

SECTION XIII
CIVIL SERVICE COMMISSION HEARINGS

13.01 Right to a Hearing

- A. Any person who is entitled to a hearing before the commission, under authority of the Civil Service Rules, may request a hearing before the Commission.
- B. When mutually agreeable by both parties, in lieu of a hearing, the matter may be submitted to the Commission for decision upon the written materials submitted by the parties.

13.02 Request for Hearing

- A. A request for hearing shall be in writing, signed by the employee, and shall contain the employee's mailing address, email address, the ruling or action being appealed and relief sought, and shall state in detail the facts and the reasons upon which the employee is basing the appeal.
- B. A hearing on the merits of the appeal may be denied if the employee fails to state specific facts or reasons which, if true, would entitle the employee to relief. A general denial by the employee of the allegations of the appointing authority shall constitute the statement of reasons for Section 13.02.A, above. (Revised 9/30/14)

13.03 Time Within Which Hearing Must be Commenced

- A. Within twenty (20) days of the receipt of the employee's request, or at a time stipulated to by the parties and agreed upon by the Commission, the Commission shall commence a hearing.
- B. If, over the objection of the Department, the Appellant requests the delay or postponement of a civil service hearing beyond the time prescribed by Rule 13.03 (A) once hearing dates are set and such request is granted by the Commission, any decision of the Commission granting an award of back pay, may take into consideration delays requested by the Appellant. Should the parties agree to postponement of a civil service hearing beyond the time prescribed by Rule 13.03 (A) once hearing dates are set and the postponement is granted by the Commission, the eligibility for back pay and other benefits during the period of the postponement which could be awarded in a decision overturning or modifying a disciplinary action shall be as agreed upon by the parties or is as determined by the Commission.

13.04 Notice of Hearing (Revised 4/11/90)

The employee shall be given not less than ten (10) days' notice, in writing, of the date and place of such hearing. In hearings in which the action of an appointing authority is at issue, the appointing authority shall be given not less than ten (10) days' notice, in writing, of the date and place of such hearing. The employee and the employee's representative shall be provided a copy of Section 13.16, Hearing Procedure and Order of Presentation. This section provides notice to the parties of the order of presentation and the burden of proof.

13.05 Parties to be Ready

On the date set for the hearing, the parties involved will be expected to be ready to proceed at the hour set, and any failure to be prepared to proceed at that time may be deemed by the Commission to be an admission by the unprepared party that the party's case is not meritorious, and that a decision should be rendered against that party. If the party against whom the decision was rendered offers, within thirty (30) days of the decision, an explanation satisfactory to the Commission, the Commission may set aside its decision and reschedule the hearing.

13.06 Rights of Employee

When a hearing is granted, the employee shall be entitled to:

- A. Be represented by an attorney or by a representative of the employee's choice.
- B. Testify under oath or affirmation
- C. Subpoena witnesses on the employee's behalf.
- D. Cross-examine all witnesses.
- E. Present such affidavits, exhibits and other evidence as the Commission deems pertinent to the matter then before it, subject to the authority of the Commission to exclude irrelevant evidence.
- F. Have a public hearing. The employee, employee's attorney or representative, may, in writing and at least five (5) days prior to the date of hearing, request that the hearing be a public meeting. If such request is served on the Director of Human Resources, the hearing shall be open to the public. In all other cases, the hearing shall be closed to the public.
- G. Request recusal, in writing and at least five days prior to the date of the hearing, of any Commissioner the employee believes has a conflict of interest which prevents said Commissioner(s) from being able to be fairly and objectively take into consideration the facts and evidence presented in the case to render an unbiased decision. **The written document must contain specific facts and reasons for which the recusal is being requested.**

13.07 Rights of the Appointing Power and Others

The appointing authority, the Director of Human Resources, or other members of the Commission staff, and any other person whom the Commission finds to be interested in the matter, shall be entitled to the same rights and be subject to the same limitations applicable to the employee.

13.08 Appearance of Employee

The appearance of the employee shall be required at all hearings, except as provided herein.

- A. The appearance of the employee shall not be required where the Commission has determined that a decision will be made on the basis of written material submitted pursuant to Section 13.01.B, above. (Revised 9/30/14)
- B. The Commission shall have discretion to consent to the absence of the employee upon a showing of good cause.

13.09 Unexcused Absence of Employee

Unexcused absence of the employee at a hearing where his presence is required may be deemed by the Commission to be a withdrawal of the request and consent to the action or ruling from which the appeal was taken.

13.10 Assistance of Counsel

The Commission shall be entitled to have the legal advice and assistance of the County Counsel or his representative.

