



# CIVIL SERVICE - 101

Presentation for TMHRA  
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# §143.001 PURPOSE



# HISTORY OF CIVIL SERVICE

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- 1947
- Political Favoritism
- Adopted in approximately 80 cities
- Smallest: Sweetwater
- Largest: Houston
- Comprehensive Employment Statute
- Benefits added post-1947



# §143.012 DIRECTOR OF CIVIL SERVICE



**§143.014**

**APPOINTMENT OF ASSISTANT  
FIRE AND POLICE CHIEFS**



# § § 143.021,.023,.025 HIRING NEW EMPLOYEES



# COMMISSION'S ROLE IN HIRING

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- Sets date for eligibility examination
- Posts notice of examination
- Sets qualifications
- Provides for actual examination
- Establishes 3-member board - medical
- Establishes eligibility list
- Provides names of eligibles



# HIRING PROCESS

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- Set by state law
- Age limitations
- No lateral hires into higher classifications, even if no one in Department is qualified to do the work
- All employees start at entry level salary, even if experience in another city
- Hiring strictly from eligibility list created by written examination and physical agility test only





# HIRING PROCESS [CONT'D]

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- No scored interviews
- Chief must justify anyone passed over on eligibility list
- One year or 18-month probationary period – cannot be extended
- No part-time employees



# HIRING PROCESS [CONT'D]

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- NOTE: Restrictions made worse by shortage of qualified applicants and competition with neighboring cities



**§143.027**

**PROBATIONARY PERIOD**



# § § 143.028--.034 PROMOTIONS



# §143.028 ELIGIBILITY FOR PROMOTION



# §143.035 ALTERNATE PROMOTION SYSTEM



# COMMISSION'S ROLE IN PROMOTIONAL EXAMS

- 
- Approves study materials
  - Posts notice
  - May open examination to next lower classification – after delegated to CSD
  - Establishes rules regarding tests
  - Ensures fairness
  - Posts scores
  - Rules on appeals
  - Adopts alternate system in PD after vote
  - Receives reason for promotional bypass



# PROMOTIONS

- 
- Limits on who can apply to take examination – prior experience at another department does not count
  - Written examination only + seniority points determines who gets promoted
  - Appeal process for written examinations
  - No interviews or other assessment factors
  - Alternative promotional system





# §143.029 PROMOTIONAL EXAMINATION NOTICE



# §143.031 ELIGIBILITY FOR PROMOTIONAL EXAMINATION



# §143.032 PROMOTIONAL EXAMINATION PROCEDURE



# §143.033 PROMOTIONAL EXAMINATION GRADES



# WHAT GRADE REQUIRED ON PROMOTIONAL EXAMS TO BE CONSIDERED PASSING?

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- *City of New Braunfels v. Tovar – 3<sup>rd</sup> Court of Appeals (5/7/2015)*
  - Sergeant's promotional exam and Tovar had grade of only 64
  - Local civil service rule required grade of 70 *before* seniority points added, and Tovar was not placed on a promotional eligibility list



# COURT'S FINDING IN TOVAR CASE

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- Court found Section 143.033 required score *include* seniority points to determine if passing
- Tovar had standing to sue even though there was no vacancy on list

**\*\*VIP: don't give promotional examinations unless there is vacancy**



**§143.034**

**REVIEW AND APPEAL  
OF PROMOTIONAL  
EXAMINATION**



**§143.035**

**OPTIONAL ALTERNATE  
PROMOTIONAL SYSTEM IN  
POLICE DEPARTMENT**





# §143.036 PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS



# PROMOTIONS

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- Chief can pass over number 1 & 2 – but only for valid reason
- Passed over employee has right to appeal before Commission or Hearing Examiner
- Strict deadlines on promotional process – must make appointments within 60 or 90 days, or risk paying promoted person back pay



§ § 143.042,.043,  
.044,.047  
OTHER PAYS



# § § 143.045,.046 LEAVES OF ABSENCE



**§143.045**  
**SICK LEAVE**



**§143.046**  
**VACATION**



# §143.051 CAUSE FOR REMOVAL OR SUSPENSION



# FOR WHAT ACTS CAN A CIVIL SERVICE EMPLOYEE BE REMOVED OR SUSPENDED?

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- §143.051: Commission rule prescribing cause for removal or suspension is not valid unless it involves one or more of following grounds (12 enumerated criteria):
- Most common is Subsection 12, which states:  
“Violation of an applicable Police or Fire Department rule or special order.”





