

# State Police Commission

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October 21, 1994

General Circular No. 38

To: State Police Commission Members, Colonel Paul Fontenot, Russell Culotta, Foye Lowe, Walt Smith, William Spencer, Baxter Welch and LSTA Affiliate Presidents

Subject: Chapter 16, State Police Commission Rules

The State Police Commission will hold a public hearing on Monday, November 21, 1994 to consider revising Chapter 16 of the State Police Commission Rules. The hearing will begin at 9:00 a.m. in the Conference Room, Eleventh Floor, Wooddale Towers Building, 1885 Wooddale Boulevard, Baton Rouge, Louisiana.

Please review these revisions and furnish, as soon as possible, any comments which you consider pertinent. If you would like to appear before the Commission and present your comments orally, you are invited to do so. Please notify Gilda Russ by Friday, November 11, 1994 of your intention to address the Commission in order to be placed on the agenda.

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

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

Sincerely,

A handwritten signature in blue ink that reads "Debra L. Johnson". The signature is written in a cursive, flowing style.

Debra L. Johnson  
Director

Attachment

## CHAPTER 16

### INVESTIGATIONS

#### 16.1 Purpose of Chapter; Penalties; Orders.

- (a) To enable the Commission to enforce the provisions of the State Police Commission Article and the State Police Commission Rules, the Commission may investigate conduct asserted to be in violation thereof.
- (b) When, after a public investigative hearing, a state classified employee is found to have violated the State Police Commission Article or a State Police Commission Rule, the Commission may order him/her suspended, demoted, discharged or otherwise disciplined or fined for contempt in accordance with Rules 2.11 - 2.13.
- (c) When, after a public investigative hearing, the conduct of any person is found to have violated the State Police Commission Article or a State Police Commission Rule, the Commission may issue such orders as it deems appropriate.

#### 16.2 Requests for Investigation.

- (a) Any person who suspects that there has been a violation of the State Police Commission Article or a State Police Commission Rule may file a request for investigation with the Director.
- (b) A request for investigation must be in writing and may not be combined with any other matter filed with the Director. It should: be clearly identified as a request for investigation; provide the name, mailing address and daytime telephone number of the person filing the request; and describe the conduct to be investigated in as much detail as is available to the person filing the request.
- (c) A request for investigation shall not be a public record.

#### 16.3 Investigations by the Director.

- (a) The Director may, on his/her own initiative, investigate any suspected violation of the State Police Commission Article or a State Police Commission Rule and shall conduct such investigations as ordered by the Commission.
- (b) Upon receipt of a request for investigation, the Director or his/her designee shall conduct such investigation as he/she deems warranted based on the information contained in the request for investigation. Thereafter, the Director shall either file formal charges under Rule 16.4

or notify the person who filed the request for investigation that he/she has decided no to file formal charges. A copy of Rule 16.4 shall be attached to such notice.

#### 16.4 Formal Charges.

- (a) Any person who asserts that there has been a violation of the State Police Commission Article or a State Police Commission Rule may file formal charges with the Commission.
- (b) Formal charges should be clearly identified as such, may not be combined with any other matter filed with the Director or the Commission and must:
  - 1. be in writing;
  - 2. contain the name, mailing address, and daytime telephone number of the person filing the charges (hereafter, the complainant) and of his attorney, if any;
  - 3. contain the name and mailing address of each person who is charged with committing a violation (hereafter, a respondent);
  - 4. identify which provision of the State Police Commission Article and/or which State Police Commission Rule was violated;
  - 5. describe, in sufficient detail to enable the respondent to prepare a defense, the conduct that violated the State Police Commission Article and/or a State Police Commission Rule;
  - 6. describe, in detail, the facts which led the complainant to conclude that a violation occurred; and
  - 7. state what action the complainant wants the Commission to take as a result of the investigation.
- (c) When formal charges are filed by someone other than the Director, the Director shall be given an opportunity to join as a complainant.
- (d) Formal charges shall not be a public record.

#### 16.5 Commission Action on Formal Charges.

- (a) Each filing which purports to be formal charges shall be considered by the Commission in executive session.

Thereafter, in its sole discretion, the Commission may take such action as it deems appropriate, including any of the following:

1. decline to investigate the matter and order the charges dismissed;
2. order the Director to conduct an investigation and to submit a report thereon;
3. offer the complainant an opportunity to provide additional information; and/or
4. order a public investigative hearing on some or all of the charges.

(b) Written notice of the Commission's action shall be given to the complainant.

#### 16.6 Docketing of Public Investigations.

After the Commission orders a public investigative hearing, the charges to be investigated shall be docketed and the case shall become a public record. Copies of the charges to be investigated and the Commission's order shall be mailed to each complainant, each respondent and each respondent's appointing authority, if any.

