 (La.App. 1 Cir. 1976)

When an employee resigns, his appeal for extended leave is moot. *Krasnoff v. City of New Orleans,* 209 So.2d 149 (La.App. 4 Cir. 1968)

A moot case is one in which there is no real controversy and which seeks to determine an abstract question not resting on existing facts or rights. *Danna v. Commissioner of Insurance*, 207 So.2d 377 (La.App. 1 Cir. 1968)

When an employee's dismissal has been upheld, his appeals of substandard ratings are moot because a favorable ruling on the ratings would not alter his non-employee status. It is beyond the jurisdiction of the Commission to pass upon or sit in judgment of the character and reputation of a person whose status is like that of the appellant. Such action would clearly be beyond the scope of the operation of the Commission, and would go beyond the authority and duty conferred upon it by the Constitution. *Danna v. Commissioner of Insurance*, 207 So.2d 377 (La.App. 1 Cir. 1968)

Rule 13.14(a)(5) – Summary Disposition: Appellant's Failure to Appear

See annotations under Rule 13.22.

Rule 13.14(a)(6) – Summary Disposition: Inadequate Notice of Adverse Action

For cases concerning the requirement that a disciplinary letter contain detailed reasons, see cases under Rule 12.8 – Detailed Reasons.

The provisions of Rule 13.14(a)6, which allow summary disposition of an appeal where the notice of disciplinary action in insufficient, do not apply if the employee was probationary. *King v. Department of Health and Human Resources*, 506 So.2d 832 (La.App. 1 Cir. 1987)

Failure to raise an objection as to the sufficiency of allegations of misconduct waives it. *Walker v. State Parks and Recreation Commission,* 341 So.2d 1203 (La.App. 1 Cir. 1976); *Bonnette v. Louisiana State Penitentiary*, *Department of Institutions*, 148 So.2d 92 (La.App. 1 Cir. 1962)

Rule 13.14(a)(7) – Summary Disposition: Lack of Proper Appointing Authority

An appeal is properly summarily granted if the action was not taken by the proper appointing authority. See cases listed under Rule 12.1 – Appointing Authority.

Rule 13.14 – Summary Disposition: Other Grounds

For an exception of *res judicata* to be sustained, there must be identity in the two suits as to the thing demanded, the cause of action, and the parties involved. *Leger v. Louisiana State University*, 601 So.2d 20 (La.App. 1 Cir. 1992)

The burden of proof is on the pleader to establish the essential facts to sustain the plea of *res judicata*. *Leger v. Louisiana State University Agriculture Center*, 607 So.2d 744 (La.App. 1 Cir. 1992)

Lis pendens is applicable only when there are two suits pending between the same parties, in the same capacities, having the same object and based on the same cause of action. *Lis pendens* is not applicable when a suit seeks a declaratory judgment and a civil service appeal seeks reinstatement and back pay. *Casse v. Sumrall*, 547 So.2d 1381 (La.App. 1 Cir. 1989)

Rule 13.14(c) – Summary Disposition: Referral to Merits

A request for summary disposition may be referred to the merits. *Bennett v. Division of Administration,* 307 So.2d 118 (La.App. 1 Cir. 1974)

Rule 13.14(d) – Summary Disposition: Grounds Raised by Commission or Referee

A Referee may raise the issue of no basis for appeal on his or her own motion. *Rocque v. Department of Health and Human Resources*, 490 So.2d 352 (La.App. 1 Cir. 1986), reversed on other grounds 505 So.2d 726 (La. 1987)

Timeliness is properly raised by a Commission on its own motion. *Simmons v. Sowela Technical School*, 458 So.2d 565 (La.App. 3 Cir. 1984)

Rule 13.15 – Assigning Appeals for Hearing

A nine-month delay until the hearing is not *per se* unconstitutional. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985)

Rule 13.15 requires appeals to be heard, as far as practicable, in the order docketed. There is no requirement that appeals be held promptly absent a showing of injury. *Hanks v. Department of State Civil Service*, 449 So.2d 500 (La.App. 1 Cir. 1984); *Burnett v. Department of Health and Human Resources*, 425 So.2d 245 (La.App. 1 Cir. 1982)

Rule 13.17 – Notice of Hearing

Although notice is a fundamental requirement of due process, the notice required for an administrative hearing is not as strict or exacting as that required in a judicial proceeding. The notice in such cases need only be reasonable under the

circumstances, and serve the primary function of allowing the employee sufficient opportunity to prepare for the hearing. *Faure v. Department of Health and Human Resources*, 504 So.2d 1022 (La.App. 1 Cir. 1987)

For the requirements of notice in administrative hearings generally, see *Lambert v. Louisiana Board of Veterinary Medicine*, 489 So.2d 1341 (La.App. 1 Cir. 1986)

Notice must be reasonably calculated under the circumstances to apprise the interested party of the pendency of the action and to afford that party an opportunity to present his objections. *Smith v. Department of Health and Human Resources*, 432 So.2d 997 (La.App. 1 Cir. 1983)

Rule 13.18 – Continuance of Hearing

The granting or denying of a motion to continue rests within the sound discretion of the Referee. When the employee receives adequate notice of the hearing and has adequate time to retain counsel, it is not an abuse off discretion to deny a continuance when an employee waits until the day of the hearing to retain counsel and asks for a continuance on that basis. *Addison v. L.S.U. Medical Center in Shreveport*, 551 So.2d 750 (La.App. 1 Cir. 1989)

A request for a continuance may be denied. *Jacomet v. T. H. Harris Vocational-Technical School,* 491 So.2d 59 (La.App. 1 Cir. 1986)

Rule 13.18(b), which allows the Commission or the Referee to deny back pay for time lost as a result of a continuance caused by the employee, is enforceable. *Werner v. Department of Police*, 487 So.2d 598 (La.App. 4 Cir. 1986); *Willis v. Department of Health and Human Resources,* 434 So.2d 1164 (La.App. 1 Cir. 1983)

It is not an abuse of discretion to deny an employee’s request for a continuance on the grounds that one of the employee’s witnesses is not available where there was no showing of prejudice or how the absent witness would have been material. *Goree v. Department of Corrections*, 468 So.2d 829 (La.App. 1 Cir. 1985)

It was not an abuse of discretion to deny a continuance on the morning of the hearing when the employee arrived at the hearing assuming that he could be represented by a co-worker although he had been previously provided information to the contrary. *Philson v. Department of Corrections,* 451 So.2d 1311 (La.App. 1 Cir. 1984)

Where the employee received notice of the hearing and contacted an attorney more than one month later, which resulted in a continuance, the employee was properly denied back pay for a continuance later requested by the agency; the original continuance caused the additional delays. *Willis v. Department of Health and Human Resources*, 434 So.2d 1164 (La.App. 1 Cir. 1983)

Refusal to grant continuance where the employee was present, but his attorney was not, was an abuse of discretion. *Gautreaux v. Division of State Buildings and Grounds*, 395 So.2d 388 (La.App. 1 Cir. 1981) See also *Boucher v. Doyal*, 210 So.2d 75 (La.App. 1 Cir. 1968)

The Commission has the authority to continue a case on its own motion. *Vidrine v. State Parks and Recreation Commission*, 169 So.2d 641 (La.App. 1 Cir. 1964)

Refusal to grant a continuance is not an abuse of discretion where attorney telegrammed that he would be there and did not appear within an hour. *Foster v. Department of Public Welfare*, 144 So.2d 271 (La.App. 1 Cir. 1962)

Rule 13.19 – Due Process in Administrative Hearings in General

Due process does not have a fixed content. It is a flexible standard and calls for such procedural protections as the particular situation demands. Where the power of the government or an agency is to be used against an individual, there is a right to a fair procedure to determine the basis for and the legality of the action. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

To determine if the procedure is adequate, three factors must be considered: the private interest affected; the risk of an erroneous deprivation; and the government's interest. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

Due process requires that a decision maker not have a direct or indirect financial stake which would give a possible temptation to the average person as a decision maker to make him partisan towards maintaining a high level of revenue generated by his adjudicative function. Even if an individual cannot show special prejudice in his particular case, the situation is which an official occupies two inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process. *Wilson v. City of New Orleans*, 479 So.2d 891 (La. 1985)

Enforced compensatory leave does not require a pre-deprivation procedure. *Adams v. Department of Health and Hospitals Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

A hearing is not required before dismissing an appeal as untimely when the untimeliness is apparent on the face of the appeal and the response to the show cause raises no questions necessitating a hearing. *Sterne v. Department of State Civil Service,* 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

The fundamental requirements of procedural due process are notice and the opportunity to be heard at a meaningful time and in a meaningful manner. *Hudson v. Department of Public Safety and Corrections*, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

Although due process must be afforded, no one has a vested right in any given mode of procedure. The procedural aspects of an appeal are primarily an administrative rule-making function. So long as the administratively established procedure provides reasonable time and opportunity for taking and perfecting an appeal the constitutional requirement of due process is satisfied. *Hudson v. Department of Public Safety and Corrections,* 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

Due process is a flexible standard that requires such procedural safeguards as a particular situation demands. Because due process is not a technical concept with a fixed content unrelated to time, place, and circumstances, precisely what process is due in a given case is dependent upon the peculiar facts involved. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center*, 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389; *Brown v. Housing Authority of New Orleans*, 590 So.2d 1258 (La.App. 1 Cir. 1991); *Casse v. Sumrall*, 547 So.2d 1381 (La.App. 1 Cir. 1989)

Not every rule violation rises to the level of a due process violation. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center*, 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389

An employee is entitled to a full and fair evidentiary hearing and a complete opportunity to establish any material issue properly raised. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992); *Meaux v. Department of Highways*, 274 So.2d 486 (La.App. 1 Cir. 1973)

A state does not violate due process when it has made procedural protections available and the employee has refused to avail himself of them. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

A breach of an agency's internal rules violates the Constitution only when the procedures promised are denied in a manner that the constitutional minimum is denied or an independent constitutional deprivation is effected. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

The fundamental requirements of due process are notice and the opportunity to be heard at a meaningful time and in a meaningful manner. The primary purpose of the required notice is to apprise the affected individual of and permit adequate preparation for the required hearing. *Casse v. Sumrall*, 547 So.2d 1381 (La.App. 1 Cir. 1989)

Due process does not require a hearing before pay incorrectly calculated is reduced. The appeal process adequately safeguards the employee's rights. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

Where the Commission rescinds the promotion of an employee, that employee must have been made a party to that proceeding as required by the Commission's own rules and procedural due process. *Donchess v. DHHR, Office of Management and Finance*, 457 So.2d 833 (La.App. 1 Cir. 1984)

Due process in administrative hearings requires: notice; an opportunity to be heard; the right to counsel; the right to cross examine adverse witnesses; and the right to present witnesses on one's behalf. A full-blown trial is not required. *Smith v. Division of Administration*, 415 So.2d 381 (La.App. 1 Cir. 1982); *Hamilton v. Louisiana Health & Human Resources Administration*, 341 So.2d 1190 (La.App. 1 Cir. 1976)

To have the promotions of those who benefited illegally from the veterans' preference points declared null and void, these individuals must be made parties to the proceedings. To adversely affect their rights without making them parties would be an injustice and an infringement on their constitutional right to due process. *Lechler v. City Civil Service Commission for Parish of Orleans,* 357 So.2d 41 (La.App. 4 Cir. 1978)

Even where a statute mandates an adjudicatory proceeding, neither that statute nor the Administrative Procedure Act requires an agency to conduct a meaningless evidentiary hearing where the facts are undisputed. *Meaux v. Department of Highways*, 228 So.2d 680 (La.App. 1 Cir. 1969)

Rule 13.19 – Hearing Procedure in General

The Commission has much discretion in the conduct of its hearings. *Pembrick v. Charity Hospital of Louisiana at New Orleans*, 268 So.2d 265 (La.App. 1 Cir. 1972)

Rule 13.19(b) – Right to Counsel

An employee who represents himself cannot be held to the same standards of skill and judgment that must be attributed to an attorney. However, a layman assumes responsibility for his own inadequacy and lack of knowledge of both procedural and substantive law. *Johnson v. Department of Health and Hospitals*, 2000-0071 (La.App. 1 Cir. 2/16/01); 808 So.2d 436*; Rader v. Department of Health and Hospitals, Office of Public Health,* 94-0763 (La.App. 1 Cir. 3/3/95); 652 So.2d 644

The criminal doctrine of ineffective assistance of counsel does not apply to civil service appeal proceedings. A civil service proceeding is not quasi-criminal. *Addison v. L.S.U. Medical Center in Shreveport*, 551 So.2d 750 (La.App. 1 Cir. 1989)

An employee may not be represented by a non-lawyer coworker. *Philson v. Department of Corrections,* 451 So.2d 1311 (La.App. 1 Cir. 1984)

Appellants in proper person must accept their own inexpertise. *Bonnette v. Louisiana State Penitentiary*, *Department of Institutions*, 148 So.2d 92 (La.App. 1 Cir. 1962)

Rule 13.19(c) – Burden of Proof in Discipline and Removal Cases in General

The burden of proof is by a preponderance of evidence, not proof beyond a reasonable doubt. *King v. Department of Public Safety*, 236 La. 602, 108 So.2d 524 (1959); *Bailey v. Department of Public Safety and Corrections,* 2005-2474 (La.App. 1 Cir 12/6/06); 951

So.2d 234; *Wopara v. State Employees' Group Benefits Program*, 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67; *Jones v. Department of Health and Human Resources*, 430 So.2d 1203 (La.App. 1 Cir. 1983); *Savoie v. State Department of Corrections*, 394 So.2d 1285 (La.App. 1 Cir. 1981); *Hebert v. Department of Police*, 362 So.2d 1190 (La.App. 4 Cir. 1978)

The burden of proof, as to the facts, is on the appointing authority in disciplinary actions. *Wopara v. State Employees' Group Benefits Program,* 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67; *Smith v. Department of Public Safety and Corrections*, 500 So.2d 779 (La.App. 1 Cir. 1986); *Dent v. Department of Corrections*, 413 So.2d 920 (La.App. 1 Cir. 1982); *Department of Public Safety v. Rigby*, 401 So.2d 1017 (La.App. 1 Cir. 1981); *Shelfo v. LHHRA, Pinecrest State School*, 361 So.2d 1268 (La.App. 1 Cir. 1978); *Stiles v. Department of Public Safety*, 361 So.2d 267 (La.App. 1 Cir. 1978)

Preponderance of evidence means evidence of a greater weight or more convincing than that offered in opposition to it. *Wopara v. State Employees' Group Benefits Program*, 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67; *Hill v. Department of Health and Human Resources*, 457 So.2d 781 (La.App. 1 Cir. 1984); *Ferguson v. Department of Health and Human Resources*, 451 So.2d 165 (La.App. 1 Cir. 1984); *Department of Corrections, Louisiana State Penitentiary v. Barrere*, 431 So.2d 782 (La.App. 1 Cir. 1983); *Jones v. Department of Health and Human Resources*, 430 So.2d 1203 (La.App. 1 Cir. 1983); *Thornton v. DHHR, Earl K. Long Memorial Hospital*, 394 So.2d 1269 (La.App. 1 Cir. 1981)

The employee does not have to prove or say anything. The agency must show by a preponderance of evidence that it had good cause to terminate the employee. *Smith v. Department of Public Safety and Corrections*, 500 So.2d 779 (La.App. 1 Cir. 1986)

Where circumstantial evidence is relied upon, such evidence, taken as a whole, must exclude every other possible hypothesis with a fair amount of certainty. *Smith v. Department of Public Safety and Corrections*, 500 So.2d 779 (La.App. 1 Cir. 1986), dissenting opinion

The agency's burden is to put on a *prima facie* case. A *prima facie* case is evidence sufficient to establish a given fact, which if not rebutted or contradicted, will remain sufficient. At this point, the burden shifts to the employee. *Smith v. Department of Public Safety and Corrections,* 500 So.2d 779 (La.App. 1 Cir. 1986), dissenting opinion

In civil matters, the plaintiff must only carry his burden of proof by a preponderance of the evidence. Therefore, a finding that a fact was "not conclusively proven" imposed a greater burden of proof than that required by law. *Department of Corrections, Louisiana State Penitentiary v. Barrere*, 431 So.2d 782 (La.App. 1 Cir. 1983)

If evidence is introduced on only some of the charges, the disciplinary action must stand or fall on the charges on which evidence was introduced. *Stiles v. Department of Public Safety*, 361 So.2d 267 (La.App. 1 Cir. 1978)

There is no presumption that the disciplinary action taken is correct. *Bernard v. Louisiana Health and Human Resources Administration*, 336 So.2d 55 (La.App. 1 Cir. 1976)

There is no need to prove what is conceded*. Heno v. Department of Labor, Division of Employment Security*, 171 So.2d 270 (La.App. 1 Cir. 1965)

Where there are two versions of the incident each of which is as probable as the other and the two witnesses are equally believable, the agency's burden of proof required it to put on some evidence, even if it is only circumstantial, to break the tie. Organizational hierarchy is irrelevant to the issue of credibility. *Wesley v. Department of Public Safety and Corrections, Louisiana Correctional Institute for Women*, CSC Docket No. 12437; 12/17/97 [CSC decision]

For cases involving failure to bear burden of proof, see: *Bryant v. Division of State Buildings and Grounds,* 264 So.2d 678 (La.App. 1 Cir. 1972); *Phelps v. State Department of Hospitals,* 250 So.2d 442 (La.App. 1 Cir. 1971); *Robbins v. New Orleans Public Library,* 208 So.2d 25 (La.App. 4 Cir. 1968); *Hollis v. Confederate Memorial Medical Center*, 148 So.2d 381 (La.App. 1 Cir. 1962)

Rule 13.19(c) – Burden of Proof, Specific Cases

If the misconduct for which disciplinary action is taken is also a crime, there is no requirement that the elements of the crime be proved. *Jones v. Louisiana Department of Highways*, 259 La. 329, 250 So.2d 356 (1971); *Broussard v. State Industrial School for Colored Youths*, 231 La. 24, 90 So.2d 73 (1956)

Adverse presumption does not apply when charges are stricken because the eye witnesses were not available. *Hammork v. Department of Health and Hospitals*, 2006-0951 (La.App. 1 Cir. 3/23/07); NDFP

The burden of proof is on the employee to prove attainment of permanent status*. Scott v. New Orleans Department of Finance,* 2002-0907 (La.App. 4 Cir. 12/19/01); 804 So.2d 836

Where the only damning evidence against an employee is the result of a drug test, and no corroborating evidence of substance abuse exists, the chain of custody becomes the critical issue and must be proved by the appointing authority with great care. The Commission's findings must be based on competent evidence; incompetent evidence will not be considered on review. The party seeking to introduce test results must first lay a proper foundation by connecting the specimen with its source, showing that it was properly labeled and preserved, properly transported for analysis, properly taken by an authorized person, and properly tested. Gaps in the chain of custody usually affect the weight of the evidence, not its admissibility, and an unbroken chain of custody is not essential for the admissibility of the evidence, so long as the foundation establishes that

it is more probable than not that the specimen tested was that originally taken. *Murray v. Department of Police*, 97-2650 (La.App. 4 Cir. 5/27/98); 713 So.2d 838

The party seeking to introduce test results must first lay a proper foundation by connecting the specimen with its source, showing that it was properly labeled and preserved, properly transported for analysis, properly taken by an authorized person, and properly tested. *George v. Department of Fire*, 93-2421 (La.App. 4 Cir. 5/17/94); 637 So.2d 1097

To prove chain of custody, live witnesses must testify to the crucial events in the chain of custody – collection, sealing, delivery to, and receipt by the chemist, testing performed, and analytical methods used. To overcome this type of evidence, the employee must provide evidence showing that his specimen was tampered with, lost, or not the one tested. *George v. Department of Fire*, 93-2421 (La.App. 4 Cir. 5/17/94); 637 So.2d 1097

It must be shown by a preponderance of evidence that the conduct did, in fact, impair the efficient and orderly operation of the public service. *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987); *Fields v. State of Louisiana, Department of Corrections,* 498 So.2d 174 (La.App. 1 Cir. 1986)

The employee, who had worked for the state for over thirty years, was ordered to issue a waiver of time delays in a pending private adoption case. Believing the use of such waiver to be improper, she requested that her supervisor obtain an opinion from the legal department. Her request was denied and instead her supervisor sought a non-legal opinion on the use of such waiver in a voluntary surrender private adoption. The employee eventually was ordered by a supervisor to issue the waiver; however, she refused to do so. The appointing authority failed to carry its burden of proving that the employee's conduct had, in fact, actually impaired the efficient and orderly operation of the public service because the employee's failure to issue the waiver had not delayed the proceedings. *Fisher v. DHHR, Office of Human Development,* 517 So.2d 318 (La.App. 1 Cir. 1987)

No adverse inference arises if the evidence does not indicate that the absent witnesses would, in fact, have been able to testify about the events at issue. That witnesses might have been present is not a sufficient factual basis to invoke the presumption. *Smith v. Department of Public Safety and Corrections*, 500 So.2d 779 (La.App. 1 Cir. 1986)

Failure to call a witness who possesses knowledge of facts pertinent to the case and whose absence is not satisfactorily explained results in an inference that the witness' testimony would be adverse. *Taylor v. Department of Health and Human Resources,* 491 So.2d 752 (La.App. 1 Cir. 1986); *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984); *Ryder v. Department of Health and Human Resources*, 400 So.2d 1123 (La.App. 1 Cir. 1981); *Duckett v. Louisiana Wildlife & Fisheries Commission*, 175 So.2d 723 (La.App. 1 Cir. 1965)

Intent is generally irrelevant. Any employee should know that he cannot give state property to a private individual. *Bourque v. Department of Transportation and Development*, 457 So.2d 828 (La.App. 1 Cir. 1984)

Where an employee disputes his status as probationary, the agency must prove that the employee was probationary. *Toney v. Department of Corrections*, 448 So.2d 194 (La.App. 1 Cir. 1984)

Where the sole evidence of theft was an employee's answer to an ambiguous question on a polygraph examination and the answer was given on the advice of counsel, disciplinary action was not warranted. *Wells v. Department of Corrections*, 439 So.2d 470 (La.App. 1 Cir. 1983)

To show payroll falsification, the agency must show intent to deceive. *Louisiana State University v. Bailey,* 432 So.2d 336 (La.App. 1 Cir. 1983)

When an employee is disciplined for the same conduct for which he is convicted, the Commission is not obligated to hear evidence. The Commission did not err in refusing to go behind the finding of the court in the theft case, and was correct in finding that the conviction alone was sufficient to justify appellant's dismissal. (The employee was dismissed for theft of state property and was convicted of that theft.) *Johnson v. State Parks and Recreation Commission*, 198 So.2d 180 (La.App. 1 Cir. 1967)

To prove fraud, agency must prove intent to defraud and loss or damage or strong probability of loss or damage. *In re Wingate*, 184 So.2d 237 (La.App. 1 Cir. 1966); *Colvin v. Department of Employment Security*, 132 So.2d 909 (La.App. 1 Cir. 1961)

Rule 13.19(c) – Burden of Proof, Appointing Authority

Delegation of appointing authority may be proved as any other fact, by direct or circumstantial evidence. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811; *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900; *Louisiana Public Service Commission v. Cheathon,* 625 So.2d 703 (La.App. 1 Cir. 1993)

Delegation of appointing authority may be proved by introduction of an authentic act delegating authority. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811; *Taylor v. Department of Health and Human Resources,* 491 So.2d 752 (La.App. 1 Cir. 1986)

An authentic act is a writing executed before a notary and two witnesses and signed by each party who executed it, the witnesses, and the notary. LSA-C.C. art. 1833. A memorandum and an affidavit do not qualify as authentic acts. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Rule 13.19(t) establishes what evidence is needed to prove a *prima facie* delegation of appointing authority – an authentic act or a certified copy thereof. In the absence of such evidence, the burden is on the agency to present sufficient admissible evidence to prove the alleged delegation. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Where the only evidence to prove delegation of appointing authority was a "retroactive" affidavit signed before a notary but no witnesses and a non-authenticated memo, proof was insufficient. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Delegation of appointing authority may be implied when there is sufficient evidence of past practice and custom, over time, that show intent to delegate. *Department of Agriculture and Forestry v. Jones,* 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900; *Louisiana Public Service Commission v. Cheathon,* 625 So.2d 703 (La.App. 1 Cir. 1993)

The delegation from the President of the Board to the Managing Director, which delegated "authority to serve as the Appointing Authority for the Orleans Levee Board … include[ing] …making appointments to positions, reprimanding, suspending from duty without pay, or utilizing other disciplinary methods; terminating employment for cause" was sufficient. However, the re-delegation from the Managing Director to the Acting Personnel Director, which delegated authority to act as "Acting Personnel Director" … encompass[ing] those activities affecting staff which are deemed necessary for the orderly function of the agency … include[ing] initiating, processing, signing, … personnel documents and records of personnel transactions" but included no specific language concerning appointments or discipline, fell short of delegating appointing authority. Testimony from the President and the Managing Director was not sufficient. *Pellitteri v. Orleans Levee District*, 633 So.2d 615 (La.App. 1 Cir. 1993)

Where the only evidence of proof of delegation of appointing authority to the Facility Administrator was the rulebook written by the Facility Administrator, proof of the delegation was insufficient. *DuBois v. Department of Health and Human Resources*, 448 So.2d 230 (La.App. 1 Cir. 1984)

Where confusion existed at the hearing concerning the necessity for proving proper appointing authority, the interest of justice required that the agency be allowed to present additional evidence and the case remanded to the Commission. *DuBois v. Department of Health and Human Resources,* 448 So.2d 230 (La.App. 1 Cir. 1984)

Rule 13.19(c) – Burden of Proof, Procedural Matters

The burden of proof is on the pleader to establish the essential facts to sustain the plea of *res judicata*. *Leger v. Louisiana State University Agriculture Center*, 607 So.2d 744 (La.App. 1 Cir. 1992)

The party asserting untimeliness has the burden of proving when the delays commenced. *Faure v. Department of Health and Human Resources*, 504 So.2d 1022 (La.App. 1 Cir. 1987)

Rule 13.19(d) – Evidence

The results of a properly administered polygraph examination are admissible in an administrative hearing to determine whether the appointing authority had good or lawful cause for taking disciplinary action against a police officer. It is the province of the Board to determine the weight to be given this evidence. *Evans v. DeRidder Municipal Fire and Police Civil Service Board*, 2001-2466 (La. 4/3/02); 815 So.2d 61 **OLD LAW**: Evidence concerning the results of a polygraph examination is generally inadmissible, but this is within the sound discretion of the trier of fact. *Arnold v. New Orleans Police Department*, 383 So.2d 810 (La.App. 4 Cir. 1980); *Manale v. Department of Police,* 376 So.2d 607 (La.App. 4 Cir. 1979*); Creadeur v. Department of Public Safety,* 364 So.2d 155 (La.App. 1 Cir. 1978)

Hearsay evidence can qualify as "competent evidence," provided that the evidence has some degree of reliability and trustworthiness and is of the type that reasonable persons would rely upon. This determination must be made on a case-by-case basis under the particular facts and circumstances. *Chaisson v. Cajun Bag & Supply Co.*, 1997-1225 (La. 3/4/98); 708 So.2d 375

An admission in a pleading falls within the scope of a judicial confession and is full proof against the party making it. LSA-C.C. art. 2291; *Cheatham v. City of New Orleans*, 378 So.2d 369 (La. 1979)

Whether other employees should be disciplined is solely within the appointing authority's discretion and is irrelevant in the absence of discrimination. *Reed v. Louisiana Wild Life and Fisheries Commission*, 235 La. 124, 102 So.2d 869 (1958); *Spell v. Department of Natural Resources*, 504 So.2d 1009 (La.App. 1 Cir. 1987)

Evidence of political or religious motivation is admissible on the issue of the weight to be given to the appointing authority's witnesses. *King v. Department of Public Safety*, 234 La. 409, 100 So.2d 217 (1958)

Failure to admit evidence of political motivation is reversible error. *King v. Department of Public Safety*, 234 La. 409, 100 So.2d 217 (1958)

The Commission can refuse to let the employee rebut the state's evidence brought out during cross-examination as to employee's credibility and can refuse to allow the employee to introduce evidence as to misconduct which is not related to charges against her. *Broussard v. State Industrial School for Colored Youths*, 231 La. 24, 90 So.2d 73 (1956)

Acquittal of criminal charge does not foreclose a civil service hearing. It is entirely possible for a person's conduct to present adequate cause for dismissal without it being sufficient to warrant conviction for a crime. *Leggett v. Northwestern State College*, 242 La. 927, 140 So.2d 5 (1962); *Bailey v. Department of Public Safety and Corrections*, 2005-2474 (La.App. 1 Cir 12/6/06); 951 So.2d 234; *Department of Public Safety and Corrections v. Hooker*, 558 So.2d 676 (La.App. 1 Cir. 1990); *Johnson v. State Parks and Recreation Commission,* 198 So.2d 180 (La.App. 1 Cir. 1967); *Foster v. Department of Welfare,* 159 So.2d 515 (La.App. 1 Cir. 1963)

It is the province of the Commission or Referee to determine the weight to be given to an employee's admission. *Marsellus v. Department of Public Safety and Corrections*, 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656

Rule 13.19(t) establishes what evidence is needed to prove a *prima facie* delegation of appointing authority – an authentic act or a certified copy thereof. In the absence of such evidence, the burden is on the agency to present sufficient admissible evidence to prove the alleged delegation. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Because Rule 13.19(g) is not consistent with the Louisiana Code of Evidence articles concerning self-authentication of public documents, the Commission improperly relied on the code articles. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

The exclusionary rule was not applied in a City Civil Service Commission appeal involving the termination of a fireman who tested positive for cocaine. *George v.* Department of Fire, 93-2421 (La.App. 4 Cir. 5/17/94); 637 So.2d 1097 **BUT SEE**: Varnado *v. Department of Employment & Training, Office of Worker's Compensation,* CSC Docket Nos. S-10332 and S-10333; 10/14/99 [Referee decision]

Even in the absence of corroboration, information from police officers is reliable enough to establish reasonable suspicion. *George v. Department of Fire*, 93-2421 (La.App. 4 Cir. 5/17/94); 637 So.2d 1097

A statement that is against a party's interest is considered reliable because a person rarely lies to his disadvantage; a person generally will not make an untrue statement if he knows the statement will injure his patrimony or liberty; but one must consider whether the person had a motive to falsify when the statement was made. *Department of Public Safety and Corrections, Division of State Police v. Piazza,* 588 So.2d 1218 (La.App. 1 Cir. 1991)

In civil service hearings, the criminal rule of evidence that requires independent corroboration for an admission does not apply. *Department of Public Safety and Corrections, Division of State Police v. Piazza*, 588 So.2d 1218 (La.App. 1 Cir. 1991)

Because the use of cocaine is prohibited at any time, on or off duty, by State Police regulations and criminal law, the circumstances under which the drug was used are immaterial. *Department of Public Safety and Corrections, Division of State Police v. Piazza*, 588 So.2d 1218 (La.App. 1 Cir. 1991)

