

# State Police Commission



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Transmittal Sheet No. 55

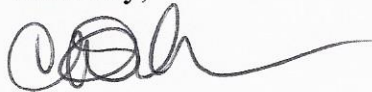
Subject: Revision of State Police Commission Rules 12.12 Extension of Time to Complete an Administrative Investigation and Adoption of State Police Commission Rule 12.13 – 12.20

Effective Date: October 9, 2014

At its meeting on October 9, 2014, on motion duly made and seconded, by unanimous vote of the members present, the State Police Commission voted to Revise State Police Commission Rules 12.12 Extension of Time to Complete an Administrative Investigation and Adoption of State Police Commission Rule 12.13 – 12.20

Attached is a complete copy of Chapter 12 for inclusion in your rules.

Sincerely,



Cathy J. Derbonne  
Director

Attachment

**AN EQUAL OPPORTUNITY EMPLOYER**

## **Chapter 12**

### **Disciplinary Actions, Removals and Resignations**

#### **12.1 Appointing Authority.**

Disciplinary and other actions authorized by this chapter may be taken only by the appointing authority or his or her designee.

#### **12.2 Cause; Disciplinary Actions.**

(a) A permanent employee may only be disciplined for cause.

(b) Disciplinary actions include only the following: dismissals, suspensions without pay, reductions in pay, involuntary demotions and written reprimands.

#### **12.3 Restrictions On Suspensions Without Pay and Reductions in Pay.**

(a) Except as provided by Rule 12.5 or as ordered by the Commission or agreed to under Chapter 13 or Chapter 16, a suspension without pay may not exceed 720 working hours.

(b) No disciplinary reduction in pay may bring an employee's pay below the minimum of his pay range or below minimum wage.

#### **12.4 Administrative Leave Pending Investigation.**

(a) Where, in the judgment of the appointing authority, there is reason to suspect that an employee has engaged in conduct which would warrant disciplinary action, but the appointing authority does not then possess sufficient facts to support a disciplinary action, or an employee's dismissal or removal is proposed in accord with Rule 12.7, and the employee's continued presence on the job or performance of his duties reasonably poses a significant hazard or danger to the general health or safety or the efficiency of the public service, the employee may, either verbally or in writing, be placed on Administrative Leave with pay. Such leave shall not reduce the employee's annual or compensatory leave.

(b) When an employee is placed on Administrative Leave under the provisions of this rule, if feasible, the employee shall first be informed of the intended action and the reasons therefor and the employee shall be given an opportunity to respond verbally at that time. If such is not feasible, or will reasonably significantly endanger the general health or safety or the efficiency of the public service, such shall not be required and, in that case, the employee shall merely be informed of the action. This notice and opportunity to verbally respond shall not substitute for the requirements of Rule 12.7.



(c) Within fifteen (15) calendar days after the action provided for by this rule, the appointing authority shall provide the employee with such facts which support the action as are then available and which will not violate any confidence between the appointing authority and the investigating, arresting and/or prosecuting authority.

(d) An action taken under this rule shall not exceed thirty (30) calendar days without the prior approval of the Director. Upon sufficient reasons provided to her by the appointing authority, the Director may allow an extension of the Administrative Leave for an additional thirty (30) calendar days.

(e) Upon completion of the investigation, the Director and the employee shall be notified in writing of the outcome of the investigation. Should the appointing authority find that cause does not exist for further action against the employee, the employee shall immediately be returned to duty. Should, however, the employee then be disciplined, and if not previously given, the employee shall then be given all notices required by Rule 12.7 and/or Rule 12.8.

(f) Notwithstanding any other provision of these Rules, an Administrative Leave Pending Investigation, Dismissal or Removal is not a disciplinary action and may not be appealed to the Commission, except on the basis of discrimination or a violation of the Article or these Rules.

(g) The appointing authority may, within their discretion, require an employee placed on Administrative Leave under this rule to immediately surrender his commission card, badge, weapon (s) and all department issued equipment.

#### **12.5 Suspension or Administrative Leave Pending Criminal Proceedings.**

(a) Upon the arrest or indictment of, or the issuance of a criminal summons to an employee, at the request of the appointing authority, the Commission may allow the suspension of the employee during the pendency of the criminal proceedings. This suspension may be for such duration and under such conditions as the Commission may allow.

