

PROPOSED REVISION TO CIVIL SERVICE RULE XIII

RULE XIII § 2 HEARINGS

XIII§2.1 Assigning Appeals for Hearing

The Director shall fix the time and place for the hearing of appeals by the Commission, and, as far as practicable, shall fix them in the order in which docketed, provided that, for good cause shown, the Commission, its Chairman, or the Director may upset any fixing and may either relegate the case for refixing to the foot of the docket or give it a special assignment both as to time and place.

XIII§2.~~2~~¹ Power to Administer Oaths, Take Testimony, and Demand Production of Records

The Commission, each member of the Commission, the Director, its attorney and any referee of the Commission shall have the power to administer oaths, subpoena witnesses, and compel the production of books, records, files, and papers pertinent to any investigation or hearing authorized by the Commission pursuant to the Law and Rules. (Amended October 1, 2010)

When the Commission hears an appeal, and in the absence of a court reporter, the Commission Chairman will administer an oath to the witnesses who will then be examined by the parties. In certain cases, it may be necessary for testimony to be taken outside the presence of the Commission or on a day other than the day set for the hearing. In such cases, the Commission may appoint or designate a person with the power to administer oaths, such as a court reporter, to take and transcribe the necessary testimony. The parties to the appeal will be entitled to question the witness in front of the person designated to take the testimony. (Added October 1, 2010)

Any employee required to testify shall not be subjected to any disciplinary action by the Appointing Authority because he so testifies. (Added October 1, 2010)

XIII§2.~~3~~² Refusal to Appear or Testify; Providing False Testimony (Amended October 1, 2010)

- A. Any employee in the classified service who refuses or fails to appear before the Commission, its Director, or its attorney in response to a subpoena or a request under the provisions of

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Rule XIII§2.1, 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 a witness in his behalf at a hearing, or who fails to produce any books, papers, photographs, or other items pertinent to the hearing may be found by the Commission to be guilty of contempt in accordance with these Rules and, in addition to that which is provided for in these Rules, may be found by the Commission to have forfeited his position and may be found by the Commission not to be eligible thereafter for appointment to any position in the classified service for a period not to exceed ten years or be subject to a suspension from his position. (Amended October 1, 2010)

- B. In the case of refusal by any person to willfully fail to appear in response to a subpoena or to an order issued under the provisions of Rule XIII§2.1 hereof, or to willfully fail to answer any question or produce any books, papers, photographs, or other items pertinent to any hearing before the Commission, the Director, or its attorney, or to knowingly give false testimony or to knowingly solicit, condone, or accept, without refutation, false or misleading testimony given by any witness in his behalf at any such hearing, the Commission may authorize its attorney to seek an order from a court of requisite jurisdiction compelling such person to appear before the Commission, its members, its Director, or its attorney and to produce records, or be there to give testimony pertaining to the matter under consideration or in question. The Commission may also authorize its attorney to pursue contempt proceedings against any person who fails to comply with the order of the Court and these Rules. (Added October 1, 2010)
- C. If the Appointing Authority or the appellant fail to appear at the place, and on the day and at the hour fixed for such hearing, the Commission may, in its discretion, decide the issue involved on the basis of the evidence introduced and may render a decision by default against any party failing to appear. (Redesignated from Rule XIII§3 effective October 1, 2010)

XIII§2.43 Deadlines for Hearings (Added October 1, 2010)

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- A. The Commission shall provide the employee and the Appointing Authority with advance written notice of the scheduling of a hearing on an appeal. This notice shall be sent at least fifteen (15) days before the date fixed for the hearing and shall include the date, time, and location of the hearing. If such written notice is placed in the United States mail, postage prepaid, and addressed to the employee at his last known address, notice shall be deemed to have been given. (Redesignated from Rule XIII § 3 and amended effective October 1, 2010)

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- B. The employee and the Appointing Authority shall provide the Commission with a Pre-Hearing Memorandum, which shall contain the following: (1) a factual background of the appeal; (2) a summary of the law relied upon by each party; (3) a witness list and a summary of the anticipated testimony for each witness; and, (4) an exhibit list at least ten (10) calendar days in advance of the hearing. Parties shall not be entitled to call any witnesses to testify at the hearing that are not included in the Pre-Hearing Memorandum; or to place into evidence any exhibit not disclosed in the Pre-Appeal Memorandum, except upon approval of the Commission and for good cause shown. A copy of all exhibits to be used at the hearing shall be provided to the Commission as attachments to the Pre-Hearing Memorandum. The provisions of this subsection shall not apply to rebuttal witnesses or to documents or other evident used for impeachment purposes. (Amended June 23, 2017)
- C. The employee and the Appointing Authority shall attend a Pre-Hearing Conference with the Civil Service Board Chairperson and/or Civil Service Board Designee as well as the Civil Service Board's legal counsel to discuss and, if possible, agree upon, among other things, stipulation of fact and evidence to be submitted at the hearing. The Chairperson and/or Designee shall endeavor to schedule the Pre-Hearing Conference at a time and place convenient for all parties between five (5) to seven (7) calendar days before the date of the appeal hearing. Attendance either in-person or by telephone at the Pre-Hearing Conference is mandatory. (Added June 23, 2017)

XIII§2.54 Hearing Proceedings (Added October 1, 2010)