An admission by the employee can supply proof of the incident giving rise to disciplinary action. *Department of Public Safety and Corrections, Office of State Police v. Piazza*, 588 So.2d 1218 (La.App. 1 Cir. 1991); *Malone v. Department of Corrections*, 468 So.2d 839 (La.App. 1 Cir. 1985); *Geystand v. Louisiana Special Education Center*, 415 So.2d 409 (La.App. 1 Cir. 1982)

Evidence of alleged prior misconduct on the part of other Office of Forestry employees was properly ruled inadmissible. *Spell v. Department of Natural Resources*, 504 So.2d 1009 (La.App. 1 Cir. 1987)

The adverse presumption rule is tempered by the proposition that a party need only prove his case. If he calls one or more witnesses, he is not penalized by failing to call still another witness on the subject. *Harrigan v. Freeman*, 498 So.2d 58 (La.App. 1 Cir. 1986)

Copies of state records, papers and documents, when certified as being true copies by the official custodian, are admissible equally with the originals. *Licausi v. Department of Health and Human Resources*, 458 So.2d 148 (La.App. 1 Cir. 1984); LSA-R.S. 13:3712

If testimony that would otherwise be hearsay is not used to prove the truth of the charges, but rather is used to show what prompted later action, the testimony is admissible. *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984)

An agency should be allowed to introduce evidence to support all charges in the letter of disciplinary action, including evidence of prior counseling. *Appeal of Kennedy*, 442 So.2d 566 (La.App. 1 Cir. 1983)

In appeals of disciplinary actions, evidence of prior competency is irrelevant. *Sample v. Department of Corrections*, 434 So.2d 1211 (La.App. 1 Cir. 1983); *Butler v. Department of Corrections, Louisiana State Penitentiary,* 271 So.2d 651 (La.App. 1 Cir. 1972); *Cunningham v. Caddo-Shreveport Health Unit*, 141 So.2d 142 (La.App. 1 Cir. 1962)

Administrative policies concerning severity of penalty are irrelevant. *Williams v. Department of Health and Human Resources*, 422 So.2d 1258 (La.App. 1 Cir. 1982)

Hearsay is admissible but the opinion cannot be based on hearsay alone; the opinion must be based on competent evidence. *Michel v. Department of Public Safety, Alcoholic Beverage Control Board,* 341 So.2d 1161 (La.App. 1 Cir. 1976)

Existence of a satisfactory service rating does not preclude introduction of evidence of misconduct during the rating period. *Parrino v. Louisiana State University,* 207 So.2d 800 (La.App. 1 Cir. 1968)

Conviction of the charge precludes introduction of testimony as to innocence. *Johnson v. State Parks and Recreation Commission*, 198 So.2d 180 (La.App. 1 Cir. 1967)

It is permissible to accept testimony under a proffer. *Heno v. Department of Labor, Division of Employment Security*, 171 So.2d 270 (La.App. 1 Cir. 1965)

A fourteen year old was considered competent to testify. *Foster v. Department of Public Welfare*, 159 So.2d 515 (La.App. 1 Cir. 1963)

Where employees engaged in conduct that interfered with the agency's operations and cost the state a substantial amount of money, their insistence that they knew nothing about the scheme to submit bogus claims and therefore did not knowingly participate in it was irrelevant. *Collins v. Division of Administration, Office of Risk Management,* CSC Docket Nos. S-14375 and S-14378; 2/19/02 [CSC decision]

Where there are two versions of the incident each of which is as probable as the other and the two witnesses are equally believable, the agency's burden of proof required it to put on some evidence, even if it is only circumstantial, to break the tie. Organizational hierarchy is irrelevant to the issue of credibility. *Wesley v. Department of Public Safety and Corrections, Louisiana Correctional Institute for Women*, CSC Docket No. 12437; 12/17/97 [CSC decision]

Rule 13.19(e) – Appellant May Be Called First

Under Rule 13.19(e), an appeal can be summarily dismissed when the employee's testimony reveals there are no legal grounds to support the appeal. Under these circumstances additional evidence would have served no purpose in proving the employee's position and the employee was given a full, fair and complete opportunity to establish the issues raised. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital*, 610 So.2d 936 (La.App. 1 Cir. 1992)

Under Rule 13.19(e), an appellant can be required to testify. If the appellant claims a privilege against self-incrimination, no adverse inference is to be drawn. *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984)

The employee may be called on cross as part of the agency's case. *Shelfo v. LHHRA, Pinecrest State School*, 361 So.2d 1268 (La.App. 1 Cir. 1978)

Rule 13.19(g) – Affidavits and Ex Parte Statements

An affidavit may not be used to establish appointing authority over the objection of the employee. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

A non-authenticated memo may not be used to establish appointing authority. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

The self-authentication provisions of the Louisiana Code of Evidence are inconsistent with Rule 13.19(g) and therefore the Commission improperly relied on them. *Lane v. Department of Public Safety and Corrections*, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Rule 13.19(h) – Cross Examination of Witnesses

The employee may be called on cross as part of the agency's case. *Shelfo v. LHHRA, Pinecrest State School,* 361 So.2d 1268 (La.App. 1 Cir. 1978)

Rule 13.19(i) – Stipulations

On factual matters, a party is bound by his pleadings and stipulations. LSA-C.C. art. 2291. *State v. Ward*, 314 So.2d 383 (La.App. 3 Cir. 1975)

The parties cannot stipulate to a conclusion of law. *State v. Ward*, 314 So.2d 383 (La.App. 3 Cir. 1975)

Rule 13.19(j) – Limiting Corroborative Testimony

The purpose of Rule 13.19(j), which allows the Commission to limit corroborative testimony, is to prevent unnecessary disturbance of an inordinate number of state officers and employees. *Munson v. State Parks and Recreation Commission*, 235 La. 652, 105 So.2d 254 (1958)

The Commission may limit corroborative evidence. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital*, 610 So.2d 936 (La.App. 1 Cir. 1992)

The Commission can refuse to hear repetitious testimony. *Pembrick v. Charity Hospital of Louisiana at New Orleans*, 268 So.2d 265 (La.App. 1 Cir. 1972), appeal after remand 234 So.2d 442 (La.App. 1 Cir. 1970); *Guillory v. State Department of Institutions*, 219 So.2d 282 (La.App. 1 Cir. 1969)

Rule 13.19(k) – Procedure in General

The decision as to whether a witness is qualified as an expert is within the sound discretion of the trial court. *Fontenot v. Department of Public Safety*, 468 So.2d 1319 (La.App. 1 Cir. 1985)

Rule 13.19(l) – Admitting Record of a Previous Case

Rule 13.19(l), which allows a transcript of a prior proceeding to be filed into evidence, does not apply to prior cases before a different tribunal. *Smith v. Board of Commissioners*, 274 So.2d 394 (La.App. 1 Cir. 1973)

Rule 13.19(m) – Scope of Hearing

The purpose of providing detailed reasons is to afford due process so the employee can know what charges he might be called upon to rebut and to limit the scope of the hearing. *Juneau v. Louisiana Board of Elementary and Secondary Education,* 506 So.2d 756 (La.App. 1 Cir. 1987); *University of New Orleans v. Pepitune,* 460 So.2d 1191 (La.App. 1 Cir. 1984); *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984); *Department of Public Safety v. Rigby,* 401 So.2d 1017 (La.App. 1 Cir. 1981); *Powell v. City of Winnfield,* 370 So.2d 109 (La.App. 2 Cir. 1979); *Lemoine v. Department of Police,* 348 So.2d 1281 (La.App. 4 Cir. 1977); *Major v. Louisiana Department of Highways,* 333 So.2d 316 (La.App. 1 Cir. 1976)

The purpose of Rule 12.2(a) [current Rule 12.8(a)2] is to apprise the employee, in detail, of the charges and to limit any subsequent proceedings to the stated reasons. *Fisher v. Department of Health and Human Resources,* 517 So.2d 318 (La.App. 1 Cir. 1987)

The Commission's review of a disciplinary action is limited to the charges against the employee that are listed in the letter of disciplinary action. *Ellins v. Department of Health,* 505 So.2d 74 (La.App. 4 Cir. 1987); *Leteff v. Department of Corrections*, 462 So.2d 254 (La.App. 1 Cir. 1984)

The appointing authority's rebuttal is not limited to the reasons mentioned in a notice advising an employee of the reasons she was not promoted. *Chism v. Northwestern State University*, 469 So.2d 18 (La.App. 1 Cir. 1985)

Rule 13.19(m), which prohibits the agency from enlarging or supplementing the charges in the letter, does not apply to appeals of discrimination. *Chism v. Northwestern State University*, 469 So.2d 18 (La.App. 1 Cir. 1985)

Pertinence of disparate treatment is highly questionable. *Smith v. Department of Health and Human Resources*, 408 So.2d 411 (La.App. 1 Cir. 1981)

Rule 13.19(p) – Judicial Notice

Official governmental records are not judicially noticeable; they must be offered into evidence. *Steckler v. United Van Lines*, 503 So.2d 133 (La.App. 5 Cir. 1987)

Agency policy is not judicially noticeable. *Duncan v. L.H.H.R.A., Division of Family Services,* 341 So.2d 1217 (La.App. 1 Cir. 1976)

The Court of Appeal can take judicial notice of the civil service rules. *Duncan v. L.H.H.R.A., Division of Family Services*, 341 So.2d 1217 (La.App. 1 Cir. 1976)

Rule 13.19(r) – Burden of Proof in Discrimination Cases

The burden of proof is on the employee to prove discrimination. *Garrett v. Louisiana Office of Student Finance*, 2006-0826 (La.App. 1 Cir. 2/9/07); NDFP; *Johnson v. Department of Health and Hospitals*, 2000-0071 (La.App. 1 Cir. 2/16/01); 808 So.2d 436; *Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993); *Mixon v. New Orleans Police Department*, 430 So.2d 210 (La.App. 4 Cir. 1983)

Statistical data alone does not prove discrimination under the Civil Service Article or rules. *Garrett v. Louisiana Office of Student Finance*, 2006-0826 (La.App. 1 Cir. 2/9/07); NDFP [few black administrators and supervisors]; *Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993); *Bernard v. L.H.H.R.A., Southwest Charity Hospital of Lafayette*, 358 So.2d 653 (La.App. 1 Cir. 1978) [no African American females in the job to which employee sought promotion]; *Brown v. L.H.H.R.A., Lake Charles Mental Health Center*, 346 So.2d 758 (La.App. 1 Cir. 1977)

Despite any personality problems between the employee and her supervisor, the disciplinary actions, including the final termination, were legitimate responses to documented work problems that disrupted the efficiency of the agency. (The employee was loud, disrespectful, and confrontational; failed to attend a conference without timely canceling her hotel reservation; failed to follow call-in procedures when she could not fulfill her workday time requirements; failed to follow supervisory directives; failed to perform her duties; and attempted to deflect blame to others.) *Turner v. Housing Authority of Bunkie,* 2004-2062, 2004-2063, 2004-2064, and 2004-2065 (La.App. 1 Cir. 9/23/05); 923 So.2d 702

In appeals based on discrimination, the burden of proof is on the employee, by a preponderance of evidence. *Hargrove v. New Orleans Police Department*, 2001-0659 (La.App. 4 Cir. 5/22/02); 822 So.2d 629; *King v. Department of Health and Human Resources*, 506 So.2d 832 (La.App. 1 Cir. 1987)

The Department of Police did not have the burden of proving the absence of racial discrimination; the employee had the burden of proving discrimination by a

preponderance of the evidence. *Hargrove v. New Orleans Police Department*, 2001-0659 (La.App. 4 Cir. 5/22/02); 822 So.2d 629

It was not prohibited discrimination to treat employees who were arrested for a felony differently from employees who pleaded guilty to a felony. *Bailey v. LSU Health Care Services Division*, 99-1981 (La.App. 1 Cir. 9/22/00); 767 So.2d 946

Article X, Section 8(B) appears to give a probationary employee the right to appeal only when he has been discriminated against because of political or religious beliefs, sex or race. Accordingly, the employee was required to establish some discriminatory reason for his removal to be entitled to reinstatement. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center,* 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389

The federal cases concerning discrimination are persuasive, but not controlling, in civil service appeals concerning discrimination. *Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993); *Bernard v. L.H.H.R.A., Southwest Charity Hospital of Lafayette*, 358 So.2d 653 (La.App. 1 Cir. 1978)

Where disparate treatment is proved, the issue is whether the disciplinary action was based on more than the consideration of the prohibited factor. (The employee requested leave after being told he could not use leave to pursue private practice during work hours.) *Murray v. Department of Revenue and Taxation,* 504 So.2d 561 (La.App. 1 Cir. 1986)

In discrimination cases, the appointing authority may rebut any proof offered by the employee. *Chism v. Northwestern State University*, 469 So.2d 18 (La.App. 1 Cir. 1985)

Although the employee had proved certain charges of harassment, the preponderance of the evidence was to the effect that the agency was not retaliating against or harassing her, but rather was attempting to resolve a disruptive conflict between the employee and her superior. (The employee refused to comply with an order to change duty station.) *Carbonell v. Department of Health and Human Resources*, 444 So.2d 151 (La.App. 1 Cir. 1983)

Use of federal Title VII disparate impact cases in an Article X race discrimination case is questionable. (The agency used arrest records in the selection process; the employee challenged this on the basis of disparate impact.) *Cha-Jua v. Department of Fire*, 439 So.2d 1150 (La.App. 4 Cir. 1983)

The Commission erred in using federal case law (the burden shifting analysis in *McDonnell Douglas*) concerning burden of proof in an Article X age discrimination case. The Constitution specifies that in civil service discrimination cases, "[t]he burden of proof on appeal, as to the facts, shall be on the employee." This constitutional provision, not the burden of proof in federal age discrimination cases, is the proper standard of proof. *Mixon v. New Orleans Police Department*, 430 So.2d 210 (La.App. 4 Cir. 1983)

The employee must prove facts that establish that the non-merit factor was the determinative factor in the agency's decision. *Mixon v. New Orleans Police Department*, 430 So.2d 210 (La.App. 4 Cir. 1983)

The employee must show that but-for the prohibited activity, the action would not have occurred. *In re: Bienvenu*, 158 So.2d 213 (La.App. 1 Cir. 1963)

Rule 13.19(r) – Burden of Proof in Discrimination Cases: Federal Law [should it be deemed applicable; see discussion in *Rougeau v. Department of Social Services,* CSC Docket No. S-15882; 9/21/07 [Referee decision]

The federal Fifth Circuit uses the "mixed-motives" or "modified *McDonnell Douglas*" framework in retaliatory discharge cases. The employee must first establish a *prima facie* case of retaliatory discharge: 1) that she engaged in a protected activity; 2) that the employer discharged her; and 3) that there is "a causal link" between the protected activity and the discharge. If the employee succeeds, the employer must articulate a legitimate, non-retaliatory reason for the discharge. If the employer does so, the employee must show either: 1) that the employer's proffered reason is a pretext or 2) that the employer's reason, while true, is but one of the reasons for the discharge, another of which was the employee's protected activity. If the employee proves that her protected activity was "a motivating factor" in the decision, the employer must prove that the discharge would have occurred regardless of retaliatory animus. *Richardson v. Monitronics International, Inc.*, 2005-10346 (5 Cir. 12/21/2005); 434 F.3d 327, [an FMLA retaliation case]

A causal link is something less than a "but for" standard*. Evans v. City of Houston,* 246 F.3d 344 (C.A. 5 2001)

An employee can establish a causal link by showing that the protected activity and the dismissal "were not wholly unrelated." *Long v. Eastfield College,* 88 F.3d 300 (C.A. 5 1996)

In order to establish a *prima facie* case of discrimination in violation of the ADA, federal law holds that a plaintiff must prove: 1) he has a disability; 2) he is a qualified individual who can perform the essential functions of the employment position he holds or desires with or without reasonable accommodation; and 3) he was subjected to unlawful discrimination because of his disability. The employee in an ADA case bears the burden of proving to the fact finder that the reasonable accommodations were available. The employer has the burden of persuasion on whether an accommodation would impose an undue hardship. *Shortess v. Department of Public Safety and Corrections,* 2006-2313 (La.App. 1 Cir. 9/14/07); 971 So.2d 1051

Rule 13.19(r) – Insufficient to Carry Burden of Proof

Employee discharged for attempted theft and lying did not show that the policy of terminating employees for theft was only applied to African Americans. *Sanders v. Department of Health and Human Resources*, 388 So.2d 768 (La. 1980)

Employee's unsubstantiated testimony is insufficient to carry burden of proof. *Hargrove v. New Orleans Police Department*, 2001-0659 (La.App. 4 Cir. 5/22/02); 822 So.2d 629; *Dore v. Louisiana Health and Human Resources Administration,* 361 So.2d 229 (La.App. 1 Cir. 1978); *Pembrick v. Charity Hospital of Louisiana at New Orleans*, 268 So.2d 265 (La.App. 1 Cir. 1972)

Where employee showed no variance from the usual procedure or that the delays experienced were unusual, he failed to carry his burden of proving racial discrimination as to a promotion. *Johnson v. Department of Health and Hospitals*, 2000-0071 (La.App. 1 Cir. 2/16/01); 808 So.2d 436

Where black applicant was the top candidate, had filled the position on an acting basis, was interviewed by an all white panel, and the position was identified in the Affirmative Action plan as underutilizing minorities, but applicant failed to show any racial bias in the selection process or any predisposition against him, he failed to bear his burden of proving racial discrimination as to the promotion*. Lawson v. State, Department of Health and Hospitals*, 618 So.2d 1002 (La.App. 1 Cir. 1993)

The fact that there are few or no minority persons in supervisory positions does not constitute proof of sexual or racial discrimination. *Lawson v. State, Department of Health and Hospitals,* 618 So.2d 1002 (La.App. 1 Cir. 1993); *Dauser v. Department of Public Utilities (Water),* 428 So.2d 1176 (La.App. 5 Cir. 1983)

Employee failed to prove that others engaged in comparable misconduct without being dismissed*. Dore v. Louisiana Health and Human Resources Administration,* 361 So.2d 229 (La.App. 1 Cir. 1978)

Employee failed to show that his change in duty station was the result of political or union activities. *Hunsinger v. Department of Highways*, 271 So.2d 692 (La.App. 1 Cir. 1972)

Rule 13.19(t) – Delegation of Appointing Authority by Authentic Act

Rule 13.19(t) establishes what evidence is needed to prove a *prima facie* delegation of appointing authority – an authentic act or a certified copy thereof. In the absence of such evidence, the burden is on the agency to present sufficient admissible evidence to prove the alleged delegation. *Lane v. Department of Public Safety and Corrections,* 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811

Delegation of appointing authority can be proved by introduction of an authentic act delegating authority. *Taylor v. Department of Health and Human Resources,* 491 So.2d 752 (La.App. 1 Cir. 1986)

Rule 13.20(a) – Referees

The Referee here was well within her legal authority to call the special hearing on the employee's employment status. As the question whether the employee was a probationary or permanent employee at the time of his termination was not a supplementation or enlargement of the substantive issues at hand, but was pertinent to the Referee's ability to determine the propriety of the appeal, the Referee committed no legal error in calling the special hearing. *Morehouse v. Southern University, Baton Rouge Campus,* 2006-1481 (La.App. 1 Cir. 5/4/07); 961 So.2d 473

When the Referee who started the hearing leaves before completing the hearing, the parties can agree to submit the appeal to the Referee presiding over the second hearing, with the Referee listening to the tapes of the prior hearing and considering the exhibits from both hearings. *Williams v. State, Department of Economic Development*, 94-1919 (La.App. 1 Cir. 5/5/95); 655 So.2d 498

The Commission is not required to appoint a Referee. Once appointed, it was within the prerogative of the Commission to determine that it needed no additional facts and consequently no further need to order additional hearings by the Referee. (Here, a prior appeal settled and the current appeal involved implementation of the settlement.) *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991)

The power of a Referee is plenary as regards the procedure for hearing appeals. *Addison v. L.S.U. Medical Center in Shreveport*, 551 So.2d 750 (La.App. 1 Cir. 1989)

Prior to the 1982 amendment to the Constitution, Referees were only empowered to issue subpoenas, administer oaths, and take testimony. The 1982 amendment specifically authorized the Commission not only to appoint Referees empowered as noted above, but also to hear and decide removal and disciplinary cases, subject to review by the Commission on any question of fact or law. *Department of Health and Human Resources v. Payton,* 498 So.2d 181 (La.App. 1 Cir. 1986)

A Referee does not have decisional authority unless it is delegated to him by the Commission. A delegation of a list of appeals to three named Referees was sufficient. *Department of Health and Human Resources v. Payton*, 498 So.2d 181 (La.App. 1 Cir. 1986)

Where some testimony was taken before the Constitution was amended and some was taken thereafter, the specific authorization by the Commission for the Referee to decide the appeal vested when additional evidence was taken and the decision was rendered after the amendment became effective. *Department of Health and Human Resources v. Payton*, 498 So.2d 181 (La.App. 1 Cir. 1986)

For a Referee's decision to be valid, all that is required is that the conclusion of the hearing and the decision be rendered after the effective date of the constitutional amendment and that the Commission delegate decisional authority to the Referee. *Department of Health and Human Resources v. Payton*, 498 So.2d 181 (La.App. 1 Cir. 1986)

A Referee can question witnesses. *Goudeau v. Department of Public Safety, Division of State Police*, 349 So.2d 887 (La.App. 1 Cir. 1977)

Only the Commission can appoint a Referee to hear an appeal. *Hamilton v. Louisiana Health & Human Resources Administration*, 341 So.2d 1190 (La.App. 1 Cir. 1976)

OLD LAW: A Referee cannot rule on a motion for summary disposition. *Goudeau v. Department of Public Safety*, 349 So.2d 887 (La.App. 1 Cir. 1977)

Rule 13.20(c) – Referee's Decision

OLD LAW: The following cases held that before deciding a case heard by a Referee, the Commission had to read and examine a hearing transcript: *Carbonell v. Department of Health and Human Resources*, 444 So.2d 151 (La.App. 1 Cir. 1983); *Cartwright v. Department of Revenue and Taxation,* 442 So.2d 552 (La.App. 1 Cir. 1983); *Wollerson v. Department of Agriculture,* 436 So.2d 1241 (La.App. 1 Cir. 1983); *Department of Health and Human Resources v. Perry*, 423 So.2d 1266 (La.App. 1 Cir. 1982); *Wells v. Department of Corrections,* 417 So.2d 377 (La.App. 1 Cir. 1982). **As to this issue, these cases became obsolete when Article X, Section 12(A) was amended, effective 10/15/82, to allow the Commission to appoint a Referee to hear and decide cases**.

For decisions generally, see annotations under Rule 13.28(c) – Commission Decisions.

Rule 13.20(d) – Finality of Referee's Decision

If no application for review is filed, the Referee's decision becomes the final decision of the Commission as of the date the Referee's decision was rendered. *Department of Health and Human Resources v. County*, 491 So.2d 68 (La.App. 1 Cir. 1986); *Shreveport-Bossier Vo-Tech School v. Baker,* 445 So.2d 1241 (La.App. 1 Cir. 1983); *Poole v. Department of Transportation and Development*, 439 So.2d 659 (La.App. 1 Cir. 1983)

The delays for seeking review of a Referee's decision commence when the decision and notice are mailed to the interested parties. *Department of Health and Human Resources v. County,* 491 So.2d 68 (La.App. 1 Cir. 1986)

Rule 13.21 – Subpoenas

The Commission can refuse to issue subpoenas where the subpoena request indicates that the testimony would be corroborative. *Munson v. State Parks and Recreation Commission,* 235 La. 652, 105 So.2d 254 (1958)

If a party does not get a full return on a subpoena *duces tecum* and does not ask for sanctions, a continuance, or an *instanter* subpoena, he waives his right to complain. *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984)

A Referee may decline to issue an *instanter* subpoena for a personnel file. *Sample v. Department of Corrections*, 434 So.2d 1211 (La.App. 1 Cir. 1983)

The Commission can refuse to issue subpoenas where the employee does not deny, but merely explains, the charges. *Elliott v. Department of Public Safety, Division of State Police,* 346 So.2d 839 (La.App. 1 Cir. 1977)

Rule 13.21, which states that no subpoena will be issued unless the testimony is deemed to be relevant, is constitutional. *Smith v. Louisiana State Board of Health*, 201 So.2d 14 (La.App. 1 Cir. 1967); *Speegle v. State Department of Institutions,* 198 So.2d 154 (La.App. 1 Cir. 1967*); Heno v. Department of Labor*, 171 So.2d 270 (La.App. 1 Cir. 1965)

The Commission can refuse to subpoena character witnesses when character is not at issue. *Smith v. Louisiana State Board of Health*, 201 So.2d 14 (La.App. 1 Cir. 1967)

The Commission can refuse to issue subpoenas if the request therefor is not timely filed. *Lee v. Department of Highways*, 138 So.2d 36 (La.App. 1 Cir. 1962)

The employee failed to comply with a subpoena that he admits he received. His conduct was willful, because it was without reasonable excuse. Loosing track of the days (essentially, the same thing as forgetting) is not an acceptable reason for failing to comply with a subpoena. In a previous case, we ordered forty-five day suspensions for employees who defiantly refused to appear. See *Investigation of Moreau and Gathe*, CSC Docket No. 4463; 10/15/84 [CSC decision]. Here, the employee testified that he intended to appear. Giving him the benefit of the doubt, his conduct, albeit willful, was not defiant. *In Re: Contempt Charges against Thomas*, CSC Docket No. 15367; 5/13/04 [CSC decision] 15-day suspension

Rule 13.22 – Dismissal for Failure of Parties to Appear [See also Rule 13.14(a)5.]

The employee's failure to appear at any of the three hearings, despite having been subpoenaed for two, was an act of contempt. Under the civil service rules, great discretion is accorded to the Commission and its Referees in determining an appropriate sanction for an act of contempt. However, it was an abuse of discretion for the Referee or the Commission to refuse to impose a sanction on a litigant who

flagrantly and willfully, without justification, violates a subpoena issued by the Referee. At a minimum, the appeal should have been dismissed. *Cheaton v. Louisiana Public Service Commission*, 94-1358 and 94-1359 (La.App. 1 Cir. 12/15/95); 690 So.2d 46

An appeal may be dismissed when a motion for continuance is denied and neither the employee nor her attorney appeared at the hearing. *Jacomet v. T. H. Harris Vocational-Technical School*, 491 So.2d 59 (La.App. 1 Cir. 1986)

An appeal cannot be dismissed for non-appearance of the employee if the Commission fails to provide notice of the hearing and the employee was not remiss. *Smith v. Department of Health and Human Resources*, 432 So.2d 997 (La.App. 1 Cir. 1983)

The Commission abused its discretion in dismissing the appeal on the ground that the employee abandoned his appeal before the Commission, in that the employee, who was present at time set for hearing, but whose attorney was not present, and who objected to proceedings and left the hearing midway through the state's first witness, had the right to be represented by counsel. The Commission should have granted a continuance to serve the ends of justice by permitting the employee to secure adequate representation. *Gautreaux v. Division of State Buildings and Grounds*, 395 So.2d 388 (La.App. 1 Cir. 1981)

Rule 13.23 – Consolidation of Appeals

A Referee has the authority to consolidate appeals. *Addison v. L.S.U. Medical Center in Shreveport*, 551 So.2d 750 (La.App. 1 Cir. 1989)

Similar or related appeals may be consolidated for hearing. *Licausi v. Department of Health and Human Resources,* 458 So.2d 148 (La.App. 1 Cir. 1984)

Rule 13.24 – Costs of Transcript

Method of assessing fee for transcribing is within the City Civil Service Commission's authority but the Commission cannot assess costs in hearings before the Commission but not before a Hearing Examiner. *Bowie v. Department of Police*, 324 So.2d 813 (La. 1975)

Transcription costs may be assessed against the employee. *Hunsinger v. Louisiana Department of Highways,* 271 So.2d 692 (La.App. 1 Cir. 1972)

Rule 13.25 – Failure to Appear and/or Testify

The employee's failure to appear at any of the three hearings, despite having been subpoenaed for two of the hearings, was an act of contempt. It was an abuse of discretion for the Referee or the Commission to refuse to impose a sanction on a litigant who flagrantly and willfully, without justification, violates a subpoena issued by the Referee. At a minimum, the appeal should have been dismissed. *Cheaton v. Louisiana*

Public Service Commission, 94-1358 and 94-1359 (La.App. 1 Cir. 12/15/95); 690 So.2d 46

It is the employee's conduct in failing to appear at the hearings that should have been the Referee's focus in determining whether he was in fact in contempt of the proceedings, rather than whether his testimony would have been taken on the days he was absent. *Cheaton v. Louisiana Public Service Commission*, 94-1358 and 94-1359 (La.App. 1 Cir. 12/15/95); 690 So.2d 46

Rule 13.28(a) – Opinions in General

Louisiana does not have *stare decisis*. To Louisiana judges, prior judicial decisions are nothing more than interpretations of law. As a result, prior errors in judicial interpretation do not "insulate" the judge from returning to legislation itself to determine its correct meaning. *Willis-Knighten Medical Center v. Caddo Shreveport Sales and Use Tax Commission,* 2004-0473 (La. 4/1/05); 903 So.2d 1071

City Civil Service Rule II, Section 4-16, which requires decisions to be rendered within ninety days, is merely directory in nature. The rule does not set the result that will follow a failure to comply. A great injustice could arise from suffering the continuance of incompetent civil servants just because the time deadline had not been met. The Commission has the authority to award back pay, to reinstate benefits, and to modify disciplinary action, which can be utilized to rectify the potential prejudice resulting from a delayed ruling. *Bishop v. Department of Health and Hospitals, Southeast Louisiana Hospital,* 2005-1750 (La.App. 1 Cir. 12/28/06); NDFP **[NOTE: It is unclear why this rule was discussed; it does not apply to a State Civil Service Commission case.]**

Wells and *Cartwright* [below] are not applicable to cases decided after Article X, Section 12(A) was amended in 1982. *Ravencraft v. Department of Public Safety and Corrections*, 608 So.2d 1051 (La.App. 1 Cir. 1992); *Fisher v. Department of Social Services, Office of Community Services*, 600 So.2d 1368 (La.App. 1 Cir. 1992)

If a fact-finding is based on an inapplicable inference, that fact finding is interdicted. *Smith v. Department of Public Safety and Corrections*, 500 So.2d 779 (La.App. 1 Cir. 1986)

Rule 13.20(c) accomplishes two results: it provides the parties with a copy of the decision and with notice of the commencement of the period in which to seek review. *Department of Health and Human Resources v. County*, 491 So.2d 68 (La.App. 1 Cir. 1986)

It is error to state that the facts "were not conclusively proved," because that imposes a burden of proof that is greater than that required by law. *Department of Corrections, Louisiana State Penitentiary v. Barrere*, 431 So.2d 782 (La.App. 1 Cir. 1983); *Jones v. Department of Health and Human Resources*, 430 So.2d 1203 (La.App. 1 Cir. 1983)

A seven-month delay in rendering the opinion was inexcusable. *Johnson v. Louisiana State University*, 418 So.2d 667 (La.App. 1 Cir. 1982)

The trier of fact must make factual findings as to all charges. *Wall v. Community Improvement Agency,* 365 So.2d 571 (La.App. 1 Cir. 1978)

The opinion must be based on evidence that would be competent in civil district court. *Stiles v. Department of Public Safety,* 361 So.2d 267 (La.App. 1 Cir. 1978); *Michel v. Department of Public Safety, Alcoholic Beverage Control Board,* 341 So.2d 1161 (La.App. 1 Cir. 1976); *Courtney v. Louisiana Department of Highways*, 282 So.2d 721 (La.App. 1 Cir. 1973); *In re Taylor*, 233 So.2d 49 (La.App. 1 Cir. 1970)

The opinion should address each allegation of misconduct and each defense. *Dore v. Louisiana Health and Human Resources Administration*, 344 So.2d 418 (La.App. 1 Cir. 1977)

The Commission's finding that the removal was justified was sufficient as a conclusion of law. *Danna v. Commissioner of Insurance*, 194 So.2d 753 (La.App. 1 Cir. 1967)

It is error to couch misconduct in negligence terminology because civil service appeals are not tort actions. *Higgins v. Louisiana State Penitentiary, Department of Institutions*, 154 So.2d 570 (La.App. 1 Cir. 1963) **BUT SEE**: *Maher v. Criminal Sheriff Department,* 298 So.2d 924 (La.App. 4 Cir. 1974)

The opinion is not invalid if a legal conclusion is styled as a factual finding. *Barnes v. Department of Highways*, 154 So.2d 255 (La.App. 1 Cir. 1963)

The opinion must contain an independent finding of fact. *Suire v. Louisiana State Board of Cosmetology,* 224 So.2d 7 (La.App. 1 Cir. 1969); *Wilson v. New Orleans Police Department*, 145 So.2d 650 (La.App. 4 Cir. 1962)

For decision by successors in office, see LSA-R.S. 13:4209.