# 12 ENUMERATED CRITERIA:

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1. Indictment, deferred adjudication or other deferred disposition, or conviction of felony, State Class A or B misdemeanor, federal misdemeanor, or other crime involving moral turpitude;
2. Violation of provisions of Charter of City;
3. Acts of incompetency;
4. Neglect of duty;
5. Discourtesy by said employee to public or to fellow employees;
6. Acts of said employee showing a lack of good moral character;



# 12 ENUMERATED CRITERIA: [CONT'D]

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7. Drinking intoxicants while on duty or intoxication while off duty;
8. Conduct prejudicial to good order;
9. Neglect or refusal to pay just debts;
10. Absence without leave, including unauthorized absence from work for period of two (2) consecutive work shifts or more, which shall be considered resignation;
11. Shirking duties; and
12. Cowardice



# §143.052 DISCIPLINARY SUSPENSIONS



# WHAT DISCIPLINARY ACTIONS CAN BE APPEALED?

- §143.0521 & §143.054: Only following disciplinary actions may be appealed to Civil Service Commission or Hearing Examiner:
  - Temporary Suspension 1-15 days
  - Involuntary Demotion Recommendation
  - Indefinite Suspension
  - Promotional Bypass



# DISCIPLINARY PROCESS

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## *The Charging Instrument:*

- §143.052(c):
- “If the department head suspends a police officer or firefighter, the department head *shall*, within 120 hours after hour of suspension, file written notice with commission giving reasons for suspension.”



# CAN YOU CITE JUST RULE OR SPECIAL ORDER THAT WAS VIOLATED?

➤ **No:**

➤ §143.052(e):

➤ “The written statement filed by the department head with the commission must point out each civil service rule alleged to have been violated and must describe the alleged acts of the person that the department head contends are in violation of the civil service rules.”



# DOES CHIEF HAVE TO INCLUDE EVERY FACT CONSIDERED IN REACHING HIS DECISION, INCLUDING PRIOR DISCIPLINE?

- 
- **No**, but CSC or HE may exclude that evidence if not referred to in suspension letter

*Paul Timothy Kuykendall v. City of Grand Prairie Fire Fighters and Police Officers' Civil Service Commission, 2006:*

- Hearing Examiner refused to admit evidence regarding officer's prior 10-day suspension because reference to it was not expressly included in Notice of Suspension



# 180-DAY RULE

## §143.052(H):

- 
- To suspend officer, Department Head cannot complain of act that occurred more than 180 days before Department Head suspends officer
  - ❖ **VIP: One of first things to do is calculate 180 days. May have already lost numerous days if complainant waited weeks or months to make report.**
  - What about Involuntary Demotion?





# 180-DAY RULE

## §143.052(H):

### [CONT'D]

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- Department Head may investigate any alleged misconduct by officer regardless of when it occurred. Only limitation is what disciplinary action can be imposed if misconduct is sustained. Pursuant to Chapter 143, following considered formal discipline:
  - Temporary Suspension 1-15 days (consecutive calendar days)
  - Agreed Suspension 16-90 days
  - Involuntary Demotion Recommendation
  - Indefinite Suspension: civil service equivalent of termination



# 180-DAY RULE

## §143.052(H):

### [CONT'D]

➤ If conduct allegedly related to criminal violation of federal, state or local law and officer is still subject to criminal penalty (i.e., criminal statute of limitations has not expired), 180 days clock begins on day act is discovered

❖ **VIP:** If you use the criminal violation provision, make sure and refer the matter to the appropriate law enforcement agency for review. A failure to do so may result in an argument that the Department Head did not possess a good faith belief that the conduct was allegedly related to a criminal violation.





# CAN SUSPENSION LETTER REFER TO ACTS OUTSIDE 180-DAY LIMIT AND FOR WHAT PURPOSE?

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## ➤ Yes:

### ➤ *Lockhart:*

- “...[Employee’s] prior record may be taken into consideration for purpose of assessing punishment.”

### ➤ *Vick v. City of Waco:*

- “Consideration of plaintiff’s record covering period prior to 6 months before suspension for purposes of assessing punishment, but not for purpose of determining truth of offense, is not violation of the statute.”



