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## GENERAL CIRCULAR NUMBER 2023-001

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**DATE:** January 17, 2023

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

**SUBJECT:** Proposed Changes to Civil Service Rule Chapter 26

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The State Civil Service Commission will consider proposed changes to Chapter 26 of the State Civil Service Rules at its regularly scheduled business meeting on Wednesday, March 1, 2023. The meeting will be held in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge Louisiana, at 9 a.m. Individuals who wish to comment should provide feedback prior to the meeting in writing to the Director of the Department of State Civil Service at Post Office Box 94111, Baton Rouge, Louisiana, 70804-9111. Comments may also be directed to the attention of the [civilservicecommission@la.gov](mailto:civilservicecommission@la.gov).

Please see the attachment for details of the amendments to Chapter 26.

Sincerely,

s/Byron P. Decoteau  
Director



## STATECIVILSERVICE

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### Proposed Amendments to State Civil Service Rules

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#### Chapter 26: Special Hearings

The State Civil Service Commission will consider the following amendments to Chapter 26 of the State Civil Service Rules at its regularly scheduled business meeting on March 1, 2023. Please refer to [General Circular No. 2023-001](#) for more information.

**Proposed Effective Date:** March 1, 2023

**Reason for Amendments:**

Chapter 26 of the Civil Service Rules currently provides that the State Civil Service Commission receives and addresses any written charges filed against the State Examiner and Deputy State Examiner of the Municipal Fire and Police Civil Service. Proposed amendments to Chapter 26 remove references to the Deputy State Examiner consistent with legislative changes which give the State Examiner the right of appointment, supervision and discharge over that position. (Act 398, 2022; [ViewDocument.aspx \(la.gov\)](#))

Two amendments are proposed to Rule 26.19. The first removes possible imposition of attorney fees against the Director when acting at the behest of the Commission and the second removes the reference to “per Respondent” since, with these changes, there is only one potential Respondent. Other proposed amendments to Chapter 26 continue the Department’s move toward making gender references neutral, make capitalization consistent, require that written notices be sent to a party’s counsel, if applicable, and otherwise are intended to enhance clarity and readability.

1 **Chapter 26: Special Hearings**

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3 **26.1 Applicability**

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

8  
9 **26.2 Written Charges**

10  
11 (a) Any municipal fire and police civil service board or any qualified elector of this state hereafter,  
12 Complainant, may file written charges with the Commission, through the Appeals Division,  
13 asserting cause for removal or discipline of the State Examiner ~~or the Deputy State Examiner~~,  
14 hereafter, Respondent.

15  
16 (b) Written charges shall:

- 17  
18 1. Contain the name, title, mailing address, and daytime telephone number of the  
19 Complainant and of its/~~his~~ their attorney, if any;  
20 2. Contain the name and mailing address of the Respondent;  
21 3. Describe in detail the conduct asserted as cause including, where pertinent, dates, times,  
22 places, and names of persons directly involved in or affected by such conduct (unless their  
23 identities are protected by law, in which case, identification may be made as permitted  
24 by law);  
25 4. Describe the evidence to prove the charges; and  
26 5. Be signed by the Complainant or its/~~his~~ their attorney, certifying that based on  
27 information, belief, and reasonable inquiry, the facts asserted in the written charges are  
28 true.

29  
30 (c) Written charges shall not be a public record.

31  
32 **26.3 Commission Action on Written Charges**

33  
34 (a) Written charges shall be considered by the Commission in executive session to determine if  
35 the charges, if proved, would constitute cause for removal or discipline. If the Commission  
36 concludes there is no reason to proceed, it may dismiss the charges and so notify the  
37 Complainant or it may offer the Complainant an opportunity to amend the charges.

38  
39 (b) If the Commission concludes there is reason to proceed on some or all charges, it shall so  
40 notify the Complainant and offer ~~it/him~~ an opportunity to prove the charges at a public  
41 hearing. Complainant shall respond in writing within thirty calendar days; failure to do so shall  
42 be construed as electing to proceed. If the Complainant elects to proceed, the Commission

43 shall order a public hearing on the charges to be heard and the case shall be docketed and  
44 heard in accordance with this Chapter.

- 45  
46 (c) If the Complainant declines to proceed, it shall so notify the Commission in writing. If the  
47 Commission determines that the public interest so requires, the Commission shall order the  
48 Director to represent the public interest and to investigate the charges privately.