Rule 13.28(a) – Opinions, Credibility

It is only natural to expect minor variations in the testimony of truthful witnesses with respect to details of incidents which are of no particular significance at the time of their occurrence, and for that reason leave no lasting impression. On the other hand, when witnesses agree on all minor details and repeat them parrot-like there is reason to suspect their veracity. *Vinzant v. L.L. Brewton Pulpwood Co*., 239 La. 95, 118 So.2d 117 (1960)

The rule of "*falsus in uno falsus in omnibus*" provides that if one element of a witness' testimony is proved to be untrue, the entirety of that witness' testimony may be rejected by the trier of fact. This doctrine does not require rejection of the witness' total testimony and the weight to be given to the remainder of the witness' testimony is to be

determined by the trier of fact. *Andrus v. Sanchez*, 2004-1063 (La.App. 5 Cir. 2/15/05); 898 So.2d 512

It is the duty of the trier of fact to make reasonable evaluations of credibility and reasonable inferences of fact. *Fields v. State of Louisiana, Department of Corrections,* 498 So.2d 174 (La.App. 1 Cir. 1986); *Licausi v. Department of Health and Human Resources,* 458 So.2d 148 (La.App. 1 Cir. 1984); *Dundy v. Louisiana State University in Baton Rouge,* 394 So.2d 650 (La.App. 1 Cir. 1980)

When credibility is at issue, the opinion should discuss the possible bias of the witnesses. *Department of Corrections v. Morgan*, 440 So.2d 785 (La.App. 1 Cir. 1983)

All witnesses are presumed to be telling the truth; absent contradiction, there is no reason to doubt a witness' veracity. *Wells v. Department of Corrections*, 439 So.2d 470 (La.App. 1 Cir. 1983)

Past history of violence has no bearing on veracity. *Department of Corrections, Louisiana State Penitentiary v. Barrere*, 431 So.2d 782 (La.App. 1 Cir. 1983)

It is illogical to believe a portion of one person's testimony but not believe another portion where it is not contradicted and is at least partially corroborated. *Department of Corrections, Louisiana State Penitentiary v. Barrere,* 431 So.2d 782 (La.App. 1 Cir. 1983); *Board of Jury Commissioners of Orleans Parish v. Goins*, 423 So.2d 25 (La.App. 1 Cir. 1982)

Organizational hierarchy is irrelevant to the issue of credibility. *Wesley v. Department of Public Safety and Corrections, Louisiana Correctional Institute for Women*, CSC Docket No. 12437; 12/17/97 [CSC decision]

Rule 13.28(a) – Modification of Penalty

A Referee may modify a dismissal under Rule 12.2 to a removal under Rule 12.6(b), where the evidence discloses that the cause for dismissal was not the employee's fault. *Sibley v. LSU Health Sciences Center-Earl K. Long Medical Center,* 2007-0895 (La.App. 1 Cir. 2/8/08); NDFP

The Commission has the authority to modify the penalty imposed if there is no cause for the more severe penalty. *Chapman v. Department of Police*, 1997-1384 (La.App. 4 Cir. 1/28/98); 706 So.2d 656; *Branighan v. Department of Police*, 362 So.2d 1221 (La.App. 4 Cir. 1978); *Bernard v. Louisiana Health and Human Resources Administration*, 336 So.2d 55 (La.App. 1 Cir. 1976); *Pendley v. Louisiana Division of Administration*, 303 So.2d 544 (La.App. 1 Cir. 1974) appeal after remand, 315 So.2d 799 (La.App. 1 Cir. 1975); *Alonzo v. Louisiana Department of Highways,* 268 So.2d 52 (La.App. 1 Cir. 1972); *Morrell v. Department of Welfare*, 266 So.2d 559 (La.App. 4 Cir. 1972); *Barnes v. Department of Highways*, 154 So.2d 255 (La.App. 1 Cir. 1963); *Simmons v. Division of*

Employment Security, 144 So.2d 244 (La.App. 1 Cir. 1962). **BUT SEE:** *Broussard v. State Industrial School for Colored Youths,* 231 La. 24, 90 So.2d 73 (1956)

It is not the job of the Commission to decide who should be disciplined how. The appointing authority is charged with the operation of his department. He is the one who must run the department, an obviously necessary part of which is dismissing or disciplining employees. While he may not do so without cause, he may, and indeed must, within the exercise of sound discretion, dismiss or discipline an employee for sufficient cause. The Commission is not charged with such operation or such disciplining. *James v. Sewerage and Water Bd.*, 505 So.2d 119 (La.App. 4 Cir. 1987); cited in *Chapman v. Department of Police*, 1997-1384 (La.App. 4 Cir. 1/28/98); 706 So.2d 656

Rule 13.28(c) – Back Pay

Back pay is automatic if an employee was illegally terminated. An illegal termination is a forced vacation for which the employer must pay. *Hearty v. Department of Police, City of New Orleans*, 238 La. 956, 117 So.2d 71 (1960)

If an employee who was admittedly unable to perform his duties is reinstated, he is entitled to back pay only from the time he was found physically able to return to his duties. *Dickson v. Department of Highways*, 234 La. 1082, 102 So.2d 464 (1958)

An illegally terminated employee is entitled to full salary until legally terminated. *Bennett v. Louisiana Wild Life and Fisheries Commission*, 234 La. 678, 101 So.2d 199 (1958); *Maurello v. Department of Health and Human Resources*, 546 So.2d 545 (La.App. 1 Cir. 1989)

Mandatory overtime is included in a back pay award. *Augustine v. Department of Public Safety and Corrections,* 2007-1289 (La.App. 1 Cir. 2/20/08); NDFP; *Alongi v. Department of Police*, 480 So.2d 1001 (La.App. 4 Cir. 1985); *Hebbler v. New Orleans Fire Department,* 299 So.2d 825 (La.App. 4 Cir. 1974)

Where the employee makes no allegations in his appeal regarding mandatory overimte and failed to establish that he worked overtime before his removal, there was no basis for awarding overtime as part of back pay. *Augustine v. Department of Public Safety and Corrections,* 2007-1289 (La.App. 1 Cir. 2/20/08); NDFP

When an employee's termination is reversed, he is entitled to full back pay, subject to certain offsets. An employee found "somewhat at fault" does not forfeit entitlement to full back pay. *Ennis v. Department of Public Safety and Corrections*, 558 So.2d 617 (La.App. 1 Cir. 1990), declining to follow *Beverly v. Sewerage and Water Board*, 519 So.2d 172 (La.App. 4 Cir. 1987)

Upon reversal of a suspension, an employee is not entitled to payment for work that would have been done on a special detail while off-duty where the detail was funded by

private employers, the performance of the special detail was at the employer's option, and the salary paid for the special detail was not computed as part of the employee's state salary or considered for purposes of state employment benefits. *Sterling v. Board of Commissioners, Port of New Orleans*, 527 So.2d 1122 (La.App. 1 Cir. 1988)

Where the employee received notice of the hearing and waited a month to contact an attorney, which resulted in a continuance, the employee was properly denied back pay for a continuance later requested by the agency; the original continuance caused the additional delays. *Willis v. Department of Health and Human Resources*, 434 So.2d 1164 (La.App. 1 Cir. 1983)

Back pay on reinstatement includes all mandatory salary increases, but does not automatically include discretionary increases. *Stafford v. Division of Administration*, 407 So.2d 87 (La.App. 1 Cir. 1981); *Hays v. Louisiana Wildlife and Fisheries Commission*, 153 So.2d 562 (La.App. 3d Cir. 1963)

Rule 13.28(c) – Offsets

The Commission may offset wages and salaries received from other work since the date of termination from back pay. *Higgins v. Louisiana State Penitentiary, Department of Institutions,* 245 La. 1009, 162 So.2d 343 (1964); *Department of Health and Human Resources v. Payton*, 498 So.2d 181 (La.App. 1 Cir. 1986); *Boozer v. Department of Health and Human Resources*, 470 So.2d 490 (La.App. 1 Cir. 1985); *Louisiana State University v. Bailey,* 432 So.2d 336 (La.App. 1 Cir. 1983); *LeBlanc v. New Orleans Police Department*, 231 So.2d 568 (La.App. 4 Cir. 1970)

It is inequitable for a worker to receive both replacement wages and a full salary during a period of separation. Therefore, an agency may offset that portion of the workers' compensation settlement that represents lost wages from a back pay award. *Jones v. Department of Health and Hospitals*, 1998-1745 (La.App. 1 Cir. 9/28/99); 754 So.2d 277

The purpose of workers' compensation is to replace lost wages and to compensate for the lost capacity to earn wages. Therefore, a settlement of a workers' compensation claim includes payment of lost wages. *Jones v. Department of Health and Hospitals*, 1998-1745 (La.App. 1 Cir. 9/28/99); 754 So.2d 277

The Commission may offset unemployment compensation benefits received since the termination from back pay. *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991); *Department of Health and Human Resources v. Payton*, 498 So.2d 181 (La.App. 1 Cir. 1986); *Boozer v. Department of Health and Human Resources*, 470 So.2d 490 (La.App. 1 Cir. 1985)

An offset for wages earned from a "moonlighting" job during other than the employee's regular working hours at the state agency would be improper. Only wages earned in a job to substitute for the state job can validly be offset. *Department of Health and Human Resources v. Payton,* 498 So.2d 181 (La.App. 1 Cir. 1986)

The Commission may order employees reinstated under such conditions as it deems appropriate. *Westrope v. Department of Health and Human Resources*, 489 So.2d 1024 (La.App. 1 Cir. 1986)

The Commission may offset wages and retirement benefits received since the termination from back pay. *Westrope v. Department of Health and Human Resources,* 489 So.2d 1024 (La.App. 1 Cir. 1986)

The Commission may offset back pay due to continuances obtained by the employee. *Werner v. Department of Police*, 487 So.2d 598 (La.App. 4 Cir. 1986); *Willis v. Department of Health and Human Resources*, 434 So.2d 1164 (La.App. 1 Cir. 1983)

An employee may draw unemployment benefits while suspended. *Johnson v. Board of Commissioners of Port of New Orleans,* 348 So.2d 1289 (La.App. 4 Cir. 1977)

The Commission may apply the setoff provisions in LSA-R.S. 49:113 (wages and salaries earned by the employee in private employment during the period of separation). *LeBlanc v. New Orleans Police Department,* 231 So.2d 568 (La.App. 4 Cir. 1970)

Rule 13.28(c) – Interest on Back Pay

NOTE: Judicial interest rates are computed each year by the Commissioner of Financial Institutions under the authority of LSA-R.S. 13:3202 and are published annually in the December issues of the *Louisiana Register* and the *Louisiana Bar Journal.*

There is no basis to deny interest on back wage payments. Sovereign immunity no longer exempts the state from liability in contract or tort. This case involves the employee's employment contract. In all other cases involving wage payments under employment contracts interest is allowed. *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991) **OLD LAW**: *Anderson v. Walker*, 233 La. 687, 98 So.2d 153 (1957); *Boucher v. Doyal,* 210 So.2d 75 (La.App. 1 Cir. 1968)

Interest on back pay is due on the difference between back pay and any offsets ordered, on a paycheck by paycheck basis. *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991) **NOTE**: Subtract the gross offsets from the gross back pay and calculate interest on the difference. *Wertz v. Department of Public Safety and Corrections*, CSC Docket No. 11232; 2/19/98 [CSC decision]

In civil service appeals, interest on back pay must be prayed for to be awarded. *Johnson v. Southern University*, 551 So.2d 1348 (La.App. 1 Cir. 1989) **BUT SEE**: *Toth v. Ensco Environmental Services, Inc.,* 551 So.2d 623 (La. 1989)

Interest on back pay is simple rather than compound. *Seals v. Morris,* 465 So.2d 140 (La.App. 1 Cir. 1985)

Rule 13.28(c) – Emoluments

Employee is not entitled to an adjustment for increased tax liability resulting from a lump sum back pay award. *Christoffer v. Department of Fire*, 1998-2408 (La. 5/18/99); 734 So.2d 629

Employee is entitled to supplemental pay that was withheld during the period of wrongful termination because state supplemental pay was a "benefit resulting from his (the fireman's) employment" and was therefore compensable under the civil service rules as back wages. *Hebbler v. New Orleans Fire Dept.,* 310 So.2d 113 (La. 1975)

Emoluments include annual and sick leave that would have accrued had the employee not been terminated. *Augustine v. Department of Public Safety and Corrections,* 2007-1289 (La.App. 1 Cir. 2/20/08); NDFP; *Lombas v. New Orleans Police Department*, 501 So.2d 790 (La.App. 4 Cir. 1986)

Emoluments include restoration of health insurance coverage on the same basis as it would have been available had employment not been terminated. If employees procured private health insurance (because COBRA was not available or was too expensive) they are entitled to reimbursement for the private health insurance premiums they paid. If COBRA was cheaper than private insurance, they are entitled only to the cost of COBRA insurance. If they procured no insurance, they are not entitled to any reimbursement. *Noya v. Department of Fire*, 611 So.2d 746 (La.App. 4 Cir. 1992)

Emoluments of a position can include the value of a free house and a utility allowance. *Messer v. Department of Corrections, Louisiana State Penitentiary*, 385 So.2d 376 (La.App. 1 Cir. 1980); *Louisiana State Civil Service Commission v. Department of Corrections,* 251 So.2d 524 (La.App. 1 Cir. 1971)

Illegally dismissed state civil service employee, when reinstated, should receive whatever he would have received if he had not been dismissed. *Louisiana State Civil Service Commission v. Department of Corrections*, 251 So.2d 524 (La.App. 1 Cir. 1971)

Rule 13.28(c) – Conditions of Reinstatement

A former probationary employee can be reinstated with permanent status. *Department of Public Safety and Corrections v. Thornton*, 625 So.2d 713 (La.App. 1 Cir. 1993)

Rule 13.28(c) – Expungement

Expungement of a personnel record of details concerning a removal does not injure the public records. The court records, which are public records, document the events that transpired. *Augustine v. Department of Public Safety and Corrections,* 2007-1289 (La.App. 1 Cir. 2/20/08); NDFP

An expungement order seeks to restore the personnel records so they will appear as they had before the employee was unlawfully removed and is intended as a benefit to the employee so that the removal incident would not jeopardize his future employment in any manner. *Augustine v. Department of Public Safety and Corrections,* 2007-1289 (La.App. 1 Cir. 2/20/08); NDFP

When there is insufficient cause for discipline, it is error not to order expungement. Allowing documentation concerning the disciplinary action to remain a part of the employee's personnel file effectively subjects her to disciplinary action without the required legal cause. *Price v. Department of Public Safety and Corrections*, 2003-0979 (La.App. 1 Cir. 4/2/04); 878 So.2d 612

Rule 13.31 – Settlements

When a settlement reinstates an employee without back pay, without past merit increases, and without earning leave between the termination and the reinstatement, the employee is in leave without pay status. This period of time does not count as state service for layoff purposes. *Maradiaga v. University of New Orleans*, 546 So.2d 579 (La.App. 1 Cir. 1989)

The agency has the responsibility to share with prospective employers the true facts, or facts that are reasonably believed to be true, about an ex-employee of theirs. We strongly doubt whether that responsibility could be contracted away in a settlement agreement (i.e., agreeing to provide a neutral reference) because such agreement would likely be *contra bonos mores. Nagel v. Department of Natural Resources,* CSC Docket No. S-14562; 6/28/02 [CSC decision on application for review]

Rule 11.10 is not meant to apply to settlements wherein a resignation is substituted for a termination. In such a case the parties are simply settling their differences and there is no separation as contemplated by that rule. A separation pursuant to that rule contemplates a voluntary leaving or the involuntary removal through the application of civil service rules. The parties may agree that up to 300 hours of annual leave should be paid when a resignation is substituted for a disciplinary action, but Rule 11.10(a) does not mandate such payment where a resignation is substituted for a disciplinary action in the course of a settlement. *Young v. Department of Revenue*, CSC Docket No. S-13808; 3/29/01 [CSC decision on application for review]

Rule 13.32 – Recusation

See also LSA-C.C.P. arts. 151-161; *Matter of Rollins Environmental Services, Inc.,* 481 So.2d 113 (La. 1985)

The grounds for recusal of a Referee are those listed in LSA-C.C.P. art 151. To have a personal interest in the cause, the facts must indicate that there would be some personal advantage in deciding the case for or against one of the parties. The pendency of another appeal before the same Referee does not constitute an interest in the cause

or the performance of a judicial act in the cause in another court. *Addison v. L. S. U. Medical Center in Shreveport*, 551 So.2d 750 (La.App. 1 Cir. 1989)

The statutory list of grounds for recusal of a judge is exclusive, not illustrative, and the grounds must be strictly construed. *Christian v. Christian*, 535 So.2d 842 (La.App. 2 Cir. 1988)

A Commission member or a Referee can hear a case until a motion to recuse is filed. *Fleming v. Department of Education*, 293 So.2d 658 (La.App. 1 Cir. 1974)

Rule 13.33(a) – Discovery Not Recognized

There is no constitutional right to pre-trial discovery in administrative hearings. *Young v. Department of Health and Human Resources*, 405 So.2d 749 (La.App. 1 Cir. 1981)

Although formal discovery is not recognized, the employee's counsel can interview certain former agency employees and certain current agency employees without the agency lawyer's consent. These include employees: who do not supervise, direct or regularly consult with the agency's lawyer concerning the matter; who do not have the authority to obligate the agency with respect to the matter; or whose act or omission in connection with the matter may not be imputed to the agency for purposes of civil or criminal liability. Code of Professional Conduct Rule 4.2; *Schmidt v. Gregorio*, 705 So.2d 742 (La.App. 2 Cir. 1994)

Rule 13.33(b) – Rehearing Prohibited

Rule 13.33(b), which prohibits rehearing, is not superseded by the Administrative Procedure Act. *Smith v. Department of Health and Human Resources*, 416 So.2d 94 (La. 1982)

Rule 13.33(b), which prohibits rehearing, is a reasonable exercise of the Commission's authority and is constitutional. *Smith v. Department of Health and Human Resources*, 416 So.2d 94 (La. 1982); *Young v. Charity Hospital of Louisiana at New Orleans*, 226 La. 708, 77 So.2d 13 (1954); *Cross v. Delgado Junior College*, 331 So.2d 599 (La.App. 1 Cir. 1976); *Waldroup v. Louisiana State University*, 255 So.2d 413 (La.App. 1 Cir. 1971); *Harmon v. Louisiana Wild Life and Fisheries Commission,* 244 So.2d 922 (La.App. 1 Cir. 1970)

The Commission cannot amend its own final decision. *Pailet v. Office of Health Services and Environmental Quality,* 379 So.2d 265 (La.App. 1 Cir. 1979)

It is not a prohibited rehearing if the court remands for further testimony*. Cormier v. State Department of Institutions,* 230 So.2d 307 (La.App. 1 Cir. 1969)

Rule 13.34 – No Right to Appeal Rules and Pay Plans

Rule 13.34 is valid and bars an appeal of the establishment of classes and pay ranges. *Easley v. Department of State Civil Service*, 572 So.2d 1101 (La.App. 1 Cir. 1990); *Latona v. Department of State Civil Service*, 492 So.2d 27 (La.App. 1 Cir. 1986); *Mayeaux v. Department of State Civil Service*, 421 So.2d 948 (La.App. 1 Cir. 1982); *Clark v. Department of Transportation and Development*, 413 So.2d 573 (La.App. 1 Cir. 1982)

Whether an appeal is allowed under [former] Rule 13.10(e) or barred by Rule 13.34 depends on what is being challenged. *Ramirez v. Department of Social Services*, 603 So.2d 795 (La.App. 1 Cir. 1992); *Easley v. Department of State Civil Service*, 572 So.2d 1101(La.App. 1 Cir. 1990)

Rule 13.34 does not bar an appeal by an employee who complains that he is being paid differently from other employees in the same classification. *Easley v. Department of State Civil Service*, 572 So.2d 1101 (La.App. 1 Cir. 1990)

Rule 13.34 bars an appeal by an employee who asserts that he is being paid differently from employees in different classifications. *Easley v. Department of State Civil Service*, 572 So.2d 1101 (La.App. 1 Cir. 1990)

Rule 13.34 bars an appeal challenging the constitutionality of a civil service pay rule. *Easley v. Department of State Civil Service*, 572 So.2d 1101 (La.App. 1 Cir. 1990)

While Rule 13.34 precludes an appeal of the adoption of a civil service rule or a pay plan, former Rule 13.10(e) allows an appeal if the discriminatory application or interpretation of a rule results in the discriminatory application of the pay plan. *Gandy v. State Civil Service Commission*, 498 So.2d 765 (La.App. 1 Cir. 1986) **NOTE: Since *Agriculture* and the repeal of Rule 13.10(e), this type of case would likely be allowed under Rule 13.10(c) as a violation of Art. X, Sec. 10(A)1.**

Rule 13.35 – Attorney's Fees [Adopted 1/5/82, with a maximum award of $500; amended 9/11/91, to increase the maximum award to $1500]

Where the record does not establish that the employee incurred any attorney's fees, the Commission did not err in denying an attorney fee award. *Augustine v. Department of Public Safety and Corrections,* 2007-1289 (La.App. 1 Cir. 2/20/08); NDFP

Despite evidence that the employee did not receive timely notice of its proposed action, the agency, nevertheless, decided to proceed with terminating her employment. Based on this evidence, the Commission did not abuse its discretion in awarding attorney fees in this matter. *Morgan v. Louisiana State University, Health Sciences Center,* 2006-0570 (La.App. 1 Cir. 4/4/07); 960 So.2d 1002

It is an abuse of discretion to deny attorney's fees when the agency fails to prove its charges. *Price v. Department of Public Safety and Corrections*, 2003-0979 (La.App. 1 Cir. 4/2/04); 878 So.2d 612

It is arbitrary and capricious to dismiss a claim for attorney's fees when the agency failed to comply with a reinstatement and back pay order and the employee had to file a new appeal to protect his rights. *James v. LSU Health Sciences Center*, 2001-1853 (La.App. 1 Cir. 11/8/02); 834 So.2d 470 (The dissenting opinion points out that there was no basis to award attorney's fees because no action was reversed or modified.)

LSA-R.S. 42:1451, which allows for the award of reasonable attorney's fees under certain circumstances, is an unconstitutional infringement on the exclusive power granted to the Commission under Article X, Section 10(A). *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991); *Johnson v. Southern University*, 551 So.2d 1348 (La.App. 1 Cir. 1988); *Department of Health and Human Resources v. Toups*, on rehearing, 451 So.2d 1126 (La.App. 1 Cir. 1984); *Pierre v. Department of Natural Resources*, 449 So.2d 596 (La.App. 1 Cir. 1984); *Appeal of Brisset,* 436 So.2d 654 (La.App. 1 Cir. 1983)

The awarding of attorney's fees in civil service appeals is discretionary; the employee must show an abuse of discretion for the court to grant relief from the denial of attorney's fees. *Johnson v. Southern University,* 551 So.2d 1348 (La.App. 1 Cir. 1988)

An award of attorney's fees will only be overturned if manifestly erroneous. *Johnson v. Southern University,* 551 So.2d 1348 (La.App. 1 Cir. 1988); *Department of Culture, Recreation and Tourism v. Peak*, 423 So.2d 718 (La.App. 1 Cir. 1982)

School employee who was reinstated to his former position by the Commission was not entitled to attorney's fees for his appeal of the order allowing offset of unemployment compensation he received during the period of separation, as the Commission did not reverse or modify action taken in a civil service appeal. *Boozer v. Department of Health and Human Resources*, 470 So.2d 490 (La.App. 1 Cir. 1985)

Rule 13.35 is penal in nature and must be strictly construed. *Department of Health and Human Resources v. Thompson*, 460 So.2d 47 (La.App. 1 Cir. 1984)

Rule 13.35 did not authorize an award of attorney's fees in connection with the rescission of a reprimand because Rule 15.10(c) did not require the Commission's approval to rescind a reprimand. *Department of Health and Human Resources v. Thompson*, 460 So.2d 47 (La.App. 1 Cir. 1984) **NOTE: A 9/11/91 amendment to Rule 13.35 makes this decision obsolete.**

For purposes of awarding attorney's fees, a finding of unreasonableness is a factual finding to be made by the trier of fact. The fact that a disciplinary action is fatally defective for procedural reasons (*i.e.*, failure to prove mailing of notice of suspension)

does not automatically make it unreasonable. *Johnson v. Department of Health and Human Resources,* 458 So.2d 137 (La.App. 1 Cir. 1984)

There is no statutory authority for the Court of Appeal to award attorney's fees and, because the employee did not ask for attorney's fees before the Commission, attorney's fees cannot be awarded under Rule 13.35. *Pierre v. Department of Natural Resources*, 449 So.2d 596 (La.App. 1 Cir. 1984)

$500.00 is a reasonable attorney's fee for twenty-one hours of work at $60.00 per hour. *Louisiana State University v. Bailey*, 432 So.2d 336 (La.App. 1 Cir. 1983)

Where the action of the appointing authority in possession of the facts of which it had knowledge, or should have had knowledge, takes an action that would offend the judgment of a reasonable and prudent man, attorney fees should be awarded. Attorney fees should not be awarded where the appointing authority has made only an error of judgment. Only where that judgment would offend the sensibilities of a reasonable and prudent man should attorney fees be awarded. *Castor v. Department of Public Safety and Corrections, LTI/Monroe,* CSC Docket No. 12466; 6/14/99 [CSC decision on application for review]; *Alexander v. DHH-New Orleans Adolescent Hospital*, CSC Docket No. S-8037; 3/25/92 [CSC decision on application for review]

When an appointing authority takes an action that it knew, or should have known, was in direct violation of a mandatory rule such as at issue here [Rule 12.8, requiring prior notice], attorney fees should be awarded. *Tillery v. LHCA-Lallie Kemp Medical Center*, CSC Docket No. S-11872; 1/1/97 [CSC decision on application for review]

For a pre-rule case, see *Hays v. Louisiana Wild Life and Fisheries Commission*, 165 So.2d 556 (La.App. 1 Cir. 1964)

Rule 13.36 – Application for Review of a Referee's Decision: Method of Review [See also La. Const. Art. X, Sec. 12(A).]

The record contains no evidence substantiating allegations that the general counsel's opinion of the Referee's decision was "rubber stamped" by the Board. There is nothing in the record suggesting that the Board did not make its own factual determinations. Further, we know of no prohibition against the Commission seeking the advice from its own counsel. *Bishop v. Department of Health and Hospitals, Southeast Louisiana Hospital,* 2005-1750 (La.App. 1 Cir. 12/28/06); NDFP

The Commission may reverse or modify a Referee's decision on an issue of law; and, after a review of the recordings or transcript of the hearing, it may reverse or modify the decision on an issue of fact. *Ben v. Housing Authority of New Orleans*, 2003-1664 (La.App. 1 Cir. 5/14/04); 879 So.2d 803

Following the April 3, 1991 amendment to Rule 13.36, the Commission is only required to review a transcript of the proceedings before a Referee if the Commission reverses

or modifies the decision on an issue of fact. *Ravencraft v. Department of Public Safety and Corrections*, 608 So.2d 1051 (La.App. 1 Cir. 1992)

Neither the civil service rules nor any other applicable laws specifically require that the Commission review testimony when the Commission reverses a Referee's decision on an issue of law. *Ravencraft v. Department of Public Safety and Corrections*, 608 So.2d 1051 (La.App. 1 Cir. 1992)

Adopting appellant's argument, that a factual review by the Commission is mandated in all cases in which an appellant raises factual issues in an application for review of a Referee's decision, would effectively deprive Referees of their constitutionally provided decision-making authority and would obligate the Commission to hear and decide for itself all disciplinary and removal cases, rendering Article X, Section 12(A) meaningless. *Ravencraft v. Department of Public Safety and Corrections*, 608 So.2d 1051 (La.App. 1 Cir. 1992)

The Commission is not required to review a transcript of the proceedings before a Referee before denying an application for review. *Fisher v. Department of Social Services*, 600 So.2d 1368 (La.App. 1 Cir. 1992)

Frye [below] is not applicable after Rule 13.36 was amended to preclude a transcript from being designated as a document to be submitted to the Commission. *Fisher v. Department of Social Services*, 600 So.2d 1368 (La.App. 1 Cir. 1992)

The failure of the Commission's notice of denial of an application for review to indicate that the Commission conducted an independent review of the sound recordings of the hearing before the Referee does not render the action defective. *Department of Health and Hospitals v. Jeffress*, 593 So.2d 680 (La.App. 1 Cir. 1991)

OLD LAW: Rule 13.36(b)(5) requires a party to specify which written documents are to be submitted to the Commission with the application for review and Rule 13.36(f) requires the Commission to review the documents so specified. The following case held that when a party designated the sound recordings or a transcript of the hearing before the Referee as a "document" to be reviewed by the Commission, the Commission had to review the transcript before taking <u>any</u> action on the application for review. *Frye v. Louisiana State University Medical Center*, 544 So.2d 81 (La.App. 1 Cir. 1989) **As to this issue, this case became obsolete when Rule 13.36(b)5 was amended on 7/12/89, to provide that "a transcript of the proceedings before the Referee may not be specified as a pleading or exhibit."**

OLD LAW: Former Rule 13.36(g) required the Commission to listen to the pertinent portions of the sound recordings when it granted review of a Referee's decision. In *Schneider v. Department of Health and Hospitals*, 552 So.2d 796 (La.App. 1 Cir. 1989), the Commission reversed the Referee on issues of law <u>and</u> fact without reviewing the transcript or sound recordings of the hearing. The court concluded that the Commission failed to fulfill its responsibility to afford a meaningful review of the case. **Rule 13.36(g)**

was amended on 4/3/01, to allow the Commission to reverse a Referee's decision on an issue of law without reviewing the transcript or the sound recordings. (The Commission must still review a transcript or the sound recordings before reversing a Referee on a factual issue.)

