

# **A PLAIN LANGUAGE GUIDE TO THE PUBLIC SAFETY CIVIL SERVICE COMMISSION**

## **Services Provided:**

The Commission serves the City of Seattle by providing these primary services:

1. Serves as a quasi-judicial body and is responsible for conducting fair, impartial and timely hearings of employee appeals involving the administration of the City's personnel system.
2. Provides **employees and departments** with timely, fair, and impartial hearings, and renders decisions on employee appeals. The Commission may issue such remedial orders as it deems appropriate.

## **THE ADMINISTRATIVE APPEAL PROCESS**

All appeal documents filed with the Commission are time sensitive. The Commission staff will date stamp the document and make a series of preliminary determinations as to whether the appeal is appropriate for Commission review:

- **What types of actions may be appealed?**

1. Appeals of Disciplinary Actions:
  - Suspension
  - Demotion
  - Termination
2. Appeals involving the examination process

- **How do I file an appeal?**

Appellants may utilize Commission appeal forms (Notice of Appeal) which can be obtained from the Commission's office or from its web site on the Inweb and Internet at <http://cityofseattle.net/pscsc/> or appellants may simply notify the Commission in writing. The notice must include the mailing and street address where process and other papers may be served, a brief description of the facts giving rise to the appeal, and a concise statement of the reason for the appeal.

Upon receipt of the appeal, the Commission will notify the appropriate parties that an appeal has been filed.

- **When should the appeal be filed?**

Appeals must be filed **within ten (10) calendar days** of the date of the letter written by the Dept. informing the employee of its **final** decision regarding a disciplinary action.

- **Does the Commission have jurisdiction issues being appealed?**

Most disciplinary actions and alleged violations of Article XVI of the Charter, the Personnel Ordinance, Rules and policies are within the Commission's jurisdiction. But there are times when there is a question as to whether the Commission has jurisdiction over a specific type of appeal. This means that the Commission is not the proper appeal body for the type of complaint being filed.

When an appeal involves matters that require the attention of both the Commission and another "rights" agency, the Commission will decide whether to proceed with hearing that aspect of the appeal that falls within its jurisdiction or whether it will wait to receive the findings of the other agency.

When there is a question regarding the Commission's jurisdiction, the Commission will review the matter, make a jurisdictional determination, and issue a formal decision on the matter.

- **What happens when the appeal exceeds the Commission's jurisdiction?**

Frequently, the Commission receives appeals that are not within its jurisdiction. These include ethics violations, sexual harassment, racial discrimination or other issues. The Commission refers these to the appropriate "rights" agency such as the Ethics and Elections Commission or the Seattle Office for Civil Rights,

When an appeal involves matters that require the attention of both the Public Safety Civil Service Commission and another "rights" agency, the Commission will decide whether to proceed with hearing that aspect of the appeal that falls within its jurisdiction, or whether it will wait to receive the findings of the other agency. When findings are received from the other "rights" agency, the Commission will decide whether to adopt the findings or whether to hold its own hearing.

- **What happens when an appeal is filed?**

Upon receipt of an appeal, Commission staff will notify all of the parties and provide them with copies of the appeal. The Executive Director will make a preliminary determination regarding whether the appeal is properly filed. This involves whether

the appeal has been timely filed and whether the employee has civil service rights. Questions of jurisdiction are taken to the Commission for resolution.

After the Executive Director makes a preliminary determination, the parties will be notified that either the hearing process is underway or that the appeal does not meet the necessary criteria for filing. In the event that an appeal is not accepted, the Executive Director will enter an Order dismissing the appeal.

- **Can the Executive Director's determination be appealed?**

All orders entered by the Executive Director can be appealed to the Commission, as long as the appeal is filed **within twenty (20) days after the date of mailing said order**.

Appeals to the Commission of decisions by the Executive Director are either heard by the Commission, itself, in a formal hearing, or decided solely on the record. The Commission will issue a final written Decision on the matter.

### **PRE-HEARING CONFERENCES**

When the Executive Director finds that an appeal is appropriate for review by the Commission, the case is processed and all parties are advised that they will be required to attend a pre-hearing conference. After the pre-hearing conference is scheduled, the parties will be notified in writing of the date and time. Pre-hearing conferences may be recorded; however, they are informal conferences. Parties may appear *pro se* (representing themselves) or they may be accompanied by any representative of their choosing.

- **Pre-hearing Conference:**

The initial pre-hearing conference is generally held before the full Commission. Its purposes are:

- To identify and frame the issues which will be heard by the Commission;
- To set the dates for “**discovery**” and for the actual hearing.

