

## CIVIL SERVICE COMMISSION POLICY

<b>SUBJECT:</b> CONDUCT OF CIVIL SERVICE COMMISSION HEARING	<b>FILED UNDER:</b> CIVIL SERVICE COMMISSION POLICIES	<b>ITEM NO:</b> 1.61 <b>PAGE</b> 1 of 5
<b>APPROVED BY:</b>  _____		<b>EFFECTIVE DATE:</b> 4-28-98
<b>AUTHORIZED SIGNATURE</b>		
<b>NOTES:</b>		

**PURPOSE:** To insure fairness and promote efficiency in the conducting of employee appeals.

This policy shall be interpreted to give effect to all of the following specific purposes.

### APPLICABILITY:

The following rules shall apply to the conduct of employee appeal hearing. Each party or his/her representative shall become familiar with and comply with all applicable rules and embodied in Article VII of the Civil Service Rules and Regulations of the City of Long Beach (Revised 1990):

1. Within 14 days after Notice of Appeal is given to the Commission, the prosecutor shall submit to the defendant or his representative all documents relied upon to support the charges other than those contemplated to be used for impeachment or rebuttal. The obligation of supplying documents is a continuing one. Except for good cause shown, failure to provide the required documents shall preclude the use of said documents at the hearing.
2. Within 30 days after Notice of Appeal if given to the Commission, the prosecution and the defense/appellant shall meet in person or by telephone at a convenient time and place and shall accomplish the following matters:
  - A) **Time Estimate** - Formulate and submit to the Commission a time estimate for the length of the hearing. Upon receipt of the time estimate, the Commission will place the hearing on calendar, and when possible, will schedule a sufficient number of consecutive hearing dates to conclude the case.
  - B) **Exchange Witness Lists** – Each party shall provide the other party with a written list of witnesses to be called at the hearing other than those contemplated to be used for impeachment or rebuttal. The obligation of listing witnesses is a continuing one. Except for good cause shown, the testimony of any witness who has not been listed on a party's witness list shall be precluded.

C) **Exchange Exhibits** – If not previously exchanged, the parties shall exchange all exhibits to be used at the hearing other than those contemplated to be used for impeachment or rebuttal. The obligation to exchange exhibits is a continuing one. Except for good cause shown, failure to provide exhibits in accordance with this section shall result in the preclusion of the exhibits(s) at the hearing.

D) **Discuss Settlement** – The parties shall explore and eliminate all possibilities of settlement.

E) **Narrow Issues** – The parties shall make every effort to eliminate from the charges all issues that will not be disputed at the hearing.

F) **Stipulation of Facts** – The parties shall make every effort to stipulate the facts upon which the parties know or have reason to know there can be no dispute for the purpose of simplifying the issues of fact to be tried at the hearing.

G) **Evidentiary Matters** – The parties shall attempt to resolve any objections to the admission of oral or documentary evidence. Each party shall, to the extent possible, identify and state the parties' position on any anticipated evidentiary problems.

3. Prior to the hearing, each party intending to offer documentary evidence at the hearing, shall provide the Executive Director of the Civil Service Department or his designee with at least eight legible copies of each item of documentary evidence intended to be offered at the hearing. Documentary evidence that will be introduced at the hearing shall be marked in advance of the hearing and shall be numbered and alphabetized sequentially. The Prosecutor is assigned exhibit numbers and the defendant is assigned letters.

Unless good cause is shown, documents not pre-marked and/or photocopied in accordance with this section may be precluded at the hearing. Pre-marked items of evidence will not be distributed by the Executive Director until such time as the items are admitted into evidence. This rule shall not preclude pre-hearing distribution to the Commission of documents provided to appellant at or before his/her "Skelly hearing."

4. **Use of Electronic Devices** – It shall be the responsibility of each party utilizing electronic devices for the presentation of testimony or evidence to ensure that the equipment necessary for such presentation is available prior to the commencement of the hearing. If audio or videotapes are to be utilized, it shall be the responsibility of the party offering them to ensure that they are both clear and audible. Failure to provide the equipment necessary for the presentation of the evidence or failure to ensure an audible and clear copy of a video or audio tape may result in the preclusion of said evidence at the time of the hearing.

