

RULE XIV

DISMISSAL, SUSPENSION OR DEMOTION

POLICY. 14.1 It is declared to be the policy of the Board to support the Appointing Authority in enforcing discipline and in demanding courteous and efficient service from public employees.

CAUSE FOR DISMISSAL, SUSPENSION OR DEMOTION. 14.2 The tenure of every employee hereunder shall be during good behavior and the rendering of efficient service, but any employee may be dismissed or suspended for cause. The following are among the causes which shall be sufficient for dismissal, suspension or demotion: (a) absence without leave; (b) commitment of any criminal act; (c) conduct unbecoming an employee in the public service; (d) disorderly or immoral conduct; (e) failure to pay or make proper provision for the liquidation of just debts; (f) incapacity due to mental or physical disability, except as hereinafter noted; (g) incompetency or inefficiency; (h) insubordination; (i) intoxication while on duty or public intoxication while off duty; (j) neglect of duty; (k) negligence or wilful damage to public property or waste of public supplies or equipment; (l) violation of any lawful or reasonable regulations or order made and given by a superior officer; (m) wilful violation of any of the provisions of the Act or these Rules.

In case of mental or physical incapacity due to service connected disability incurred in the Classified Service or while on military leave as provided in these rules, an employee may, with the consent of the Appointing Authorities and department heads concerned, and with the approval of the Director, be transferred to a vacancy in a position in some class not having a higher rate of pay than the class formerly occupied or to a position in a lower class. Should no such vacancy exist, then the Director shall place the employee's name on the layoff re-employment lists for such classes of positions as he determines the employee is qualified to fill and his name shall remain on such lists, if he is not sooner appointed therefrom, for a period of two years.

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PROCEDURE. 14.3 (a) Before any permanent employee is dismissed, suspended or demoted for cause, the Appointing Authority or his designated representative shall afford the employee due process in the form of a pre-disciplinary hearing. Written notice of the reasons for termination, suspension or demotion must be given the employee at least twenty-four (24) hours prior to the pre-disciplinary hearing, at which time the employee must be given the opportunity to respond orally and/or in writing to the charges made before the official, or the designated representative of the official, charged with the responsibility of making the disciplinary decision. The pre-disciplinary hearing must be held within seven (7) days after written notice to the employee. The determination as a result of the pre-disciplinary hearing must be communicated to the employee in writing within fourteen (14) days of the hearing. Circumstances that prevent adherence to these timeframes must have approval of the Director. The dismissal, suspension or demotion of an employee by an Appointing Authority without having first accorded the employee a pre-disciplinary hearing in accordance with this Rule shall be void and of no force and effect, and shall not be recognized by the Board, except in extraordinary situations as hereinafter specified.

(b) A permanent employee may be dismissed, suspended or demoted for cause without complying with the foregoing pre-disciplinary hearing in the event of "extraordinary situations". Extraordinary situations is hereby defined to include circumstances where an employee's retention would: (1) result in damage to public property; (2) result in injury either to the employee, a fellow employee, or to the general public; and (3) where an employee is confined in jail or prison under a writ of arrest or other judicial process. In any such event, the Appointing Authority shall, nevertheless, furnish written notice to the employee of the specific reasons for termination, suspension or demotion within twenty-four (24) hours of such dismissal, suspension or demotion, by hand delivery to his place of employment or his place of confinement or by certified mail to his address as shown by the records on file with the Personnel Board, and such employee shall also be given an opportunity for an evidentiary hearing before the Personnel Board, as prescribed in Rules 14.2 through 14.8, within twenty-eight (28) days of such action. The foregoing to the contrary notwithstanding, the employee shall forfeit his right to an evidentiary hearing unless said employee files written notice of appeal from such dismissal, suspension or demotion, within ten (10) days after notice thereof in accordance with Section XXII of Act No. 470, and Rule 14.4 herein.

(c) The Director shall prepare and disseminate to all Appointing Authorities and department heads a uniform format for use in pre-disciplinary hearings.

(d) All notices of dismissal, suspension or demotion furnished the Director under the provisions of this rule shall have attached written evidence that a pre-disciplinary hearing was held prior to such action being taken and shall be in writing

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and shall set forth: (1) the cause of action; (2) the effective date of the dismissal, suspension or demotion; and, (3) any other information deemed appropriate. A copy of such notice shall be mailed or delivered to the Director on the same day that notice is served on the employee.

(Rule 14.3 amended by the Personnel Board on June 22, 1979.)

(Rule 14.3 amended by the Personnel Board on October 20, 1981.)

(Rule 14.3 amended by the Personnel Board on December 4, 1990.)

(Rule 14.3 (a) amended by the Personnel Board on December 7, 2010.)