49  
50 **26.4 Investigation; Cooperation with Investigation; Charges; Commission Action**

- 51  
52 (a) If the Commission orders the Director to investigate, the Complainant and ~~its~~ Complainant's  
53 staff, if any, and the Respondent and ~~his~~ Respondent's staff shall fully cooperate in the  
54 investigation. Failure to do so shall be a violation of these Rules, punishable accordingly.  
55  
56 (b) After the investigation, the Director shall either file written charges under Rule 26.2 as a  
57 qualified elector or a written request to dismiss the charges. The charges filed by the Director  
58 may include conduct disclosed during the investigation that was not described in the written  
59 charges filed by a municipal fire and police civil service board or qualified elector. The written  
60 charges or request to dismiss shall be considered by the Commission in executive session.  
61  
62 (c) The Commission may dismiss the charges or order a public hearing on some or all charges.  
63 The charges to be heard shall be listed in or attached to the order.

64  
65 **26.5 Docketing; Administrative Functions; Public Record; Parties; Filings**

- 66  
67 (a) If the Commission orders a public hearing, the case shall be docketed by the Appeals Division,  
68 which shall be responsible for all administrative functions in the case.  
69  
70 (b) The parties are the Complainant(s) and the Respondent(s).  
71  
72 (c) The case record shall include the Commission's offer to the Complainant to proceed, the  
73 Complainant's response, and the Commission's order(s), copies of which shall be mailed to  
74 the Complainant, ~~and the Respondent~~ and the parties' counsel, if any. After docketing, the  
75 case shall become a public record.  
76  
77 (d) After docketing, no paper shall be filed unless it contains a certification that a copy has been  
78 mailed to counsel and unrepresented parties.

79  
80 **26.6 Answer; Discrimination**

- 81  
82 (a) Within ~~30~~ thirty calendar days following the issue date on the notice of docketing, the  
83 Respondent shall file an answer which addresses each charge and explains ~~his~~ Respondent's  
84 version of the incident. A general denial is not sufficient. Any charge not addressed is deemed  
85 admitted as written.

86  
87 (b) If the Respondent alleges discrimination in ~~his response~~ the answer, ~~he~~ such must be plead it  
88 in sufficient detail to allow the Complainant to prepare a defense. A conclusion of  
89 discrimination is not sufficient. The Respondent must describe events, including the dates  
90 and circumstances thereof, which lead Respondent to believe that ~~he is being discriminated~~  
91 ~~against~~ the alleged discrimination is because of ~~his~~ Respondent's religious or political beliefs,  
92 sex, or race.

93  
94 **26.7 Notice to Parties**

95  
96 Whenever this Chapter requires notice to the parties, notice shall be given to all counsel of record  
97 and to any unrepresented party. Notice to counsel of record shall constitute notice to the  
98 represented party. ~~he represents.~~

99  
100 **26.8 Place of Hearing; Notice of Hearing**

101  
102 (a) All public hearings before the Commission shall be heard in a convenient place in the state,  
103 accessible to the public.

104  
105 (b) Written notice of the time and place for the public hearing shall be mailed to the parties at  
106 least 30 calendar days before the date of the hearing. With the consent of the parties, this  
107 notice and delay may be waived.

108  
109 **26.9 Continuance of Hearing**

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

112  
113 **26.10 Interrogatories; Discovery**

114  
115 Interrogatories and pre-trial discovery proceedings shall not be recognized by the Commission.

116  
117 **26.11 Summary Disposition**

118  
119 (a) The Commission, on its own motion or on motion of a party, may summarily dispose of the  
120 case, a charge, or an issue on any one of the following grounds or under Rule 26.16:

- 121  
122 1. The charges to be heard, if proved, would not constitute cause for removal or discipline.  
123 2. The charges to be heard have not been described in sufficient detail.  
124 3. The facts asserted to support a conclusion of discrimination, if proved, do not support  
125 that conclusion.  
126 4. The facts asserted to support a discrimination claim have not been described in sufficient  
127 detail.  
128 5. The case has become moot.

- 129 6. Upon resting his case, the complainant has not carried its/his burden of proof.  
130  
131 (b) When the Commission summarily disposes of the case or an issue, it shall file a written  
132 decision. Notice of the decision shall be given to the parties.  
133

134 **26.12 Withdrawal of Charges; Consent Discipline**

- 135  
136 (a) With approval of the Commission, the charges to be heard may be withdrawn upon the  
137 Complainant's written request.  
138  
139 (b) The parties may file a Joint Motion for Consent Discipline, which shall include stipulations of  
140 fact and the discipline consented to. If approved by the Commission, this shall constitute a  
141 final disposition of the case.  
142

143 **26.13 Preliminary Rulings**

- 144  
145 (a) When a preliminary ruling is necessary, it shall be made by the Chief Referee.  
146  
147 (b) The application for review process shall not apply to preliminary rulings. A party who objects  
148 to the ruling may file a written motion for reconsideration, which shall be heard and decided  
149 by a majority vote of the Commission at the hearing.  
150