The Discovery schedule sets forth a period of time when the parties will exchange requested documents and witness lists. If a requested document is not provided, the Commission may issue a subpoena to request its production. “Discovery” is explained in the next section.

- To entertain any pre-hearing motions which may be brought by either of the parties, and establish schedules for filing and responding;

- **Second Pre-hearing Conference (if necessary):**

The second pre-hearing conference is generally held before the Commission's Executive Director. Its purposes are:

- To have each party submit a list of witnesses and copies of the actual evidence (documents) that each intends to use in support of their case at the hearing;
- To have evidence (discovered documents, interrogatories from each party) marked and numbered for identification and admitted as exhibits;
- To raise objections to the evidence or proposed witnesses submitted by the opposing party for a ruling by the Commission if not resolved pre-hearing;
- To set forth any stipulated facts or testimony where possible; and
- To resolve any outstanding matters as may be resolved prior to the hearing. Disputes on objections not resolved at the pre-hearing conference will be held over for ruling by the full Commission..

- **What Is Discovery?**

**Discovery** is a process that allows each of the parties to see and review the position and supporting evidence that is being presented by the opposing side. *There should never be any surprises in a hearing.* All of the evidence, it's relevance to the case - the witnesses and their relevance to the case may be established prior to the hearing.

If the contents of a document or the testimony of a witness is not relevant to the issue that has been accepted for review, it is the responsibility of the opposing party to object to it. Objections of this type should be raised during the pre-hearing conference when exhibits are being presented and marked. If a ruling is not made at the time the objection is raised, the Executive Director will mark [number] the exhibit, but hold the ruling in abeyance until the exhibit is raised during the actual hearing.

The discovery process, itself, takes place between the parties. The Commission does not participate in it unless there is a request for a continuance to the established schedule. The parties should make arrangements with each other to exchange documents in accordance with the established schedule. Each party should be prepared with a numbered list of the exhibits, containing a one sentence description of each document that they plan to present. Each party should also have a complete set of their documents prior to hearing. Witness lists should also be

presented during the discovery process according to the schedule established at the pre-hearing conference. Witness addresses (preferably work addresses) must be provided and a brief one-sentence description as to the scope of their testimony. The Executive Director can issue subpoenas and affidavits of service as necessary. Parties may prepare the subpoenas and affidavits of service for the Executive Director's signature.

A complete set of documents presented at hearing include an original for the record and four copies (for the three Commissioners and its attorney).

- **What Is A Subpoena?**

A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter. A *subpoena duces tecum* requires production of books, papers and other things.

Sometimes people don't want to testify, and a subpoena is necessary to compel them to come to a hearing.

Subpoenas must be served in person and parties may not serve their own witnesses personally. They may however, ask others to do it. A professional process server is not necessary. After a subpoena is served, the server must fill out an Affidavit of Service verifying that the subpoena has been served on the person named.

- **What Is A Stipulation?**

A **Stipulation** is an agreement by the parties on certain facts related to an appeal. Both parties accept these facts to be true, so they do not need to be raised or argued during the hearing. Simple stipulations might include:

1. Mary Smith is an employee of Seattle Police Department
2. Mary Smith is employed as a Police Officer
3. Mary Smith was hired by Seattle Police Department on August 11, 1994
4. Mary Smith used his computer for personal access to the internet on May 8, 1998
5. Mary Smith was suspended for five days for personal use of the Internet.

The parties to the appeal agree that Mary Smith used her computer for personal access to the internet, but Mary Smith might claim that there were mitigating circumstances and that the suspension was either too harsh or not justified at all. Mary Smith's claim will, at the first pre-hearing conference, be phrased into an issue. The stated issue might be:

"Whether the suspension was for justifiable cause."

All the parties to the appeal must agree on the issues that will be accepted for review. All parties will then receive a formal, written Order entered by the Executive Director that repeats the issue and the agreed upon schedule. Either party may object to the statements made on the Order and any order by the Executive Director may be appealed to the Commission, **within twenty (20) days** of the date of the Order.

- **When Presenting Your Case:**

It is important to research all of the pertinent laws, rules and policies, know what they say, and understand what they mean.

1. Stipulated facts can save time and, sometimes, provide important clues as to how a case will be presented.
2. Discovery Documents, Witness Lists, and Stipulated Facts should be specific to the issues that are accepted for hearing. When used correctly they can provide a strong basis for developing a case.
3. It is important to raise objections to documents and/or witnesses that are not relevant to the issues that have been accepted for review in a case.