APPEAL. 14.4 An employee desiring to appeal from a dismissal, suspension or demotion shall, within ten days after notice thereof, file with the Director, a written answer or explanation of the charges. Such answer shall contain (1) an admission or denial of guilt and, (2) reasons why the action should not become effective. Upon receipt of the appeal, the Director shall forward a copy thereof to the Appointing Authority concerned. The Director shall prepare and have available simplified forms for use by an employee in perfecting an appeal to the Personnel Board from such disciplinary action as aforesaid. The Personnel Department shall, where necessary, assist the employee to perfect such appeal.

INVESTIGATION AND HEARING. 14.5 The Director shall within seven (7) calendar days after receipt of the appeal, investigate to insure proper procedure was followed as set out in Rule 14.3 and 14.4 and report said appeal to the Board. The Board shall schedule a public hearing on the appeal as early as practicable. Notice of the date, time and place of the hearing shall be given to the employee and the Appointing Authority. The parties may be represented by counsel. The Board shall not be bound by the technical rules of evidence but shall seek diligently all the information and evidence bearing on the merits of the case.

(Rule 14.5 amended by the Personnel Board on October 23, 1980.)

ATTENDANCE OF WITNESSES. 14.6 It shall be the duty of the Director to subpoena witnesses other than character witnesses, for or against the employee upon written request of either party to the hearing. Civil Service employees under the jurisdiction of the Personnel Board shall be required to attend and testify without subpoena. In the interest of fairness and justice, the Board may direct that witness testimony be taken by deposition for use in hearings before the Board in accordance with the Alabama Rules of Civil Procedure. The party or parties requesting the deposition shall bear all costs attendant thereto.

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DECISION. 14.7 The hearing on appeal shall be de novo, and the Board may rescind, modify, alter or affirm the penalty of action of the Appointing Authority, or may impose such additional or different penalty as may be warranted by the evidence adduced at the hearing. Within fourteen (14) days after the conclusion of the hearing, the Board shall render its decision which shall forthwith be certified to the Appointing Authority and be enforced by him. Copies of the decision shall be delivered to all other parties at interest.

RECORD OF TESTIMONY. 14.8 The Board may require that testimony introduced at hearings be recorded by a court reporter but same shall not be transcribed except upon further order. However, any party to the hearing may request the Court Reporter to transcribe such testimony or portions thereof, provided all costs of such transcription is borne by the party requesting same.

SUSPENSIONS. 14.9 As punishment for cause as cited in Rule 14.2 an Appointing Authority may, from time to time, suspend any permanent employee without pay or other compensation after holding the pre-disciplinary hearing as set out in Rule 14.3 (a). No employee may be suspended by the Appointing Authority for a period or periods in the aggregate of more than thirty days in any year of service. However, at the request of the Appointing Authority, the Board may extend the suspension of an employee pending the resolution of criminal charges and under such other circumstances justifying such extension. An employee desiring to appeal from such suspension, as extended by the Board and as provided in this Rule 14.9, shall have the same rights of appeal for hearing before the Personnel Board and the same rights of due process and be subject to the same rules of procedure as provided in Rule 14.4 through 14.8 of these rules.

(Rule 14.9 amended by the Personnel Board on October 4, 1983.)

DEMOTION. 14.10 An employee may be demoted to a position of a lower grade for which he is qualified for any of the following reasons: (a) when an employee would otherwise be laid off because his position is being abolished, reclassified to a higher grade or a lower grade, lack of work, lack of funds; or because of the return to work from an authorized leave of another employee to such a position in accordance with the rules on leave; (b) when an employee is removed during his probationary period following promotion; (c) when an employee voluntarily requests such demotion; and (d) when an employee is demoted for cause.

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The procedure outlined in Rule 14.3 through 14.8, inclusive, shall be applicable only for demotions by reason of Rule 14.10 (d) when an employee is demoted for cause.

(Rule 14.10 amended by the Personnel Board on October 4, 1983.)

REVOCAION OF SUSPENSION AUTHORITY. 14.11 The Board will revoke the right of an Appointing Authority to suspend, or set aside a suspension, only when it is clearly shown that this right is being abused or that its continued use by an Appointing Authority is inimical to the best interests of the public.

CHARGES FILED BY CITIZENS OR TAXPAYERS OR OTHER EMPLOYEES. 14.12 Any person who desires to file charges against an employee, as provided by Paragraph (b) of Section 22 of the Act, shall file such charges in writing, in duplicate, and shall recite therein the specific act or acts of the employee constituting such cause. The Director shall serve a copy of the charges on the accused employee, and shall investigate the same and report his findings to the Board within fourteen days after receipt of the complaint. Within fourteen days after receipt of notice of the complaint, the accused employee shall file, in duplicate, a written answer to the charges. Thereafter the proceedings shall be conducted in the same manner as is provided in these rules for hearings on appeals.

(Rule XIV amended by the Personnel Board on July 6, 1993, to become effective August 1, 1993.)

(Title of Rule XIV amended by the Personnel Board on December 4, 1990, from Dismissal and Suspension to Dismissal, Suspension or Demotion.)