151 **26.14 Subpoena of Witnesses; Production of Documents**

- 152  
153 (a) The Commission, each member thereof, and a Referee shall have subpoena power over  
154 persons, documents, records, or other items within the State.  
155  
156 (b) No subpoena shall be issued unless a written request therefor:  
157  
158 1. Is received in the Appeals Division no later than fifteen (~~15~~) calendar days before the date  
159 fixed for the hearing;  
160 2. Contains the names of the witnesses, the mailing and street addresses at which the  
161 witnesses can be served;  
162 3. Contains, a description of the documents, records, or other items to be produced in  
163 sufficient detail for identification, and the name, mailing, and street addresses of the  
164 person who is to be required to produce the documents, records, or other items; and  
165 4. Contains a statement of the facts to be proved by each witness, document, record, or  
166 item.  
167  
168 (c) No subpoena shall be issued unless the request therefor complies with this Rule and a person  
169 authorized to issue the subpoena is satisfied that the testimony of the witness or the  
170 document, record, or other item is relevant to the issues before the Commission.  
171

- 172 (d) Instead of issuing and serving formal subpoenas to persons who work for the State, a person  
173 authorized to issue the subpoena may request any appointing authority to order any  
174 employee, temporary worker, or contractor under his supervision to appear and testify at  
175 any hearing, and upon being so ordered the ~~employee~~ individual subpoenaed shall appear at  
176 the hearing and furnish testimony.  
177
- 178 (e) Authentic copies of documents, records, or other items in the custody of any department,  
179 board, or agency of the State or any sub-division thereof which have been subpoenaed may  
180 be admitted in evidence with the same effect as the originals. ~~—but—~~ If the originals are  
181 subpoenaed, they must be produced and made available for inspection even though  
182 authentic copies may be subsequently introduced.  
183
- 184 (f) Any person authorized to issue a subpoena may, before doing so, require the party requesting  
185 a subpoena of one other than an officer or employee of the State to deposit with the Appeals  
186 Division a sum sufficient to cover the mileage and witness fees authorized by Rule 26.19,  
187 pending a determination of costs by the Commission.  
188
- 189 (g) A person authorized to issue a subpoena for cause deemed sufficient may issue an  
190 appropriate order at any time recalling any subpoena or request issued under the provisions  
191 of this Rule.  
192
- 193 (h) The abuse of the privilege to require the attendance of witnesses or the production of  
194 documents, records, or other items shall be deemed a violation of these Rules, punishable  
195 accordingly.  
196

## 197 **26.15 Procedure for Hearing**

- 198
- 199 (a) All hearings shall be open to the public.  
200
- 201 (b) Legal representation  
202
- 203 1. Except as is provided below, a party may be represented by an attorney licensed to  
204 practice law in Louisiana or by a law student who has satisfied the requirements of Rule  
205 20 of the Rules of the Supreme Court of Louisiana.
  - 206 2. No attorney or law student who is a classified state employee may represent another  
207 state employee in a public hearing.
  - 208 3. When a party is represented by more than one attorney/law student, only one such  
209 representative shall be permitted to examine the same witness.  
210
- 211 (c) The burden of proof, as to the facts supporting cause for removal or discipline, shall be on  
212 the Complainant. The burden of proof, as to the facts supporting a discrimination claim, shall  
213 be on the Respondent.  
214

- 215 (d) Where appropriate and not inconsistent with these Rules, the rules of evidence applicable to  
216 civil trials in the district courts of the State shall be observed in all hearings before the  
217 Commission.  
218
- 219 (e) Evidence shall not be received from the Complainant to supplement or enlarge the charges  
220 and evidence shall not be received from the Respondent to supplement or enlarge the facts  
221 alleged in support of a claim of discrimination.
- 222 (f) Affidavits and other exparte statements shall not be received in evidence without the consent  
223 of all parties, except to refresh memory or to discredit a witness.  
224
- 225 (g) Parties and witnesses shall be subject to cross-examination as in civil trials before the courts  
226 of the State and the Commission and each member of the Commission may examine and  
227 cross-examine any witness.  
228
- 229 (h) The Commission may require the parties to stipulate all undisputed facts.  
230
- 231 (i) The Commission may limit corroborative evidence.  
232
- 233 (j) Where appropriate and not inconsistent with these Rules, hearings and the taking of  
234 testimony shall be conducted according to the accepted practice in civil trials before the  
235 district courts of the State.  
236
- 237 (k) The Commission, on request of any party, or on its own motion, may sequester the witnesses.  
238 In applying this Rule, if the Complainant is a board, only one person, in addition to counsel,  
239 shall represent the Complainant.  
240
- 241 (l) The Commission, may fix the total time to be allowed for oral argument, according to the  
242 circumstances of each case, and may limit oral argument to one or more issues. Except with  
243 special leave of the Commission, only one attorney shall be permitted to present oral  
244 argument for any party.  
245
- 246 (m) The Commission may take notice of the provisions of the Article, the Rules, the Classification  
247 Plan, and the Pay Plan without the necessity of an offer in evidence.  
248
- 249 (n) When during a hearing, a ruling by the Commission is to be made, the presiding Commissioner  
250 shall rule and ~~his~~ such ruling shall constitute that of the Commission; provided, that should a  
251 member of the Commission object to such ruling or offer an alternative ruling, the ruling of  
252 the Commission shall be determined by majority vote of those members present.  
253