#### 16.7 Parties; Notice to Parties.

- (a) The parties to a public investigation are the complainant(s) and the respondent(s). Upon his/her written request, a respondent's appointing authority may be made a party.
- (b) Whenever this Chapter requires notice to the parties, notice shall be given to all counsel of record and to all unrepresented parties. Notice to counsel of record shall constitute notice to the party he/she represents.

#### 16.8 Consolidation of Public Investigations.

Two or more public investigation involving common issues of law or fact or two or more public investigations involving the same parties may be consolidated for hearing.

#### 16.9 Notice of Hearings.

Written notice of the time and place for a public investigative hearing shall be mailed to the parties at least 30 calendar days before the date of the hearing. With the consent of the parties, this notice and delay may be waived.

#### 16.10 Continuance of Hearings.

A public investigative hearing may be continued by the Commission on its own motion or by the Commission, its Chairman or the Director:

- (a) for good cause shown; or
- (b) by consent of all parties; or
- (c) if it is not reached for hearing.

#### 16.11 Summary Disposition.

(a) The Commission, on its own motion or on motion of a party, may summarily dispose of a public investigation under Rule 16.14(b) or Rule 16.15(a) or on any of the following grounds:

1. that the conduct to be investigated, even if proved, would not constitute a violation of the State Police Commission Article or a State Police Commission Rule;
2. that the conduct to be investigated has not been described in sufficient detail to enable the respondent to prepare a defense;
3. that the facts asserted to support the conclusion that a violation occurred, even if proved, do not support that conclusion;
4. that the matter under investigation has become moot;
5. that the complainant has already been afforded an opportunity to prove the same charges in an appeal hearing or in another public investigative hearing;
6. that the complainant has failed to bear his/her burden of proof.

(b) A party may move for summary disposition orally at the public investigative hearing or in writing any time before the Commission renders its final decision in the case.

(c) When the Commission summarily disposes of a public investigation, it shall render a decision in accordance with Rule 16.16.

#### 16.12 Withdrawal of Charges.

With the approval of the Commission, the charges to be investigated may be withdrawn upon the complainant's written request filed before the date of the public investigative hearing or upon the complainant's oral request made at the hearing.

#### 16.13 Amendment of Charges.

- (a) The charges to be investigated may be amended or supplemented by the Commission on its own motion or, with the approval of the Commission, on written motion of the complainant.
- (b) The respondent shall be notified of any amended or supplemental charges to be investigated and shall be given a reasonable opportunity to prepare his defense against the additional charges.

#### 16.14 Procedure for Hearings.

- (a) The burden of proof, as to the facts, shall be on the complainant.
- (b) The Commission may require the complainant to give his/her sworn testimony before hearing any other witness and if the Commission finds from such testimony that there is no just or legal ground to support the charges, it may decline to hear or consider any other evidence and dismiss the investigation.
- (c) If the investigation is not dismissed under subsection (b), the Commission shall allow the complainant to present such evidence as is relevant to the charges.
- (d) The charges against a respondent shall not be accepted as prima facie true. Evidence shall not be received from the complainant to supplement or enlarge the charges except as approved under Rule 16.13. The respondent may rebut any proof offered by the complainant in support of the charges.
- (e) Except insofar as they refer to referees, the provisions of State Police Commission Rules 13.19(a), (b), (d), (g), (h), (i), (j), (k), (l), (n), (o), (p) and (q) are hereby made applicable to public investigative hearings.

#### 16.15 Failure of Parties to Appear at Hearing.

- (a) If the complainant, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public investigative hearing, the Commission may order the investigation dismissed.

- (b) If a respondent or a respondent's appointing authority, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public investigative hearing, he/she may be deemed to have waived his/her appearance and testimony may be taken in his/her absence with the same effect as if he/she were present.

#### 16.16 Decisions.

After concluding a public investigative hearing, the Commission shall render a written decision. The Commission's decision shall be final on the day that it is rendered and on that date, the Director shall mail a copy of the decision to the parties.

#### 16.17 Certain Rules Governing Appeal Hearings Adopted by Reference.

Except insofar as they refer to referees, the provisions of the following Rules are hereby made applicable to public investigative hearings:

- (a) Rule 13.16 - "Place of Hearing."
- (b) Rule 13.21 - "Subpoena of Witnesses; Production of Documents."
- (c) Rule 13.24 - "Transcripts of Proceedings of Appeals to the Commission.:"
- (d) Rule 13.25 - "Refusal to Appear; Refusal to Testify: False Testimony."
- (e) Rule 13.26 - "Costs of Appeals."
- (f) Rule 13.27 - "Witness Fees."
- (g) Rule 13.29 - "Interlocutory Rulings."
- (h) Rule 13.32 - "Recusation of Commissioner or Referee."
- (i) Rule 13.33 - "Interrogatories; Pre-Trial Discovery; Rehearing of Appeal."

#### 16.18 Applicability to Pending Investigations.

When this Chapter becomes effective, any investigation which has already been docketed but has not yet been decided shall be processed in accordance with Rule 16.5.