# REFERENCE TO ACTS OUTSIDE 180 DAYS AND THEIR PURPOSE

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- *City of San Antonio v. Longoria:*
  - “Acts or events outside six-month period may be used to explain or evaluate propriety and gravity of acts within six-month period.”
  
- *City of Houston v. Plaster:*
  - “Section 16 [now, §143.052(h)] does not preclude Chief or commission from considering acts outside six-month period to explain acts complained of.”



# WHAT MUST NOTICE INCLUDE REGARDING EMPLOYEE'S RIGHT TO APPEAL AND CHOICES?

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➤ *City of DeSoto v. White:*

➤ Supreme Court concluded §143.057 language (waive rights to appeal to district court as stated in §143.057(j)) was mandatory, but *not* jurisdictional. Remedy here: abatement for officer to reconsider appeal choice

\*\* Keep formatted letter with statutorily required language so all Chief needs to change is name, date, facts, and charges



# WHO MAY SIGN NOTICE?

## *The CHIEF*

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- *City of Houston v. Clark*, 197 S.W.3d 314 (Tex. 2006):
  - Suspended for 15 days without pay for violating basic dispatch protocols. When his suspension was imposed, Fire Chief serving 7-day suspension. Because Fire Chief was on suspension, Acting Fire Chief signed Notice
  - Clark appealed suspension, because Acting Fire Chief (who was not appointed by Mayor or confirmed by City Council) did not have authority to impose discipline



# WHEN IS DISCIPLINE IMPOSED FOR 180-DAY PURPOSES?

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- *City of Houston v. Richard:*
- TLGC 143.117(d)(2):
  - Suspension is void and fire fighter or police officer is entitled to person's full pay if:
  - Suspension is imposed later than 180th day after date department head discovers or becomes aware of violation that resulted in suspension



# MUST EMPLOYEE RECEIVE A COPY AND WHEN?

- 
- §143.052(c):
    - “The department head shall immediately deliver a copy of the statement in person to the suspended fire fighter or police officer.”
  
  - ❖ **VIP: Provide same notice to Commission as you do to employee to avoid problems**





# MUST EMPLOYEE SIGN NOTICE?

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➤ **No:**

➤ No statutory requirement that employee sign letter

❖ **VIP: Have employee sign letter, which confirms receipt of it, notification of appeal rights, and starts appeal clock**



# WHAT IF CHIEF UNABLE TO FIND EMPLOYEE?

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- Must use Due Diligence in serving him by:
  - Hand delivery
  - Certified mail
  - Send copy to legal representative
- Write “Unable to Serve” on Notice and file with Commission within 120 hours

# WHAT IF EMPLOYEE REFUSED TO SIGN?



- Write “refused to sign” and with your name, date, and time
- File it with Commission within 120 hours



# MUST DEPARTMENT HEAD PERSONALLY DELIVER COPY OF NOTICE?

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➤ **No:**

➤ *City of Laredo v. Almazan:*

➤ § 143.052(c) does not require department head to personally deliver written statement to suspended employee

➤ Internal Affairs office served it on employee, which was deemed sufficient



# WHAT HAPPENS TO NOTICE?

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- §143.010(g):
  - Must be filed with Civil Service Commission
  - Recommend that Chief file it with Director, which suffices to serve it with Commission



# WHEN DOES NOTICE HAVE TO BE FILED WITH COMMISSION?

- § 143.052(c): “. . . within 120 hours after hour of suspension.”
  - Recommend “letter” to employee be same document that is filed with Commission to avoid charge that Chief amended it
  - Recommend Chief never verbally inform employee of formal disciplinary action



# WHAT IS “HOUR OF SUSPENSION” FOR FILING PURPOSES?

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- Is it day suspension letter is reduced to writing?
- Is it day Department Head signs letter?
- Is it day officer receives copy of letter?
- Is it day letter is filed with Civil Service?
- Is it day suspension actually begins?



