

**PROCEDURES GOVERNING
DISCIPLINE APPEALS
TO THE
PUBLIC SERVICE COMMISSION**

**Public Service Commission
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INTRODUCTION

1. The Public Service Commission has authority to hear appeals of discipline penalties under section 28 of the *Public Service Commission Regulations 2001* (“*Regulations*”). These procedures define the practice established by the Commission in appeals under these Regulations, the Prison Officers (*Discipline etc.*) Rules 1981, the Bermuda Fire and Rescue Service (*Discipline*) Regulations 2013, Police (*Conduct*) Orders 2016, and Police (*Performance*) Orders 2016.
2. These procedures must always be consistent with the Commission’s governing authority in the Regulations, as well as other relevant statutes. In instances where a conflict exists between this document and the Regulations or other statute, the authority of the Regulations or statute prevails.

SCOPE, PURPOSE AND INTERPRETATION

1. All appeals will be decided by a Panel of the Public Service Commission. Section 28 of the Regulations does not require an attendance in person and hearings are on the Record unless prior permission to appear has been requested and granted.
2. These procedures apply to all discipline hearings.
3. The fundamental duty of fairness and natural justice shall inform and direct the interpretation of these procedures.
4. These procedures are intended to ensure:
 - a) that all parties to the proceedings are afforded a reasonable opportunity to present their case;
 - b) that the Record, and any submissions or oral presentations are disclosed and presented in a timely and efficient manner; and
 - c) that proceedings before the Panel are conducted in a less formal manner than the Courts, and as expeditiously as circumstances and fairness permit.

GENERAL MATTERS

1. Where a question arises that these procedures do not answer, a Panel retains the authority to decide any matter not provided for by these procedures.
2. These procedures may be amended from time to time without notice.
3. A Panel may dispense with, amend, vary or supplement all or part of these procedures, if it is satisfied that, special circumstances exist; or it is in the public interest to do so.
4. A Panel may extend or abridge the time requirements fixed by these procedures or otherwise fixed by the Commission, on its own initiative or in response to a request by any party to the proceedings.
5. If a party fails to comply with a time limit specified in these procedures or by the Commission or a Panel for the filing of documentary evidence or other material, without satisfactory explanation, the Commission or a Panel may disregard the documentary evidence or material or may in the exercise of its discretion dismiss or allow the appeal.
6. Unless a Panel grants an extension or an adjournment, all time limits for complying with these procedures, and all dates set for a hearing, are final.

DEFINITIONS

1. **Appellant:** any person who submits a valid appeal.
2. **Appeal:** an appeal by a public servant, a fire officer, police officer, or prison officer.
3. **Chairperson:** an individual designated to act as Chairperson of the Public Service Commission.
4. **Commission:** the Public Service Commission.

5. **Discipline Authority:** The employer's representative, usually Head of Department, the Chief Fire Officer, and the Commissioner of Corrections.
6. **Hearing:** the convening of a Panel to decide a case upon a review of the record, including written submissions, or convening to receive oral evidence and oral submissions in addition to a review of the record and submissions.
7. **Secretary:** an administrator of the Commission for the purposes of these Rules including that individual's delegate, who shall act as clerk to the Panel.
8. **Panel:** at least three members of the Public Service Commission sitting as a Panel to hear an appeal.
9. **Panel Chair:** The Chair of a Panel when not the same individual as the Chair of the PSC
10. **Parties:** the parties to a proceeding are:
 - a. the Appellant, including a union representative or friend;
 - b. the Respondent;
 - c. the Secretary;
11. **Record:** The documents relating to the discipline proceeding before the discipline authority.
12. **Regulations:** *The Public Service Commission Regulations 2001, the Prison Officers (Discipline etc.) Rules 1981, Police (Conduct) Orders 2016, and the Bermuda Fire and Rescue Service (Discipline) Regulations 2013.*
13. **Respondent:** the discipline authority, or employer's representative
14. **Response:** the discipline authority's Response to an Appeal.
15. **Submission:** an oral or written argument.

PART A

FILING OF DOCUMENTS

1. A document may be filed with the Panel, to the attention of the Secretary, by any of the following methods:
 - a) delivering a copy to the Commission's office;
 - b) mailing a copy to the Commission's office;
 - c) transmitting a copy to the Commission's office via e-mail, followed by delivery of printed copies; or

d) such other manner as the Commission may determine.