13.11 Continuances

The Commission may grant a continuance of any hearings upon such terms and conditions as it may deem proper. Any request for a continuance made less than forty-eight (48) hours prior to the time set for the hearing shall be denied unless good cause is shown for the continuance. (Rev. 5/77)

13.12 Amendment of Charges

At any time, but not less than ten (10) days before the hearing, the appointing authority may serve on the employee and file with the Commission, an amended or supplemental statement of charges. If the amended or supplemental charges present new causes for disciplinary action, the employee shall be afforded a reasonable time in which to prepare his defense thereto and to file a further answer.

13.13 Evidence and Witnesses

- A. The hearing shall be conducted in accordance with the provisions of Government Code Section 11513 and need not be conducted according to technical rules relating to evidence and witnesses. However, the parties shall proceed and conduct themselves as in formal proceedings. Further, any motions shall be made in accordance with Section 13.15 and any party or witness may be examined at any time pursuant to California Evidence Code Section 776, unless the witness has been excused.
- B. The parties are to meet at least fourteen (14) days before the hearing to pre-mark exhibits and reach agreement as to which exhibits will be admitted without objection and to identify those exhibits as to which objections to admissibility remain. Sufficient copies of such exhibits, three-hole-punched, must be submitted to the Secretary at the time the exhibit is introduced so that each Commissioner, Secretary to the Commission, Counsel to the Commission, transcriber (if applicable) an opposing Counsel receive a copy. No additional copies of demonstrative evidence, video evidence or over-sized exhibits need be provided. The parties shall also meet about any facts as to which they are willing to stipulate may be deemed proved without the introduction or admission of evidence.
- C. No less than seven (7) calendar days before the first date scheduled for the hearing and by 12pm , the parties shall each submit to the Commission Secretary the following:
 - 1) Witness list
 - 2) Joint exhibit list identifying each exhibit by number.
 - 3) Party exhibit list identifying each exhibit by number.
 - 4) A realistic time estimate of the full length of the hearing.
 - 5) A one-page summary of the case setting forth the charge(s), the proposed discipline and any defenses to be raised by the Appellant.
 - 6) A list of facts the parties stipulate may be deemed proved without the introduction or admission of evidence.
 - 7) Any pre-trial motions.
 - 8) Any trial briefs to be considered by the Commission.
- D. No less than six (6) calendar days before the first date scheduled for the hearing the Commission Secretary shall provide the Commissioners with the following:
 - 1. Request for appeal and Notice of Appeal
 - 2. County Documents from which the Appeal was taken
 - 3. Witness lists
 - 4. Joint exhibit list and exhibits
 - 5. Party exhibit lists and exhibits
 - 6. Party summaries of the action
 - 7. Stipulation of agreed facts
 - 8. Any Trial briefs
- E. On the first day of hearing, before opening statements or the taking of evidence on the first day of the hearing, the parties must be prepared to address the following matters

with the Commission:

- 1) Any exhibits to be admitted without objection. Such exhibits will be admitted at that time.
 - 2) Any stipulated facts. Stipulated facts will be deemed proved for all purposes without the need for evidence.
 - 3) Any pre-hearing motions that have not been resolved.
 - 4) Any witness or scheduling problems known to the parties.
- F. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil action. Hearsay evidence may be admitted for any purpose, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privileges and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant or repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.
- G. The parties shall make reasonable efforts to consolidate documents to reduce the time necessary for distributing and marking evidence into the record. Documents shall be sequentially numbered. Further, the parties shall make reasonable efforts to avoid cumulative testimony.
- H. The Commission shall have the authority to limit testimony it deems to be cumulative of testimony previously provided.
- I. It is the duty of persons involved in the proceedings of the Civil Service Commission hearings to:
1. Maintain composure and be respectful to the Civil Service Commission, its officers, and opposing party.
 2. Counsel or argue positions regarding actions only as legal or just, and which pertain to alleged violations of the Civil Service Rules of Solano County.
 3. Abstain from all offensive personal remarks.
 4. Discourage the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
 5. Comply with the Commission hearing rules.
- G. The Commission may censure or take any other appropriate action, up to and including permanently, or for a limited period as is just, excluding any person involved in the proceedings before the Solano County Civil Service Commission who fails to maintain these standards. If the Commission makes a finding to take action against such person, they will produce a written finding of facts, decision and order.

13.14 Exclusion of Witnesses

The Commission may exclude witnesses not under examination. The Director of Human Resources, the legal adviser to the Commission, the employees, the employee's attorney or representative, the appointing authority **or designee**, and counsel for the appointing authority **would not be excluded**.

13.15 Testimony of Employee

The employee shall not be required to testify, but may be cross-examined as to any matter relevant to the hearing if he takes the stand voluntarily. If the employee does not testify in his or her own behalf, the employee may be called by the Commission and examined by the Commission as if under cross-examination.