254 **26.16 Failure of Parties to Appear at Hearing**  
255



- 256 (a) If the Complainant, without having been granted a continuance, is neither present nor  
257 represented at the place and time fixed for a public hearing, the Commission may order the  
258 charges dismissed.  
259
- 260 (b) If the Respondent, without having been granted a continuance, is not present at the place  
261 and time fixed for a public hearing, he may be deemed to have waived ~~his~~ their appearance  
262 and testimony may be taken in its/~~his~~ their absence with the same effect as if it/~~he~~ they were  
263 present.  
264
- 265 (c) This Rule shall not prevent the Commission from continuing the case if it learns that reason  
266 for the absence(s) was beyond the ~~parties'~~ party's or their attorney's control.  
267

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

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270 ~~(a) Any person who willfully refuses or fails to appear before the Commission in response to~~  
271 ~~a subpoena or a request under Rule 26.14(d), or having appeared refuses to testify or~~  
272 ~~answer any question pertinent to the matters under consideration or who knowingly~~  
273 ~~gives false testimony or who knowingly solicits, condones, or accepts, without refutation,~~  
274 ~~false, or misleading testimony given by any witness in his/her behalf at a hearing, or who~~  
275 ~~fails to produce any documents, records, or other items ordered may be found by the~~  
276 ~~Commission to be guilty of contempt in accordance with Rules 2.11 through 2.13.~~  
277

278 (a) A person who engages in the following conduct may be found by the Commission to be guilty  
279 of contempt in accordance with Rules 2.11 through 2.13:  
280

- 281 1. Willfully refuses or fails to appear before the Commission in response to a subpoena or  
282 an order under Rule 26.14(d);
- 283 2. Having appeared for a hearing, refuses to testify or answer any question pertinent to the  
284 matters under consideration;
- 285 3. Knowingly gives false testimony;
- 286 4. Knowingly solicits, condones, or accepts, without refutation, false or misleading  
287 testimony given on the party's behalf by any witness at a hearing; or
- 288 5. Fails to produce any subpoenaed documents, records or other items.  
289

290 (b) Any officer or employee in the state classified service who is found by the Commission to  
291 have engaged in such the conduct described in Paragraph (a) may also be found by the  
292 Commission to have forfeited ~~his~~ their office or position and may be found by the  
293 Commission ~~not~~ to not be eligible thereafter for appointment to any position in the state  
294 classified service for a period not to exceed ten years or be subject to a suspension from his  
295 position.  
296

297 (c) Any officer or employee required to testify shall not be subjected to any disciplinary action  
298 by his appointing authority because he so testifies.

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**26.18 Decision; Rehearing; Appeal**

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

**26.19 Attorney Fees**

When the Complainant, other than the Director when acting at the behest of the Commission, ~~or Director~~ does not bear ~~its/his~~ their burden of proving the charge(s) and the Commission finds there is no reasonable basis for the charges, the Commission may order the Complainant ~~it/him~~ to pay reasonable attorney's fees in an amount not to exceed \$1,500, ~~per Respondent~~.

**26.20 Witness Fees**

- (a) The travel expenses of an officer or employee of the State who is required to appear before the Commission in a hearing shall be paid by the department which employs him.
- (b) The Commission may order that any person who is not an officer or employee of the State and who is subpoenaed to testify at a hearing shall be entitled to the same mileage and fees as are allowed witnesses in civil cases by the Nineteenth Judicial District Court for the Parish of East Baton Rouge.
- (c) Witness fees and travel expenses may be taxed to either party, in the Commission's discretion.

**26.21 Transcripts of Proceedings; Record**

- (a) The proceedings of all public hearings before the Commission shall be recorded, but shall be transcribed only upon order of the Commission and upon payment of estimated costs by the person requesting the transcript.

341 (b) If not contained in the Commission's written decision, any portion of the Commission's Rules,  
342 Classification Plan, or Pay Plan material to the decision shall be copied into the record on  
343 appeal.  
344

345 **26.22 Recusation of Commissioner**  
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347 (a) If a Commissioner files written charges against the State Examiner ~~or Deputy State Examiner~~,  
348 that Commissioner shall recuse ~~himself~~ themselves from participating in any process that  
349 may come before the Commission because of those charges.  
350

351 (b) All other grounds for recusation of a Commission shall be the same as the grounds for the  
352 recusation of judges of the courts of the State of Louisiana, provided, a quorum of the  
353 Commission cannot be recused.