5. **Pre-Hearing conference** – Prosecuting and defense attorneys or representatives, and defendants, **must** report to the Civil Service Department at 8:00 a.m., or 30 minutes prior to the scheduled hearing time. This pre-hearing conference shall accomplish the following matters:
  - A) **Discuss Settlement** – The parties shall explore and eliminate all possibilities of settlement.
  - B) **Narrow Issues** – The parties shall make every effort to eliminate from the charges all issues that will not be disputed at the hearing.
  - C) **Evidentiary Matters** – The parties shall attempt to resolve any objections to the admission of oral or documentary evidence. Each party shall, to the extent possible, identify and state the parties' position on any anticipated evidentiary problems.
  - D) **Evidence at the Hearing** - The parties shall insure that the Executive Director of the Civil Service Department or his designee has received eight copies of each and every item of documentary evidence to be used at the hearing.
6. Attorneys and representative must not schedule other activities which interfere with the appeal hearing. If unexpected events occur, alternative counsel should be provided. Continuances based upon unavailability of counsel or representatives will be granted by the Commission only for good cause shown.
7. **Subpoenas** – The Civil Service Commission has the power to issue Subpoenas and/or Subpoenas Duces Tecum in order to compel the attendance of witnesses and the production of pertinent documents. If a party desires to subpoena a City employee or compel the production of City documents, or subpoena non-city employees or compel the production of non-City documents, it shall be the party's obligation to secure service of the Subpoenas issued by the Executive Director. That party must notify the Executive Director of the Civil Service Department in writing at least 14 days prior to the scheduled hearing.
8. **Discovery orders; informal requests; testimony of witnesses; prohibition.**
  - A) No order requiring discovery shall be made in a disciplinary hearing except as provided in these rules. These rules shall be the only means by which either party may compel the disclosure or production of information or evidence required to be disclosed by these rules.
  - B) Before a party may seek Commission enforcement of any disclosure required by these rules, the party shall make an informal request of opposing counsel for the desired materials and information. If within 15 days the opposing counsel fails to provide the

materials and information requested, the party may seek a Commission order. Upon a showing that a party has not complied with Section I, and upon a showing that the moving party complied with the informal discovery procedure provided in these rules, the Commission may make any order necessary to enforce these rules, including, but not limited to, immediate disclosure, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order deemed appropriate.

C) The Commission may prohibit the testimony of a witness only if all other sanctions have been exhausted. The Commission shall not dismiss a charge pursuant to these rules unless required to do so by law.

## 9. Sanctions

A) A person is subject to the contempt sanction for any of the following in an adjudicative proceeding before the Commission.

1. Disobedience of or resistance to a lawful order.
2. Refusal to take the oath or affirmation as a witness or thereafter refusal to be examined.
3. Obstruction or interruption of the due course of the proceeding during a hearing or near the place of the hearing by any of the following:
  - a) Disorderly, contemptuous, or insolent behavior toward the presiding officer while conducting the proceeding.
  - b) Breach of the peace, boisterous conduct or violent disturbance.
  - c) Other unlawful interference with the process or proceedings of the agency.
4. Violation of the prohibition of ex parte communications.
5. Failure or refusal, without substantial justification, to comply with a deposition order, discovery request, subpoena, or other order of the presiding officer, or moving, without substantial justification, to compel discovery.

B) The Commission may certify the facts that justify the contempt sanction against a person to the superior court in and for the county where the proceeding is conducted. The court shall thereupon issue an order directing the person to appear before the court at a specified time and place, and then and there to show cause why the person should not be punished for contempt. The order and a copy of the certified statement shall be served on the person. Upon service of the order and a copy of the certified statement, the court has jurisdiction of the matter.

- C) The Commission may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure.
10. Nothing contained in these procedures shall in any way limit an employee's right to a hearing before the Civil Service Commission, as provided for in Article XI of the Long Beach City Charter and Article VII of the Civil Service Rules and Regulations.