13.16 Subpoenas

The Director of Human Resources, is authorized to issue subpoenas on behalf of the Commission, for peace officers pursuant to Government Code Sections 68097.1 through 68097.2, and all other witnesses under Government Code Section 31110.2 as to all other witnesses.

The Director of Human Resources, as Commission Secretary, shall sign subpoenas and subpoenas duces tecum presented and presented for signature by the appointing authority or the appellant or their respective attorneys. for the appointing authority upon the request of that authority. The Director of Human Resources shall also sign such subpoenas for the employee, upon written request of the employee or his attorney.

13.15 Pre-Hearing and Hearing Motions

- A. For hearings set to commence more than twenty (20) calendar days after filing of the appeal, all objections to the substantive or procedural sufficiency of any notice, process, or proceeding occurring prior to the commencement of hearing before the Commission, including, but not limited to, objections to the pre-disciplinary (*Skelly*) notice, the disciplinary investigation, the disclosure of materials on which the proposed discipline is based and the pre-discipline hearing by the appointing authority, the order of discipline, to exclude items of physical evidence or concerning the issuance and/or service of Commission subpoenas, shall be in writing and shall be filed with the Commission Secretary and personally served on the opposing party's legal counsel or representative not less than fifteen (15) calendar days prior to the first date the matter is scheduled for hearing. Any response to such objections shall be in writing and shall be filed with the Commission Secretary and personally served on the moving party's legal counsel or representative not less than seven (7) calendar days prior to the first day the matter is set for hearing. If a party is not represented, then service shall be on the party. All motions and responses thereto shall contain citations to or photocopies of the statutes, rules, or court cases supporting the positions asserted.
- B. For any hearing set to commence within twenty (20) calendar days from the filing of the appeal, all objections referenced in this section shall be due fourteen (14) full calendar days prior to the first date the matter is scheduled for hearing and any response shall be due seven (7) full days prior to the first date the matter is scheduled for hearing.
- C. Any motion or objection made during the course of a hearing may be oral but shall be

accompanied by written citations or photocopies of the statutory or court decisions serving as grounds for the motion or objection and shall be submitted prior to the close of the hearing unless otherwise as directed by the Commission. Such written citations or photocopies are not required to support an evidentiary objection, a motion to close the hearing, continue the hearing or to exclude witnesses.

- D. Failure to comply with 13.15 (A-C), unless excused by the Commission upon a factual showing of good cause, shall constitute a waiver of the motion or objection or the response to the motion or objection.
- E. California law allows *Pitchess* motions to be brought before the Civil Service Commission. *Pitchess* motions will only be entertained by the Commission after an appeal has been filed with the Commission pursuant to Civil Service Rule 13.01 and its jurisdiction thereby invoked. Any *Pitchess* motion filed prior to the filing of an appeal with the Commission shall be denied without prejudice.
 - 1. *Pitchess* motions are considered to be pre-hearing motions, but they shall be governed by the filing deadlines articulated in California Code of Civil Procedure Section 1005(b). Hearing timelines may be adjusted in order to have any *Pitchess* motions considered by the Commission and/or prior to the submission of opening briefs or taking testimony.
 - 2. The papers constituting the *Pitchess* motion shall comply with California Evidence Code Section 1043. The hearing of a *Pitchess* motion shall be conducted as follows:
 - a. The hearing shall be closed to all but the moving party, his or her legal counsel, an employer representative, legal counsel to the employer and the Custodian of Records.
 - b. The moving and opposing parties shall argue their respective positions if they are unable to stipulate as to whether a prima facie showing has been made by the moving party. Following argument, the Commission will retire to closed session to decide whether a prima facie showing has been made. The Commission will then reconvene to the closed hearing and announce its decision.
 - c. If the Commission concludes a prima facie showing has been made or the parties stipulate that prima facie showing has been made, then the Commission will adjourn to closed session to inspect the records brought to the hearing by the Custodian of Records.
 - 1. The Custodian of Records and legal counsel, if any, representing the Custodian shall attend the closed session.
 - 2. The Custodian of Records shall be placed under oath during the closed session and shall respond to the questions asked by the Commission regarding the records produced at the hearing.
 - 3. The Secretary to the Commission shall tape-record the Commission's closed session review of the records.
 - 4. Any records ordered produced by the Commission shall be produced by the Custodian to the moving party along with a letter articulating what records or information, if any, has been ordered disclosed. The Custodian shall serve a copy of the letter on the Secretary to the Commission.

5. The tape recording of the closed session record review shall be retained by the Secretary under seal and the tape shall not be released or transcribed except upon stipulation of the parties or order of the Superior Court or appellate court.
- d. In determining whether records should be released, the Commission shall be guided in its determination by California Evidence Code Section 1045.