# *CARR V. CITY OF FORT WORTH*

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- Court found City failed to file letter of suspension with Civil Service Commission within 120 hours of hour of suspension, not the day before, when Chief informed her she was being indefinitely suspended
- Employee reinstated





# *CARR V. CITY OF FORT WORTH*

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- The real importance of this case:
  - Court concluded that failure to file Notice with Commission within 120 hours of “hour of suspension” resulted in finding that Department failed to meet statutory obligations and officer/fire fighter will likely be reinstated
  - Case had “promotional domino” effect





# CAN SUSPENSION NOTICE BE AMENDED?

➤ **No**: §143.053(c)

- *Bichsel v. Carver, 321 S.W.2d 284 (Tex.1959)*
- During civil service hearing, city attorney realized charges were legally insufficient, and withdrew them. Chief later issued another set of charges, which were same facts
- Supreme Court ruled this was impermissible amendment of original written charges



# VOLUNTARY TEMPORARY SUSPENSION 143.052 (G)

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- 16-90 days
- No appeal
- Consider using for suspensions less than 16 days
- Consider “Final Warning” and “Last Chance” language



**§143.056**

**PROCEDURES AFTER  
FELONY INDICTMENT OR  
MISDEMEANOR COMPLAINT**



# CRIMINAL CHARGES

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- §143.056:
  - When formal criminal charges levied against employee, §143.056 timelines apply



# §143.010 COMMISSION APPEAL PROCEDURE



# §143.010(b)

## THE LETTER OF APPEAL



# REQUIRED STATUTORY LANGUAGE

- 
- §143.010(b) - Letter of Appeal:
    - Basis for appeal and request hearing
    - Statement denying truth of charges
    - Take exception to legal sufficiency of charge
    - Allege that recommended discipline does not fit offense, or;
    - Combination of these statements
  - §143.057 - If Hearing Examiner is requested, original notice of appeal must state employee's decision to appeal to Hearing Examiner.





# WHEN MUST APPEAL LETTER BE FILED?

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- *City of Lubbock v. Elkins*
  - Within 10 calendar days/240 hours after date of service
  - Failure to file proper notice of appeal within 10-day statutory period results in Commission/HE lacking jurisdiction to hear appeal



# §143.053

# APPEALS OF DISCIPLINE



# CHOOSING CSC OR HE

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- Employee's choice
- Can be most critical decision in entire appeal
- Election must be contained in original letter of appeal



# SCHEDULING APPEAL

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- §143.053(b) – must occur within 30 calendar days
- §143.057(e) – shall begin as soon as HE can schedule it
- §143.056(d) – if employee has pending criminal charges, appeal can be delayed



# APPEAL PROCESS

## §143.053

- 
- City has burden of proving charges by preponderance of evidence
  - Hearing conducted just like trial
  - Employee has right to be represented by counsel or person of his choosing
  - Witnesses may be placed under The Rule.
  - Only evidence presented at hearing may be considered.  
§143.010(g)



# PRE-TRIAL DISCOVERY

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- 143 does not provide for pre-trial discovery process
- Public Information Act Request (PIA/ORR) can be used by appellant
- Texas Rules of Court do not apply
- Texas Administrative Procedures Act does not apply



# PRE-TRIAL MOTIONS

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- Pre-Trial motions seek to exclude evidence that is irrelevant, inadmissible, cumulative, and should be addressed by filing Motion in Limine and obtain ruling
- City Example – Disciplinary actions by former chief not binding on new chief



# APPEAL PROCESS

## §143.053

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- Usually, HE and CSC will consider only evidence that Department Head had before him at time he made decision to suspend employee
- If employee applied for unemployment benefits, use that hearing as discovery tool
- Usually, HE and CSC will exclude decisions by other governmental bodies (i.e., EEOC, TWC) as being irrelevant
- Hearing to be conducted “fairly and impartially”





# CAN DEPARTMENT USE “G” FILE IN HEARING?

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- Yes:
- Subject to sealing protective order
- AG ruled (informal opinions) if hearing examiner admits exhibits pursuant to protective order, and documents are sealed, *are not subject to public release* (OR2007-10948, OR2007-07166)



# DOES AN EMPLOYEE HAVE A RIGHT OF ACCESS TO HIS "G" FILE

- **No:**
- Numerous informal letter rulings from AG, upholding confidentiality of "G" file
- AG agrees that provisions in PIA (§552.023, "Special Right of Access") does not apply to "G" file; neither does it apply to §143.089(e)



# PAYING FOR EMPLOYEES TO TESTIFY AT CIVIL SERVICE HEARING

- Question: Does Local Gov't Code § 142.009 require municipality to pay employee for appearance as witness in civil service hearing before HE when employee is subpoenaed in his capacity as employee and testifies during his off time?
- Answer: **Yes**: Civil Service hearing covered by that statute. Consider establishing local rule stating City will pay for time actually spent testifying