Rule 13.36 – Standard of Review on Application for Review

The Commission, not the courts, is constitutionally authorized to establish a standard by which it will review a Referee's decision. *Teeter v. Louisiana Department of Culture, Recreation and Tourism-Office of State Museum,* 2007-0578 (La.App. 1 Cir. 2/20/08); NDFP; *Jackson v. Department of Health and Hospitals,* 1998-2722 (La.App. 1 Cir. 2/18/00); 752 So.2d 357; *Burst v. Board of Commissioners, Port of New Orleans,* 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955; *Wheeler v. Department of Public Safety and Corrections, Washington Correctional Institute*, 544 So.2d 66 (La.App. 1 Cir. 1989)

When reviewing a Referee's decision, the Commission is not required to accord deference to the Referee's decision. *Jackson v. Department of Health and Hospitals*, 1998-2722 (La.App. 1 Cir. 2/18/00); 752 So.2d 357

The Constitution does not establish a standard of review for the Commission when reviewing a Referee's decision. *Burst v. Board of Commissioners, Port of New Orleans*, 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955; *Wheeler v. Department of Public Safety and Corrections, Washington Correctional Institute*, 544 So.2d 66 (La.App. 1 Cir. 1989)

Rule 13.37 – Time for Filing Application for Review [See also La. Const. Art. X, Sec. 12(A).]

If an application for review of a Referee's decision is untimely, the thirty-day delay for appealing to the Court of Appeal commences the day following the day the Referee's decision was rendered. If the application for review is timely, the thirty-day delay for appealing commences the day following the day the order denying review was filed with the Director of Civil Service. *Department of Culture Recreation and Tourism v. Fontenot*, 518 So.2d 1067 (La.App. 1 Cir. 1987)

Rule 13.38 – Action Required Following Decision

Rule 13.38 requires the agency to return the reinstated employee to the payroll when he presents himself ready for work at the time and place it existed before termination. *James v. LSU Health Sciences Center,* 2001-1853 (La.App. 1 Cir. 11/8/02); 834 So.2d 470

If a termination is reversed or rescinded due to procedural defects, the employer can re-use the same conduct to support a subsequent termination. To effectuate the recision of the initial termination, the agency must reinstate the employee on paper as though the original termination had not occurred and the agency must pay the employee his salary

between the effective date of the original termination and the effective date of the second termination. Before re-terminating the employee, the agency must provide the employee with the required due process; however, an employer is generally under no obligation to allow an employee who is to be re-terminated to resume his regular duties. *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991)

Employee's failure to present himself for work within the time required by this rule is cause for dismissal. (Employee waited until more than three months after the Commission denied the agency's application for review before presenting himself for work.) *Orleans Levee District v. Glenn*, 577 So.2d 336 (La.App. 1 Cir. 1991)

CHAPTER 6

CIVIL SERVICE RULES: CHAPTERS 14 – 21

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Rule 14.1(a) and (l) – Discrimination

An employee cannot be disciplined for political or religious reasons or for any type of discrimination. *King v. Department of Public Safety,* 234 La. 409, 100 So.2d 217 (1958); *Cormier v. State Department of Institutions*, 212 So.2d 143 (La.App. 1 Cir. 1968), appeal after remand, 230 So.2d 307 (La.App. 1 Cir. 1969); *Duckett v. Louisiana Wildlife & Fisheries Commission,* 175 So.2d 723 (La.App. 1 Cir. 1965); *Hays v. Louisiana Wild Life and Fisheries Commission,* 165 So.2d 556 (La.App. 1 Cir. 1964)

The Commission can discipline a state, classified employee who violates the Article or a civil service rule. La. Const. Art. X, Sec. 10. Discriminating against an employee because of her race constitutes such a violation. La. Const. Art. X, Sec. 8(B) and Rule 14.1(a). To invoke the Commission's authority to punish, the employee's recourse is to file a request for investigation or formal charges, pursuant to Chapter 16 of the rules. *Sandres v. Division of Administration, Office of Risk Management*, CSC Docket No. 15257; 12/2/04 [Referee decision]

Rule 14.1(b) – Political Contributions

Rule 14.1(b) is violated when an employee contributed $100 to a candidate who was running for State Representative. That the candidate was a friend of hers did not excuse the violation. *Public Investigation of Freiler*, CSC Docket No. 15204; 2/10/04 [CSC decision; 5-day suspension]

The prohibition against political activity by state classified employees is not limited to statewide elected offices. It applies to **all** political offices. By making contributions on four different occasions to two candidates' campaigns for local political offices, the employee violated Rule 14.1(b) and (e). *Public Investigation of Juneau,* CSC Docket No. 14284; 7/11/01[CSC decision; 15-day suspension]

Rule 14.1(e) – Political Activity

For a discussion of political campaigning, see *Gremillion v. Department of Highways,* 129 So.2d 805 (La.App. 1 Cir. 1961).

Rule 14.1(e) is violated when an employee wears a shirt in public that supports the election of a candidate for State Representative. *Public Investigation of Boudreaux*, CSC Docket No. I-15236; 3/4/04 [CSC decision; 1-day suspension]

Employee drove a candidate's truck (which prominently displayed his campaign signs) to free up the candidate so he could actively solicit votes. This is a public display of support for a candidate that is clearly prohibited by the State Constitution and the civil service rules. *Public Investigation of Ducote*, CSC Docket No. 11741; 1/29/97 [CSC decision; 1-day suspension]

Rule 14.1(e) was violated when an employee wrote, for publication, a column that opposed the election of a candidate for political office (President) and supported the Democratic party in an election. He far exceeded his right "as a citizen to express his opinion privately." *Public Investigation of Harkness*, CSC Docket No. 10457; 2/9/94 [CSC decision; 5-day suspension]

If the employee had just made a copy of the recall petition, signed it, and mailed it in, she would not have violated Rule 14.1(e)5. However, by making additional copies of the petition and offering to send it in for others, she made it easier for others to participate in the recall effort. Therefore, she took an active part in the recall effort. Her ignorance of the civil service rules does not excuse her actions. Classified employees are expected to familiarize themselves with the rules governing their employment, particularly the rules governing prohibited political activity. Employees who do not act at their peril. *Public Investigation of Verma*, CSC Docket No. 10297; 7/21/93 [CSC decision; 30-day suspension]

Employee knowingly gave public support to a candidate for political office (Governor) by displaying that candidate's sign in his truck on two separate occasions. Adding to the severity of the violation is the fact that the second incident occurred only two days after the first violation was brought to the employee's attention. *Public Investigation of Bennett*, CSC Docket No. 10359; 7/21/93 [CSC decision; 60-day suspension]

Rule 14.1(e) is violated when an employee actively engages in her husband's political campaign. *Public Investigation of Seal,* CSC Docket No. 9855; 3/17/93 [CSC decision; 60-day suspension]

Rule 14.1(j) – False Statements

Rule 14.1(j) is violated when an employee and his supervisor make false statements concerning the employee's duties, thereby fraudulently obtaining a classification to which the employee was not entitled. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

An appointing authority (Assistant Secretary) who appoints himself to a classified fall-back position (Deputy Assistant Secretary) with no intention of serving in the latter position violates Article X, Section 7 of the Article and Rule 14.1(j). *Williams v. Department of State Civil Service*, 96-0497 (La.App. 1 Cir. 12/20/96); 686 So.2d 159

By knowingly submitting false information on a job description and by certifying the accuracy of the incorrect and misleading job description, the employee and his supervisor impaired civil service's ability to achieve correct classification for pay and promotional purposes. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

The Commission's imposition of a 45-day suspension was not arbitrary for a supervisor who certified the accuracy of his subordinate's position description, knowing it was false. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

The Commission's imposition of a reduction in pay plus a two-year bar on eligibility for pay raises or promotions was not arbitrary for an employee who falsified his position description and received an underserved reallocation as a result. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

Rule 14.1(j) is violated when an employee falsifies an employment application by claiming college degrees and college course work not earned. *Public Investigation of Marti*n, CSC Docket No. 10660; 9/21/04 [CSC decision; promotion rescinded and bar from promotion for one year]; *Public Investigation of Fields*, CSC Docket No. 11946; 7/10/97 [CSC decision; bar from appointment and promotion for one year]; *Public Investigation of Davis*, CSC Docket No. 10155; 3/17/93 [CSC decision; 60-day suspension]; *Public Investigation of Alford,* CSC Docket No. 9709; 10/1/92 [CSC decision; demotion with pay reduction]

Rule 14.1(j) is violated when an employee falsifies his job application by claiming education and experience he does not have. *Public Investigation of Jarrell*, CSC Docket No. 15334; 7/29/04 [CSC decision; 10-day suspension]

Rule 14.1(j) is violated when an employee signs a position description that is patently false: she claimed supervisory duties she did not have and, as a result, received pay to which she was not entitled. Trusting her supervisor, the employee signed the paperwork without reading it. An employee does this at her peril. Ordinarily, when an employee falsifies a position description, we order the employee and his or her supervisor suspended for at least 45 days. However, there are mitigating circumstances. The supervisor is no longer subject to our jurisdiction; the employee was a new state employee who made two mistakes – she trusted her supervisor and she did not read the paperwork she signed. Although she cannot escape responsibility for these mistakes, she is the less culpable of the two. *Public Investigation of LeBlanc*, CSC Docket No. 14656; 5/20/02 [CSC decision; pay reduced to correct rate and 10-day suspension]

Rule 14.1(j) is violated when employees' time and attendance sheets are works of fiction. The reports fell woefully short of complying with Rule 15.2 because they did not reflect who actually rendered the service, who was actually at work, and who was actually absent. Nonetheless, all five employees signed the reports, knowing them to be false. As such, they made false certificates with regard to state classified employment. Although the employees are guilty of false reporting, there is no evidence that by participating in time trading, the employees committed or attempted to commit fraud. The evidence is uncontroverted that someone actually worked the hours for which the District paid. The District was not shorted; if anything, the employees shorted themselves of overtime pay. The District lost accurate records, but it did not pay for work that was not performed. The employees had been openly participating in time trading for over ten years with the full knowledge and approval of their supervisor and, for the past five years, that of the Administrator and the Chairman of the Board. *Public*

Investigation of LeBlanc, et al., CSC Docket No. 13081; 4/14/99 [CSC decision; 1-day suspensions for employees and 3-day suspension for supervisor]

What the employee termed an "exaggeration" of her duties was in fact a falsification of those duties. As a result, she received a grade to which she was not entitled. *Public Investigation of Merz*, CSC Docket No. 10724; 9/21/94 [CSC decision; barred from promotion for two years]

Rule 14.1(j) is violated when an employee, her immediate supervisor, and his immediate supervisor falsify the employee's position description by claiming duties she does not perform. *Public Investigation of Delaup, et al*., CSC Docket No. 10588; 7/14/94 [CSC decision; 45-day suspensions]

Rule 14.1(m) – Duty to Answer Questions

Where employee only did paperwork for misclassification and department knew of misclassification, employee did not violate duty to assist the Commission and answer truthfully all questions. *In re Taylor,* 233 So.2d 49 (La.App. 1 Cir. 1970)

Rule 15.2 – Certification of Payroll and Attendance

The employees admitted that the time and attendance sheets were works of fiction. These reports fell woefully short of complying with Rule 15.2 because they did not reflect who actually rendered the service, who was actually at work, and who was actually absent. Although the employees are guilty of false reporting, there is no evidence that by participating in time trading, the employees committed or attempted to commit fraud. The evidence is uncontroverted that someone actually worked the hours for which the District paid. The District was not shorted; if anything, the employees shorted themselves of overtime pay. The District lost accurate records, but it did not pay for work that was not performed. The employees had been openly participating in time trading for over ten years with the full knowledge and approval of their supervisor and, for the past five years, that of the Administrator and the Chairman of the Board. *Public Investigation of LeBlanc, et al.,* CSC Docket No. 13081; 4/14/99 [CSC decision; 1-day suspensions for employees and 3-day suspension for supervisor]

Rule 15.10 – Modification of Personnel Actions

It is an abuse of discretion for the Director to approve an agency's request to rescind a disciplinary action that has already been served to allow the agency to take a more severe action based on the same conduct. *Lundy v. University of New Orleans,* 1998-0054 (La.App. 1 Cir. 2/19/99); 728 So.2d 927

Chapter 16 – Investigations

For penalties imposed for specific violations, see annotations under Rules 14.1(b), (e), (j), and (m).

In an investigation, the facts must be clearly established; they need not be established beyond a reasonable doubt. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

In reviewing the Commission's imposition of discipline following an investigation, the same standard of review applies as when the Commission hears a case in which the agency imposed the disciplinary action – *i.e.,* to determine whether the action is based on legal cause and the punishment is commensurate with the infraction. The court should not modify the Commission's order unless it is arbitrary, capricious or characterized by an abuse of discretion. *Blackwell v. Sumrall*, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

The Commission may penalize classified employees who violate the civil service rules by removal, suspension, or demotion. *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989)

The investigatory power of the Commission does not subject unclassified employees to the jurisdiction of the Commission. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989); *In re Investigation of Lauricella,* 546 So.2d 207 (La.App. 1 Cir. 1989); *In re Coon,* 141 So.2d 112 (La.App. 1 Cir. 1962)

Although the employee was serving in a classified position at the time the Commission conducted its investigation, the Commission did not have authority to investigate conduct that occurred while she served in an unclassified position. *In re Investigation of Smith,* 546 So.2d 561 (La.App. 1 Cir. 1989)

The Commission cannot demote a person who does not qualify for a position when that person was not made a party to the proceedings. The Commission must either file charges to investigate the matter in accordance with Chapter 16 of the rules or remand the matter to the appointing authority for further action in accordance with Chapter 12 of the rules. *Donchess v. DHHR, Office of Management and Finance*, 457 So.2d 833 (La.App. 1 Cir. 1984)

The fact that the Commission acts as both prosecutor and judge does not violate due process. *Vidrine v. State Parks and Recreation Commission,* 169 So.2d 641 (La.App. 1 Cir. 1964)

The purpose of the constitutional power to investigate is to promote the efficiency of state government. *In re Coon,* 141 So.2d 112 (La.App. 1 Cir. 1962)

The Commission can discipline a state, classified employee who violates the Article or a civil service rule. La. Const. Art. X, Sec. 10. Discriminating against an employee because of her race constitutes such a violation. La. Const. Art. X, Sec. 8(B) and Rule 14.1(a). To invoke the Commission's authority to punish, the employee's recourse is to file a request for investigation or formal charges, pursuant to Chapter 16 of the rules.

Sandres v. Division of Administration, Office of Risk Management, CSC Docket No. 15257; 12/2/04 [Referee decision]

Where the conduct being investigated occurred while respondent was a classified state employee, his resignation from the classified service did not deprive the Commission of its jurisdiction over the person, the position, or the subject matter. *Public Investigation of Mohon,* CSC Docket No. 9711; 11/10/93 [CSC decision]

Chapter 17 – Layoff Avoidance, Layoff, and Post Layoff in General

NOTE: Chapter 17 was revised effective 7/11/01; therefore, some of the rules referred to in the decisions no longer exist. Specifically, the Director no longer has the authority to order a review of all contracts or to expand commuting areas.

Layoffs for economic reasons were upheld despite a showing that there was adequate money available. (The employees also complained of lack of a quorum of the Parks Commission when it voted to abolish the jobs, inadequate notice, and political interference.) *Munson v. State Parks and Recreation Commission*, 235 La. 652, 105 So.2d 254 (1958)

Because a permanent classified employee has a property interest in retaining his job, his position may not be changed or abolished without due process of law. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Exactly what process is due is dependent upon the peculiar facts of the case. Due process is a flexible standard which requires such procedural safeguards as a particular situation demands. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Due process does not require that employees who are laid off, reassigned, or demoted in lieu of layoff be afforded a pre-deprivation hearing. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Due process does not require that employees who are laid off, reassigned, or demoted in lieu of layoff be afforded notice before the layoff plan is approved. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

When a settlement reinstates an employee without back pay, without past merit increases, and without earning leave between the termination and the reinstatement, the employee is in leave without pay status. This period of time does not count as state service for layoff purposes. *Maradiaga v. University of New Orleans*, 546 So.2d 579 (La.App. 1 Cir. 1989)

Employee failed to prove that his layoff was the result of personal animosity. G*uillot v. Southwest Charity Hospital*, 186 So.2d 428 (La.App. 1 Cir. 1966); *Heno v. Department of Labor,* 171 So.2d 270 (La.App. 1 Cir. 1965)

The Commission has no power to review the administrative actions of another state agency, except in those limited instances set forth in the Constitution. In the absence of a showing of political or other illegal discrimination, the Commission will not undertake to review the propriety of action of another commission in abolishing certain positions, when accomplished in accordance with the Constitution and rules. *Heno v. Department of Labor,* 171 So.2d 270 (La.App. 1 Cir. 1965)

Rule 17.10 – Required Notice

The notice requirements of former Rule 17.2(a) [current Rule 17.10(a)1], requiring a reasonable attempt to notify affected employees that a layoff is necessary and former Rule 17.14(b) [current Rule 17.10(a)2], requiring general notice to affected employees after a layoff plan is approved satisfied due process, although the displacement process resulted in employees' receiving short notice. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Individual notice prior to the approval of the layoff plan is not required by due process. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

NOTE: Effective 7/11/01, the layoff rules were amended to ensure that affected employees get at least five days notice before a layoff plan is approved and at least five days notice before a layoff-related action becomes effective. See Rule 17.10(a)3 and 4.

Rule 17.14 – Exemptions and Exceptions

Former Rule 17.4 [current Rule 17.14(c)] authorizes but does not require expansion of career fields. Therefore, the failure to expand career fields does not violate this rule. *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992)

Rule 17.15 – Layoff Plan

Former Rule 17.4 [current Rule 17.15] requires the agency to select the organizational units affected by the layoff. The rule does not require department-wide layoffs. Therefore, the failure to conduct the layoff on a system-wide basis presents no violation of a rule. *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992)

The Director of Civil Service violates Chapter 17 when he approves a layoff plan even though it was not in compliance with former Rule 17.14 [current Rule 17.15] and fails to issue orders to bring it into compliance. *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992)

Rule 17.19 – Displacement Rights

Former Rule 17.17 [current Rule 17.19(c)5], which limits displacement rights to the commuting area, does not do such violence to the principle of seniority as to require that

the layoff plan be stricken. *Beter v. Department of Wildlife and Fisheries,* 592 So.2d 1359 (La.App. 1 Cir. 1991)

Former Rule 17.4 [current Rule 17.15] requires the agency to select the organizational units affected by the layoff and former Rule 17.17 [current Rule 17.19(c)3] confines "bumping" to the units selected. This does not require department-wide "bumping." Therefore, the failure to allow "bumping" on a system-wide basis presents no violation of a rule. *Casse v. Department of Health and Hospitals,* 597 So.2d 547 (La.App. 1 Cir. 1992)

Rule 17.25 – Department Preferred Re-employment List

An agency cannot circumvent the department preferred re-employment list by creating a new position that is substantially similar to a position to which an employee has reemployment rights. *Stewart v. Office of Student Financial Assistance,* 1998-2057 (La.App. 1 Cir. 11/5/99); 757 So.2d 17

Rule 17.25 requires that the employee be qualified for a vacant position, not that he be the most qualified candidate. *Stewart v. Office of Student Financial Assistance,* 1998-2057 (La.App. 1 Cir. 11/5/99); 757 So.2d 17

An appointment from a department preferred re-employment list is not a promotion. Promotion covers the situation where an employee in a job at a lower pay grade who is actually receiving pay at the lower grade changes position to a job at a higher pay grade so that his pay increases to that of the higher pay grade. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

An employee who is appointed to a higher position from a department preferred re-employment list is not entitled to promotional pay. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991) **NOTE: While this case was pending at the Court of Appeal, the Commission adopted Rule 6.5.1 on 1/10/90 (on an emergency basis), and on 2/7/90 (on a regular basis), to clarify pay on appointment from a department preferred reemployment.**

The fact that two other employees received promotional pay upon appointment from a department preferred re-employment list did not entitle the appellant to pay that the Commission later determined was in error. *Mobley v. Department of Social Services,* 594 So.2d 914 (La.App. 1 Cir. 1991)

Rule 21.6(b) – Compensatory Leave [former Rule 11.29]

Nothing in the FLSA or its implementing regulations prohibits a public employer from compelling the use of compensatory time. An employee who requests to use compensatory time must be permitted to do so unless the employer's operations would be unduly disrupted. *Christensen v. Harris County,* 529 U.S. 576, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000)

Compensatory time granted pursuant to the civil service rules is not a property right. *Jackson v. Department of Public Safety*, 675 F.Supp. 1025 (M.D. La. 1985), affirmed at 800 F.2d 1143 (C.A. 5 1986)

When an employer promises a benefit to employees and employees accept by their actions in meeting the conditions, the result is not a mere gratuity or illusory promise but a vested right in the employee to the promised benefit. *Knecht v. Board of Trustees for State Colleges and Universities,* 591 So.2d 690 (La. 1991)

If an employee is promised an hour of paid leave in return for an hour of overtime work for which he received no pay in wages, the paid leave is a form of deferred compensation, in lieu of wages. Once services are rendered, the right to receive the promised remuneration vests. *Knecht v. Board of Trustees for State Colleges and Universities,* 591 So.2d 690 (La. 1991)

Once an employee worked overtime pursuant to the compensatory leave policy, a bilateral contract was complete and the Board was obligated to grant paid leave. The Board's consent was implied by: the existence of a written executive order; a set of procedures whereby the employees earned, accrued, and took paid leave in accordance with the executive order and received monthly accountings of their leave balances. *Knecht v. Board of Trustees for State Colleges and Universities,* 591 So.2d 690 (La. 1991)

An agency may place an employee on enforced compensatory leave between the date a termination is rescinded and the effective date of the re-termination. *Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans*, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491

Enforced compensatory leave is not a disciplinary action, despite employee's claim that it was punitive in nature. *Adams v. Department of Health and Hospitals Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

Enforced compensatory leave does not require a pre-deprivation procedure. *Adams v. Department of Health and Hospitals Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

When an agency is investigating possible wrongdoing by an employee, the adoption of Rule 12.10 preempted the agency's discretion under Rules 11.9 (enforced annual leave) and 11.29(d) [current Rule 21.6(b)] (enforced compensatory leave). *Munson v. University Medical Center, Louisiana Health Care Authority,* CSC Docket Nos. 11231 and S-11376; 8/9/00 [Referee decision; application for review denied 9/13/00]; cited with approval in *Craig v. Dept. of Public Safety & Corrections, Swanson Correctional Center for Youth*, CSC Docket No. S-15157; 1/19/05 [CSC decision on application for review]

The employee's interest in compensatory time is not as strong as the employee's interest in annual leave. The literal wording of Rule 11.29 [current Rule 21. 6(b)]

authorizing an appointing authority to require an employee to utilize compensatory time at any time contains no restriction and should be applied as written. The principles of *Clary* are not applicable to enforced compensatory time. *Dobbins v. Department of Public Safety and Corrections,* CSC Docket No. 13956; 4/5/01 [CSC decision on application for review] **NOTE:** *Clary v. Department of Health and Hospitals, Hammond Developmental Center,* CSC Docket No. 13189; 11/4/99 [CSC decision on application for review] requires an appointing authority to communicate to an employee who is placed on enforced annual leave for more than thirty days the rational basis related to a governmental interest for requiring the use of such leave.

To have a property right in a benefit, one must have more than an abstract need or desire, or unilateral expectation of it. When the evidence established that all attorneys within the Legal Section were informed of and allowed to utilize the informal overtime system, which by long standing policy did not limit the accrual of overtime, the Legal Section of the Department gave the employee the right to expect he would be allowed to accumulate and receive compensatory time for all of his overtime hours. The compensatory time policy, though unwritten, was well known and routinely followed. It constituted a legally protectable tacit contract with the employees subject to it. Thus, the employee had a property right in his compensatory time accrued under the policy which allowed for unlimited accrual. *Finley v. Department of Transportation and Development*, 93-1710 (La.App. 1 Cir. 6/24/94); 639 So.2d 431 **NOTE**: **Unlike *Jones* [below], the policy violated a civil service rule that prohibited unlimited accrual. This distinction might have yielded a different result had this case been decided later. See *Lafleur v. City of New Orleans*, 2001-3224 (La. 12/4/02); 831 So.2d 941**

Uniform pay arguments are only applicable when members of the same civil service class are paid differently. There is no prohibition against computing different overtime pay for different classes. *Marie v. City of New Orleans,* 612 So.2d 244 (La.App. 4 Cir. 1992)

By its long standing policy of allowing unlimited accrual of compensatory time, along with allowing early retirement based thereon, the City gave the employee the right to expect just that treatment. Plaintiff clearly had more than an abstract need or desire, or a unilateral expectation of being allowed to take his accrued compensatory time before retirement. The department's compensatory time policy, though unwritten, was well known and routinely followed. It constituted a legally protectable tacit contract with the employees subject to it. Thus plaintiff had a property right in his compensatory time accrued under the policy which allowed for unlimited accrual. *Jones v. City Parish of East Baton Rouge,* 526 So.2d 462 (La.App. 1 Cir. 1988)

CHAPTER 7

CONSTITUTIONAL ISSUES OUTSIDE ARTICLE X

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Due Process

> La. Const. Art. I, Sec 2: "No person shall be deprived of life, liberty, or property, except by due process of law."
>
> Fifth Amendment, U. S. Constitution**:** "No person shall be deprived of life, liberty, or property, without due process of law…"
>
> Fourteenth Amendment, U. S. Constitution: "… nor shall any state deprive any person of life, liberty, or property, without due process of law…"

Procedural due process requires notice to the employee, an explanation of the evidence against him, and an opportunity to respond to the charges, either orally or in writing, prior to termination. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985); *Maurello v. Department of Health and Human Resources*, 510 So.2d 458 (La.App. 1 Cir. 1987); *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

Due process does not have a fixed content. It is a flexible standard and calls for such procedural protections as the particular situation demands. Where the power of the government or an agency is to be used against an individual, there is a right to a fair procedure to determine the basis for and the legality of the action. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

To determine if the procedure is adequate, three factors must be considered: the private interest affected; the risk of an erroneous deprivation; and the government's interest. *Bell v. Department of Health and Human Resources*, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)

Due process does not require a pre-deprivation hearing before an employee is reallocated downward. *Bell v. Department of Health and Human Resources,* 483 So.2d 945 (La. 1986)

Due process requires that a decision maker not have a direct or indirect financial stake which would give a possible temptation to the average person as a decision maker to make him partisan towards maintaining a high level of revenue generated by his adjudicative function. Even if an individual cannot show special prejudice in his particular case, the situation is which an official occupies two inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process. *Wilson v. City of New Orleans*, 479 So.2d 891 (La. 1985)

Enforced compensatory leave does not require a pre-deprivation procedure. *Adams v. Department of Health and Hospitals Office of Public Health,* 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943

A hearing is not required before dismissing an appeal as untimely when the untimeliness is apparent on the face of the appeal and the response to the show cause raises no questions necessitating a hearing. *Sterne v. Department of State Civil Service,* 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505

Notice to employee that he is the subject of an investigation for charges of insubordination before being suspended with pay was <u>not</u> sufficient pre-termination notice because the agency did not explain the evidence supporting the charge, review the charges with the employee, give him a meaningful opportunity to be heard, or even take his statement until after the appointing authority had already made the decision to terminate. *Cannon v. City of Hammond,* 1997-2660 (La.App. 1 Cir. 12/28/98); 727 So.2d 570

The pre-deprivation notice need not be in writing. *Abel v. City of Kenner Municipal Fire and Police Civil Service*, 97-1086 (La.App. 5 Cir. 7/28/98); 716 So.2d 451; *Brown v. Housing Authority of New Orleans,* 590 So.2d 1258 (La.App. 1 Cir. 1991)

An employee is not entitled to a contradictory hearing before termination. *Abel v. City of Kenner Municipal Fire and Police Civil Service*, 97-1086 (La.App. 5 Cir. 7/28/98); 716 So.2d 451

The fundamental requirements of procedural due process are notice and the opportunity to be heard at a meaningful time and in a meaningful manner. *Hudson v. Department of Public Safety and Corrections*, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

Although due process must be afforded, no one has a vested right in any given mode of procedure. The procedural aspects of an appeal are primarily an administrative rule-making function. So long as the administratively established procedure provides reasonable time and opportunity for taking and perfecting an appeal, the constitutional requirement of due process is satisfied. *Hudson v. Department of Public Safety and Corrections,* 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

The choice of the triggering event that begins the running of an appeal delay does not involve due process concerns unless it affects a litigant's rights of notice and an opportunity to be heard. Rule 13.12 provides for both of these rights – the delay does not begin to run until the employee receives notice of the challenged action and the employee is given thirty days from such notice to perfect his appeal. *Hudson v. Department of Public Safety and Corrections*, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314

Due process is a flexible standard that requires such procedural safeguards as a particular situation demands. Because due process is not a technical concept with a fixed content unrelated to time, place, and circumstances, precisely what process is due in a given case is dependent upon the peculiar facts involved. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center*, 93-1574 (La.App. 1 Cir.