(b) In such cases, the request of the appointing authority shall contain all the details required by Rule 12.8 as are then available to the appointing authority and which will not violate any confidence between the appointing authority and the investigating, arresting and/or prosecuting authority. Such request shall be furnished to the employee at or prior to the time it is furnished to the Commission.

(c) Prior to approving a suspension under this rule, the Commission shall allow the employee or his attorney a reasonable opportunity to appear before the Commission and respond.

(d) At the time it considers such request, the Commission may decline the request for the suspension and, instead, place the employee on Administrative Leave with pay during the pendency of the criminal proceedings. Should the Commission do so, such action shall not be appealable to the Commission, except on the basis of discrimination or a violation of the Article or these Rules.

## **12.6 Non-disciplinary Removals.**

(a) An employee may be removed under the following conditions:

1. When he or she holds more than one position in the state service and the multiple employment causes an employing agency to be liable for overtime payments under the Fair Labor Standards Act and, after having been provided an opportunity to do so, the employee has refused to resign from one of the positions; or

2. When the reason for the dismissal is not the employee's fault or conduct, or when the employee fails to obtain or loses, as a result of conduct that was not work related, a license, commission, certificate or other accreditation that is legally required for his job.

(b) An employee removed under this rule shall be furnished with the same notice required for dismissals under Rule 12.8, and he or she shall have the same right to appeal such as if it were a disciplinary dismissal.

(c) When an employee is removed under this rule, the appointing authority shall designate the dismissal as non-disciplinary on all forms used to report such dismissal, and the adverse consequence of Rules 6.5(c), 7.5(a)4, 8.9(c), 7.24(a), 8.18(d), 11.18(b), and 17.24 shall not apply.

## **12.7 Pre-dismissal, Removal Or Discipline Procedure.**

(a) A permanent employee may not be dismissed or removed or subjected to any discipline, other than a letter of reprimand until he has been given written notice of the proposed action and the reasons therefor, a description of the evidence supporting the proposed action and a reasonable opportunity to respond thereto.

(b) In the case of a suspension pending the outcome of criminal proceedings, the notice provided to the employee under the provisions of Rule 12.5(b) shall satisfy the requirements of paragraph (a) of this rule.



## **12.8 Written Notice.**

(a) Except as provided by Rule 12.5, a permanent employee who is disciplined shall be given prior written notice of the action which:

1. States the action which is being taken and the effective date and time thereof;
2. Contains such information as will fully inform the employee of the conduct on which the action is based and which will enable him or her to prepare a defense, including, where pertinent, the date, time and place of such conduct and the names of persons directly involved in or affected by such conduct (unless their identities are protected by law, in which case, identification shall be made as permitted by law);
3. Contains the following notification: "You have the right to appeal this action to the State Police Commission. The time limits and procedure for appealing are contained in Chapter 13 of the State Police Commission Rules."; and
4. Advises the employee that a copy of Chapter 13 of the State Police Commission Rules can be obtained from the State Police Commission and provides the Commission's current mailing address and telephone and fax numbers.

(b) Written notice is considered given:

1. Upon delivery to the employee or a person of suitable age and discretion who resides with the employee; or
2. On the 7th calendar day after it is mailed to the employee, with correct postage, at the most recent address furnished by the employee in writing to the Human Resources Office.

## **12.9 Letters Of Counseling and/or Warning; Responses.**

(a) A letter of counseling or warning is not a disciplinary action. Such letters may be maintained in a supervisory or investigatory file, however, they shall not be included in any record which is accessible to the public. Such a letter is not appealable to the Commission except on the basis of discrimination or a violation of the Article or these Rules.

(b) The employee may submit a written response to any letter of counseling or warning issued to him or her, and such response shall be attached to each copy of the letter of counseling or warning that is maintained by the employing agency.

## **12.10 Removal Of Sick Or Disabled Employees.**

(a) Upon exhaustion of their sick leave and upon their request, an employee absent from duty because of a physical and/or mental disability or condition which prevents performance of the usual duties shall thereafter be placed on any type of paid leave then available to them and, upon the exhaustion of such paid leave, the employee shall then be placed on unpaid leave. The period of leave provided for by this rule shall be until the exhaustion of the employee's sick leave or the leave provided for by the Family Medical Leave Act (FMLA) or one(1) year, whichever is longer.