13.16 Hearing Procedure and Order of Presentation (Revised 4/11/90)

- A. The President presides over the hearing. To establish a proper administrative record, the hearing shall be commenced by the President, establishing the following:
 1. A quorum of the Civil Service Commissioners is present and that all Commissioners present are able to judge fairly and objectively take into consideration the facts and evidence presented in the case to render an unbiased decision. Any Commissioner who is unable to judge fairly and objectively **shall identify the facts and/or reasons which are the basis of recusing** him/herself from the proceedings.
 2. The presence of the employee, and if represented, by whom.
 3. The presence of the appointing authority and, if represented, by whom.
 4. That both parties are prepared to proceed with the hearing.
 5. That both parties have received a copy of this section of the Rules with their Notice of Hearing.
 6. The charges or complaint and the appeal shall be read, unless their reading is waived by the parties.
- B. The President will then indicate that the matter is ready to proceed to hearing. He will first address the following:
 1. Discuss any witness or scheduling problems known to the parties
 2. Admit joint exhibits
 3. Admit stipulated facts
 4. Address any pre-hearing motions that have not been addressed or resolved.

C. Burden of Proof and Order of Presentation

The order of presentation of the appeal shall be as follows:

1. Where the appeal is based upon an action initiated by the appointing authority (termination, discipline, suspension), the appointing authority has the burden of proof and presents evidence first.
2. Where the appeal is based upon an action initiated by the employee (based on alleged discrimination, harassment, rules violation or discrimination as

reason for discharge from probationary status), the employee has the burden of proof and presents evidence first.

3. The party having the burden of proof is the moving party. The other party is the responding party.

D. The hearing will be presented by the parties in the following manner:

1. The moving party may make or waive an opening statement.
2. The responding party may make or waive an opening statement.
3. All witnesses shall give testimony under oath or affirmation administered by the Commission Secretary.
4. The moving party shall present its case first. The case shall be presented through witnesses and/or documentary evidence. Documents introduced and/or submitted as evidence shall be provided for each Commissioner, Commissioner's Counsel, Secretary to the Commission, opposing counsel and Custodian of Records.
5. The responding party may then present its case. If a case is presented, it shall be through witnesses and/or documentary evidence.
6. Each witness may be cross-examined by the other side and by the Commission members immediately after that witness's testimony. Should the Commission question the witnesses, either party may ask a single series of follow-up questions of the witness limited to the scope of the areas covered by the Commission's questions.
7. The Commission may call witnesses, who will be subject to the Commission's direct examination and cross-examination by the parties.
8. Rebuttal evidence may be presented by the moving party, after the responding party is finished.
9. The moving party may make a closing argument.
10. The responding party may make a closing argument.
11. Time for closing argument shall be within the discretion of the Commission.

13.18 Findings and Decision

- A. When submitted, the Commission should retire to a closed session to weight the

evidence and discuss the merits, and make its decision. After making its decision, the President should reconvene the Commission in public session and announce its decision. This decision shall either uphold, modify, or set aside the action taken and appealed from. If the action taken is upheld, it shall be final as to the date it was taken. If the action is set aside, the employee will be entitled to have restored any rights or benefits or salary which have been denied as a result of the action appealed from. If the action taken is modified, the Commission shall issue such orders as are necessary to carry out the decision of the Commission.

- B. The Commission may make their ruling on each individual claim brought before the Commission.** The Commission may prepare the findings of fact and conclusions of law or delegate the preparation of the same to the prevailing party. The opposing party shall be provided with a copy of any proposed findings prepared by the prevailing party. Prior to the adoption of findings and conclusions, the opposing party, in writing, may oppose the proposed findings and/or submit its own proposed findings and conclusions of law, the Commission may adopt all or part of the findings and conclusions of either or both parties, or it may prepare its own findings and conclusions.
- C.** Within ten (10) days after the Commission has adopted Findings of Facts and Conclusions of Law, the Director of Human Resources shall mail a copy of the findings and decision to the employee and the appointing authority. If either the employee or the appointing authority was represented by a counsel, a copy of the findings and decision shall be mailed to the counsel, which will constitute compliance with this provision.

13.18 Report of Hearings

Hearings on charges of discrimination, dismissals, demotions, or suspensions in excess of five (5) days shall be conducted with a stenographic reporter. The Commission may order that other hearings be reported by a stenographic reporter, or recorded by electronic means, if it deems such reporting or recording advisable or necessary. In any hearing where a stenographic reporter is not required, either party may arrange for a stenographic reporter to be present at his own cost.

13.19 Transcripts of Hearings

Any party may obtain a transcript or a copy of the recording of any hearing which has been reported or recorded by making independent arrangements with the reporter or recorder for the preparation thereof, and assuming the cost of such preparation.