# TELEVISION/MEDIA COVERAGE

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- Can media be excluded from hearing?
- Answer: **No**:
  - §143.010(c): All Commission meetings open to public
  - CSC or HE can restrict television coverage
  - Blanket prohibition may result in injunction against City
  - CSC can and should adopt an applicable rule on media coverage
  - City should assign point of contact for media inquiries



# TRANSCRIPTS OF THE HEARING

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- §143.010(h) requires Commission to maintain public record of proceeding but that can be tape recording or video
- Always have court reporter transcribe hearing; do not rely on Commission to tape record proceeding
- Transcript can be invaluable in subsequent litigation
- City pays cost unless agreement reached with opposing counsel



# HEARING

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- CSC or HE is asked to answer two questions:
  - Are charges true? § 143.053(g)
  - Was discipline appropriate?
  - CSC or HE may only suspend or dismiss employee for violation of civil service rules and only after finding of truth of specific charges against employee



# §143.053(e) REMEDIES



# CSC OR HEARING EXAMINER MAY, IN AWARD:

- 
- Permanently dismiss employee from Department
  - Temporarily suspend employee from Department
  - Restore employee to his former position in Department
  - Order reduction in amount of suspension-now only to 15 days
  - Discipline can only be reduced, never increased
  - Award back pay, leave, and service credit in retirement system
  - Statute doesn't say "make whole"





# AWARD ISSUES

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- No authority to award attorney's fees to prevailing party or costs
- MAY NOT substitute demotion for indefinite suspension - HE exceeds jurisdiction



# COURT PUNTS ON SUSPENSION IN LIEU OF DEMOTION

- May be allowed to substitute temporary suspension in lieu of demotion (but don't try it!)
- *Kuykendall v. City of Grand Prairie:*
  - “Regardless of whether suspension could be imposed when the department head recommended demotion, the hearing examiner had to find appellant committed the charged misconduct before he could impose either form of discipline.”



# OFFSET OF BACK PAY OWED

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- *City of Temple v. Taylor:*
  - Question: Does §143.053(f) permit city to offset for wages earned by employee during period of suspension?
  - Answer: Yes



# OFFSET OF BACK PAY OWED [CONT'D]

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- Taylor's lost wages with City of Temple totaled \$32,405.35
- Taylor earned \$15,119.40 from other sources during suspension
- City sought offset of that amount, leaving back pay in amount of \$17,285.95



# OFFSET OF BACK PAY OWED [CONT'D]

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- Court of Appeals held award of full compensation under §143.053(f) of local government code should be offset by income earned from outside sources during period of suspension



# OFFSET OF BACK PAY OWED [CONT'D]

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- Question: What if employee did not seek other sources of income?
- General employment law principles require employee to use reasonable diligence to mitigate damages, so what should remedy be?



**§143.057**

**HEARING EXAMINER OPTION**



# APPEAL OF HEARING EXAMINER DECISIONS

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➤ Section 143.057(j):

“A district court may hear an appeal of a hearing examiner's award only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the district court having jurisdiction in the municipality in which the fire or police department is located.”

- What if city straddles two counties?
- What is exceeding jurisdiction?





# SUPREME COURT DECIDES STANDARD OF REVIEW OF HEARING EXAMINER DECISIONS

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## ➤ *Pasadena v. Smith:*

- Must be opportunity for meaningful judicial review to comply with Constitutional requirements
- Court held hearing examiner exceeded authority after he relied on Houston provision and his interpretation of Houston provision was wrong
- No default judgment for non-compliance



# COMMON RULINGS BY HEARING EXAMINERS THAT RESULT IN LAWSUITS

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- Exceeded jurisdiction by imposing conditions on employee's return (probationary period, demotion)
- Retained jurisdiction to ensure compliance with order
- Once Award is issued, HE loses jurisdiction



# EXCEEDING JURISDICTION

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➤ *City of Pasadena v. Smith:*

- “The most accurate test we can state is that a hearing examiner exceeds his jurisdiction when his acts are not authorized by Act or are contrary to it, or when they invade policy-setting realms protected by nondelegation doctrine.”
- “. . .But the [civil service] Act does not empower a hearing examiner to make rules.”