(b) After such employee has been absent from duty because of such physical and/or mental disability or condition for the period provided for by Rule 12.10(a), and the employee has exhausted all of his or her sick leave or leave available under FMLA and the employee's job must be performed without further interruption, the appointing authority, may, for these reasons, remove such employee. Such removal shall not disqualify the former employee from non-competitive reemployment, as provided for by Rule 8.18.

(c) Notice of the removal of an employee under the provisions of sub- section (b) shall be given pursuant to the provisions of Rule 12.8.

(d) An employee removed under this rule shall have a right of appeal only based upon discrimination and/or the violation of the Article or these Rules.

## **12.11 Resignations.**

(a) Upon the termination of the services of a permanent or probationary employee by voluntary resignation, the appointing authority shall request that the employee submit a letter of resignation or complete other appropriate agency "exit" forms. Where it is not possible to secure the letter or form, the appointing authority shall prepare and maintain a written explanation of the reason(s) for the resignation, if known, and the reason that a letter of resignation or exit form was not obtained.

(b) The resignation of an employee, submitted orally or in writing, shall become an accomplished fact upon:

1. Its acceptance by the appointing authority or his or her designee, notwithstanding that it may include a prospective effective date; or

2. The occurrence of the effective date and time specified by him in his statement of intention to resign.

(c) When signed by the appointing authority or his or her designee, a personnel status change form which reports to the Director the resignation of an employee shall constitute one type of acceptance of the resignation.



(d) An employee may not rescind or withdraw his resignation subsequent to:

1. Its acceptance by the appointing authority unless the appointing authority agrees thereto;
2. The effective date and time specified in the resignation; or
3. The terminal date and hour specified in the personnel status change form mentioned in sub-section (c) hereof.

(e) By mutual agreement between an employee and the appointing authority, an accepted resignation may be withdrawn and rescinded at any time prior to the effective date and time specified by the employee in the resignation.

(f) When an employee resigns after receiving the notice required under Rule 12.7 that his dismissal has been proposed, the SF-1 form reporting the resignation shall so indicate. At the time the SF-1 form reporting the resignation is mailed or delivered to the Director, a copy thereof shall be mailed to the employee at the last known address furnished by the employee to the Human Resources Office.

## **12.12 Troopers Rights related to Administrative Investigations**

The statutory embodiment of the Law Enforcement Officer's Bill of Rights, as set forth at La. R.S. 40:2531, et seq, is considered an unconstitutional infringement on the Constitutional authority of this Commission and as such, it will not be applied to cases under Commission review. Members of the state police service, (hereinafter "Louisiana State Police Troopers") who are under administrative investigation with a view to possible disciplinary action as set forth in 12.2(b) of these Rules are afforded certain minimum rights by this Commission as set forth below. These rules do not apply to criminal investigations, fleet crash, shooting review or equal employment investigations. Criminal, fleet crash, shooting review or equal employment investigations, drug/alcohol screening, fitness for duty evaluations and requests for incident reports are not considered administrative investigations, nor are these rules considered applicable to those preliminary investigatory actions.

## **Rule 12.13 Notice**

The Louisiana State Police Trooper being investigated shall be informed, within fourteen (14) calendar days of the start of the investigation (as set forth in Rule 12.18 below), that Trooper is under investigation, including the date(s) of the alleged offense and the substance of the factual allegations being made against the Trooper. Further, at the start of any interrogation, Trooper shall be informed of identity and authority of the person conducting such investigation, and at the commencement of any interrogation, such officer shall be informed as to the identity of all persons present during such interrogation. The Louisiana State Trooper shall, upon request, be provided a copy of any written



complaint after his/her interrogation if a written complaint has been made against the Trooper. The Louisiana State Trooper shall be allowed to make notes.

#### **Rule 12.14 Conditions**

Any interrogation of Louisiana State Police Trooper in connection with an investigation shall be for a reasonable period of time and shall allow for reasonable periods for the rest and personal necessities of such Louisiana State Police Trooper.

#### **Rule 12.15 Recording of Interviews**

All interrogations of any Louisiana State Police Trooper in connection with the administrative investigation shall be recorded in full. The Louisiana State Police Trooper shall be provided a copy of the recording or transcript, if the recording is transcribed, of the recording of his/her statements upon his/her written request.