SERVICE

2. Any notice required to be served on a party may be served by the Commission in the following manner:
 - a) a copy of the document or notice may be delivered by regular mail;
 - b) a document sent by mail shall be deemed to be received by the party on the fifth day after the document or notice is mailed;
 - c) if a party shows by cogent evidence, in writing, to the Panel that a notice or document did not come to the party's attention, the Panel may extend the time for a response or other action.

NOTICE OF APPEAL - s. 18 Bermuda Fire and Rescue Service (Discipline) Regulations 2013

3. If a Fire Officer gives notice of an appeal to the Commission, the Chief Fire Officer shall within 14 days of the notice of appeal file with the Commission a record of the appeal in accordance with section 18 of the 2013 Regulations.
4. The Chief Fire Officer shall at the same time provide a copy of the materials to the officer subject to discipline.

NOTICE OF APPEAL - Police (Conduct) Orders 2016 and Police (Performance) Orders 2016

5. The Discipline Authority shall, within 14 days of the date of the notice of appeal, deliver the Record of the discipline proceeding to the Commission, notify the officer that he has done so, and provide copies of the Record to the officer.

NOTICE OF APPEAL – s. 20 – Prison Officers (Discipline) Rules 1981

6. If a Prison Officer delivers notice of an appeal to the Commission, the Commissioner of Prisons shall within 14 days of the notice file with the Commission any supplementary items in the record for the Commission's use, in accordance with the Rules.
7. The Commissioner of Prisons shall at the same time provide a copy of the Record to the officer subject to discipline or to his designated representative.

NOTICE OF APPEAL – s. 28 of the Public Service Commission Regulations 2001

8. The Head of the Civil Service or his designate shall, within 14 days of the date of the notice of appeal, deliver the Record of the discipline proceeding to the Commission and the officer.

WITHDRAWAL

9. An Appellant may withdraw an Appeal at any time prior to a Panel Hearing by giving notice in writing to the Panel.
10. The Secretary shall advise the parties to the Appeal of the withdrawal of the Appeal and all action regarding the Appeal shall cease.
11. If the Appellant has indicated an intention to withdraw an appeal but fails to do so in writing, the Panel may consider the Appeal withdrawn and instruct the Secretary to advise the Parties accordingly. If the Appellant fails to communicate with the Commission for a period of 30 days, the Appeal will be considered withdrawn.

PART B

REFERRAL TO PANEL

12. Upon receipt of an Appeal, the Chairperson shall appoint at least three members of the Commission to act as a Panel to hear the appeal, or all members of the PSC may sit as the Panel.
13. The Chairperson shall appoint one member as Panel Chair.

HEARINGS 'On the Record'

14. All Appeals shall be conducted by the Commission without an oral hearing, except with the permission of the Commission. The discipline authority may make submissions in reply to the appeal only with permission of the Commission.
15. A party may ask for permission to appear in person to address the Panel. A request to appear in person shall be in writing and shall be made with the Notice of Appeal. The Commission may deny the request or grant the request to appear in person. If the Commission denies the request to appear in person or if no request is made, the Commission may proceed to determine the appeal on the Record. The Record may include any submissions on fact or law made by a party or the party's representative.

APPEARING BEFORE THE COMMISSION

16. If an appearance in person is granted by the Commission, the hearing shall be held within a reasonable time upon receipt of a notice of appeal, ordinarily within 90 days after the appellant files the notice of appeal with the Commission.
17. Hearings in person shall be held at a place and time designated by the Panel.

18. Hearings shall normally be held at the offices of the Department of Human Resources and the Panel will generally sit between 9:30 am and noon on weekdays unless the Panel decides otherwise.
19. Hearings shall not be open to the public, unless otherwise ordered by the Commission.
20. Any party may present evidence with the permission of the Panel, and shall be entitled to make representations to the Panel with the assistance of a union representative or friend.
21. Prior to the date of the hearing in person, if a party wishes to postpone the hearing to another date, or to make an application to vary the time limits previously agreed or ordered, the party shall make the request in writing to the Secretary not later than 10 days in advance of the hearing date.
22. A hearing in person may be postponed if the Panel considers it is fair to do so. When considering a request for a postponement or a motion for an adjournment, the Panel may take into account the following matters:
 - a) the reason for the request;
 - b) prejudice to a person or party;
 - c) the timing of the request or motion;
 - d) the number of postponements or adjournments already granted;
 - e) the public interest;
 - f) the availability of the parties;
 - g) the efforts made to avoid the postponement or adjournment;
 - h) the principles of fairness and natural justice; and
 - i) any other relevant factors.