# § § 143.071--.073 LEAVES OF ABSENCE



**§143.081**

**PHYSICAL/MENTAL FITNESS**



# SECTION 143.081(B)

- 
- “If a question arises as to whether a police officer is sufficiently physically or mentally fit to continue that person’s duties, the police officer shall submit to the commission a report from the person’s personal physician, psychiatrist, or psychologist, as appropriate.”
    - Who raises the question? - Generally, the Chief
    - Who orders the employee? - Generally, the Chief
    - Who is appropriate for mental fitness?
      - Psychologist or psychiatrist?
      - Employee is ordered to see his/her doctor and to submit report to Commission

# REPORT SHOULD BE LIMITED IN SCOPE AND CLEARLY ANSWER:

## Fit For Duty



## Not





# EMPLOYEE'S REPORT RECEIVED

- Report turned in to Chief and to Director
  - Director:
    - Schedules meeting with Commission
    - Posts meeting—executive session/personnel §551.074 (confidential medical information)
- OR...
- If no one (meaning Chief or employee) questions report . . .
- And Employee is Fit:
  - Return to duty (and if misconduct is involved—proceed with internal investigation)
- And Employee is Unfit:
  - Put on leave (their own) under §143.073(d), or
  - Schedule a meeting/proceed under next step of §143.081, which is, §143.081(c)





# SECTION 143.081(c)

- 
- “If the commission, department head, or the [employee] questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the [employee] and to submit a report to the Commission, the department head, and the person.”
  - Chief: Generally, it’s department head who questions report, because s/he’s first to look at it
  - Director: Find/research appropriate medical provider to recommend to Commission
  - Commission: Review and participate in decision regarding appointment and issue Order to Employee



# SECTION 143.081(c) [CONT'D]

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What should Order contain?

- Require employee to cooperate in all phases of examination, including participation in additional testing
- Order/instruction to share results of employee's personal medical provider to Commission's provider. At a minimum, Commission's doctor must have same information that employee's doctor possessed, including initial memo to employee (calling "question") and job description
- Request Commission's doctor to answer only question: is employee fit for duty or not?
- Include re-affirmation of continued viability of medical authorization
- It should be as comprehensive as possible to avoid problems later
- Include date for report to be completed



# RECEIVE COMMISSION'S REPORT

- Director: Schedules meeting
- Commission, Director, Chief and Employee:
  - Review report and attend meeting
- All parties consider reports
- Issue for Commission:
  - Do reports agree or disagree?





# FFD REPORTS: AGREE OR DISAGREE?

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- If Reports Agree—Issue Returns to Chief for assignment
- Neither Commission nor Board of Three have authority to make assignments
- If Unfit, Chief will work with HR and comply with ADA obligations



# IF/WHEN REPORTS DISAGREE

## §143.081(D)

➤ If report of appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with report of employee's personal medical provider . . .

“. . . the commission shall appoint a three-member board composed of a physician, psychiatrist, and a psychologist, or any combination, as appropriate, to examine the fire fighter or police officer. The board's findings as to the person's fitness for duty shall determine the issue.”

- Board's decision is final . . .
- On the issue of whether employee is fit or unfit



# RECEIPT OF BOARD OF THREE'S REPORT

- 
- Director: Schedules meeting of Commission
  - Commission: Accepts the report and that acceptance ends the Commission's role
  - Chief: Determines assignment
    - If Fit: Go to work
    - If Unfit: Civil Service and ADA



# FITNESS FOR DUTY/LEAVE RETURN TO DUTY ISSUES

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➤ § 143.081

➤ State Law

➤ ADA

➤ FMLA/USERRA

➤ Federal Law



# LEAVE ENTITLEMENTS FEDERAL

- FMLA: Leave entitlement up to 12 weeks per 12 months
- USERRA: Leave entitlement and reinstatement times depending on length of deployment
- ADA: Reasonable accommodation; may be entitled to leave if not unduly burdensome.
- Overlapping obligations—work with HR and legal and involve them in process early



# VETERANS' ISSUES

- Consult USERRA Regulations
- What if Disability is Temporary or Permanent?
- If Permanent—reassign out of department
  - At what rate of pay?
  - Obligated to create a job?
  - Obligated to remove incumbent?