6/27/94); 640 So.2d 1389; *Brown v. Housing Authority of New Orleans*, 590 So.2d 1258 (La.App. 1 Cir. 1991); *Casse v. Sumrall*, 547 So.2d 1381 (La.App. 1 Cir. 1989)

Not every rule violation rises to the level of a due process violation. *Truax v. Department of Public Safety and Corrections, Dixon Correctional Center*, 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389

The employee must receive notice of the charges against him before the pre-termination hearing. *Riggins v. Department of Sanitation,* 617 So.2d 112 (La.App. 4 Cir. 1993)

An employee is entitled to a full and fair evidentiary hearing and a complete opportunity to establish any material issue properly raised. *Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital,* 610 So.2d 936 (La.App. 1 Cir. 1992); *Meaux v. Department of Highways*, 274 So.2d 486 (La.App. 1 Cir. 1973)

When employee was put on notice that his conduct (refusing to accept assignments from an employee in the same classification who was designated his supervisor) was unacceptable and that further insubordination could result in serious disciplinary action and was allowed to explain his position, whatever due process rights he had were satisfied. Appellant was clearly warned and fully apprised of his situation and chose to disregard his orders. *King v. Department of Transportation and Development,* 607 So.2d 789 (La.App. 1 Cir. 1992)

Due process does not require a pre-deprivation hearing during the departmental investigation or prior to an order to submit to a drug test. *Banks v. Department of Public Safety and Corrections,* 598 So.2d 515 (La.App. 1 Cir. 1992)

A pre-termination hearing at which the employee is given notice of the charges against him, an explanation of the evidence against him, and an opportunity to explain his side of the story meets due process requirements. *Brown v. Housing Authority of New Orleans,* 590 So.2d 1258 (La.App. 1 Cir. 1991)

Notice is sufficient if it apprises the employee of the nature of the charges and the general substance of the evidence against him. Failure to respond to employee's attorney's request for additional information did not make the notice defective when the information was sufficient to allow the attorney to prepare a three page response. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

To satisfy due process, the employee's responses need not necessarily be forwarded to the appointing authority, especially where there is an internal rule providing the employee an opportunity to request a hearing before the appointing authority and the employee has refused to avail himself of that opportunity. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

A state does not violate due process when it has made procedural protections available and the employee has refused to avail himself of them. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

Due process is satisfied when the employee is apprised of the nature of the charges against him and the general substance of the evidence against him and is given an opportunity to respond to his immediate supervisor and to a regional supervisor. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

When an elaborate post-termination procedure is in place, only the barest of pre-termination procedure is required. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

Due process was satisfied where agency discussed the charges with the employee on three occasions and allowed the employee to respond, but did not record the employee's responses or forward them to the decision maker. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

A breach of an agency's internal rules violates the Constitution only when the procedures promised are denied in a manner that the constitutional minimum is denied or an independent constitutional deprivation is effected. *Department of Public Safety and Corrections v. Savoie,* 569 So.2d 139 (La.App. 1 Cir. 1990)

A pre-disciplinary procedure is required before suspending an employee, without pay, for an indefinite period. *Ayio v. Parish of West Baton Rouge School Board,* 569 So.2d 234 (La.App. 1 Cir. 1990)

The fundamental requirements of due process are notice and the opportunity to be heard at a meaningful time and in a meaningful manner. The primary purpose of the required notice is to apprise the affected individual of, and permit adequate preparation for the required hearing. *Casse v. Sumrall*, 547 So.2d 1381 (La.App. 1 Cir. 1989)

Exactly what process is due is dependent upon the peculiar facts involved. Due process is not a technical concept with a fixed content unrelated to time, place and circumstances. It is a flexible standard which requires such procedural safeguards as a particular situation demands. However, the fundamental requirements of due process are notice and the opportunity to be heard at a meaningful time and in a meaningful manner. The primary purpose of the required notice is to apprise the affected individual of, and permit adequate preparation for the required hearing. *Casse v. Sumrall*, 547 So.2d 1381 (La.App. 1 Cir. 1989)

If employees have a right to a pre-deprivation hearing, a mass meeting does not afford them any meaningful protection of their rights. Only in individual hearings could the full facts and circumstances relevant to each employee's position be considered. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

Due process does not require that employees who are to be laid off, demoted, or reassigned for financial reasons be given a pre-deprivation hearing where there is an opportunity for a post-deprivation hearing before a neutral decision maker. *Casse v. Sumrall,* 547 So.2d 1381 (La.App. 1 Cir. 1989)

A post-termination hearing does not cure the constitutional defect of failing to provide a pre-termination hearing. *Murray v. Department of Revenue and Taxation,* 543 So.2d 1150 (La.App. 1 Cir. 1989)

Due process was satisfied when an employee was previously disciplined, was warned that failure to correct behavior would result in disciplinary action, and was afforded an opportunity to ask questions about the letter of termination when it was handed to him. *Martin v. Department of Revenue and Taxation*, 525 So.2d 268 (La.App. 1 Cir. 1988)

Due process does not require a hearing before pay incorrectly calculated is reduced. The appeal process adequately safeguards the employee's rights. *Bockrath v. Department of Health and Human Resources,* 506 So.2d 766 (La.App. 1 Cir. 1987)

To determine whether due process rights have been violated, the court must balance the employee's interest in retaining employment against the agency's interest in expeditious removal of unsatisfactory employees, the avoidance of administrative burdens, and the risk of an erroneous termination. *Murray v. Department of Revenue and Taxation*, 504 So.2d 561 (La.App. 1 Cir. 1986)

The pre-termination hearing need not definitively resolve the propriety of the action. It need not be an evidentiary hearing. It should be an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. *Murray v. Department of Revenue and Taxation,* 504 So.2d 561 (La.App. 1 Cir. 1986)

A pre-deprivation procedure is required before removing an employee for exhaustion of sick leave and inability to work. *Brumfield v. Department of Fire,* 488 So.2d 1181 (La.App. 4 Cir. 1986)

The purpose of Rule 13.12 is to provide a time limit on the right to appeal. Due process does not give an employee an interminable length of time in which to appeal. It is not unreasonable to require an employee to appeal within thirty days of the date he receives actual knowledge of some adverse action by the appointing authority or of some violation of the rules giving rise to an appeal. *Butler v. Charity Hospital of New Orleans*, 442 So.2d 531 (La.App. 1 Cir. 1983)

Due process in administrative hearings requires: notice; an opportunity to be heard; the right to counsel; the right to cross examine adverse witnesses; and the right to present witnesses on one's behalf. A full-blown trial is not required. *Smith v. Division of*

Administration, 415 So.2d 381 (La.App. 1 Cir. 1982); *Hamilton v. Louisiana Health & Human Resources Administration*, 341 So.2d 1190 (La.App. 1 Cir. 1976)

Even where a statute mandates an adjudicatory proceeding, neither that statute nor the Administrative Procedure Act requires an agency to conduct a meaningless evidentiary hearing where the facts are undisputed. *Meaux v. Department of Highways*, 228 So.2d 680 (La.App. 1 Cir. 1969)

Equal Protection

> La. Const. Art. I, Sec. 3: "No person shall be denied the equal protection of the laws."
>
> Fourteenth Amendment, U. S. Constitution: "No state shall … deny to any person within its jurisdiction the equal protection of the laws."

Persons or interests may be treated differently if there is a rational basis for the differentiation that is reasonably related to a valid governmental purpose. *Succession of Thompson*, 367 So.2d 796 (La. 1979)

Laws classifying persons based on race or religious beliefs are repudiated completely. In the middle of the spectrum are laws that classify persons on the basis of the six grounds listed in the third sentence of Article 1, Section 3 of the State Constitution (birth, age, sex, culture, physical condition, or political ideas or affiliations). At the other end of the spectrum are laws that classify persons on any other basis, which must pass the minimum standard of being rationally related to a legitimate governmental purpose. *Gorbaty v. Department of State Civil Service,* 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159

Because a reprimand does not either temporarily or permanently affect any substantial employee rights, there is a rational basis for differentiating reprimands from other disciplinary actions for the purpose of requiring notice of appeal rights. An employee who is reprimanded is not entitled to notice of his right to appeal as a matter of equal protection. *Smith v. Department of Health and Human Resources*, 461 So.2d 1243 (La.App. 1 Cir. 1984)

To determine whether a civil service rule violates equal protection, a determination must be made as to whether the law impinges on a fundamental right or operates to the disadvantage of some suspect class. If the law does either of these things, it is subject to strict scrutiny and will be declared unconstitutional unless a compelling governmental interest exists; if neither right is involved, the standard is whether there is any rational basis to support it. *Carbonell v. Department of Health and Human Resources*, 444 So.2d 151 (La.App. 1 Cir. 1983)

Rule 8.16(c) has a reasonable basis because it prevents appointing authorities from gerrymandering certificates of eligibles by hiring in one area and then immediately

transferring the employee to an area where he could not have been reached on a certificate. Therefore, Rule 8.16(c) does not violate equal protection. *Carbonell v. Department of Health and Human Resources,* 444 So.2d 151 (La.App. 1 Cir. 1983)
Equal protection requires that state laws or rules or actions of administrative agencies affect alike all persons and interests similarly situated. *Clark v. State*, 434 So.2d 1276 (La.App. 1 Cir. 1983)

Rule 11.1(b) is not unconstitutional, but the Commission cannot approve a method of establishing hours of work in excess of 40 hours per week that lies solely in the agency's discretion and that will not apply equally to all positions in the affected class. *Meaux v. Department of Highways,* 228 So.2d 680 (La.App. 1 Cir. 1969)

Privacy

> La. Const. Art. I, Sec. 5: "Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy."
>
> Fourth Amendment, U. S. Constitution: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

The Fourth Amendment explicitly protects against two different types of governmental invasion: searches and seizures. A search occurs when the government infringes an expectation of privacy that society is prepared to consider reasonable. On the other hand, a seizure of a person occurs when the government meaningfully interferes with his liberty, and seizure of property occurs when the government meaningfully interferes with an individual's possessory interests in property. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

Not all invasions of privacy or interferences with liberty or property are searches or seizures. Before the infringement can be labeled either "search" or "seizure," in the sense in which those words are used in the Fourth Amendment, the government action must be unreasonable or constitute a meaningful interference. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

Government employers and supervisors are subject to the restraints of the Fourth Amendment when they conduct searches and seizures within their employees' work spaces. To constitute a Fourth Amendment violation, the employee must have a reasonable expectation of privacy in the area searched or the item seized and the expectation must be one that society is prepared to consider reasonable. If a reasonable expectation of privacy exists, the Fourth Amendment requires that the inception and the scope of the search be reasonable under all the circumstances. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

Ordinarily, a search of an employee's office by a supervisor will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigatory work-related purpose such as to retrieve a file. The search will be permissible in its scope when "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of ... the nature of the misconduct." *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

Under the following circumstances, the employees (a hearing officer and his secretary) had reasonable expectations of privacy in their state offices: the offices are not generally open to public scrutiny; the doors to the offices locked; the hearing officer's desk locked; only the hearing officer's secretary had free access to the office; initially, the hearing officer's state office was located in his private office and he provided his own computer; when the state acquired offices and equipment, the state off-loaded personal and state files from the hearing officer's computer onto the state computer and the agency had no computer use policy; private files and personal records were kept in the desk; although the hearing officer and his secretary shared office space, they did not share such office space with any other employees; the hearing officer had occupied that particular office for some time and he kept various material in his office, which included personal files, files of clients unrelated to the Workers' Compensation Office, personal financial records, and other items; and Workers' Compensation Office files were not kept in the hearing officer's office during periods when he was not at the office, which obviated any administrative need the Workers' Compensation Office staff would have had to access the hearing officer's office. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

The search was unreasonable from its inception where: there were no reasonable grounds to conclude that the search would reveal any employee misconduct; although the Director had a "gut" feeling that the employee, among others, was maintaining a private practice outside his duties as a hearing officer because of the hearing officer's and a co-worker's reluctance to assimilate to the Director's views, the Director admitted that he had no information about their use of state equipment or personnel; the Director's chief counsel advised the Director that he could not possibly believe that they would find anything as a result of the "audits;" although the Secretary testified that the Director had information from an employee that personal files were kept on the state computers, that employee adamantly denied finding anything or discussing the matter with the Director. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

It is reasonable for a governmental employer to order an employee to submit to a drug test on the basis of individualized suspicion under certain circumstances. The factors to be considered are: 1) the nature of the tip or information; 2) the reliability of the informant; 3) the degree of corroboration; and 4) other factors contributing to suspicion or lack thereof. *George v. Department of Fire,* 93-2421 (La.App. 4 Cir. 5/17/94); 637

So.2d 1097; *Banks v. Department of Public Safety and Corrections,* 598 So.2d 515 (La.App. 1 Cir. 1992)

Urinalysis testing based on reasonable suspicion that the employee is under the influence of drugs or alcohol or that the employee has used a controlled substance within the past twenty-four hours may be made when: 1) the demand for the sample comes on the express authority of the highest officer present in the institution; 2) the specific objective facts on which the suspicion is based are disclosed to the employee at the time the demand is made; 3) strict guidelines are followed to assure confidentiality of results; and 4) the equipment used must provide sufficient guarantees of trustworthiness. *Banks v. Department of Public Safety and Corrections,* 598 So.2d 515 (La.App. 1 Cir. 1992)

The observation of an employee's residence from a public street does not constitute either a search or an invasion of privacy. Visual observation by an officer from a place where he has a right to be is not a search. *Claverie v. L.S.U. Medical Center in New Orleans,* 553 So.2d 482 (La.App. 1 Cir. 1989)

The essential inquiry in making the determination of whether a search or invasion of privacy is unreasonable is whether an individual has a subjective expectation of privacy that is constitutionally protected. An individual usually can have no reasonable expectation of privacy to that which he knowingly exposes to the public. *Claverie v. L.S.U. Medical Center in New Orleans,* 553 So.2d 482 (La.App. 1 Cir. 1989)

Free Speech

> La. Const. Art. 1, Sec. 7: "Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom."
>
> First Amendment, U. S. Constitution: "Congress shall make no law … abridging the freedom of speech, or of the press."

It is well settled that freedom of speech guaranteed by the First Amendment to the United States Constitution is not absolute but subject to reasonable regulation as to time, place, and manner of exercise when such regulation is reasonably related to some valid public interest. *Cox v. Louisiana,* 79 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965)

Whether an employee's speech addresses a matter of public concern (*i.e.,* relating to any matter of political, social, or other concern to the community) must be determined by the content, form, and context of a given statement. *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103

An employee who makes an unprotected statement is not immunized from discipline by the fact that the statement is surrounded by protected statements. *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103

A public employee's speech is protected by the First Amendment when he speaks as a citizen upon matters of public concern, but not when he speaks as an employee upon matters only of personal interest. *Foreman v. LSU Health Sciences Center*, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103

Generally, the First Amendment prohibits a government employer from taking actions which were designed to "suppress the rights of public employees [to] participat[e] in public affairs." However, the First Amendment does not prevent a government employer from taking action in response to an employee's expression that does not touch on public concern. The courts will not interfere with personnel decisions when a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon matters only of personal interest. *Varnado v. Department of Employment and Training*, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013

Law enforcement agencies are qualitatively different from other government branches. The First Amendment does not protect personal behavior in the law enforcement context to the same extent that it does in other areas of governmental concern. The need for high morale and internal discipline in a police force led this Court to hold that a reasonable likelihood of harm generally is enough to support full consideration of the police department's asserted interests in restricting its employees' speech. *Normand v. City of Baton Rouge, Police Dept.*, 572 So.2d 1123 (La.App. 1 Cir. 1990)

There is a three prong test to determine whether a governmental entity's adverse employment decision contravened the employee's First Amendment guarantees. The employee must initially show as a matter of law that the speech at issue deserves constitutional protection. This question involves two steps: (1) whether the speech constitutes a matter of public concern, and (2) whether the employee's interest in making such statements outweighs the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. If the court deems the speech worthy of protection, the employee then must prove as a factual matter that the protected speech was a motivating factor in the detrimental employment decision. Lastly, if the employee establishes his case, the employer must be given an opportunity to persuade the jury that it would have reached the same decision in the absence of the protected activity. *Normand v. City of Baton Rouge, Police Dept.*, 572 So.2d 1123 (La.App. 1 Cir. 1990)

To constitute a matter of public concern, speech must relate to a topic of political, social or other concern of the community. But speech which may be of general interest to the public is not automatically afforded First Amendment protection. In analyzing such issues, courts have particularly focused on the extent to which the content of the employee speech was calculated to disclose wrongdoing or inefficiency or other malfeasance on the part of government officials in the conduct of their official duties. In analyzing whether speech constitutes a matter of public concern, the focus is on the motive of the speaker *i.e.*, whether the speech was calculated to disclose misconduct or dealt with only personal disputes and grievances with no relevance to the public interests. Courts must look at the point of the speech: Was the employee's point to

bring wrongdoing to light or to raise other issues of public concern because they are of public concern, or was the point to further some purely private interest? *Normand v. City of Baton Rouge, Police Dept*., 572 So.2d 1123 (La.App. 1 Cir. 1990)

Where the expressions are not a matter of public concern and do not relate to a topic of political, social or other concern of the community, but instead pertain to personal disputes and grievances and were not calculated to disclose misconduct, the employee's interest in making the statements does not outweigh the Department's interest, as an employer, in promoting the efficiency of the public services it performs through its employees. *Normand v. City of Baton Rouge, Police Dept*., 572 So.2d 1123 (La.App. 1 Cir. 1990)

The employee's remarks concerned the legality of an arrest of a council member for possession of narcotics. In conversation first with another officer and then with a Sheriff's Department employee, the employee alleged that the arrest was arranged by the Chief of Police and another officer because the council member was investigating the employment practices at the Police Department. This is clearly a matter of public concern and is protected unless protection of his right of free speech is outweighed by the employer's interest in promoting the efficiency of the public services it performs through its employees. In striking the balance, the time, place, and manner as well as the context of the statement are relevant. The statement was first made in conversation with another officer while in a patrol unit in the presence of three inmate trustees. The statement was later repeated in conversation with a deputy at the sheriff's office in the presence of the other officer. At the time these statements were made the employee was on duty as a member of the uniform patrol division of the Police Department. *Dix v. City of Lake Charles*, 569 So.2d 1112 (La.App. 3 Cir. 1990)

The Police Department is a highly visible arm of local government. Its efficient performance depends in great measure on the smoothness and tranquility of its internal operations and the public respect and confidence which it enjoys. Although the record contains no objective evidence demonstrating actual impairment of the efficiency of the department's operations, the very nature of the employee's statements are such as to disrupt the smoothness of the internal operations of the Police Department and shake the respect and confidence of the public in that department. In our view, the employer's interest in this case clearly outweighed the employee's constitutional right to freedom of speech. *Dix v. City of Lake Charles*, 569 So.2d 1112 (La.App. 3 Cir. 1990)

Under certain circumstances a public servant may be discharged because of his speech without violating the First Amendment right to free speech. *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968) *Pickering* establishes certain guidelines by which applicability of the First Amendment is determined in cases of this nature. More particularly, *Pickering* holds that the interests of a state as an employer allow reasonable restriction upon speech when such limitation promotes efficiency in public service, maintains discipline, increases harmony among co-workers, and promotes loyalty and confidence in positions where such traits are of importance. On the other hand, *Pickering* holds that the legitimate interests of individuals and the

public require that public employees not be restricted from making public statements on matters of public concern, especially statements having no direct connection with the employee's employment or duties and not directed at a nominal superior. *Dumez v. Houma Municipal Fire and Police Civil Service,* 408 So.2d 403 (La.App. 1 Cir. 1981)

Self-Incrimination

> La. Const. Art. I, Sec. 13: “When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of … his right against self-incrimination.”
>
> Fifth Amendment, U.S. Constitution: “No person shall … be compelled in any criminal case to be a witness against himself.”

When an employee is required to answer questions or face termination, the employer <u>cannot</u> require the employee to waive the *Garrity* immunity [discussed below], nor can the employer discipline the employee for refusing to waive this immunity. *Gardner v. Broderick,* 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968); *United Sanitation Men’s Association v. Commissioner of Sanitation,* 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968)

When an employee is given the option of answering questions in an internal, administrative investigation or being fired, the statements the employee gives <u>cannot</u> be used in any subsequent criminal proceeding. *Garrity v. State of New Jersey,* 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967); *Evans v. DeRidder Municipal Fire and Police Civil Service Board,* 2001-2466 (La. 4/3/02)*;* 815 So.2d 61; *Public Emp. Ass'n of New Orleans, Inc. v. City of New Orleans,* 404 So.2d 537 (La.App. 4 Cir. 1981); *Frey v. Department of Police,* 288 So.2d 410 (La.App. 4 Cir. 1973)*; Dieck v. Department of Police,* 266 So.2d 500 (La.App. 4 Cir. 1972), concurring opinion

The employee exercises the privilege conferred by *Garrity* by filing a motion to quash the indictment or a motion to suppress evidence if there is any subsequent criminal proceeding. The burden will be on the prosecuting authority to prove that the evidence it proposes to use was derived from a legitimate source wholly independent of the compelled statements. *State v. Foster*, 2002-1259 (La.App. 1 Cir. 2/14/03); 845 So.2d 393

A person may decline to answer questions, claiming the privilege against self-incrimination in either a civil or a criminal proceeding. In a civil proceeding, the trial court generally allows the witness to testify and be asked each question and then rules as to whether that particular question is incriminating when the witness invokes the privilege after each question. *Turner v. Department of Transportation and Development*, 2001-2426 (La.App. 1 Cir. 6/21/02); 822 So.2d 786

In administrative proceedings, the privilege against self-incrimination has been limited to situations where the threatened penalty is criminal rather than civil in nature. The

privilege does not apply when the risk of criminal liability is removed by a grant of immunity or when prosecution and conviction are precluded by the passage of the period of limitations. *Turner v. Department of Transportation and Development*, 2001-2426 (La.App. 1 Cir. 6/21/02); 822 So.2d 786

Former civil service employee could not assert privilege against self-incrimination in her civil service appeal when the time limits for criminal prosecution had run. *Turner v. Department of Transportation and Development*, 2001-2426 (La.App. 1 Cir. 6/21/02); 822 So.2d 786 [See 18 U.S.C. 3282 and LSA-C.Cr.P. arts. 572 and 573 for the time limits for prosecution.]

The Fifth Amendment privilege does not justify an officer's refusal to answer questions as to his whereabouts while he claimed he was sick when the employee was specifically told that the investigation was being conducted as an institutional disciplinary investigation and would not involve any criminal matters or charges. *Sterling v. Department of Public Safety and Corrections,* 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448

The employee acquires a "use plus derivative use immunity," meaning that neither his statements nor information derived from them can be used against him in a criminal proceeding. *State v. Delcambre,* 1997-1447 (La.App. 3 Cir. 4/29/98); 710 So.2d 846

Under Rule 13.19(e), an appellant can be required to testify. If the appellant claims a privilege against self-incrimination, no adverse inference is to be drawn. *Howard v. Housing Authority of New Orleans*, 457 So.2d 834 (La.App. 1 Cir. 1984)

Even if the employee is suspected of criminal activity, this would not relieve him of the duty to submit to the polygraph examination as directed. (The employee was never asked to waive immunity when interrogated about his knowledge of the incident.) *Dieck v. Department of Police,* 266 So.2d 500 (La.App. 4 Cir. 1972)

Right to Counsel

> La. Const. Art. I, Sec. 13: "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of … his right to the assistance of counsel, and if indigent, his right to court appointed counsel."
>
> Amendment VI, U. S. Constitution: "In all criminal prosecutions, the accused shall enjoy the right … to have the assistance of counsel for his defense."

Absent specific statutory or contractual authority, there is no right to counsel in civil matters. *State v. Stafford,* 394 So.2d 1287 (La.App. 1 Cir. 1981)

Absent specific statutory or contractual authority, there is no right to counsel in administrative inquiries. *Martone v. Morgan,* 251 La. 993, 207 So.2d 770 (1968)

An employee is not entitled to have counsel present during meetings with her appointing authority concerning work-related matters. The Sixth Amendment of the Federal Constitution and Article I, Section 13 of the State Constitution give a person a right to an attorney, but only in a criminal prosecution. Absent specific statutory or contractual authority, there is no right to counsel in civil matters. Likewise, absent specific statutory or contractual authority, there is no right to counsel in administrative inquiries. *Rougeau v. Department of Social Services,* CSC Docket No. S-15882; 9/21/07 [Referee decision]

Advice of Counsel Defense

To establish an "advice of counsel" defense, an employee must first prove that the attorney's advice was based upon full disclosure of all facts. *Ball v. DHH - Northwest La. Developmental Center*, CSC Docket Nos. S-12693, S-12694, and S-12695; 1/11/00 [CSC decision on application for review], citing *Jones v. Soileau*, 448 So.2d 1268 (La. 1984); *Breaux v. Jefferson Davis Sheriff's Department*, 96-944 (La.App. 3 Cir. 2/5/97); 689 So.2d 615.

Reliance on the advice of agency counsel can shield an employee from discipline when there is full disclosure of all facts. *Nicholas v. Housing Authority of New Orleans*, 477 So.2d 1187 (La.App. 1 Cir. 1985). See also *Louisiana Farms v. Louisiana Department of Wildlife and Fisheries, 95-845* (La.App. 3 Cir. 10/9/96); 685 So.2d 1086, in which reliance on agency counsel, among other factors, operated to grant wildlife agents immunity from personal liability. Other factors relevant to immunity defenses include: the objective reasonableness of the employee's action; the presence of extraordinary circumstances; how specifically tailored the advice was; the prominence and competence of counsel; and the timing between the advice and the action. *V-1 Oil Company v. State of Wyoming*, 902 F.2d 1482 (10 Cir. 1990)

An employee cannot shield him- or herself from disciplinary action by merely asserting that he or she relied on the advice of private counsel. The employee must first prove that the attorney's advice was based upon full disclosure of all facts. The employee's unsupported hearsay testimony as to the advice allegedly given is not sufficient. *Rougeau v. Department of Social Services,* CSC Docket No. S-15882; 9/21/07 [Referee decision]

CHAPTER 8

MISCELLANEOUS STATUTES
AND
COMPANION CASES

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LSA-R.S. 13:3416, 3417 – Director as Indispensable Party

The Director of Civil Service is an indispensable party when a decision of the Commission is appealed to the Court of Appeal. *Duhe v. Department of Revenue and Taxation*, 432 So.2d 280 (La.App. 1 Cir. 1983); *Dunn v. Department of Health and Human Resources*, 421 So.2d 437 (La.App. 1 Cir. 1982); *Paisant v. University of New Orleans*, 391 So.2d 1237 (La.App. 1 Cir. 1980); *In re Roberts*, 263 So.2d 452 (La.App. 1 Cir. 1972); *Meaux v. State Department of Highways*, 223 So.2d 186 (La.App. 1 Cir. 1969); *In re Boudreaux*, 193 So.2d 416 (La.App. 1 Cir. 1966)

If the Director of the Department of State Civil Service intervenes, a compromise to which the Director was not a party is invalid. *Smith v. Division of Administration*, 358 So.2d 1291 (La.App. 1 Cir. 1978)

LSA-R.S. 13:3712 – Copies of State Records

Copies of state records, papers and documents, when certified as being true copies by the official custodian, are admissible equally with the originals. *Licausi v. Department of Health and Human Resources*, 458 So.2d 148 (La.App. 1 Cir. 1984)

LSA-R.S. 13:4202 – Judicial Interest Rates

The Commissioner of Financial Institutions is required to compute the judicial interest rates and publish them annually in the December issues of the *Louisiana Register* and the *Louisiana Bar Journal.*

LSA-R.S. 23:631 and 634 – Payment of Employees

A "use it or lose it" leave policy does not *per se* violate LSA-R.S. 23:631 or 634. However, the failure to pay on retirement the value of accrued annual leave that was earned under the policy violated these statutes. *Wyatt v. Avoyelles Parish School Board,* 2001-3180, 2001-0131, 2001-0259 (La. 12/4/02); 831 So.2d 906

Vacation pay is an "amount then due" for purposes of LSA-R.S. 23:631 if, according to the employer's stated vacation policy, the employee is eligible for and has accrued the right to take vacation time with pay and the employee has not taken or been compensated for the vacation time as of the date of his resignation. (Agency policy allowed employees to use annual leave accrued during the year prior to and the year of resignation.) Thus, employees were entitled to compensation for annual leave accrued during this period. *Wyatt v. Avoyelles Parish School Board,* 2001-3180, 2001-0131, 2001-0259 (La. 12/4/02); 831 So.2d 906

The Commission does not have jurisdiction over a claim under LSA-R.S. 23:631 seeking a money judgment for past due wages. (The statute requires payment of wages to separated employees within fifteen days or on next regular pay day.) *Hawkins v. State, Department of Health and Hospitals,* 613 So.2d 229 (La.App. 1 Cir. 1992)

LSA-R.S. 23:967 – "Whistleblower" Statute

Because of Article X, Section 12(A)'s grant of exclusive jurisdiction, LSA-R.S. 23:967 (the "whistleblower" statute) does not apply to employment-related disputes of classified state civil service employees. The district court had jurisdiction to award damages, attorney's fees, and costs, but no jurisdiction to address issues that would have been addressed by the Commission – reinstatement, back pay, and merit increases. *Goldsby v. State, Department of Corrections,* 2003-0343 (La.App. 1 Cir. 11/7/03); 861 So.2d 236

LSA-R.S. 40:2531(B)(7) – Rights of Law Enforcement Officers under Investigation

Summary disposition of the disciplinary action is not mandated where LSA-R.S. 40:2531(B)(7) provides no penalty for failing to complete the investigation within sixty days and where no prejudice has been demonstrated. *Marks v. New Orleans Police Department*, 2006-0575 (La. 11/29/06); 943 So.2d 1028

LSA-R.S. 42:1101, *et seq.* – Code of Governmental Ethics

The purpose of the Ethics Code is to prevent public officers and employees from becoming involved in conflicts of interest situations by prohibiting public servants from engaging in certain behavior. The Code prohibits not only actual conflicts of interest, but also guards against the appearance of impropriety, and prevents situations which create the perception of conflicts of interest. A conflict of interest is a situation which would require an official to serve two masters, presenting a potential, rather than an actuality of wrongdoing. The wrongdoing does not have to occur in order for a prohibited conflict to exist. A public official may have done no wrong in the ordinary sense of the word, but a conflict of interest may put him in danger of doing wrong. The Code is aimed at avoiding even this danger. *Villanueva v. Commission on Ethics for Public Employees,* 98-0980 (La.App. 1 Cir. 5/18/99); 812 So.2d 1

LSA-R.S. 42:1142C – Appeals from Ethics Commission Decisions

A penalty imposed by the Ethics Commission that is authorized by LSA-R.S. 42:1153B is subject to review by the State Civil Service Commission, with a right of appeal to the Court of Appeal. *Villanueva v. Commission on Ethics for Public Employees,* 96-1912 (La. 5/20/97); 693 So.2d 154

LSA-R.S. 42:1414 – Termination for Conviction of a Felony

Former LSA R.S. 42:1414 was unconstitutional as applied to classified employees because by enacting it the legislature directly interfered with the Commission's authority to define cause under Article X, Section 10 and usurped the Commission's exclusive authority to decide though the appeal process whether felonious conduct requires termination from state service. *AFSCME, Council #17 v. State, Department of Health and Hospitals,* 2001-0422 (La. 6/29/01); 789 So.2d 1263 **NOTE: As a result of this decision, Article X, Section 25.1 was adopted to require the legislature to provide**

for the removal of public employees for conviction, during employment, of a felony. See LSA-R.S. 42:1414, added by Acts 1982, No. 353, effective 7/17/82 and amended by Acts 2003, No. 240, effective 6/5/03.

NOTE: The issue of the impact of an article 893 conviction or guilty plea on the requirements of LSA-R.S. 42:1414 was pretermitted in *Bailey v. LSU Health Care Services Division,* 99-1981 (La.App. 1 Cir. 9/22/00); 767 So.2d 946.

LSA-R.S. 42:1451 – Attorney's Fees

LSA-R.S. 42:1451, which allows for the award of reasonable attorney's fees under certain circumstances, is an unconstitutional infringement on the exclusive power granted to the Commission under Article X, Section 10(A). *Baker v. Southern University*, 590 So.2d 1313 (La.App. 1 Cir. 1991); *Johnson v. Southern* University, 551 So.2d 1348 (La.App. 1 Cir. 1988); *Department of Health and Human Resources v. Toups,* on rehearing, 451 So.2d 1126 (La.App. 1 Cir. 1984); *Pierre v. Department of Natural Resources,* 449 So.2d 596 (La.App. 1 Cir. 1984); *Appeal of Brisset,* 436 So.2d 654 (La.App. 1 Cir. 1983)

LSA-R.S. 44:1 *et seq.* – Public Records

NOTE: LSA-R.S. 44:11 provides that the following information contained in a public employee's personnel record is confidential: home telephone numbers and addresses (when employee asks that they remain confidential), social security number, financial institution direct deposit information, medical records, claim forms, insurance applications, requests for payment of benefits, and all other health records of public employees, public officials, and their dependents.

