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GENERAL CIRCULAR NUMBER 2023-012

DATE: March 10, 2023

TO: Heads of State Agencies and Human Resources Directors

SUBJECT: Proposed Changes to Civil Service Rule Chapter 26

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, April 5, 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.

This General Circular supersedes General Circular No. 2023-001.

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

Sincerely,

s/Byron P. Decoteau
Director



STATECIVILSERVICE

Proposed Amendments to State Civil Service Rules

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 April 5, 2023. Please refer to [General Circular No. 2023-012](#) for more information. This General Circular supersedes General Circular No. 2023-001.

Proposed Effective Date: April 5, 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, making capitalization consistent, requiring that written notices be sent to a party’s counsel, if applicable, and otherwise are intended to enhance clarity and readability.

Chapter 26: Special Hearings

26.1 Applicability

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

26.2 Written Charges

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

(b) Written charges shall:

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

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

26.3 Commission Action on Written Charges

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

(b) If the Commission concludes there is reason to proceed on some or all charges, it shall so notify the eComplainant 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~~ Failure to do so
42 shall be construed as electing to proceed. If the ~~Complainant~~ Complainant elects to proceed, the
43 Commission shall order a public hearing on the charges to be heard and the case shall be
44 docketed and heard in accordance with this ~~Chapter~~ chapter.

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

50
51 **26.4 Investigation; Cooperation with Investigation; Charges; Commission Action**

- 52
53 (a) If the Commission orders the Director to investigate, the ~~Complainant, the Respondent and~~
54 the staff of both, as applicable, and its staff, if any, and the respondent and his staff shall fully
55 cooperate in the investigation. Failure to do so shall be a violation of these ~~Rules~~ rules, punishable
56 accordingly.
- 57
58 (b) After the investigation, the Director shall either file written charges under Rule 26.2 as a
59 qualified elector or a written request to dismiss the charges. The charges filed by the Director
60 may include all conduct disclosed during the investigation, regardless of whether included in
61 the original charges. ~~that was not described in the written charges filed by a Municipal Fire~~
62 ~~and Police Civil Service Board or qualified elector.~~ The written charges or request to dismiss
63 shall be considered by the Commission in executive session.
- 64
65 (c) The Commission may dismiss the charges or order a public hearing on some or all charges.
66 The charges to be heard shall be listed in or attached to the order.

67
68 **26.5 Docketing; Administrative Functions; Public Record; Parties; Filings**

- 69
70 (a) If the Commission orders a public hearing, the case shall be docketed by the Appeals Division,
71 which shall be responsible for all administrative functions in the case.
- 72
73 (b) The parties are the ~~Complainant(s)~~ and the ~~Respondent(s)~~.
- 74
75 (c) The case record shall include the Commission's offer to the ~~Complainant~~ Complainant to proceed, the
76 ~~Complainant's~~ Complainant's response, and the Commission's order(s), copies of which shall be mailed to
77 the ~~Complainant, and the Respondent~~ Complainant, and the Respondent and the parties' counsel, if any. After docketing, the
78 case shall become a public record.
- 79
80 (d) After docketing, no paper shall be filed unless it contains a certification that a copy has been
81 mailed to counsel and unrepresented parties.

82
83 **26.6 Answer; Discrimination**

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

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

26.7 Notice to Parties

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

26.8 Place of Hearing; Notice of Hearing

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

26.9 Continuance of Hearing

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

26.10 Interrogatories; Discovery

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

26.11 Summary Disposition

- (a) The Commission, on its own motion or on motion of a party, may summarily dispose of the case, a charge, or an issue on any one of the following grounds or under Rule 26.16:
1. The charges to be heard, if ~~proved~~ proven, would not constitute cause for removal or discipline;

2. The charges to be heard have not been described in sufficient detail;
3. The facts asserted to support a conclusion of discrimination, if ~~proved~~ proven, do not support that conclusion;
4. The facts asserted to support a discrimination claim have not been described in sufficient detail;
5. The case has become moot; or
6. Upon resting ~~his~~ their case, the eComplainant has not carried ~~its/his~~ the required burden of proof.

- (b) When the Commission summarily disposes of the case, a charge, or an issue, it shall file a written decision. Notice of the decision shall be given to the parties.

