

PEACE OFFICER MERIT COMMISSION POLICY & PROCEDURE**APPEAL HEARING PROCEDURES****PROCEDURE****1.0 CLOSING HEARINGS TO THE PUBLIC**

Appeal hearings are considered open meetings under Utah law, but hearings may be closed to the public under Section 52-4-5(1)(a) (U.C.A. 1953). Closing a hearing is not automatic; it must be moved by a party and approved by a majority vote of the Merit Commission. Any member of the public or the news media, except witnesses who are excluded, may attend an open meeting, provided they conduct themselves in an orderly manner.

2.0 PREHEARING CONFERENCES

The Merit Commission may, at its discretion, schedule a prehearing conference and require that all interested parties be in attendance. The purpose of said conference would be to:

- (1) establish the ground rules upon which the hearing will be conducted;
- (2) define the issues which will be the subject of contention;
- (3) identify witnesses;
- (4) ascertain stipulations of fact;
- (5) entertain any preliminary motions; and
- (6) establish the date(s) for an evidentiary hearing.

3.0 CONDUCT OF HEARINGS

Hearings before the Merit Commission are conducted with appropriate formality and decorum, so that the due process rights of all parties are protected and the Merit Commission may perform its function. Utah Rules of Evidence and Rules of Civil Procedure are used as guidelines in the conduct of Merit Commission hearings, but are not strictly followed or applied. In keeping with its goal of obtaining all pertinent facts, the Merit Commission does not strictly apply rules of evidence regarding authentication, foundation, hearsay, or relevance.

3.1 Procedures Governing the Hearing

The following procedures are intended to be a guide for the conduct of hearings and are not fixed in the sense that they will be allowed to interfere with the purpose of the hearing which is to bring out all of the facts.

3.1.1 Responsibilities of the Chair

The Chair shall make certain that the hearing is conducted in an atmosphere of impartiality and objectivity and that all parties have ample opportunities to reveal and express all evidence in their possession. The Chair shall encourage full discussion of all issues and the opportunity for interrogation of all witnesses so that a complete and accurate portrayal of the respective positions can emerge. Prior to the commencement of the hearing, the Chair shall announce the rules to be followed.

3.1.2 Statement of Grievance

The Chair shall open the hearing by naming the parties and stating the nature of grievance.

3.1.3 Presentation of Department Case

The Department's representative may briefly summarize the Department's case in an opening statement. This will be followed by the introduction of material evidence and witness testimony in support of the Department's position.

3.1.4 Presentation of Appellant's Case

The Appellant's representative may briefly summarize the Appellant's case in an opening statement. This will be followed by the introduction of material evidence and witness testimony in support of the Appellant's position.

3.1.5 Acceptance of Exhibits at Hearings

The Merit Commission shall accept evidence and exhibits at the hearing in order to obtain a full understanding of the grievance. The Merit Commission encourages that, where feasible, the parties submit seven (7) copies of written documentation to be distributed as follows: one original copy for the permanent record for the Merit Commission staff, one copy for each Merit Commission member, one copy for Department's representative, one copy for the witness being questioned about a document, and one copy for the appellant/representative.

3.1.6 Closing

Before closing the hearing, the Merit Commission shall allow the appellant/representative and the Department's representative to make closing arguments.

4.0 BURDEN OF PROOF

The burden of proof and the burden of proceeding shall be on the Departments in cases involving disciplinary action and shall be on the appellant in all other cases.

5.0 REPRESENTATION

The appellant may present his/her case personally or through a representative of his/her choice.

6.0 WITNESSES

6.1 The parties shall include in their prehearing outlines a list of anticipated witnesses. Additional witnesses may be included upon notification to the Merit Commission and the opposing representative provided at least three (3) working days prior to the hearing.

6.2 In regard to the testimony of witnesses, the Merit Commission may allow 'leading questions' in order to expedite the matter; however, caution will be exercised to assure that witnesses are given an opportunity to fully explain their position. The Merit Commission will also allow 'hearsay evidence' which is deemed appropriate. The Merit Commission will weigh this evidence in its decision-making process and will consider only that which it finds to be relevant, reliable, and substantive.

7.0 ISSUANCE OF SUBPOENAS

Upon request from either party and with notice to the opposing party, the Merit Commission may issue a subpoena to compel witness testimony or to require relevant written documentation. A member of the Merit Commission or designated staff may sign the subpoena. It is the responsibility of the requesting party to have the subpoena lawfully served.

8.0 EXCLUSIONARY RULE

Upon motion of either party, the Merit Commission may invoke the exclusionary rule for witnesses; however, one Department representative will be allowed to remain present at all times. The appellant may move to have the Department's representative excluded from the hearing for specific portions or all of the questioning of a witness for just cause shown. If the Merit Commission grants this request, an alternative Department representative shall be designated and allowed to remain during the testimony.