The Louisiana legislature has enacted legislation which protects only certain information in the personnel records of a public employee which it has deemed to be confidential. Because employment applications for public employment have not been exempted from the public records law by statute and because the resumes at issue have not been shown to contain facts which would expose the applicants to public disgrace or would intrude upon the applicants' seclusion, solitude, or private affairs, all such applications, regardless of the responsibilities of the job at issue, are accessible under LSA-R.S. 44:31. In sum, under existing Louisiana law, the applicants for public employment have no right of privacy in their resumes. *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 1996-1979 (La. 7/1/97); 696 So.2d 562

A resume is generally not something containing facts that would cause the "expose the [applicant] to public disgrace." The applicant's subjective desire for confidentiality in this instance is not in the contents of the resume, but in the fact that he has submitted a resume. If a resume or application contains facts which would expose the applicant to public disgrace, are clearly private in nature, or are protected by law from disclosure, then that resume or application, or the private matters contained therein, may not be disclosable depending on the circumstances. However, in general, an applicant for

public employment in Louisiana has no reason to expect that his or her application will be kept private. Further, in light of this state's expansive and constitutionally protected guarantee of public access to public documents, it is clear that Louisiana citizens have not yet chosen through their legislature to recognize a general right of privacy in an application for public employment. Accordingly, there is no need to balance conflicting constitutional rights, because there is no right to privacy in this case. *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 1996-1979 (La. 7/1/97); 696 So.2d 562

Documents, which concerned purported settlement of claims between various architects and engineers and the state of Louisiana with regard to liability for defects in design or construction of the Louisiana Superdome were "public records" and were not exempt from public's right of inspection under any of the exceptions established by law. *Dutton v. Guste*, 395 So.2d 683 (La. 1981)

A public employee's personnel file is not subject to public records disclosure. *East Bank Consolidated Special Service Fire Protection District v. Crossen,* 04-0838 (La.App. 5 Cir. 12/28/04); 892 So.2d 666

Agency grievance records and the names of employees who filed grievances are not subject to disclosure under the public records law. Because the files at issue contained information having the potential to cause embarrassment to individuals, the right to privacy outweighed the public interest. *Broderick v. State, Department of Environmental Quality,* 2000-0156 (La.App. 1 Cir. 5/12/00); 761 So.2d 713

A public employee has no reason to expect that his or her interviews concerning personnel problems will be kept private. Although the investigative report might cause those questioned discomfort, facts concerning the daily operation of the state agency are not protected from disclosure as they are not private in nature. Therefore, the investigation report is subject to disclosure under the public records law. Nevertheless, any private matters contained in the investigation report may not be disclosable if disclosure would expose the employee to public disgrace or would constitute an unreasonable invasion of privacy. *Hilbun v. State, Division of Administration*, 1998-1993 (La App. 1 Cir. 11/5/99); 745 So.2d 1189

Leave request forms of parish district attorney were "public records." *Hatfield v. Bush*, 572 So.2d 588 (La.App. 1 Cir. 1990)

Records that were in mayor's possession and which related to selection of new fire chief did not fall within "personnel" exemption to this section of public records law and should, accordingly, have been disclosed to newspaper; applicants for high-level position in department with annual budget of approximately $15,000,000 did not have "objectively reasonable" expectation of privacy in not having their identities disclosed. *Gannett River States Pub. v. Hussey*, 557 So.2d 1154, (La.App. 2 Cir. 1990)

LSA-R.S. 49:113 – Off-set of Wages

A remand to the Commission to determine the amount of wages earned during the period of termination is not necessary, for the mandatory provision of LSA-R.S. 49:113 can be given full effect by simply amending the decree of the Court of Appeal to permit the employing authority to have the offset or credit provided in the act. Under this amended decree the employing authority will be fully protected because when it pays to the employee the wages withheld during the period of illegal separation, it may offset against them all wages, if any, earned by the employee in private employment during that period. *Higgins v. Louisiana State Penitentiary, Department of Institutions,* 245 La. 1009, 162 So.2d 343 (1964)

LSA-R.S. 49:113 does not prohibit offset for wages earned from other public employment. *Louisiana State University v. Bailey*, 432 So.2d 336 (La.App. 1 Cir. 1983); *Stafford v. Division of Administration*, 407 So.2d 87 (La.App. 1 Cir. 1981); *Parta v. New Orleans Police Department,* 231 So.2d 574 (La.App. 4 Cir. 1970); *LeBlanc v. New Orleans Police Department,* 231 So.2d 568 (La.App. 4 Cir. 1970)

This statute, which applies when the Court of Appeal reinstates an employee, does not allow an offset for unemployment compensation benefits. *Ceaser v. State, Department of Public Safety and Corrections,* 583 So.2d 145 (La.App. 1 Cir. 1991); *Alongi v. Department of Police,* 480 So.2d 1001 (La.App. 4 Cir. 1985)

Under LSA-R.S. 49:113, an employee who is somewhat at fault does not forfeit his entitlement to "all salaries and wages withheld during the period of illegal separation." *Ennis v. Department of Public Safety and Corrections,* 558 So.2d 617 (La.App. 1 Cir. 1990), declining to follow *Beverly v. Sewerage and Water Board,* 519 So.2d 172 (La.App. 4 Cir. 1987)

LSA-R.S. 49: 964(G)6 – Standard of Review [APA]

The standard of review for Commission decisions is <u>not</u> that imposed by LSA-R.S. 49:964(G)6 of the Administrative Procedure Act. *Ward v. Department of Public Safety and Corrections,* 97-1110 (La.App. 1 Cir. 9/18/98); 718 So.2d 1042 **overruling** *Blackwell v. Sumrall,* 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147 and *Howard v. Housing Authority of New Orleans,* 457 So.2d 834 (La.App. 1 Cir. 1984)

URCA Rule 3-1.4 – Stay of Execution

The decision of the Commission must be complied with pending appeal to the Court of Appeal. *Major v. Louisiana Department of Highways,* 327 So.2d 515 (La.App. 1 Cir. 1976)

Rules of Professional Conduct, Rule 4.2

Plaintiff's counsel may interview defendant's unrepresented former employees without violating this rule. Schmidt v. Gregorio, 705 So.2d 742 (La.App. 2 Cir. 1994)

Miscellaneous Companion Cases

Malpractice suit against attorney for failing to file a civil service appeal. *Perkins v. Brown*, 236 So.2d 579 (La.App. 1 Cir. 1970)

Defamation suit against employer. *Bienvenu v. Angelle*, 254 La. 182, 223 So.2d 140 (1969)

Suit for intentional interference with employment rights; dismissed for district court's lack of jurisdiction. *Foreman v. Falgout*, 503 So.2d 517 (La.App. 1 Cir. 1986)

Criminal prosecution for payroll fraud based on testimony given at a civil service hearing. *State v. Kimberlin*, 246 La. 441, 165 So.2d 279 (1964)

CHAPTER 9

HISTORY OF APPEALS – STATUTORY AND CONSTITUTIONAL PROVISIONS

1940 – Adopted State Civil Service Law [Acts 1940, No. 172, effective 7/12/40, unless otherwise indicated; LSA-R.S. 42:721, *et seq.*]

Section 4. Department of State Civil Service

> (b) [Created a five-member Commission appointed by the Governor from nominees submitted by LSU, Loyola, Centenary, Tulane, and Louisiana College.]

Section 6. Duties of the commission:

> …
>
> (6) To conduct hearings and pass upon complaints by or against any officer or employee in the classified service for the purpose of demotion, reduction in pay or position, suspension or dismissal of such officer or employee, in accordance with the provisions of this Act.

Section 34. Appeals by Employees to the Commission. [Effective 7/1/42; suspended until 1/1/43, by Acts 1942, No. 369]

> (a) Any regular employee[1] in the classified service, subject to the provisions of this Act, or the rules made pursuant thereto, who deem [sic] that he or she has been removed, dismissed, retired, reduced in pay, demoted, subjected to a second suspension of sixty (60) days or less without pay, or subjected to any other disciplinary action set out in Section 33 of this Act,[2] without just cause, may, within sixty (60) days of such action demand a hearing to determine the reasonableness of such action, and the Commission shall grant the employee a hearing within forty-five (45) days after receipt of such request. In the event such hearing is not held within the forty-five day period herein specified, following receipt of request for such hearing, then the employee shall be forthwith reinstated in his or her position with full pay for lost time, but this shall not jeopardize the right of the Commission to finally determine the matter at a later date. After hearing and considering the evidence for and against such disciplinary action, the Commission shall approve or disapprove the action. In case of approval the disciplinary action shall be deemed final as ordered. In case of disapproval the Commission shall reinstate the employee under such conditions as it deems proper, and may order full pay for lost time.

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[1] Section 3 (27) defines "regular employee" as "an employee who has been appointed to a position in the classified service in accordance with this Act after completing his working [test] period."

[2] Section 33 contains no other disciplinary actions.

If the Commission finds that the disciplinary action was for religious or political reasons, then the employee shall forthwith be reinstated in his position and be reimbursed for any loss of pay occasioned by such disciplinary action.

(b) The foregoing provisions of this section shall not apply to temporary appointments as defined in Section 26, and employees during their working test period as defined and provided for in Section 25 of this Act.

1940 – Amended La. Const. 1921, Art. XIV, Sec. 15 [Acts 1940, No. 381, effective 11/5/40]

Section 1.

…

(b). [Ratified the State Civil Service Law and provided that it could not be amended or repealed except by a two-thirds vote of the elected members in each house of the legislature.

1944 – Amended State Civil Service Law [Acts 1944, No. 276, effective 7/26/44]

Section 34. Appeals by Employees to the Commission.

(a) [Added a right of appeal to any regular employee in the classified service who deems that he or she has been improperly treated, discriminated against, or denied any right under the provisions of this Act and changed the hearing requirement to within 90 days of the request for a hearing]

(b) [Added] The Commission may refer the taking of testimony to one or more members of the Commission, the Director or any other employee of the Department, or to a member of the Louisiana bar whenever an employee who has been granted a hearing requests the appointment of a Referee; provided the employee makes affidavit that he is unable to defray the expense of attending a formal hearing with his witnesses at the place designated by the Commission; and provided further that the employee waive in writing a formal hearing and consent for the Commission to render an opinion on the record established before a Referee. If a Referee is appointed as herein provided, he shall have the power to administer oaths and shall examine under oath all witnesses brought or summoned before him at the Parish seat nearest the place of employment of the employee and shall cause a true transcript of the testimony to be recorded. Such transcript together with any documentary evidence that may be introduced, shall be submitted to the Commission which shall render its opinion on the basis of such evidence and its opinion as thus rendered shall be final.

(c) [Added] The Commission may, in its discretion, order the costs of any hearing or appeal, or any portion of such costs, including the cost of recording and transcribing testimony, to be paid by the department or organization unit against whose action the appeal is taken or hearing granted.

(d) The foregoing provisions of this section shall not apply to temporary appointments as defined in Section 26, nor to employees during their working test period as defined and provided in Section 25 of this Act, except a regular employee who is removed while serving a working test period following promotion or is removed while serving provisionally in a position to which he has been promoted, and who is denied reinstatement in his former position as provided in Section 18 of this Act.

1948 – Amended State Civil Service Law [Acts 1948, No. 340, effective 7/28/48]

Section 5. Civil Service Commission

(a) [Five members]

(b) [Appointed by the Governor]

Section 6. Duties of the Commission. In addition to the duties imposed upon it elsewhere in this Act it shall be the duty of the Commission:

…

(6) To conduct hearings.

Section 7. Appointment of the Director.

[Placed the Director in the unclassified service.]

Section 34. Appeals by Employees to the Director.

(a) [Granted permanent employees a right to appeal disciplinary actions to the Director and required the Director to conduct the hearing within 45 days of the request for a hearing.]

1948 – Repealed [**State Civil Service Law** Acts 1948, Ex. Sess., No. 12, effective 9/26/48]

1948 – Created Louisiana Merit System Council [Acts 1948, Ex. Sess., No. 13, effective 10/23/48]

Section 1. [Established a system of personnel administration for “employees of those agencies or divisions or sections of State agencies administering federal funds which by federal law, rules or regulations are required to operate under personnel standards on a merit basis.”]

Section 2. The agencies whose personnel administration shall be governed by this Act are the State Board of Health, the Department of Public Welfare, the Division of Employment Security of the Department of Labor, the Hospital and Health Planning Division of the State Hospital Board and any other agencies or divisions of agencies which are required by federal law, rules and regulations to operate under personnel

standards on a merit basis, all of which agencies may be hereinafter referred to as the "Federal Aid Agencies" and the Louisiana Merit System Council.

Section 4. [Created a Louisiana Merit System Council, composed of five members – four appointed by the Governor on recommendation of the agencies under the jurisdiction of the Council and one appointed by the governor at his discretion.]

Section 5. Duties of the Council. In addition to the duties imposed upon it elsewhere in this Act, it shall be the duty of the Council

…

(d) To adopt, with the approval of the agencies, regulations for establishment and maintenance of a merit system of personnel administration in the federal aid agencies and in the Merit System Council in conformity with the merit system standards of the Federal Security Agency, which regulations shall include the following:

> …
>
> (13) Regulations providing for an appeal to the Council of employees of the federal aid agencies or of the Merit System Council, except those in the exempt service, who have been subjected to disciplinary action by their appointing authorities, which regulations shall provide such employees with appropriate remedies in cases where the Council finds they have been subjected to disciplinary action without just cause.

1953 – Adopted La. Const. 1921 Art. XIV, Sec. 15: "The Civil Service Amendment"
[Acts 1952 No. 18, effective 6/30/53, unless otherwise indicated]

(A) (1). **Appointments and promotions; examinations; discrimination.** … No person in the "State" or "City Classified Service", having gained civil service status shall be discriminated against or subjected to any disciplinary action except for cause, and no person in the State or City Classified Service shall be discriminated against or subjected to any disciplinary action for political or religious reasons, and all such persons shall have a right of appeal from such actions.

…

(C) **State commission.** …The five Commissioners shall be appointed by the Governor for a term of six years… [from nominations submitted by LSU, Loyola, Centenary, Tulane, and Louisiana College] [Effective 11/4/52]

(I) **Rules and regulations; removal of names from lists; delegation of powers.** There is vested in the State Civil Service Commission … the authority and power, after public notice and public hearing, to adopt, amend, repeal and enforce rules which shall have the effect of law, … including rules "(8) fixing the procedure, the time within which appeals must be taken and all other matters pertaining to appeals … .

> …
>
> (b) …Employees affected by the allocation or reallocation of a position to a class, or by any changes in the classification plan, shall be afforded a reasonable

opportunity to be heard thereon, first by the Director and later by appeal to the Commission after filing with the Director a written request for a hearing.

(N) (1). **Employees' rights and obligations; dismissal, etc. for cause.** No person in the State or [City] Classified Service, having acquired permanent Civil Service status, shall be demoted, dismissed, or discriminated against, except for cause, expressed in writing by the appointing authority. (a) The burden of proof on appeals, as to the facts, shall be on the employee.

(2) **Discrimination; political or religious.** No person shall be appointed or promoted to, or demoted, or dismissed from any position in the State or City Classified Service, or in any way favored or discriminated against with respect to employment in the Classified Service because of his political or religious opinions or affiliations.

(O) (1) **Appeals; jurisdiction; decision; judicial review.** There is vested in the State Civil Service Commission … the exclusive right to hear and decide all appeals and the legality of all removal and disciplinary cases. The decision of the appropriate Civil Service Commission shall be final on the facts, but an appeal shall be granted to the Supreme Court of Louisiana on any question of law if application to the Commission is made within thirty (30) days after the Commission's decision becomes final. The Supreme Court shall promulgate rules of procedure to be followed in the taking and lodging of such appeals.

(2) **Right of Appeal.** Subject to the rules governing the right of appeal, persons in the State or City Classified Service who allege that they have been deprived of their rights or discriminated against under the provisions of this Section, or persons who shall have applied for or shall have been examined for the Classified Service and shall not have established their status as permanent Classified employees and allege that they have been discriminated against in review of their applications, admission to the examination, the scoring of examinations, the establishment of eligible lists and certifications therefrom, shall be granted the right of appeal before the appropriate Commission.

…

(6) **Reference; powers of referee.** Any Commission may refer the taking of testimony to one or more members of the Commission, the Director, or any other employee of the Department. If a referee is appointed as herein provided, he shall have the power to administer oaths and shall examine under oath all witnesses brought or summoned before him at the parish seat nearest the place of employment of the employee, and shall cause a true transcript of the testimony to be recorded. Such transcript, together with any documentary evidence that may be introduced, shall be submitted to the Commission, which shall render its opinion on the basis of such evidence, and its opinion as thus rendered shall be final.

1958 – Amended La. Const. Art. VII, Sec. 10 [Acts 1958, No. 561 effective 11/4/58; transferred appellate jurisdiction over decisions of the Civil Service Commissions from the Louisiana Supreme Court to the Courts of Appeal.]

1974 – Adopted Article X, Part 1: “the Civil Service Article” [effective midnight 12/31/74]

§8. Appeals

(A) Disciplinary Actions. No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission. The burden of proof on appeal, as to the facts, shall be on the appointing authority.

(B) Discrimination**.** No classified employee shall be discriminated against because of his political or religious beliefs, sex, or race. A classified employee so discriminated against shall have the right of appeal to the appropriate commission. The burden of proof on appeal, as to the facts, shall be on the employee.

§12. Appeal

Each commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to administer oaths to witnesses. The decision of a commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final.

1982 – Amended La. Const. Art. X, Sections 8 and 12 [Acts 1982, No. 883, effective 10/16/82; gave Referees decisional authority and established a Commission review process for referees’ decisions.]

§8. Appeals

(A) Disciplinary Actions. No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part. The burden of proof on appeal, as to the facts, shall be on the appointing authority.

(B) Discrimination. No classified employee shall be discriminated against because of his political or religious beliefs, sex, or race. A classified employee so discriminated against shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part. The burden of proof on appeal, as to the facts, shall be on the employee.

§12 Appeal

(A) State. The State Civil Service Commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee, with subpoena power and power to administer oaths, to take testimony, hear, and decide removal and disciplinary cases. The decision of a referee is subject to review by the commission on any question of law or fact upon the filing of an application for review with the commission within fifteen calendar days after the decision of the referee is rendered. If an application for review is not timely filed with the commission, the decision of the referee becomes the final decision of the commission as of the date the decision was rendered. If an application for review is timely filed with the commission and, after a review of the application by the commission, the application is denied, the decision of the referee becomes the final decision of the commission as of the date the application is denied. 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 wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final. Any referee appointed by the commission shall have been admitted to the practice of law in this state for at least three years prior to his appointment.

(B) Cities. Each city commission established by Part I of this Article shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to administer oaths to witnesses. The decision of a commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final.
1990

1990 – Amended La. Const. Art. X, Sections 1 and added Sections 41- 51 [Acts 1990, No. 1106, effective 1/1/91; created the state police service and the State Police Commission for all regularly commissioner full-time law enforcement officers employed by the DPSC, Office of State Police.]

2002 – Adopted La. Const. Art. X, Section 25.1 [Acts 2002, 1st Ex. Sess. No. 166, effective 12/11/02; required the legislature to provide by law for the removal of a state or local public employee upon conviction of a felony.]

List of Citations

Abel v. City of Kenner Municipal Fire and Police Civil Service, 97-1086 (La.App. 5 Cir. 7/28/98); 716 So.2d 451
Acosta v. Department of Health and Human Resources, 423 So.2d 104 (La.App. 1 Cir. 1982)
Adams v. Department of Health and Hospitals Office of Public Health, 99-1982 (La.App. 1 Cir. 9/22/00); 767 So.2d 943
Adams v. Department of Health and Hospitals, 1997-0750 (La.App. 1 Cir. 4/8/98); 710 So.2d 1176
Adams v. Jefferson Parish Dept. of Community Action Programs, 02-1090 (La.App. 5 Cir. 4/29/03); 845 So.2d 1147
Addison v. L. S. U. Medical Center in Shreveport, 551 So.2d 750 (La.App. 1 Cir. 1989)
Adikema v. Department of Public Safety and Corrections, Office of Youth Development, 2006-1854 (La.App. 1 Cir. 9/14/07); 971 So.2d 1071
AFSCME, Council #17 v. State, Department of Health and Hospitals, 2001-0422 (La. 6/29/01); 789 So.2d 1263
Akins v. Housing Authority of New Orleans, 2003-1086 (La.App. 4 Cir. 9/10/03); 856 So.2d 1220, writ denied 2003-2781 (La. 12/19/03); 861 So.2d 574
Albert v. Louisiana State Penitentiary, 396 So.2d 340 (La.App. 1 Cir. 1981)
Alexander v. Department of Health and Human Resources, 484 So.2d 722 (La.App. 1 Cir. 1986)
Alexander v. DHH-New Orleans Adolescent Hospital, CSC Docket No. S-8037; 3/25/92 [CSC decision on application for review]
Allen v. DHHR, Ruston State School, 426 So.2d 234 (La.App. 1 Cir. 1983)
Alongi v. Department of Police, 480 So.2d 1001 (La.App. 4 Cir. 1985)
Alonzo v. Louisiana Department of Highways, 268 So.2d 52 (La.App. 1 Cir. 1972)
Anderson v. Division of Employment Security of Department of Labor, 233 La. 694, 98 So.2d 155 (1957)
Andrus v. Sanchez, 2004-1063 (La.App. 5 Cir. 2/15/05); 898 So.2d 512
Antoine v. Department of Public Safety and Corrections, 95-2558 (La.App. 1 Cir. 9/27/96); 681 So.2d 1282
Appeal of Brisset, 424 So.2d 1040 (La.App. 1 Cir. 1982) reversed 430 So.2d 79 and 81 (La. 1983), appeal after remand 436 So.2d 654 (La.App. 1 Cir. 1983)
Appeal of Kennedy, 442 So.2d 566 (La.App. 1 Cir. 1983)
Armant v. Housing Authority of New Orleans, 351 So.2d 1262 (La.App. 1 Cir. 1977)
Arnold v. New Orleans Police Department, 383 So.2d 810 (La.App. 4 Cir. 1980)
Augustine v. Department of Public Safety and Corrections, 2006-1846 and 2006-1847 (La.App. 1 Cir. 6/8/07); NDFP
Augustine v. Department of Public Safety and Corrections, 2007-1289 (La.App. 1 Cir. 2/20/08); NDFP
Ayio v. Parish of West Baton Rouge School Board, 569 So.2d 234 (La.App. 1 Cir. 1990)
Bailey v. Department of Health and Human Resources, 460 So.2d 39 (La.App. 1 Cir. 1984)
Bailey v. Department of Public Safety and Corrections, 2005-2474 (La.App. 1 Cir 12/6/06); 951 So.2d 234

Bailey v. LSU Health Care Services Division, 99-1981 (La.App. 1 Cir. 9/22/00); 767 So.2d 946
Baker v. Southern University, 590 So.2d 1313 (La.App. 1 Cir. 1991)
Baker v. Southern University, 604 So.2d 699 (La.App. 1 Cir. 1992)
*Ball v. DHH- Northwest La. Developmental Cente*r*,* CSC Docket Nos. S-12693, S-12694, and S-12695; 1/11/00 [CSC decision on application for review]
Baloney v. DHHR, Office of Family Services, 364 So.2d 203 (La.App. 1 Cir. 1978)
Banks v. Department of Public Safety and Corrections, 598 So.2d 515 (La.App. 1 Cir. 1992)
Bannister v. Department of Streets, 95-0404 (La. 1/16/96); 666 So.2d 647
Barclay v. Department of Commerce and Industry, 228 La. 779, 84 So.2d 188 (1955)
Barenis v. Gerace, 357 So.2d 892 (La.App. 1 Cir. 1978)
Barlow v. Department of Health and Hospitals, CSC Docket No. 11770; 8/12/98 [CSC decision]
Barnes v. Department of Highways, 154 So.2d 255 (La.App. 1 Cir. 1963)
Barquet v. Department of Welfare, 620 So.2d 501 (La.App. 4 Cir. 1993)
Bartholomew v. LSU Health Sciences Center, Health Care Services Division, Medical Center of Louisiana at New Orleans, CSC Docket No. 13397; 12/23/02 [CSC decision]
Basco v. State, Department of Corrections, 335 So.2d 457 (La.App. 1 Cir. 1976)
Bass v. Department of Public Safety and Corrections, 94-1974 (La.App. 1 Cir. 5/5/95); 655 So.2d 455, appeal after remand 95-2499 (La.App. 1 Cir. 6/28/96); 676 So.2d 1178
Bayhi v. Department of Health and Human Resources, 408 So.2d 395 (La.App. 1 Cir. 1981)
Bedgood v. Wildlife and Fisheries Commission, 128 So.2d 267 (La.App. 1 Cir. 1961)
Bell v. Department of Health and Human Resources, 472 So.2d 235 (La.App. 1 Cir. 1985), affirmed 483 So.2d 945 (La. 1986)
Ben v. Housing Authority of New Orleans, 2003-1664 (La.App. 1 Cir. 5/14/04); 879 So.2d 803
Bennett v. Division of Administration, 307 So.2d 118 (La.App. 1 Cir. 1974), appeal after remand 334 So.2d 651 (La.App. 1 Cir. 1976)
Bennett v. Louisiana Wild Life and Fisheries Commission, 234 La. 678, 101 So.2d 199 (1958)
Bernard v. L.H.H.R.A., Southwest Charity Hospital of Lafayette, 358 So.2d 653 (La.App. 1 Cir. 1978)
Bernard v. Louisiana Health and Human Resources Administration, 336 So.2d 55 (La.App. 1 Cir. 1976)
Berry v. Department of Public Safety and Corrections, 2001-2186 and 2001-2187 (La.App. 1 Cir. 9/27/02); 835 So.2d 606
Besson v. Bayou Lafourche Fresh Water District, CSC Docket No. 14296; 1/10/02 [CSC decision on application for review]
Beter v. Department of Wildlife and Fisheries, 592 So.2d 1359 (La.App. 1 Cir. 1991)
Beverly v. Sewerage and Water Board, 519 So.2d 172 (La.App. 4 Cir. 1987)
Bienvenu v. Angelle, 254 La. 182, 223 So.2d 140 (1969)
Bishop v. Department of Health and Hospitals, Southeast Louisiana Hospital, 2005-1750 (La.App. 1 Cir. 12/28/06); NDFP
Blackwell v. Sumrall, 1997-0084 (La.App. 1 Cir. 2/20/98); 708 So.2d 1147

Blake v. Giarrusso, 263 So.2d 392 (La.App. 4 Cir. 1972)
Bland v. City of Houma, 264 So.2d 729 (La.App. 1 Cir. 1972)
Board of Commissioners, Port of New Orleans v. Livingston, 546 So.2d 259 (La.App. 1 Cir. 1989)
Board of Jury Commissioners of Orleans Parish v. Goins, 423 So.2d 25 (La.App. 1 Cir. 1982)
Board of Trustees, State Employees Group Benefits Program v. Moncrieffe, 93-1393 (La.App. 1 Cir. 10/7/94); 644 So.2d 679
Bockrath v. Department of Health and Human Resources, 506 So.2d 766 (La.App. 1 Cir. 1987)
Bonnette v. Louisiana State Penitentiary, Department of Institutions, 148 So.2d 92 (La.App. 1 Cir. 1962), appeal after remand 162 So.2d 21 (La.App. 1 Cir. 1964)
Book v. Louisiana Wild Life & Fisheries Commission, 194 So.2d 768 (La.App. 1 Cir. 1967)
Boozer v. Department of Health and Human Resources, 470 So.2d 490 (La.App. 1 Cir. 1985)
Boucher v. Division of Employment Security, 226 La. 227, 75 So.2d 343 (1954)
Boucher v. Division of Employment Security, 235 La. 851, 106 So.2d 285 (1958)
Boucher v. Doyal, 210 So.2d 75 (La.App. 1 Cir. 1968)
Bourque v. Department of Transportation and Development, 457 So.2d 828 (La.App. 1 Cir. 1984)
Bouterie v. Department of Fire, 410 So.2d 340 (La.App. 4 Cir. 1982)
Bowie v. Department of Police, 324 So.2d 813 (La. 1975)
Braddock v. Department of Labor, Office of Workers' Compensation, CSC Docket Nos. 12250, 12275, and 12361; 11/25/98 [CSC decision]
Bradford v. Department of Hospitals, 255 La. 888, 233 So.2d 553 (1970)
Branighan v. Department of Police, 362 So.2d 1221 (La.App. 4 Cir. 1978)
Breaux v. Jefferson Davis Sheriff's Department, 96-944 (La.App. 3 Cir. 2/5/97); 689 So.2d 615.
Brickman v. New Orleans Aviation Board, 236 La. 143, 107 So.2d 422 (1958)
Broderick v. State, Department of Environmental Quality, 2000-0156 (La.App. 1 Cir. 5/12/00); 761 So.2d 713
Brook v. Louisiana State University, 405 So.2d 1216 (La.App. 1 Cir. 1981)
Brouillette v. Sewerage and Water Board, 367 So.2d 9 (La.App. 4 Cir. 1978)
Broussard v. Department of Corrections, 405 So.2d 1219 (La.App. 1 Cir. 1981)
Broussard v. State Industrial School for Colored Youths, 231 La. 24, 90 So.2d 73 (1956)
Brown v. Department of Health & Hospitals, 2004-2348 (La.App. 1 Cir. 11/4/05); 917 So.2d 522
Brown v. Housing Authority of New Orleans, 590 So.2d 1258 (La.App. 1 Cir. 1991)
Brown v. L.H.H.R.A., Lake Charles Mental Health Center, 346 So.2d 758 (La.App. 1 Cir. 1977)
Brumfield v. Department of Transportation and Development, 498 So.2d 153 (La.App. 1 Cir. 1986)
Bryan v. Department of Corrections, 374 So.2d 155 (La.App. 1 Cir. 1979)
Bryant v. Division of State Buildings and Grounds, 264 So.2d 678 (La.App. 1 Cir. 1972)