26.12 Withdrawal of Charges; Consent Discipline

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

26.13 Preliminary Rulings

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

26.14 Subpoena of Witnesses; Production of Documents

- (a) The Commission, each member thereof, and a Referee shall have subpoena power over persons, documents, records, or other items within the State.
- (b) No subpoena shall be issued unless a written request therefor:
 1. Is received in the Appeals Division no later than fifteen ~~(15)~~ calendar days before the date fixed for the hearing;
 2. ~~Contains the names of the witnesses, the mailing and street addresses at which the witnesses can be served, a description of the documents, records, or other items to be produced in sufficient detail for identification, and the name, mailing, and street addresses of the person who is to be required to produce the documents, records, or other items; and~~

- 170 2. Contains the names of the witnesses, the mailing and street addresses at which the
171 witnesses can be served;
172 ~~3. Contains a statement of the facts to be proved by each witness, document, record, or~~
173 ~~item.~~
174 3. Contains, a description of the documents, records, or other items to be produced in
175 sufficient detail for identification, and the name, and mailing, and street addresses of the
176 person who is to be required to produce the documents, records, or other items; and
177 4. Contains a statement of the facts to be ~~proved~~ proven by each witness, document, record,
178 or item.
179
180 (c) No subpoena shall be issued unless the request therefor complies with this ~~R~~rule and a person
181 authorized to issue the subpoena is satisfied that the testimony of the witness or the
182 document, record, or other item is relevant to the issues before the Commission.
183
184 (d) Instead of issuing and serving formal subpoenas to persons who work for the ~~S~~state, a person
185 authorized to issue the subpoena may request ~~any~~ an Appointing Authority to order any
186 employee, temporary worker, or contractor under ~~his~~ that Appointing Authority's supervision
187 to appear and testify at ~~any~~ the hearing, and upon being so ordered the ~~employee~~ individual
188 subpoenaed shall appear at the hearing and furnish testimony.
189
190 (e) Authentic copies of documents, records, or other items in the custody of any department,
191 board, or agency of the ~~S~~state or any ~~sub-division~~ subdivision thereof which have been
192 subpoenaed may be admitted in evidence with the same effect as the originals, ~~but~~ If the
193 originals are subpoenaed, they must be produced and made available for inspection even
194 though authentic copies may be subsequently introduced.
195
196 (f) Any person authorized to issue a subpoena may, ~~before doing so,~~ first require the party
197 requesting a subpoena of one other than an officer or employee of the ~~S~~state to deposit with
198 the Appeals Division a sum sufficient to cover the mileage and witness fees authorized by
199 Rule 26.19, pending a determination of costs by the Commission.
200
201 (g) A person authorized to issue a subpoena may, for cause deemed sufficient, ~~may issue an~~
202 ~~appropriate order at any time recalling~~ recall any subpoena or request issued under the
203 provisions of this ~~R~~rule.
204
205 (h) The abuse of the privilege to require the attendance of witnesses or the production of
206 documents, records, or other items shall be deemed a violation of these ~~R~~rules, punishable
207 accordingly.
208

209 **26.15 Procedure for Hearing**

- 210
211 (a) All hearings shall be open to the public.
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(b) Legal representation

1. Except as is provided below, a party may be represented by an attorney licensed to practice law in Louisiana or by a law student who has satisfied the requirements of Rule 20 of the Rules of the Supreme Court of Louisiana.
2. No attorney or law student who is a classified state employee may represent another state employee in a ~~public~~ special hearing.
3. When a party is represented by more than one attorney/law student, only one such representative shall be permitted to examine the same witness.

(c) The burden of proof, as to the facts supporting cause for removal or discipline, shall be on the ~~Complainant~~. The burden of proof, as to the facts supporting a discrimination claim, shall be on the ~~Respondent~~.

(d) Where appropriate and not inconsistent with these ~~R~~rules, the rules of evidence applicable to civil trials in the district courts of the ~~S~~state shall be observed in all hearings before the Commission.

(e) Evidence shall not be received from the ~~Complainant~~ to supplement or enlarge the charges and evidence shall not be received from the ~~Respondent~~ to supplement or enlarge the facts alleged in support of a claim of discrimination.

(f) Affidavits and other ex parte statements shall not be received in evidence without the consent of all parties, except to refresh memory or to discredit a witness.

(g) Parties and witnesses shall be subject to cross-examination as in civil trials before the courts of the ~~S~~state and the Commission and each member ~~of the Commission~~ thereof may examine and cross-examine any witness.

(h) The Commission may require the parties to stipulate all undisputed facts.

(i) The Commission may limit corroborative evidence.