§143.082

# PERFORMANCE EVALUATIONS



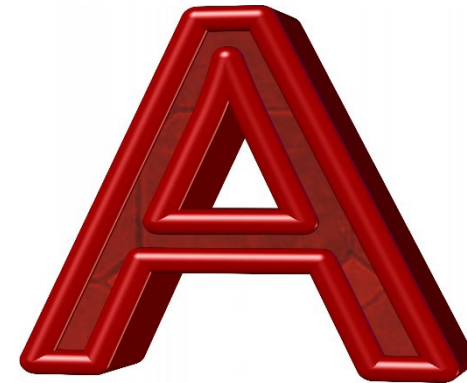
# §143.089 PERSONNEL FILE



# CIVIL SERVICE PERSONNEL FILES

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- Maintained under §143.089
- §143.089(a) states Civil Service Director (or designee) shall maintain personnel file on each...employee
- Known as “A” file
- See also §143.011





# §143.089 “A” FILE MUST CONTAIN:

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- Any document, letter or memo relating to:
  - Commendation/honor bestowed by department or public
  - Any misconduct if letter/document (a) is from the employing department, and (b) if misconduct resulted in disciplinary action in accordance with this chapter
  - Periodic evaluations



# DEPARTMENTAL PERSONNEL FILE - "G" FILE



# §143.089 “G” FILE

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- A police or fire department may maintain personnel file on fire fighter or police officer . . . for department’s use . . . but department may not release any information contained in department file to any agency or person requesting information relating to police officer or fire fighter
- Department “shall” refer requestor to director

# INFORMAL DISCIPLINE

- Written reprimands and verbal counselings
  - By law – maintained in Confidential Department file
  - 180-day rule does not apply
  - No appeal







# JC-0257 (2000)

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- Attorney General concluded employees do not have right to appeal reprimand or any other “informal” discipline
- Can appeal only “formal” discipline, which are suspensions, demotions, promotional pass overs



# JC-0257 (2000) [cont'd]

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- Because they cannot appeal informal discipline, those documents may not be maintained in the director's "A" file
- Reprimands and other informal discipline must be kept in the confidential departmental "G" file



# *CITY OF SAN ANTONIO V. TEXAS ATTORNEY GENERAL, ET AL.*

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➤ Austin Court of Appeals found:

“We conclude the plain, simple, and unambiguous terms of subsection (g) permit only one reasonable construction—the legislature intended to deem confidential the information maintained by the City police department for its own use under subsection (g).”



# *CITY OF SAN ANTONIO V. TEXAS ATTORNEY GENERAL, ET AL. [CONT'D]*

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- Requestors contended that disputed information was subject to disclosure because records were under physical control of department's internal affairs unit
- Court rejected argument: "There is no suggestion in the statute that such "use" may not include use or physical control by a subsidiary element of the department."



# *CITY OF SAN ANTONIO V. SAN ANTONIO EXPRESS-NEWS*

- 
- Here, the Court held that Use of Force reports, compiled for administrative purposes, were not “confidential personnel files”
  - Those reports did not bear on employment relationship and were not used by the SAPD in personnel decisions



# *CITY OF SAN ANTONIO V. SAN ANTONIO EXPRESS-NEWS [CONT'D]*

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➤ Court went far in explaining its reasoning so that factual result would not be misinterpreted:

“We hold that subsection (g) prohibits disclosure of (1) information of the type listed in Section 143.089 (a)–(d) that is maintained in the police officer’s or fire fighter’s civil service personnel file and (2) any other information reasonably related to a police officer’s or fire fighter’s employment relationship.”

➤ at p. 5



# JC-0283 (2000) [cont'd]

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- Anyone in the department head's "chain of command" could have access, including the City Manager and council
- Also included City attorney in persons "not outside the department"
- AG concluded that the Council must designate the persons who have access to the "G" file



# JC-0283 (2000) [cont'd]

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- Council must designate those individuals through an ordinance or resolution
- Reminded us that distribution of this confidential information to unauthorized persons is a criminal offense
- After consulting with your City attorney, you may want to adopt an ordinance setting out the persons/positions who have access to the G file.\*\*



# JC-0283 (2000) [cont'd]

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- Information contained the “G” file is confidential by law under §552.101
- AG concluded law prohibits release of information in that file to anyone outside the department





# DISCLAIMER

**This presentation is provided for informational purposes only and is neither intended to be legal advice nor does it create an attorney-client relationship.**



# Questions?



**THIS IS NOT LEGAL ADVICE, PLEASE CONTACT YOUR LABOR AND  
EMPLOYMENT ATTORNEY REGARDING YOUR SITUATION**

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