Bryant v. Young Memorial Vocational-Technical School, 197 So.2d 158 (La.App. 1 Cir. 1967)
Burnett v. Department of Health and Human Resources, 425 So.2d 245 (La.App. 1 Cir. 1982)
Burst v. Board of Commissioners, Port of New Orleans, 93-2069 (La.App. 1 Cir. 10/7/94); 646 So.2d 955
Burton v. Department of Highways, 135 So.2d 588 (La.App. 1 Cir. 1961)
Butler v. Charity Hospital of New Orleans, 442 So.2d 531 (La.App. 1 Cir. 1983)
Butler v. Department of Corrections, Louisiana State Penitentiary, 271 So.2d 651 (La.App. 1 Cir. 1972)
Butler v. Department of Health and Human Resources, 432 So.2d 1000 (La.App. 1 Cir. 1983)
Cain v. Fowler, 158 So.2d 631 (La.App. 1 Cir. 1963)
Cain v. Department of State Civil Service, CSC Docket No. 10764; 11/23/94 [CSC decision]
Caldwell v. Caddo Levee District, 554 So.2d 1245 (La.App. 1 Cir. 1989)
Callaghan v. Department of Fire, 385 So.2d 25 (La.App. 4 Cir. 1980)
Cannon v. City of Hammond, 1997-2660 (La.App. 1 Cir. 12/28/98); 727 So.2d 570
Capital City Press v. East Baton Rouge Parish Metropolitan Council, 1996-1979 (La. 7/1/97); 696 So.2d 562
Carbo v. Department of Health and Hospitals, Office of Public Health, CSC Docket No. 14180; 10/11/02 [CSC decision]
Carbonell v. Department of Health and Human Resources, 444 So.2d 151 (La.App. 1 Cir. 1983)
Carleton v. Department of State Civil Service, 430 So.2d 670 (La.App. 1 Cir. 1982)
Carpenter v. Confederate Memorial Medical Center, 250 So.2d 161 (La.App. 1 Cir. 1971)
Carter v. Department of Revenue and Taxation, 563 So.2d 920 (La.App. 1 Cir. 1990)
Cartwright v. Department of Revenue and Taxation, 442 So.2d 552 (La.App. 1 Cir. 1983)
Cartwright v. Department of Revenue and Taxation, 460 So.2d 1066 (La.App. 1 Cir. 1984)
Casse v. Department of Health and Hospitals, 592 So.2d 1366 (La.App. 1 Cir. 1991)
Casse v. Department of Health and Hospitals, 597 So.2d 547 (La.App. 1 Cir. 1992)
Casse v. Sumrall, 547 So.2d 1381 (La.App. 1 Cir. 1989)
Castor v. Department of Public Safety and Corrections, LTI/Monroe, CSC Docket No. 12466; 6/14/99 [CSC decision on application for review]
Caston v. Executive Department, Division of State Buildings and Grounds, 331 So.2d 864 (La.App. 1 Cir. 1976)
Ceaser v. State, Department of Public Safety and Corrections, 583 So.2d 145 (La.App. 1 Cir. 1991)
Celestine v. Department of Public Safety & Corrections, 2006-1481 (La.App. 1 Cir. 5/4/07); NDFP
Chadwick v. Department of Highways, 238 La. 661, 116 So.2d 286 (1959)
Chaisson v. Cajun Bag & Supply Co., 1997-1225 (La. 3/4/98); 708 So.2d 375
Cha-Jua v. Department of Fire, 439 So.2d 1150 (La.App. 4 Cir. 1983)

Chapman v. Department of Police, 1997-1384 (La.App. 4 Cir. 1/28/98); 706 So.2d 656
Chassaignac v. Audubon Park Commission, 259 So.2d 603 (La.App. 4 Cir. 1972)
Chatman v. Division of Administration, CSC Docket No. S-14329; 8/14/01 [CSC decision]
Cheaton v. Louisiana Public Service Commission, 94-1358 and 94-1359 (La.App. 1 Cir. 12/15/95); 690 So.2d 46
Chism v. Northwestern State University, 469 So.2d 18 (La.App. 1 Cir. 1985)
Christensen v. Harris County, 529 U.S. 576, 120 S.Ct. 1655, 146 L.Ed.2d 621 (2000)
Christian v. Christian, 535 So.2d 842 (La.App. 2 Cir. 1988)
Christoffer v. Department of Fire, 1998-2408 (La. 5/18/99); 734 So.2d 629
Cilano v. Department of Employment Security, 356 So.2d 458 (La.App. 1 Cir. 1977)
Civil Service Commission, City of New Orleans v. Guste, 428 So.2d 457 (La. 1983)
Clark v. Department of Transportation and Development, 413 So.2d 573 (La.App. 1 Cir. 1982)
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Clary v. Department of Health and Hospitals, Hammond Developmental Center, CSC Docket No. 13189; 11/4/99 [CSC decision on application for review]
Claverie v. L. S. U. Medical Center in New Orleans, 553 So.2d 482 (La.App. 1 Cir. 1989)
Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985)
Coleman v. Department of Health and Human Resources, 461 So.2d 583 (La.App. 1 Cir. 1984)
Collins v. Division of Administration, Office of Risk Management, CSC Docket Nos. S-14375 and S-14378; 2/19/02 [CSC decision]
Colvin v. Department of Employment Security, 132 So.2d 909 (La.App. 1 Cir. 1961)
Coney v. DHH-Hammond Developmental Center, CSC Docket No. 11550; 6/17/97 [CSC decision on application for review]
Cormier v. State Department of Institutions, 212 So.2d 143 (La.App. 1 Cir. 1968), appeal after remand, 230 So.2d 307 (La.App. 1 Cir. 1969)
Cortez v. Department of Public Safety, 292 So.2d 876 (La.App. 1 Cir. 1974)
Cottingham v. Department of Revenue, 232 La. 546, 94 So.2d 662 (1957)
Cottrell v. City of New Orleans, 2004-1772 (La.App. 4 Cir. 5/11/05); 904 So.2d 43
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Courtney v. Louisiana Department of Highways, 282 So.2d 721 (La.App. 1 Cir. 1973)
Craig v. Dept. of Public Safety & Corrections, Swanson Correctional Center for Youth, CSC Docket No. S-15157; 1/19/05 [CSC decision on application for review]
Creadeur v. Department of Public Safety, 364 So.2d 155 (La.App. 1 Cir. 1978)
Cross v. Delgado Junior College, 331 So.2d 599 (La.App. 1 Cir. 1976)
Crowe v. Department of Public Safety and Corrections, Public Safety Services, Office of State Fire Marshal, CSC Docket No. S-14679; 1/27/03 [CSC decision]
Cunningham v. Caddo-Shreveport Health Unit, 141 So.2d 142 (La.App. 1 Cir. 1962)
Daley v. Department of Health and Human Resources, 461 So.2d 613 (La.App. 1 Cir. 1984)
Danna v. Commissioner of Insurance, 194 So.2d 753 (La.App. 1 Cir. 1967)

Danna v. Commissioner of Insurance, 207 So.2d 377 (La.App. 1 Cir. 1968)
Dauser v. Department of Public Utilities (Water), 428 So.2d 1176 (La.App. 5 Cir. 1983)
Lechler v. City Civil Service Commission for Parish of Orleans, 357 So.2d 41 (La.App. 4 Cir. 1978)
Davenport v. Department of Corrections, LTI-New Orleans, 315 So.2d 407 (La.App. 1 Cir. 1975)
Day v. Department of Institutions, 228 La. 105, 81 So.2d 826 (1955)
Dent v. Department of Corrections, 413 So.2d 920 (La.App. 1 Cir. 1982)
Dent v. Department of Corrections, 460 So.2d 57 (La.App. 1 Cir. 1984)
Department of Agriculture and Forestry v. Jones, 93-0128 and 93-0129 (La.App. 1 Cir. 3/11/94); 633 So.2d 900
Department of Corrections v. Cage, 418 So.2d 3 (La.App. 1 Cir. 1982)
Department of Corrections v. Freeman, 470 So.2d 962 (La.App. 1 Cir. 1985)
Department of Corrections v. Morgan, 440 So.2d 785 (La.App. 1 Cir. 1983), appeal after remand 469 So.2d 13 (La.App. 1 Cir. 1985)
Department of Corrections v. Murray, 439 So.2d 484 (La.App. 1 Cir. 1983)
Department of Corrections v. Pickens, 468 So.2d 1310 (La.App. l Cir. 1985)
Department of Corrections, Louisiana State Penitentiary v. Barrere, 431 So.2d 782 (La.App. 1 Cir. 1983)
Department of Culture Recreation and Tourism v. Fontenot, 518 So.2d 1067 (La.App. 1 Cir. 1987)
Department of Culture, Recreation and Tourism v. Peak, 423 So.2d 718 (La.App. 1 Cir. 1982)
Department of Culture, Recreation and Tourism v. Seifert, 560 So.2d 492 (La.App. 1 Cir. 1990)
Department of Health and Hospitals v. Jeffress, 593 So.2d 680 (La.App. 1 Cir. 1991)
Department of Health and Human Resources v. County, 491 So.2d 68 (La.App. 1 Cir. 1986)
Department of Health and Human Resources v. Payton, 498 So.2d 181 (La.App. 1 Cir. 1986)
Department of Health and Human Resources v. Perry, 423 So.2d 1266 (La.App. 1 Cir. 1982)
Department of Health and Human Resources v. Thompson, 460 So.2d 47 (La.App. 1 Cir. 1984)
Department of Health and Human Resources v. Toups, 451 So.2d 1126 (La.App. 1 Cir. 1984)
Department of Labor, Office of Employment Security v. Leonards, 498 So.2d 178 (La.App. 1 Cir. 1986)
Department of Public Safety and Corrections v. Hooker, 558 So.2d 676 (La.App. 1 Cir. 1990)
Department of Public Safety and Corrections v. Savoie, 569 So.2d 139 (La.App. 1 Cir. 1990)
Department of Public Safety and Corrections v. Thornton, 625 So.2d 713 (La.App. 1 Cir. 1993)
Department of Public Safety and Corrections, Division of State Police v. Piazza, 588 So.2d 1218 (La.App. 1 Cir. 1991)

Department of Public Safety and Corrections, Office of State Police v. Mensman, 94-1073 (La.App. 1 Cir. 6/30/95); 671 So.2d 360
Department of Public Safety and Corrections, Office of State Police v. Temple, 93-1899 (La.App. 1 Cir. 6/24/94); 638 So.2d 1173
Department of Public Safety v. Rigby, 401 So.2d 1017 (La.App. 1 Cir. 1981)
Department of Social Services v. Schneeweiss, 588 So.2d 1185 (La.App. 1 Cir. 1991)
Department of State Civil Service v. Housing Authority of East Baton Rouge, 95-1959 (La.App. 1 Cir. 5/10/96); 673 So.2d 726
Department of Transportation and Development v. Gabour, 468 So.2d 1301 (La.App. 1 Cir. 1985)
Dickson v. Department of Highways, 234 La. 1082, 102 So.2d 464 (1958)
Didier v. Department of State Civil Service, 446 So.2d 886 (La.App. 1 Cir. 1984)
Dieck v. Department of Police, 266 So.2d 500 (La.App. 4 Cir. 1972)
Diel v. Office of Group Benefits, CSC Docket No. 15070; 10/22/03 [CSC decision]
Distefano v. Department of State Civil Service, CSC Docket No. 15683; 11/3/05 [CSC decision]
Division of Administration v. Powers, 423 So.2d 51 (La.App. 1 Cir. 1982)
Dix v. City of Lake Charles, 569 So.2d 1112 (La.App. 3 Cir. 1990)
Dobbins v. Department of Public Safety and Corrections, CSC Docket No. 13956; 4/5/01 [CSC decision on application for review]
Domas v. Division of Employment Security, 227 La. 490, 79 So.2d 857 (1955)
Donchess v. DHHR, Office of Management and Finance, 457 So.2d 833 (La.App. 1 Cir. 1984)
Dore v. LHHRA, Division of Family Services, 344 So.2d 418 (La.App. 1 Cir. 1977), appeal after remand *Dore v. Louisiana Health and Human Resources Administration,* 361 So.2d 229 (La.App. 1 Cir. 1978)
DuBois v. Department of Health and Human Resources, 448 So.2d 230 (La.App. 1 Cir. 1984)
Duckett v. Louisiana Wildlife & Fisheries Commission, 175 So.2d 723 (La.App. 1 Cir. 1965)
Ducote v. Louisiana Department of Health and Human Resources, 369 So.2d 179 (La.App. 1 Cir. 1979)
Duczer v. State Banking Department, 277 So.2d 453 (La.App. 1 Cir. 1973)
Duhe v. Department of Revenue and Taxation, 432 So.2d 280 (La.App. 1 Cir. 1983)
Dumez v. Houma Municipal Fire and Police Civil Service, 408 So.2d 403 (La.App. 1 Cir. 1981)
Duncan v. Department of Public Safety, 468 So.2d 797 (La.App. 1 Cir. 1985)
Duncan v. L.H.H.R.A., Division of Family Services, 341 So.2d 1217 (La.App. 1 Cir. 1976)
Dundy v. Louisiana State University in Baton Rouge, 394 So.2d 650 (La.App. 1 Cir. 1980)
Dunlap v. Louisiana State University Health Sciences Center, 2005-1605 (La.App. 1 Cir. 6/9/06); 938 So.2d 109
Dunn v. Department of Health and Human Resources, 421 So.2d 437 (La.App. 1 Cir. 1982)
Dutton v. Guste, 395 So.2d 683 (La. 1981)

Easley v. Department of State Civil Service, 572 So.2d 1101 (La.App. 1 Cir. 1990)
East Bank Consolidated Special Service Fire Protection District v. Crossen, 04-0838 (La.App. 5 Cir. 12/28/04); 892 So.2d 666
Edwards v. Department of Corrections, 461 So.2d 678 (La.App. 1 Cir. 1984)
Ellins v. Department of Health, 505 So.2d 74 (La.App. 4 Cir. 1987)
Elliott v. Department of Public Safety, Division of State Police, 346 So.2d 839 (La.App. 1 Cir. 1977)
Ennis v. Department of Public Safety and Corrections, 558 So.2d 617 (La.App. 1 Cir. 1990)
Evans v. City of Houston, 246 F.3d 344 (C.A. 5 2001)
Evans v. DeRidder Municipal Fire and Police Civil Service Board, 2001-2466 (La. 4/3/02); 815 So.2d 61
Evans v. Louisiana State University Agricultural Center, 2006-2025 (La.App. 1 Cir. 6/8/07); 965 So.2d 418
Faure v. Department of Health and Human Resources, 504 So.2d 1022 (La.App. 1 Cir. 1987)
Ferguson v. Department of Health and Human Resources, 451 So.2d 165 (La.App. 1 Cir. 1984)
Fields v. State of Louisiana, Department of Corrections, 498 So.2d 174 (La.App. 1 Cir. 1986)
Finley v. Department of Corrections, 351 So.2d 811 (La.App. 1 Cir. 1977)
Finley v. Department of Transportation and Development, 93-1710 (La.App. 1 Cir. 6/24/94); 639 So.2d 431
Fisher v. Department of Health and Human Resources, 517 So.2d 318 (La.App. 1 Cir. 1987)
Fisher v. Department of Social Services, Office of Community Services, 600 So.2d 1368 (La.App. 1 Cir. 1992)
Flanagan v. Department of Environmental Quality, 2007-0044 (La.App. 1 Cir. 11/2/07); NDFP
Flanagan v. Department of Environmental Quality, 99-1332 (La.App. 1 Cir. 12/28/99); 747 So.2d 763
Fleming v. Louisiana Department of Education, 293 So.2d 658 (La.App. 1 Cir. 1974)
Flores v. State Department of Civil Services, 308 So.2d 393 (La.App. 1 Cir. 1975)
Flowers v. Department of Revenue and Taxation, 507 So.2d 240 (La.App. 1 Cir. 1987)
Floyd v. Louisiana Wildlife and Fisheries Commission, 283 So.2d 537 (La.App. 1 Cir. 1973)
Fontenot v. Department of Public Safety, 468 So.2d 1319 (La.App. 1 Cir. 1985)
Foreman v. Falgout, 503 So.2d 517 (La.App. 1 Cir. 1986)
Foreman v. LSU Health Sciences Center, 2004-0651 (La.App. 1 Cir. 3/24/05); 907 So.2d 103
Foster v. Department of Public Welfare, 144 So.2d 271 (La.App. 1 Cir. 1962), appeal after remand 159 So.2d 515 (La.App. 1 Cir. 1963)
Frazier v. Department of State Civil Service, 449 So.2d 95 (La.App. 1 Cir. 1984)
Frye v. L. S. U. Medical Center in New Orleans, 584 So.2d 259 (La.App. 1 Cir. 1991)
Frye v. Louisiana State University Medical Center, 544 So.2d 81 (La.App. 1 Cir. 1989)

Gainer v. Department of Health and Hospitals, Central Louisiana State Hospital, 610 So.2d 936 (La.App. 1 Cir. 1992)
Gandolfo v. Department of Police, 357 So.2d 568 (La.App. 4 Cir. 1978)
Gannett River States Pub. v. Hussey, 557 So.2d 1154, (La.App. 2 Cir. 1990)
Gandy v. State Civil Service Commission, 498 So.2d 765 (La.App. 1 Cir. 1986)
Gardner v. Broderick, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968)
Garrett v. Louisiana Office of Student Finance, 2006-0826 (La.App. 1 Cir. 2/9/07); NDFP
Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967)
Gaspard v. Department of State Civil Service, 93-0311 (La.App. 1 Cir. 3/11/94); 634 So.2d 14
Gautreaux v. Division of State Buildings and Grounds, 395 So.2d 388 (La.App. 1 Cir. 1981)
George v. Department of Fire, 93-2421 (La.App. 4 Cir. 5/17/94); 637 So.2d 1097
Geystand v. Louisiana Special Education Center, 415 So.2d 409 (La.App. 1 Cir. 1982)
Goins v. DHHR, E. A. Conway Memorial Hospital, 361 So.2d 306 (La.App. 1 Cir. 1978)
Goldsby v. State, Department of Corrections, *2003-0343 (La.App. 1 Cir. 11/7/03);* 861 So.2d 236
Golphin v Division of Administration, 314 So.2d 498 (La.App. 1 Cir. 1975)
Gorbaty v. Department of State Civil Service, 1999-1389 (La.App. 1 Cir. 6/23/00); 762 So.2d 1159
Gordon v. Louisiana State Board of Education, 313 So.2d 605 (La.App. 1 Cir. 1975)
Goree v. Department of Corrections, 468 So.2d 829 (La.App. 1 Cir. 1985)
Goudeau v. Department of Public Safety, Division of State Police, 349 So.2d 887 (La.App. 1 Cir. 1977)
Graffeo v. City of New Orleans, 351 So.2d 1311 (La.App. 4 Cir. 1977)
Green v. Department of Transportation and Development, CSC Docket No. S-11229; 4/12/96 [CSC decision on application for review]
Green v. Louisiana State University Health Sciences Center-Shreveport, 2006-2437 (La.App. 1 Cir. 9/14/07); NDFP
Greenleaf v. DHH, Metropolitan Developmental Center, 594 So.2d 418 (La.App. 1 Cir. 1991)
Gremillion v. Department of Highways, 129 So.2d 805 (La.App. 1 Cir. 1961)
Guillory v. Department of Health and Hospitals, CSC Docket No. 13616; 3/13/01 [CSC decision on application for review]
Guillory v. Department of Transportation and Development, 450 So.2d 1305 (La. 1984), appeal after remand 475 So.2d 368 (La.App. 1 Cir. 1985)
Guillory v. State Department of Institutions, 219 So.2d 282 (La.App. 1 Cir. 1969), appeal after remand 234 So.2d 442 (La.App. 1 Cir. 1970)
Guillot v. Southwest Charity Hospital, 186 So.2d 428 (La.App. 1 Cir. 1966)
Hamilton v. Louisiana Health & Human Resources Administration, 341 So.2d 1190 (La.App. 1 Cir. 1976)
Hamlett v. Division of Mental Health, 325 So.2d 696 (La.App. 1 Cir. 1976)
Hammork v. Department of Health and Hospitals, 2006-0951 (La.App. 1 Cir. 3/23/07); NDFP
Hanks v. Department of State Civil Service, 449 So.2d 500 (La.App. 1 Cir. 1984)

Hargrove v. New Orleans Police Department, 2001-0659 (La.App. 4 Cir. 5/22/02); 822 So.2d 629
Harmon v. Louisiana Wild Life and Fisheries Commission, 244 So.2d 922 (La.App. 1 Cir. 1970)
Harper v. Housing Authority of Monroe, 412 So.2d 1157 (La.App. 1 Cir. 1982)
Harrigan v. Freeman, 498 So.2d 58 (La.App. 1 Cir. 1986)
Hatfield v. Bush, 572 So.2d 588 (La.App. 1 Cir. 1990)
Hawkins v. State, Department of Health and Hospitals, 613 So.2d 229 (La.App. 1 Cir. 1992)
Hays v. Louisiana Wild Life and Fisheries Commission, 165 So.2d 556 (La.App. 1 Cir. 1964)
Hays v. Louisiana Wild Life and Fisheries Commission, 243 La. 278, 143 So.2d 71 (1962)
Hays v. Louisiana Wildlife and Fisheries Commission, 153 So.2d 562 (La.App. 3d Cir. 1963)
Hays v. Wild Life and Fisheries Commission, 136 So.2d 559 (La.App. 1 Cir. 1961)
Head v. Department of Highways, 166 So.2d 346 (La.App. 1 Cir. 1964)
Hearty v. Department of Police, City of New Orleans, 238 La. 956, 117 So.2d 71 (1960)
Hebbler v. New Orleans Fire Dept., 299 So.2d 825 (La.App. 4 Cir. 1974), reversed in part 310 So.2d 113 (La. 1975)
Heinberg v. Department of Employment Security, 256 So.2d 747 (La.App. 1 Cir. 1971)
Heirs of Tarver v. State, Department of Health and Hospitals, 94-1121 (La.App. 1 Cir. 4/7/95); 653 So.2d 1346
Heno v. Department of Labor, Division of Employment Security, 171 So.2d 270 (La.App. 1 Cir. 1965)
Herbert v. Department of Police, 362 So.2d 1190 (La.App. 4 Cir. 1978)
Higgins v. Louisiana State Penitentiary, Department of Institutions, 154 So.2d 570 (La.App. 1 Cir. 1963), amended 245 La. 1009, 162 So.2d 343 (1964)
Hilbun v. State, Division of Administration, 1998-1993 (La.App. 1 Cir. 11/5/99); 745 So.2d 1189
Hill v. Department of Health and Human Resources, 457 So.2d 781 (La.App. 1 Cir. 1984)
Hills v. Department of Health and Hospitals, East Louisiana State Hospital, CSC Docket No. S-12127; 12/17/97 [CSC decision]
Holliday v. Department of Social Services, CSC Docket No. 10302; 7/5/94 [CSC decision]
Hollingsworth v. State, Department of Public Safety, 354 So.2d 1058 (La.App. 1 Cir. 1977)
Hollis v. Confederate Memorial Medical Center, 148 So.2d 381 (La.App. 1 Cir. 1962)
Hoover v. Department of Finance, 283 So.2d 298 (La.App. 4 Cir. 1973)
Housing Authority of the City of Morgan City v. Gibson, 598 So.2d 545 (La.App. 1 Cir. 1992)
Howard v. Housing Authority of New Orleans, 457 So.2d 834 (La.App. 1 Cir. 1984)
Hudson v. Department of Public Safety and Corrections, 96-0499 (La.App. 1 Cir. 11/8/96); 682 So.2d 1314
Hughes v. Department of Police, 131 So.2d 99 (La.App. 4 Cir. 1961)

Hunsinger v. Louisiana Department of Highways, 271 So.2d 692 (La.App. 1 Cir. 1972)
In re Bienvenu, 155 So.2d 225 (La.App. 1 Cir. 1963), appeal after remand 158 So.2d 213 (La.App. 1 Cir. 1963)
In re Boudreaux, 193 So.2d 416 (La.App. 1 Cir. 1966)
In re Coon, 141 So.2d 112 (La.App. 1 Cir. 1962)
In re Investigation of Lauricella, 546 So.2d 207 (La.App. 1 Cir. 1989)
In re Investigation of Smith, 546 So.2d 561 (La.App. 1 Cir. 1989)
In re Owens, 236 So.2d 229 (La.App. 1 Cir. 1970)
In re Roberts, 263 So.2d 452 (La.App. 1 Cir. 1972)
In re Taylor, 233 So.2d 49 (La.App. 1 Cir. 1970)
In re Wingate, 184 So.2d 237 (La.App. 1 Cir. 1966)
In re Wingate, 189 So.2d 1 (La.App. 1 Cir. 1965)
Jackson v. Department of Health and Hospitals, 1998-2722 (La.App. 1 Cir. 2/18/00); 752 So.2d 357
Jackson v. Department of Public Safety, 675 F.Supp. 1025 (M.D. La. 1985), affirmed at 800 F. 2d 1143 (C.A. 5 1986)
Jacomet v. T. H. Harris Vocational-Technical School, 491 So.2d 59 (La.App. 1 Cir. 1986)
James v. LSU Health Sciences Center, 2001-1853 (La.App. 1 Cir. 11/8/02); 834 So.2d 470
James v. Sewerage and Water Bd., 505 So.2d 119 (La.App. 4 Cir. 1987)
Jefferson Levee District v. Lanza, 459 So.2d 26 (La.App. 1 Cir. 1984)
Johnson v. Board of Commissioners of Port of New Orleans, 348 So.2d 1289 (La.App. 4 Cir. 1977)
Johnson v. Department of Finance, 354 So.2d 766 (La.App. 4 Cir. 1978)
Johnson v. Department of Health and Hospitals, 2000-0071 (La.App. 1 Cir. 2/16/01); 808 So.2d 436
Johnson v. Department of Health and Human Resources, 458 So.2d 137 (La.App. 1 Cir. 1984)
Johnson v. Louisiana State University, 418 So.2d 667 (La.App. 1 Cir. 1982), appeal after remand 431 So.2d 447 (La.App. 1 Cir. 1983)
Johnson v. Southern University, 551 So.2d 1348 (La.App. 1 Cir. 1988)
Johnson v. State Department of Institutions, 198 So.2d 159 (La.App. 1 Cir. 1967)
Johnson v. State Parks and Recreation Commission, 198 So.2d 180 (La.App. 1 Cir. 1967)
Jones v. City Parish of East Baton Rouge, 526 So.2d 462 (La.App. 1 Cir. 1988)
Jones v. Department of Health and Hospitals, 1998-1745 (La.App. 1 Cir. 9/28/99); 754 So.2d 277
Jones v. Department of Health and Human Resources, 430 So.2d 1203 (La.App. 1 Cir. 1983)
Jones v. Department of Public Safety and Corrections, 2004-1766 (La.App. 1 Cir. 9/23/05); 923 So.2d 699
Jones v. Department of Public Safety and Corrections, Louisiana Correctional Institute for Women, 2006-2466 (La.App. 1 Cir. 9/14/07); NDFP
Jones v. Louisiana Department of Highways, 237 So.2d 916 (La.App. 1 Cir. 1970) reversed 259 La. 329, 250 So.2d 356 (1971)

Jones v. Soileau, 448 So.2d 1268 (La. 1984)
Juneau v. Louisiana Board of Elementary and Secondary Education, 506 So.2d 756 (La.App. 1 Cir. 1987)
Juneau v. LSU Health Sciences Center, *W. O. Moss Regional Medical Center*, CSC Docket No. 14980; 12/10/03 [CSC decision on application for a review]
Kennedy v. Louisiana School for the Deaf, CSC Docket No. 11184; 10/11/95 [CSC decision]
Keys v. LSU Health Sciences Center-Medical Center of LA at New Orleans, CSC Docket Nos. 13222, 14722, and 14775; 1/9/05 [CSC decision on application for review]
Khosravanipour v. Department of Transportation and Development, 93-2041, 93-2042, 93-2043, 93-2044, and 93-2045 (La.App. 1 Cir. 10/7/94); 644 So.2d 823
King v. Department of Health and Human Resources, 506 So.2d 832 (La.App. 1 Cir. 1987)
King v. Department of Public Safety of Louisiana, 236 La. 602, 108 So.2d 524 (1959)
King v. Department of Public Safety, 234 La. 409, 100 So.2d 217 (1958)
King v. Department of Transportation and Development, 607 So.2d 789 (La.App. 1 Cir. 1992)
King v. LSU Health Sciences Center, 2003-1138 (La.App. 1 Cir. 4/2/04); 878 So.2d 544
Knecht v. Board of Trustees for State Colleges and Universities, 591 So.2d 690 (La. 1991)
Krasnoff v. City of New Orleans, 209 So.2d 149 (La.App. 4 Cir. 1968)
Kyle v. Civil Service Commission, 588 So.2d 1154 (La.App. 1 Cir. 1991)
Lafleur v. City of New Orleans, 2001-3224 (La. 12/4/02); 831 So.2d 941
Lambert v. Louisiana Board of Veterinary Medicine, 489 So.2d 1341 (La.App. 1 Cir. 1986)
Lane v. Department of Public Safety and Corrections, 2000-2010 (La.App. 1 Cir. 2/15/02); 808 So.2d 811
La*scala v. New Orleans City Park,* 535 So.2d 478 (La.App. 1 Cir. 1989)
Lasserre v. Louisiana Public Service Commission, 2004-0615 (La.App. 1 Cir. 4/8/05); 903 So.2d 474, **writ granted** 2005-1866 (La. 3/10/06); 925 So.2d 491; **then settled**
Latona v. Department of State Civil Service, 492 So.2d 27 (La.App. 1 Cir. 1986)
Lawson v. State, Department of Health and Hospitals, 618 So.2d 1002 (La.App. 1 Cir. 1993)
LeBlanc v. New Orleans Police Department, 231 So.2d 568 (La.App. 4 Cir. 1970)
Lee v. Department of Highways, 138 So.2d 36 (La.App. 1 Cir. 1962)
Lee v. East Baton Rouge Parish School Board, 2003-0711 (La.App. 1 Cir. 6/30/04); 887 So.2d 1
Lee v. LSU Health Sciences Center-New Orleans, CSC Docket No. S-15298, decided 3/29/05 [Referee decision]
Leger v. Louisiana State University Agricultural Center, 607 So.2d 744 (La.App. 1 Cir. 1992)
Leger v. Louisiana State University, 601 So.2d 20 (La.App. 1 Cir. 1992)
Leggett v. Northwestern State College, 242 La. 927, 140 So.2d 5 (1962)
Legros v. Department of Public Safety, Division of State Police, 364 So.2d 162 (La.App. 1 Cir. 1978)
Lemoine v. Department of Police, 348 So.2d 1281 (La.App. 4 Cir. 1977)