(j) Where appropriate and not inconsistent with these ~~R~~rules, hearings and the taking of testimony shall be conducted according to the accepted practice in civil trials before the district courts of the ~~S~~state.

(k) The Commission, on request of any party, or on its own motion, may sequester the witnesses. In applying this ~~R~~rule, if the ~~Complainant~~ is a board, only one person, in addition to counsel, shall represent the ~~Complainant~~.

(l) The Commission, may fix the total time to be allowed for oral argument, according to the circumstances of each case, and may limit oral argument to one or more issues. Except with

special leave of the Commission, only one attorney shall be permitted to present oral argument for any party.

(m) The Commission may take notice of the provisions of the Article, the Rules, the Classification Plan, and the Pay Plan without the necessity of an offer in evidence.

(n) When during a hearing, a ruling by the Commission is to be made, the presiding Commissioner shall rule and ~~his~~ such ruling shall constitute that of the Commission; provided, that should a member of the Commission object to such ruling or offer an alternative ruling, the ruling of the Commission shall be determined by majority vote of those members present.

26.16 Failure of Parties to Appear at Hearing

(a) If the ~~€~~Complainant, without having been granted a continuance, is neither present nor represented at the place and time fixed for a public hearing, the Commission may order the charges dismissed.

(b) If the ~~€~~Respondent, without having been granted a continuance, is not present at the place and time fixed for a public hearing, ~~he~~ Respondent may be deemed to have waived ~~his~~ their appearance and testimony may be taken in its/~~his~~ Respondent's absence with the same effect as if it/~~he~~ they were present.

(c) This ~~R~~rule shall not prevent the Commission from continuing the case ~~if it learns~~ upon learning ~~the that~~ reason for the absence(s) was beyond the ~~parties'~~ party's or their attorneys' ~~s~~ control.

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

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

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

1. Willfully refuses or fails to appear before the Commission in response to a subpoena or an order under Rule 26.14(d);
2. Having appeared for a hearing, refuses to testify or answer any question pertinent to the matters under consideration;

- 299 3. Knowingly gives false testimony;
300 4. Knowingly solicits, condones, or accepts, without refutation, false or misleading
301 testimony given on the party's behalf by any witness at a hearing; or
302 5. Fails to produce any subpoenaed documents, records or other items.
303

304 (b) Any officer or employee in the state classified service who is found by the Commission to
305 have engaged in such the conduct described in Paragraph (a) may also be found by the
306 Commission to have forfeited ~~his~~their office or position and may be found by the
307 Commission ~~not to not~~ be eligible thereafter for appointment to any position in the state
308 classified service for a period not to exceed ten years or be subject to a suspension from ~~his~~
309 their position.

310
311 (c) Any officer or employee required to testify shall not be subjected to any disciplinary action
312 ~~by his appointing authority because he so testifies~~ for so testifying.
313

314 **26.18 Decision; Rehearing; Appeal**

315

316 (a) When, after a public hearing, the Commission determines there is no cause for removal or
317 discipline, it shall issue an order dismissing the complaint. If the Commission determines
318 there is cause, it may remove, suspend without pay, reduce in pay, demote, or dismiss the
319 State Examiner ~~or Deputy State Examiner~~. The Commission and it shall issue a written
320 decision containing findings of fact, conclusions of law, the action being taken, and the date
321 and time the action shall become effective. The Commission's decision shall be final on the
322 day it is rendered. Notice of the decision shall be given to all ~~the~~ parties.
323

324 (b) No rehearing shall be granted from a final decision of the Commission.
325

326 (c) The final decision of the Commission shall be subject to review on any question of law or
327 fact upon appeal to the Court of Appeal, First Circuit, upon application filed with the
328 Commission within thirty calendar days after its decision becomes final.
329

330 **26.19 Attorney Fees**

331

332 When the ~~e~~Complainant, other than the Director when acting at the behest of the Commission,
333 ~~or Director~~ does not bear ~~its/his~~ the required burden of proving the charge(s) and the
334 Commission finds there is no reasonable basis for the charges, the Commission may order the
335 Complainant it/him to pay reasonable attorney's fees in an amount not to exceed \$1,500. ~~per~~
336 Respondent.
337

338 **26.20 Witness Fees**

339

340 (a) The travel expenses of an officer or employee of the ~~S~~state who is required to appear before
341 the Commission in a hearing shall be paid by the employing 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, at ~~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~~ party requesting the transcript.

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

26.22 Recusation of Commissioner

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

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