#### **Rule 12.16 Right to Counsel**

- (a) The Louisiana State Police Trooper being questioned, whether as a target or as a witness in an administrative investigation, shall have the right to be represented by counsel, a representative of his/her choosing.
- (b) The Louisiana State Police Trooper shall be granted up to fifteen (15) calendar days to secure such representation, during which time all questioning of the trooper shall be suspended.
- (c) The Louisiana State Police Trooper's representative or counsel shall not disrupt or interfere with the interview or interrogation. The Louisiana State Police Trooper's representative or counsel may not instruct the Trooper how to testify but may confer with the Trooper as necessary throughout the interrogation and make statements on the record.

#### **Rule 12.17 Statements inadmissible at criminal proceeding**

No statement made by the Louisiana State Police Trooper during the course of an administrative investigation shall be admissible in a criminal proceeding against him/her and he/she shall be so advised at the beginning of the interview or interrogation.

#### **Rule 12.18 Time within which to initiate investigation**

- (a) When a formal complaint is made against any Louisiana State Police Trooper, the Appointing Authority or his designee shall cause an investigation to be initiated within fourteen (14) calendar days of the date the complaint is made.



(b) If no formal complaint is made against a Trooper but an incident justifies an investigation, the Appointing Authority or his designee shall cause an investigation to be initiated within fourteen (14) calendar days of the date that Internal Affairs, the Troop/Section Commander or anyone above the commander in the chain of command, learns of the incident.

**Rule 12.19 Time to complete investigation and extensions of time**

(a) Except as otherwise provided in this Rule, each investigation of a Louisiana State Police Trooper which is conducted under the provisions of this rule shall be completed within sixty days of the date the investigation was initiated.

(b) The appointing authority or his designee may petition the State Police Commission, or its Executive Director, for an extension of the time within which to complete the investigation. The executive Director shall have the authority to grant up to one fifteen (15) calendar day extension without the necessity of a hearing but the Trooper shall be notified of the request for extension of time.

(c) The State Police Commission shall have the authority to grant up to a sixty (60) day extension, in addition to that set forth in subparagraph (b) above, upon a showing of good cause at a hearing conducted by the Commission. The Commission shall set the matter for hearing and shall provide notice of the hearing to the Louisiana State Police Trooper who is under investigation. The Louisiana State Police Trooper who is under investigation shall have the right to attend the hearing and to present evidence and arguments against the extension. Any hearing conducted regarding this Rule may be conducted either by the full Commission or a referee and may be conducted in person or by telephone or other electronic means, as deemed necessary and appropriate by the Commission.

(d) Nothing contained in this Paragraph shall be construed to prohibit the Louisiana State Police Trooper under investigation and the appointing authority from entering into a written agreement extending the investigation for up to an additional sixty (60) days.

(e) The investigation shall be considered complete upon determination of the appointing authority to institute disciplinary action against the Louisiana State Trooper or a determination of an exonerated, unfounded or not-sustained complaint.

(f) Written notice shall be given to the Trooper within seven (7) calendar days from the completion of the investigation, as described in (e) above, that the investigation is complete, the findings of the investigation (Sustained, Not Sustained, Exonerated or Unfounded), the proposed discipline and that the pre-deprivation notice required by Rule 12.8 shall be given within 45 calendar days.

(g) Nothing in this paragraph shall limit an investigation of alleged criminal activity.

(h) The investigation of criminal activity may suspend the sixty (60) day period for completing the administrative investigation.

(i) If the Appointing Authority or his designee requires an extension of time within which to complete the investigation or if an extension of time is jointly requested, and the Trooper has been placed on leave pending investigation under Rule 12.4, the Trooper shall be continued on paid administrative leave pending investigation until the completion of the investigation if the Appointing Authority finds that continued leave is warranted under Rule 12.4.

### **Rule 12.20 Penalty**

Any disciplinary action taken against the Louisiana State Trooper in violation of these Rules may be reduced, modified or reversed by the Commission, in accordance with Rule 13.20.

T/S-21

T/S-42- Rule 12.12

T/S -55 Rules 12.12, 12.13-12.20

07/21/97

07/16/09

10/09/14