Leonard v. Department of Public Safety and Corrections, CSC Docket No. 15491; 2/23/05 [CSC decision]
Leteff v. Department of Corrections, 462 So.2d 254 (La.App. 1 Cir. 1984)
Licausi v. Department of Health and Human Resources, 458 So.2d 148 (La.App. 1 Cir. 1984)
Lombas v. Department of Police, 467 So.2d 1273 (La.App. 4 Cir. 1985)
Lombas v. New Orleans Police Department, 501 So.2d 790 (La.App. 4 Cir. 1986)
London v. Department of State Civil Service, 1999-0755 (La.App. 1 Cir. 5/22/00); 798 So.2d 123
Long v. Eastfield College, 88 F.3d 300 (C.A. 5 1996)
Lopez v. LSU Health Sciences Center-Shreveport, 2006-2059 and 2006-2060 (La.App. 1 Cir. 9/14/07); NDFP
Louisiana Department of Agriculture and Forestry v. Sumrall, 1998-1587 (La. 3/2/99); 728 So.2d 1254
Louisiana Farms v. Louisiana Department of Wildlife and Fisheries, 95-845 (La.App. 3 Cir. 10/9/96); 685 So.2d 1086
Louisiana Public Service Commission v. Cheathon, 625 So.2d 703 (La.App. 1 Cir. 1993)
Louisiana State Civil Service Commission v. Department of Corrections, 251 So.2d 524 (La.App. 1 Cir. 1971)
Louisiana State University Medical Center in Shreveport v. Boyd, 432 So.2d 330 (La.App. 1 Cir. 1983)
Louisiana State University Medical Center, Shreveport v. Dickey, 448 So.2d 214 (La.App. 1 Cir. 1984)
Louisiana State University v. Bailey, 432 So.2d 336 (La.App. 1 Cir. 1983)
Louviere v. Pontchartrain Levee District, 199 So.2d 392 (La.App. 1 Cir. 1967)
Lundy v. University of New Orleans, 1998-0054 (La.App. 1 Cir. 2/19/99); 728 So.2d 927
Maggio v. Department of Public Safety, 234 So.2d 844 (La.App. 1 Cir. 1970)
Maher v. Criminal Sheriff Department, 298 So.2d 924 (La.App. 4 Cir. 1974)
Major v. Louisiana Department of Highways, 327 So.2d 515 (La.App. 1 Cir. 1976)
Major v. Louisiana Department of Highways, 333 So.2d 316 (La.App. 1 Cir. 1976)
Malone v. Department of Corrections, Louisiana Training Institute-Ball, 468 So.2d 839 (La.App. 1 Cir. 1985)
Manale v. Department of Police, 376 So.2d 607 (La.App. 4 Cir. 1979)
Manning v. Department of Wildlife and Fisheries, 99-0782 and 99-0783 (La.App. 1 Cir. 5/12/00); 762 So.2d 157
Maradiaga v. University of New Orleans, 546 So.2d 579 (La.App. 1 Cir. 1989)
Marcantel v. Department of Transportation and Development, 590 So.2d 1253 (La.App. 1 Cir. 1991)
Marie v. City of New Orleans, 612 So.2d 244 (La.App. 4 Cir. 1992)
Marks v. New Orleans Police Department, 2006-0575 (La. 11/29/06); 943 So.2d 1028
Marsch v. Department of Public Safety and Corrections, CSC Docket Nos. 14736 and S-14756; 11/8/02 [Referee decision; application for review denied 1/13/03]
Marsch v. LSU Health Sciences Center-Earl K. Long Medical Center, 2007-1272 (La.App. 1 Cir. 2/8/08); NDFP
Marsellus v. Department of Public Safety and Corrections, 2004-0860 (La.App. 1 Cir. 9/23/05); 923 So.2d 656

Martin v. Department of Revenue and Taxation, 525 So.2d 268 (La.App. 1 Cir. 1988)
Martone v. Morgan, 251 La. 993, 207 So.2d 770 (1968)
Matter of Rollins Environmental Services, Inc., 481 So.2d 113 (La. 1985)
Mauboules v. Louisiana Wild Life and Fisheries Commission, 312 So.2d 899 (La.App. 1 Cir. 1975)
Maurello v. Department of Health and Human Resources, 510 So.2d 458 (La.App. 1 Cir. 1897)
Maurello v. Department of Health and Human Resources, 546 So.2d 545 (La.App. 1 Cir. 1989)
Mautemps v. Port of South Louisiana, 93-0900 (La.App. 1 Cir. 3/11/94); 634 So.2d 30
Mayeaux v. Department of State Civil Service, 421 So.2d 948 (La.App. 1 Cir. 1982)
McGee v. Department of Transportation and Development, 1999-2628 (La.App. 1 Cir. 12/22/00); 774 So.2d 1280
McKeller v. Louisiana State University, 461 So.2d 585 (La.App. 1 Cir. 1984)
McNeely v. Department of Health and Human Resources, 413 So.2d 594 (La.App. 1 Cir. 1982)
Meaux v. Department of Highways, 228 So.2d 680 (La.App. 1 Cir. 1969)
Meaux v. Department of Highways, 274 So.2d 486 (La.App. 1 Cir. 1973)
Meaux v. State Department of Highways, 223 So.2d 186 (La.App. 1 Cir. 1969)
Messer v. Department of Corrections, Louisiana State Penitentiary, 385 So.2d 376 (La.App. 1 Cir. 1980)
Michel v. Department of Public Safety, 341 So.2d 1161 (La.App. 1 Cir. 1976)
Miller v. State Department of Health, 135 So.2d 570 (La.App. 1 Cir. 1961)
Mixon v. New Orleans Police Department, 430 So.2d 210 (La.App. 4 Cir. 1983)
Mobley v. Department of Social Services, 594 So.2d 914 (La.App. 1 Cir. 1991)
M*ontegue v. City of New Fire Department,* 95-2166 (La.App. 4 Cir. 5/29/96); 675 So.2d 810
Morehouse v. Southern University, Baton Rouge Campus, 2006-1481 (La.App. 1 Cir. 5/4/07); 961 So.2d 473
Morgan v. Department of Public Safety and Corrections, CSC Docket No. 11851; 6/12/97 [CSC decision]
Morgan v. Louisiana State University, Health Sciences Center, 2006-0570 (La.App. 1 Cir. 4/4/07); 960 So.2d 1002
Morrell v. Department of Welfare, 266 So.2d 559 (La.App. 4 Cir. 1972)
Morris v. State Department of Highways, 274 So.2d 924 (La.App. 1 Cir. 1973)
Morrison v. Department of Highways, 229 La. 116, 85 So.2d 51 (1956)
Mott v. Department of Health and Human Resources, 506 So.2d 713 (La.App. 1 Cir. 1987)
Mouledoux v. Maestri, 197 La. 526, 2 So.2d 11, 16 (1941)
Mullins v. State, 387 So.2d 1151, 1152 [La. 1980]
Munson v. State Parks and Recreation Commission, 235 La. 652, 105 So.2d 254 (1958)
Munson v. University Medical Center, Louisiana Health Care Authority, CSC Docket Nos. 11231 and S-11376; 8/9/00 [Referee decision; application for review denied 9/13/00]
Murray v. Department of Police, 97-2650 (La.App. 4 Cir. 5/27/98); 713 So.2d 838
Murray v. Department of Revenue and Taxation, 504 So.2d 561 (La.App. 1 Cir. 1986)

Murray v. Department of Revenue and Taxation, 543 So.2d 1150 (La.App. 1 Cir. 1989)
Nagel v. Department of Natural Resources, CSC Docket No. S-14562; 6/28/02 [CSC decision on application for review]
New Orleans Firefighters Association Local 632, AFL-CIO v. City of New Orleans, 590 So.2d 1172 (La. 1991)
Newbrough v. State, Department of Highways, 280 So.2d 646 (La.App. 1 Cir. 1973)
Newton v. Louisiana Training Institute-Monroe, Department of Corrections, 376 So.2d 1032 (La.App. 1 Cir. 1979)
Nicholas v. Housing Authority of New Orleans, 477 So.2d 1187 (La.App. 1 Cir. 1985)
Norbert v. LSU Health Sciences Center, University Medical Center, 2007-0161 (La.App. 1 Cir. 11/2/07); ___ So.2d ___
Normand v. City of Baton Rouge, Police Dept., 572 So.2d 1123 (La.App. 1 Cir. 1990)
Noya v. Department of Fire, 609 So.2d 827 (La. 1992), appeal after remand, 96-2612 (La.App. 4 Cir. 4/23/97); 693 So.2d 279
Odom v. City of Minden, 300 So.2d 462 (La. 1974)
Onesta v. Department of State Civil Service, 434 So.2d 1153 (La.App. 1 Cir. 1983)
Orleans Levee District v. Glenn, 577 So.2d 336 (La.App. 1 Cir. 1991)
Owen v. New Orleans City Civil Service Commission, 371 So.2d 364 (La.App. 4 Cir. 1979)
Pailet v. Office of Health Services and Environmental Quality, 379 So.2d 265 (La.App. 1 Cir. 1979)
Pailet v. Office of Health Services and Environmental Quality, 387 So.2d 1274 (La.App. 1 Cir. 1980)
Paisant v. University of New Orleans, 391 So.2d 1237 (La.App. 1 Cir. 1980)
Paisant v. University of New Orleans, 391 So.2d 1238 (La.App. 1 Cir. 1980)
Parrino v. Louisiana State University, 207 So.2d 800 (La.App. 1 Cir. 1968)
Parta v. New Orleans Police Department, 231 So.2d 574 (La.App. 4 Cir. 1970)
Patrick v. Lake Charles Municipal Fire and Police, 344 So.2d 1121 (La.App. 3 Cir. 1977)
Paulin v. Department of Safety and Permits, 308 So.2d 817 (La.App. 4 Cir. 1975)
Pelletier v. Executive Department, Division of State Buildings and Grounds, 331 So.2d 72 (La.App. 1 Cir. 1976)
Pellitteri v. Orleans Levee District, 633 So.2d 615 (La.App. 1 Cir. 1993)
Pembrick v. Charity Hospital of Louisiana at New Orleans, 268 So.2d 265 (La.App. 1 Cir. 1972)
Pendley v. Louisiana Division of Administration, 303 So.2d 544 (La.App. 1 Cir. 1974), appeal after remand, 315 So.2d 799 (La.App. 1 Cir. 1975)
Perkins v. Director of Personnel, 220 So.2d 253 (La.App. 1 Cir. 1969)
Perkins v. Brown, 236 So.2d 579 (La.App. 1 Cir. 1970)
Perrot v. Orleans Levee District, CSC Docket No. S-10424; 6/15/1995 [CSC decision on application for review]
Perry v. Sindermann, 408 U.S. 593, 601, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972)
Peterson v. Department of Streets, 369 So.2d 235 (La.App. 4 Cir. 1979)
Phelps v. State Department of Hospitals, 250 So.2d 442 (La.App. 1 Cir. 1971)
Philson v. Department of Corrections, 451 So.2d 1311 (La.App. 1 Cir. 1984)
Pierre v. Department of Natural Resources, 449 So.2d 596 (La.App. 1 Cir. 1984)
Pilcher v. Mourad, 187 So.2d 183 (La.App. 2 Cir. 1966)

Pilson v. Metropolitan Human Service District, 2005-2253 (La.App. 1 Cir. 9/27/06); 944 So.2d 622
Polk v. Edwards, 626 So.2d 1128 (La. 1993)
Poole v. Department of Transportation and Development, 439 So.2d 659 (La.App. I Cir. 1983)
Pope v. New Orleans City Park, 95-1634 (La.App. 1 Cir. 4/4/96); 672 So.2d 388
Portis v. Department of Corrections, 407 So.2d 435 (La.App. 1 Cir. 1981)
Powell v. City of Winnfield, 370 So.2d 109 (La.App. 2 Cir. 1979)
Price v. Department of Public Safety and Corrections, 2003-0979 (La.App. 1 Cir. 4/2/04); 878 So.2d 612
Public Emp. Ass'n of New Orleans, Inc. v. City of New Orleasns, 404 So.2d 537 (La.App. 4 Cir. 1981)
Pugh v. Department of Culture, Recreation and Tourism, 597 So.2d 38 (La.App. 1 Cir. 1992)
Raborn v. Louisiana Health and Human Resources Administration, 349 So.2d 903 (La.App. 1 Cir. 1977), **writ granted** 351 So.2d 175 (La. 1977); **then settled**
Rader v. Department of Health and Hospitals, Office of Public Health, 94-0763 (La.App. 1 Cir. 3/3/95); 652 So.2d 644
Ragusa v. Department of Public Safety, 238 So.2d 193 (La.App. 1 Cir. 1970)
Ramirez v. Department of Social Services, 603 So.2d 795 (La.App. 1 Cir. 1992), appeal after remand 96-1448 (La.App. 1 Cir. 5/9/97); 694 So.2d 1157
Ravencraft v. Department of Public Safety and Corrections, 608 So.2d 1051 (La.App. 1 Cir. 1992)
Ravencraft v. Department of Public Safety and Corrections, 609 So.2d 829 (La.App. 1 Cir. 1992)
Ream v. Department of Health and Human Resources, 461 So.2d 1217 (La.App. 1 Cir. 1984)
Reed v. Louisiana Wild Life and Fisheries Commission, 235 La. 124, 102 So.2d 869 (1958)
Richardson v. Monitronics International, Inc., 2005-10346 (5 Cir. 12/21/2005); 434 F.3d 327
Riggins v. Department of Sanitation, 617 So.2d 112 (La.App. 4 Cir. 1993)
Robbins v. New Orleans Public Library, 208 So.2d 25 (La.App. 4 Cir. 1968)
Roberts v. Department of Health and Hospitals, 1997-0855 (La.App. 1 Cir. 5/15/98); 712 So.2d 696
Robinson v. Natchitoches Parish Housing Authority, 554 So.2d 1384 (La.App. 1 Cir. 1989)
Roby v. Department of Finance, 496 So.2d 1096 (La.App. 4 Cir. 1986)
Rocque v. Department of Health and Human Resources, 490 So.2d 352 (La.App. 1 Cir. 1986) reversed 496 So.2d 317 (La. 1986), on rehearing 505 So.2d 726 (La. 1987)
Rodgers v. Department of Public Welfare, 250 So.2d 163 (La.App. 1 Cir. 1971)
Rodriguez v. Board of Commissioners, Port of New Orleans, 344 So.2d 436 (La.App. 1 Cir. 1977)
Rollins v. Housing Authority of New Orleans, 93-1810 (La.App. 1 Cir. 10/7/94); 644 So.2d 837

Rougeau v. Department of Social Services, CSC Docket No. S-15882; 9/21/07 [Referee decision]
Roussell v. Louisiana Health and Human Resources Administration, 354 So.2d 661 (La.App. 1 Cir. 1977) reversed 356 So.2d 1014 (La. 1978)
Rudloff v. Chief Administrative Office, 413 So.2d 550 (La.App. 4 Cir. 1982)
Russell v. Division of Administration, State Buildings, CSC Docket No. 13314; 3/11/99 [CSC decision on application for review]
Ryder v. Department of Health and Human Resources, 400 So.2d 1123 (La.App. 1 Cir. 1981)
Sample v. Department of Corrections, 434 So.2d 1211 (La.App. 1 Cir. 1983)
Samuels v. Department of Public Safety and Corrections, WCI, CSC Docket No. 12470; 3/12/98 [CSC decision]
Sanders v. Department of Health and Human Resources, 388 So.2d 768 (La. 1980), appeal after remand 394 So.2d 629 (La.App. 1 Cir. 1980)
Sanderson v. Department of Public Safety, 351 So.2d 813 (La.App. 1 Cir. 1977)
Sandres v. Division of Administration, Office of Risk Management, CSC Docket No. 15257; 12/2/04 [Referee decision]
Savoie v. State Department of Corrections, 394 So.2d 1285 (La.App. 1 Cir. 1981)
Scallon v. Department of Institutions, 143 So.2d 160 (La.App. 1 Cir. 1962)
Schmidt v. Gregorio, 705 So.2d 742 (La.App. 2 Cir. 1994)
Schneider v. Department of Health and Hospitals, 552 So.2d 796 (La.App. 1 Cir. 1989)
Scott v. New Orleans Department of Finance, 2002-0907 (La.App. 4 Cir. 12/19/01); 804 So.2d 836
Scott v. Office of Housing and Urban Affairs, 1999-2446 (La.App. 4 Cir. 4/26/00); 759 So.2d 1002
Seals v. Morris, 465 So.2d 140 (La.App. 1 Cir. 1985)
Searcy v. Louisiana Department of Corrections, 484 So.2d 773 (La.App. 1 Cir. 1986)
Sewell v. New Orleans Police Department, 221 So.2d 621 (La.App. 4 Cir. 1969)
Shaw v. Dept. of Public Safety and Corrections - LTI, Monroe, CSC Docket No. 12193; 12/8/98 [CSC decision on application for review]
Shelfo v. LHHRA, Pinecrest State School, 361 So.2d 1268 (La.App. 1 Cir. 1978)
Shelton v. Southeastern Louisiana University, 431 So.2d 437 (La.App. 1 Cir. 1983)
Shortess v. Department of Public Safety & Corrections, 2006-2313 (La.App. 1 Cir. 9/14/07); 971 So.2d 1051
Shreveport-Bossier Vo-Tech School v. Baker, 445 So.2d 1241 (La.App. 1 Cir. 1983)
Sibley v. LSU Health Sciences Center – Earl K. Long Medical Center, 2007-0895 (La.App. 1 Cir. 2/8/08); NDFP
Sidney N. Collier Memorial Vocational-Technical School v. Caulfield, 460 So.2d 54 (La.App. 1 Cir. 1984)
Simien v. Office of the Governor, Office of Women's Services, CSC Docket No. 13295; 3/11/99 [CSC decision on application for review]
Simmons v. Division of Employment Security, 144 So.2d 244 (La.App. 1 Cir. 1962)
Simmons v. Sowela Technical Institute, 458 So.2d 565 (La.App. 3 Cir. 1984)
Simpson v. Department of Social Services, CSC Docket No. 13196; 6/15/01 [CSC decision]

Skelly v. Board of Commissioners, Port of New Orleans, CSC Docket Nos. 12902 and 12907; 1/21/99 [CSC decision]
Slowinski v. England Economic and Industrial Development District, 2002-0189 (La. 10/15/02); 828 So.2d 520
Smith v. Board of Commissioners, 262 La. 96, 262 So.2d 383 (1972), appeal after remand 274 So.2d 394 (La.App. 1 Cir. 1973)
Smith v. Department of Health and Human Resources, 408 So.2d 411 (La.App. 1 Cir. 1981)
Smith v. Department of Health and Human Resources, 416 So.2d 94 (La. 1982)
Smith v. Department of Health and Human Resources, 432 So.2d 997 (La.App. 1 Cir. 1983)
Smith v. Department of Health and Human Resources, 461 So.2d 1243 (La.App. 1 Cir. 1984)
Smith v. Department of Public Safety and Corrections, 500 So.2d 779 (La.App. 1 Cir. 1986)
Smith v. Division of Administration, 358 So.2d 1291 (La.App. 1 Cir. 1978)
Smith v. Division of Administration, 362 So.2d 1101 (La. 1978)
Smith v. LSU Medical Center, 365 So.2d 599 (La.App. 1 Cir. 1978)
Smith v. Lorch, 98-0319 (La.App. 1 Cir. 4/1/99), 730 So.2d 530
Spears v. Department of Corrections, 402 So.2d 203 (La.App. 1 Cir. 1981)
Speegle v. State Department of Institutions, 198 So.2d 154 (La.App. 1 Cir. 1967)
Spell v. Department of Natural Resources, 504 So.2d 1009 (La.App. 1 Cir. 1987)
Spencer v. Department of Health and Human Resources, 392 So.2d 149 (La.App. 1 Cir. 1980)
Spruill v. Louisiana Wildlife and Fisheries Commission, 183 So.2d 141 (La.App. 1 Cir. 1966)
St. Romain v. State, Department of Wildlife and Fisheries, 2003-0291 (La.App. 1 Cir. 12/11/03); 863 So.2d 577
Stafford v. Division of Administration, 407 So.2d 87 (La.App. 1 Cir. 1981)
State Civil Service Commission v. Department of Public Safety Director, 2003-1702 (La. 4/14/04); 873 So.2d 636
State Licensing Board for Contractors v. State Civil Service Commission, 240 La. 331, 123 So.2d 76 (La. 1960)
State Licensing Board of Contractors v. State Civil Service Commission, 110 So.2d 847 (La.App. 1 Cir. 1959), affirmed 240 La. 331, 123 So.2d 76 (1960)
State Parks and Recreation Commission v Walker, 315 So.2d 905 (La.App. 1 Cir. 1975), appeal after remand *Walker v. State Parks and Recreation Commission*, 341 So.2d 1203 (La.App. 1 Cir. 1976)
State v. Amato, 1996-0606 (La.App. 1 Cir. 6/30/97); 698 So.2d 972
State v. Delcambre, 1997-1447 (La.App. 3 Cir. 4/29/98); 710 So.2d 846
State v. Foster, 2002-1259 (La.App. 1 Cir. 2/14/03); 845 So.2d 393
State v. Kimberlin, 246 La. 441, 165 So.2d 279 (1964)
State v. Stafford, 394 So.2d 1287 (La.App. 1 Cir. 1981)
State v. Ward, 314 So.2d 383 (La.App. 3 Cir. 1975)
Steckler v. United Van Lines, 503 So.2d 133 (La.App. 5 Cir. 1987)

Sterling v. Board of Commissioners, Port of New Orleans, 527 So.2d 1122 (La.App. 1 Cir. 1988)
Sterling v. Department of Public Safety & Corrections, Louisiana State Penitentiary, 97-1960 and 97-1961 (La.App. 1 Cir. 9/25/98); 723 So.2d 448
Stern v. New Orleans City Planning Commission, 2003-0817 (La.App. 4 Cir. 9/17/03); 859 So.2d 696
Sterne v. Department of State Civil Service, 1998-0525 (La.App. 1 Cir. 4/1/99); 731 So.2d 505
Stewart v. Office of Student Financial Assistance, 1998-2057 (La.App. 1 Cir. 11/5/99); 757 So.2d 17
Stiles v. Department of Public Safety, 361 So.2d 267 (La.App. 1 Cir. 1978)
Stobart v. State, Department of Transportation and Development, 617 So.2d 880 (La. 1993)
Strickland v. State through Office of the Governor, 525 So.2d 740 (La.App. 1 Cir. 1988), **writ granted** 526 So.2d 1122 (La. 1988); **dismissed as moot** 534 So.2d 956 (La. 1988)
Succession of Thompson, 367 So.2d 796 (La. 1979)
Suire v. Louisiana State Board of Cosmetology, 224 So.2d 7 (La.App. 1 Cir. 1969)
Sutherland v. Board of Commissioners, 459 So.2d 1282 (La.App. 1 Cir. 1984)
Sutton v. Department of Public Safety, Division of State Police, 340 So.2d 1092 (La.App. 1 Cir. 1976)
Tally v. St. Tammany Fire Protection District No. 1, 1997-0569 (La.App. 1 Cir. 5/15/98); 713 So.2d 709
Tanner v. City of Baton Rouge, 422 So.2d 1263 (La.App. 1 Cir. 1982)
Tassin v. Louisiana Wildlife and Fisheries Commission, 193 So.2d 812 (La.App. 1 Cir. 1966)
Taylor v. Department of Health and Human Resources, 491 So.2d 752 (La.App. 1 Cir. 1986)
Taylor v. Department of State Civil Service and Department of Health and Hospitals, CSC Docket No. 11931; 2/1/9/98 [CSC decision]
Teeter v. Louisiana Department of Culture, Recreation and Tourism-Office of State Museum, 2007-0578 (La.App. 1 Cir. 2/20/08); NDFP
Theard v. Louisiana Health and Human Resources Administration, 354 So.2d 663 (La.App. 1 Cir. 1977) reversed 356 So.2d 433 (La. 1978)
Theodore v. Department of Health and Human Resources, 515 So.2d 454 (La.App. 1 Cir. 1987)
Thomas v. Department of Corrections, 430 So.2d 1153 (La.App. 1 Cir. 1983)
Thomas v. Department of Corrections, Office of Probation and Parole, 442 So.2d 554 (La.App. 1 Cir. 1983)
Thomas v. Department of Welfare, 454 So.2d 839 (La.App. 4 Cir. 1984)
Thoreson v. Department of State Civil Service, 433 So.2d 184 (La.App. 1 Cir. 1983)
Thorne v. Sewerage and Water Board, 393 So.2d 870 (La.App. 4 Cir. 1981)
Thornton v. DHHR, 394 So.2d 1269 (La.App. 1 Cir. 1981)
Tillery v. LHCA-Lallie Kemp Medical Center, CSC Docket No. S-11872; 1/1/97 [CSC decision on application for review]

Toms v. Louisiana Health and Human Resources Administration, 349 So.2d 941 (La.App. 1 Cir. 1977)
Toney v. Department of Corrections, 448 So.2d 194 (La.App. 1 Cir. 1984)
Toney v. Department of Public Safety and Corrections, 496 So.2d 460 (La.App. 1 Cir. 1986)
Toth v. Ensco Environmental Services, Inc., 551 So.2d 623 (La. 1989)
Toups v. Department of Health and Human Resources, 421 So.2d 936 (La.App. 1 Cir. 1982)
Triplett v. State Civil Service Commission, 521 So.2d 716 (La.App. 1 Cir. 1988)
Truax v. Department of Public Safety and Corrections, Dixon Correctional Center, 93-1574 (La.App. 1 Cir. 6/27/94); 640 So.2d 1389
Turner v. Department of Transportation and Development, 2001-2426 (La.App. 1 Cir. 6/21/02); 822 So.2d 786
Turner v. Department of Transportation and Development, CSC Docket No. S-12682; 9/16/98 [CSC decision on application for review]
Turner v. Housing Authority of Bunkie, 2004-2062, 2004-2063, 2004-2064, and 2004-2065 (La.App. 1 Cir. 9/23/05); 923 So.2d 702
United Sanitation Men's Association v. Commissioner of Sanitation, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968)
University of New Orleans v. Pepitune, 460 So.2d 1191 (La.App. 1 Cir. 1984)
Usun v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans, 2002-0295 (La.App. 1 Cir. 2/14/03); 845 So.2d 491
Valentine v. Office of Economic Development, Office of Financial Institutions, CSC Docket No. S-9633; 1/1/93 [CSC decision on application for review]
Valyan v. Department of Health and Hospitals, CSC Docket Nos. 11303 and 11361; 10/9/96 [CSC decision]
Varnado v. Department of Employment and Training, 95-0787 (La.App. 1 Cir. 6/28/96); 687 So.2d 1013
Varnado v. Department of Employment & Training, Office of Worker's Compensation, CSC Docket Nos. S-10332 and S-10333; 10/14/99 [Referee decision]
Varnado v. LSU, Health Sciences Center, Health Care Services Division, W. O. Moss Regional Medical Center, CSC Docket No. 14588; 12/17/02 [Referee decision; application for review denied 2/12/03]
Vidrine v. State Parks and Recreation Commission, 169 So.2d 641 (La.App. 1 Cir. 1964)
Villanueva v. Commission on Ethics for Public Employees, 96-1912 (La. 5/20/97); 693 So.2d 154, appeal after remand, 98-0980 (La.App. 1 Cir. 5/18/99); 812 So.2d 1
Villemarette v. Department of Public Safety, 129 So.2d 835 (La.App. 1 Cir. 1961)
Vinzant v. L.L. Brewton Pulpwood Co., 239 La. 95, 118 So.2d 117 (1960)
Waldroup v. Louisiana State University, 255 So.2d 413 (La.App. 1 Cir. 1971)
Walker v. Department of Corrections, 428 So.2d 1105 (La.App. 1 Cir. 1983)
Walker v. State Parks and Recreation Commission, 341 So.2d 1203 (La.App. 1 Cir. 1976)
Wall v. Community Improvement Agency, 343 So.2d 229 (La.App. 1 Cir. 1977)
Wall v. Community Improvement Agency, 365 So.2d 571 (La.App. 1 Cir. 1978)
Walters v. Department of Police of City of New Orleans, 454 So.2d 106 (La. 1984)

Walther v. Department of State Civil Service, 98-2485 (La.App. 1 Cir. 12/28/99); 747 So.2d 790
Ward v. Department of Public Safety and Corrections, 97-1110 (La.App. 1 Cir. 9/18/98); 718 So.2d 1042
Washington v. Confederate Memorial Medical Center, 147 So.2d 923 (La.App. 1 Cir. 1962)
Washington v. Confederate Memorial Medical Center, 160 So.2d 286 (La.App. 1 Cir. 1964)
Weckel v. LHHRA, Charity Hospital of Louisiana at New Orleans, 353 So.2d 337 (La.App. 1 Cir. 1977)
Wells v. Department of Corrections, 417 So.2d 377 (La.App. 1 Cir. 1982)
Wells v. Department of Corrections, *Louisiana State Penitentiary,* 439 So.2d 470 (La.App. 1 Cir. 1983)
Wells v. Department of Public Safety and Corrections, 498 So.2d 266 (La.App. 1 Cir. 1986)
Werner v. Department of Police, 487 So.2d 598 (La.App. 4 Cir. 1986)
Wertz v. Department of Public Safety and Corrections, CSC Docket No. 11232; 2/19/98 [CSC decision]
Wertz v. DPSC, Alcoholic Beverage Control, CSC Docket No. 10226; 11/30/94 [CSC decision on application for review]
Wesley v. Department of Public Safety and Corrections, Louisiana Correctional Institute for Women, CSC Docket No. 12437; 12/17/97 [CSC decision]
Westmoreland v. Department of Health and Hospitals, CSC Docket No. 12952; 10/14/99 [CSC decision]
Westrope v. Department of Health and Human Resources, 489 So.2d 1024 (La.App. 1 Cir. 1986)
Wheeler v. Department of Public Safety and Corrections, 500 So.2d 786 (La.App. 1 Cir. 1986)
Wheeler v. Department of Public Safety and Corrections, Washington Correctional Institute, 544 So.2d 66 (La.App. 1 Cir. 1989)
White v. Department of Health and Human Resources, 385 So.2d 400 (La.App. 1 Cir. 1980)
Whitehead v. Department of Wildlife and Fisheries, CSC Docket No. 15607; 9/2/05 [CSC decision]
Wilkinson v. Louisiana State University, 316 So.2d 482 (La.App. 1 Cir. 1975)
Williams v. Department of Corrections, 316 So.2d 411 (La.App. 1 Cir. 1978)
Williams v. Department of Health and Human Resources, 422 So.2d 1258 (La.App. 1 Cir. 1982)
Williams v. Department of Health and Hospitals/OCDD/Pinecrest Development Center, CSC Docket No. 13005; 5/19/00 [CSC decision on application for review]
Williams v. Department of Public Safety, 415 So.2d 543 (La.App. 1 Cir. 1982)
Williams v. Department of State Civil Service, 96-0497 (La.App. 1 Cir. 12/20/96); 686 So.2d 159
Williams v. Housing Authority of New Orleans, 425 So.2d 1310 (La.App. 1 Cir. 1983)
Williams v. Orleans Levee District, Board of Commissioners, 2000-0297 (La.App. 1 Cir. 3/28/01); 784 So.2d 657

Williams v. State, Department of Economic Development, 94-1919 (La.App. 1 Cir. 5/5/95); 655 So.2d 498
Willis v. Department of Health and Human Resources, 434 So.2d 1164 (La.App. 1 Cir. 1983)
Willis-Knighten Medical Center v. Caddo Shreveport Sales and Use Tax Commission, 2004-0473 (La. 4/1/05); 903 So.2d 1071
Wilson v. City of New Orleans, 479 So.2d 891 (La. 1985)
Wilson v. Department of Health and Hospitals, CSC Docket No. S-15118; 3/17/04 [CSC decision]
Wilson v. New Orleans Police Department, 145 So.2d 650 (La.App. 4 Cir. 1962)
Wlochowicz v. Forbes, 248 So.2d 69 (La.App. 1 Cir. 1971)
Wollerson v. Department of Agriculture, 436 So.2d 1241 (La.App. 1 Cir. 1983)
Woodruff v. Department of Fire, 364 So.2d 1341 (La.App. 4 Cir. 1978)
Wopara v. State Employees' Group Benefits Program, 2002-2641 (La.App. 1 Cir. 7/2/03); 859 So.2d 67
Wyatt v. Avoyelles Parish School Board, 2001-3180, 2001-0131, and 2001-0259 (La. 12/4/02); 831 So.2d 906
Young v. Charity Hospital of Louisiana at New Orleans, 226 La. 708, 77 So.2d 13 (1954)
Young v. Department of Health and Human Resources, 405 So.2d 749 (La.App. 1 Cir. 1981)
Young v. Department of Revenue, CSC Docket No. S-13808; 3/29/01 [CSC decision on application for review]