

SECTION XIII
CIVIL SERVICE COMMISSION HEARINGS
(Approved by Civil Service Commission 5/11/77)

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, stating employee's mailing 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 his case.
- 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

Within twenty (20) days of the receipt of the employee's request, the Commission shall commence a hearing.

13.04 Continuance Pending Termination of Criminal Proceedings

Where the employee is appealing from a ruling or order which resulted from alleged criminal activities of the employee, and criminal charges are pending against the employee in a court of competent jurisdiction because of such activities, the Commission may suspend all proceedings on appeal until the termination of such criminal proceedings in trial court. In the event of such suspension of proceedings, the Commission, at its first regular meeting after the termination of such criminal proceedings in the trial court, shall set the matter for hearing.

13.05 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.

13.06 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.

13.07 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.

13.08 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.

13.09 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.

13.10 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.

13.11 Assistance of Counsel

The Commission shall be entitled to have the legal advice and assistance of the County Counsel

or his representative.

13.12 Evidence and Witnesses

Hearings shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. 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.

13.13 Subpoenas

The Director of Human Resources shall sign subpoenas and subpoenas duces tecum 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.

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

13.14 Exclusion of Witnesses

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

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. (Rev 5/77)

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. The presence of the employee, and if represented, by whom.
2. The presence of the appointing authority and, if represented, by whom.
3. That both parties are prepared to proceed with the hearing.
4. That both parties have received a copy of this section of the Rules with their Notice of Hearing.
5. 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.

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.

- C.** 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.
- 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.
- 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.

13.17 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 prevailing party will prepare proposed findings of fact and conclusions of law for adoption by the Commission. The opposing party will be provided with a copy of said proposed findings. 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.

13.20 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)

13.21 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.