DOCUMENTS FOR USE AT THE HEARING IN PERSON

23. An appellant shall prepare a Book of Documents for use at the hearing, incorporating the Record of the Discipline Authority and any additional documents that were relied on at the discipline hearing.

24. Each document shall be listed and identified by a number, which shall be used for the duration of the appeal hearing.

SUBMISSIONS TO THE PANEL

25. Any submissions on fact and law that a party to an appeal intends to rely upon before an Appeal Hearing shall be:
 - a) filed with the Panel as directed; and
 - b) served on every party to the Appeal upon a timetable agreed by the parties or ordered, but not less than fourteen (14) days before the Hearing.

PRELIMINARY MATTERS / ATTENDANCE OF WITNESSES

26. The Panel Chair or the Panel may, on its own motion or at the request of any party, hold a preliminary hearing to deal with any matter that may aid in the efficient disposition of the hearing.
27. Applications for Judicial Review on preliminary matters are considered premature and the Panel may not delay the continuation of the appeal on the merits of the case, unless ordered by a Court of competent jurisdiction, including matters relating to discovery, and the failure of any party to abide by any order made may result in an appeal being dismissed or allowed.
28. At the request of any party prior to a hearing, the Panel may invite the attendance of witnesses and/or order the production of documents at a preliminary hearing at a place and time to be decided at the discretion of the Panel.
29. Where a witness is required at the instance of any party to a hearing or preliminary proceeding, the cost of attendance, if any, shall be borne by the party who requires the attendance. Where a witness is required at the instance of the Panel, the cost of attendance, if any, shall be borne by the Panel.

PROCEDURE AT HEARING

30. If a Hearing in person has been allowed, and if an Appellant does not appear at the hearing, the Panel may consider the Appeal withdrawn and dismiss the Appeal. If a disciplinary authority does not appear at the hearing, the Panel may proceed with the hearing in the absence of a Respondent. In either case the Panel may decide to adjourn to a future date.
31. The Panel may, at its discretion, conduct a hearing or a preliminary hearing in person or by teleconference, video conference or by any other electronic means, or on the Record.
32. The Panel shall have authority to control the procedure of a hearing, to admit or exclude testimony or other evidence, whether or not admissible in a court, and to rule upon motions and objections.
33. The Panel shall not be bound by the rules of evidence in civil proceedings: it may receive all evidence it deems relevant.
34. All persons in attendance at the hearing are expected to conduct themselves in an appropriate and respectful manner. The Panel may exclude from the hearing room, or from further participation in a proceeding, any person who engages in improper conduct. The Panel may also, at its discretion, exclude from the hearing room a witness, other than a party, who has not yet testified.
35. The Panel is in charge of the hearing room. Decisions of the Panel Chair regarding these Rules are final.

ADJOURNMENT

36. The Panel may continue a hearing from day to day or adjourn it to a later date by announcement at the hearing or by notice to all parties.

RECORD OF HEARING

37. The Commission shall compile a documentary record of every hearing.
38. The Record shall contain the following:
 - a) every document filed with the Commission's office under these procedures in respect of the hearing or a step in the proceeding;
 - b) the notice of hearing;
 - c) any orders made throughout the hearing; and
 - d) the final Decision and Order rendered by the Panel and the reasons for the Decision.
39. The Record of a hearing is not a public record, subject to the procedures pertaining to confidentiality of documents, *in camera* testimony, and the requirements of law.

PANEL DECISION

40. The Panel shall give its final Decision in writing, and include reasons for its Decision, within sixty (60) days after the Parties have delivered Final Summations, if any.
41. If the Panel requires additional time to give a decision, it shall make a statement advising of a thirty (30) day extension for the Decision to be rendered. An additional extension may be required in exceptional circumstances.
42. When the Panel has issued the Decision, the Secretary shall notify the Parties by providing a copy of the Panel's Decision.
43. The Commission may, at any time, correct a typographical error, an error of calculation or similar error made in an Order or reasons where to do so is expedient.