- A. All hearings shall be open to the public.
- B. At all appeal hearings the Appointing Authority shall have the burden of proof and shall proceed first to present its case in support of the actions taken by it against the employee. After the Appointing Authority has completed the presentation of its case, the employee shall be permitted to present his case. The Appointing Authority shall be entitled to present testimony and documentation to rebut the employee's allegations and evidence following the completion of the employee's presentation of his case. (Redesignated from Rule XIII§1.3 and

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amended effective October 1, 2010)

Notwithstanding the aforesaid, in all cases in which the employee has asserted that the Appointing Authority has discriminated against him in imposing the disciplinary action taken, the employee shall have the burden of proof and shall proceed first to present his case. In such cases, the party alleging discrimination must prove that he is in a protected class based on race, color, religion, national origin, age, disability, gender, sexual orientation, or political affiliation and prove that he suffered an adverse employment action. The burden will then shift to the City which must articulate a legitimate non-discriminatory reason for its decision or action. If the City carries this burden, the burden will shift back to the appellant who must prove that the reason given by the City for its action or decision is untrue and that the real reason was intent to discriminate.

- C. All persons to be called as witnesses by the employee and the Appointing Authority shall be sworn in and placed under the rule of sequestration prior to the commencement of the first hearing on the employee's appeal. Witnesses placed under the rule of sequestration shall be banned from the hearing room during the course of the hearing except when testifying before the Commission themselves. Witnesses placed under this rule of sequestration shall further be prohibited from discussing the facts and circumstances of the case with any persons or parties other than the attorneys for the employee and/or the Appointing Authority. After a witness has completed his testimony at a hearing and has been released by the parties, he shall be released from the rule of sequestration, except that he shall be prohibited from discussing the case with any other witness until the conclusion of the appeal before the Commission.
- D. Affidavits and other exparte statements shall not be received into evidence without the consent of all parties, except to refresh memory or to discredit a witness.
- E. Parties and witnesses shall be subject to cross-examination as in civil trials before the courts and the Commission, each member of the Commission, or its attorney may examine and cross-examine any witness.

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- F. The Commission may require that the parties stipulate all undisputed facts.
- G. The Commission may limit corroborative evidence.
- H. The Commission may set 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.
- I. The Commission may take notice of the provisions of the Act, the Rules, the classification plan, and the pay plan without the necessity of an offer in evidence.
- J. At the time or commencement of any hearing or other matter considered or decided by the Alexandria Civil Service Commission under Rule XIII, a Commissioner shall recuse him/herself without a motion from the proceeding or matter for conflicts of interest or personal reasons where prejudice or bias could cause an unfair and partial hearing. (Added June 20, 2012) (Amended September 19, 2018)
 - 1. Repealed September 19, 2018
 - 2. Repealed September 19, 2018
 - 3. Repealed September 19, 2018
- K. (Added June 20, 2012) (Repealed September 19, 2018)
 - 1. Repealed September 19, 2018
- L. When a formal motion is presented to recuse a Commissioner, the party requesting the recusal shall list the specific reasons why the Commissioner should not be involved in the hearing and evidence supporting the alleged bias or prejudice. The Commissioner shall either recuse himself or refer the motion to the other Commissioners present. (Added June 20, 2012) (Amended September 19, 2018)
- M. If the Motion for Recusal is referred to the other

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Commissioners present, the inquiry shall be an objective one. The Commissioners deciding the Motion for Recusal shall not ask whether the Commissioner is subjectively biased, but whether the average Commissioner in his position is likely to be neutral, or whether there is an unconstitutional potential for bias. (Added June 20, 2012)

- N. In the event of a tie vote by the Commissioners present who are referred a Motion for Recusal, it shall be construed as a failure of the party bearing the burden of proof as required by these Rules. In such a case, the party failing to satisfy the burden of proof in a convincing manner necessarily fails to support its/his contentions. The Chairman may withhold his vote if his voting would result in a tie, but he may also vote to enforce the tie if desired. (Added June 20, 2012) (Amended September 19, 2018)

XIII§2.~~65~~ The Commission shall decide appeals on the basis of relevant facts produced and presented by the employee and the Appointing Authority at the appeal hearing, including sworn testimony and documentary evidence. (Added October 1, 2010)

XIII§2.~~76~~ The policy of the Commission with regard to disciplinary appeals shall be as follows: (Added October 1, 2010)

- A. In reviewing the disciplinary actions, the Commission shall have the duty and authority to determine whether the Appointing Authority acted with just cause and within its Rules, procedures, and policies in taking disciplinary action for infractions allegedly committed by an employee, and, if so, whether the discipline imposed is commensurate with the infraction.
- B. The Commission shall act to modify or set aside disciplinary action taken by the Appointing Authority only when it finds that the Appointing Authority has acted unreasonably. The fact that the Commission finds the Appointing Authority could or should have pursued a different course of action against such employee shall not be sufficient grounds to modify or set aside disciplinary action taken by the Appointing Authority.

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- C. For purposes of this Rule, “just cause” shall be defined as a rational basis for the disciplinary action taken by the Appointing Authority, based upon the information available to the Appointing Authority at the time such discipline was imposed. Just cause shall be deemed to have been established when the Appointing Authority produces evidence demonstrating the employee’s commission of the alleged infractions and demonstrating that the commission of such infractions bear a real and substantial relationship to the efficient operation of the affected department of the City government.

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