Only those exhibits admitted into evidence may be utilized during the hearing.

### **THE HEARING**

Unless requested by one of the disputing parties, upon a showing of good cause, all Commission Hearings are public and anyone may attend and observe the proceedings.

The Commission generally delegates its authority to hear cases to a fellow Commissioner as Presiding Officer who conducts the actual hearing. Either or both the department and the appellant may choose to be represented by an attorney, or anyone else of their choosing. If either party retains an attorney, the other party is notified. Once a party retains an attorney, communication with that party will cease and all communication will be routed directly to the representing attorney.

- **Burden of Proof:**

At any hearing regarding a disciplinary action – demotion, suspension or discharge, the burden of proof rests with the disciplining authority... the department. At any other hearing, such as a violation of Personnel Rules regarding classifications, the Appellant has the burden of proof and must prove his or her case by a preponderance of the

evidence. The party having the burden of proof will be the first party to present its case during the Hearing.

- **Opening Statements:**

The Presiding Officer may ask the parties to make opening statements with a time limit (e.g. 5 minutes for each side).

An opening statement is a brief outline or summary of the nature of an appeal and the anticipated proof that will be presented. The party with the burden of proof will go first, and the opposing party will follow.

**The purpose of opening statements is to briefly establish the nature of the appeal and assist the Commission in understanding how it will be presented.**

- **Calling and Questioning Witnesses:**

This is a critical element of the hearing process. It provides both sides with the opportunity to utilize the evidence and question the witness on the facts of the case.

Each witness will be sworn in by the Executive Director prior to giving testimony. Each witness will testify through a question and answer process.

In the case of a disciplinary action, the department will go first and begin with its **direct examination**. During this time, any evidence that has been introduced during the pre-hearing conference, to which the witness can speak, will be offered. Any objections to the admission of evidence during a pre-hearing conference that were not ruled on at that time, will be argued and ruled on as they are introduced during the hearing.

When direct examination is completed, the opposing party will engage in **cross-examination**. Cross-examination is limited to those things that were raised during direct examination, but it provides an opportunity to “test” the truth and raise doubt as to the credibility of the witness and/or what was said.

Upon completion of cross-examination, the introducing party may engage in a **re-direct examination**. The purpose of the re-direct examination is to re-establish or re-affirm the truth of what may have been questioned during the cross-examination. This is especially important; if any doubts were raised regarding the testimony or evidence during the cross-examination.

After the party with the burden of proof presents his/her case, the opposing party will present its case, evidence and witnesses, in the same order – direct examination, cross-examination, and re-direct examination.

- **Calling the Same Witnesses:**

If the same witness appears on the witness lists for both parties, that witness will only be called once, and both parties will be allowed to question the witness at that time. The parties are responsible for scheduling their witnesses so that the hearing can move along efficiently. If a department-head or someone with similar scheduling difficulties will be testifying, it is the Commission's practice to hold the proceedings in abeyance to allow that witness to testify at a time that is most convenient for the witness.

- **Rebuttal Evidence:**

If the a party's case raises issues that were not covered in the opposing party's case, the opposing party is given an opportunity to present **rebuttal evidence or witnesses**.

Such rebuttal may be at the discretion of the Presiding Officer, who may require either party to show proof that this is necessary.

- **Closing Arguments:**

The Presiding Officer may request closing arguments with a time limit for each side. Once again, in disciplinary matters the department will go first. The closing arguments should summarize the case and review the testimony and evidence that "proves" it. After the department presents its summary, the Appellant will present his/her summary.

- **Briefs:**

On occasion the Commission will request Post-Hearing briefs and/or Proposed Findings of Fact, Conclusions of Law and an Order. Sometimes these are requested at the beginning of a hearing but most often, they are requested at the end of the hearing. Briefs are written statements which argue the case. They generally contain summaries of the facts, the pertinent laws, and an argument of how the law applies to the facts supporting the party's position. They usually include case cites that support a given position.

### **DECISION OF THE COMMISSION**

- **Issuance of Decision:**

The Commission will issue a decision within **ninety (90) days** from the **Close of the Record**. This is either the last day of the hearing or **ninety (90) days** from the date of



the receipt of the post-hearing brief. The Commission's Decision will contain Findings of Fact, Conclusions of Law, and an Order.

- **Judicial Review:**

A decision of the Commission is considered final and conclusive unless a party of record makes an application to the Superior Court of the State of Washington for King County for a writ of review.