9.0 OBJECTIONS/MOTIONS

9.1 The Merit Commission will entertain objections at the time they occur and will rule either to sustain or overrule the objection. On occasion, however, the Merit Commission may rule to note the objection for subsequent review and proceed with the hearing in order to expedite the matter. In its final decision, the Merit Commission will issue written rulings on motions and significant objections made during the proceedings in which the Merit Commission's decision was delayed or otherwise not expressly made during the hearing.

9.2 Inasmuch as the hearings are transcribed, a ruling to 'strike' an answer will signify that the Merit Commission will not consider such evidence in formulating its decision. The response will not be physically removed from the transcript.

10.0 HEARING RECORD AND TRANSCRIPT

10.1 A verbatim record prepared by a certified court reporter or other agreed upon system shall be kept of the proceedings.

10.2 If either party desires a copy of the verbatim record the requesting party shall make the necessary arrangements and bear any costs incurred.

10.3 Pursuant to the Utah Open and Public Meetings Act, the Commission shall make an audio recording of both open and closed portions of the hearing. Access to the recording shall be in accordance with the Act.

11.0 ADDITIONAL INVESTIGATION

The Merit Commission reserves the right, when circumstances dictate, to seek additional information after the formal hearing if it determines that such inquiries will provide needed clarification of the issues involved, fill in information gaps, or verify or disprove hearing testimony. The Merit Commission shall determine whether such additional information must be presented in a hearing.

12.0 STANDARD OF EVIDENCE

The standard of substantial evidence shall apply to hearings before the Merit Commission. Substantial Evidence is that quantum and quality of evidence that is adequate to convince a reasonable mind to support a conclusion.

13.0 DECISIONS

13.1 Within thirty (30) calendar days from the last date of the hearing, the Merit Commission shall issue its decision, and shall direct its Merit Commission Staff to inform the parties of the decision and to arrange for preparation of the written decision.

13.2 The Commission shall provide to the legal representative of the prevailing party sufficient information to prepare a draft decision or the Merit Commission may elect to prepare its own draft decision. The draft will be circulated to the representative of the non-prevailing party or to the representatives of both parties in the event the Merit Commission drafts its own decision. The

representative(s) shall be allowed seven (7) calendar days to review the draft decision and to respond to the Merit Commission with comments or objections to the draft.

13.3 If the prevailing party is not represented by an attorney or other professional representative, the initial draft of the decision will be prepared by the Merit Commission. That draft will be circulated for comments and objections to both parties.

13.4 After receipt of written comments or objections regarding the draft decision, the Merit Commission will consider any comments or objections received, and shall direct its Merit Commission Staff to finalize its written decision.

13.5 The Merit Commission's final decision shall be executed by a member of the Merit Commission and dated for purposes of appeal or other further procedures.

14.0 DISTRIBUTION OF DECISIONS

14.1 The Merit Commission does not make public announcements of its decisions. Copies of the Merit Commission decisions, which shall include: Issues, findings of fact, and conclusions of law, and shall be distributed to the appellant, the Sheriff, and legal representatives of both parties. A copy of the decision will be placed in the appellant's personnel file.

15.0 MOTIONS FOR RECONSIDERATION

Decisions of the Merit Commission are final and binding; however, upon the filing of a Motion for Reconsideration by either party, the Merit Commission may set the matter for hearing on the Motion. The Motion shall include the specific allegations for requesting a review by the Merit Commission. After notice and an opportunity for hearing, the Merit Commission may grant the Motion upon good cause shown.

16.0 WAIVER PROCEDURES

The Merit Commission, on its own motion, may waive or modify any of the procedures provided herein.

17.0 EX PARTE COMMUNICATION

17.1 No interested person outside of the Merit Commission shall make or knowingly cause to be made to a member of the Merit Commission and/or staff an ex parte communication relevant to the merits of the proceeding.

17.2 No member of the Merit Commission and/or staff shall make or knowingly cause to be made to any interested person an ex parte communication relevant to the merits of the proceeding.

17.3 The Merit Commission may discuss matters relevant to the proceedings outside of the hearing with the appellant/representative and Department's representative, provided, however, that both parties consent to and are present throughout the duration of the discussion.

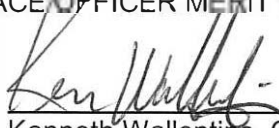
17.4 Prior to a scheduled or anticipated hearing no member of the Merit Commission shall listen to conversation that may relate to the merit or issues involved.

18.0 JUDICIAL REVIEW

An employee may seek judicial review of a major disciplinary action by appealing the Merit Commission decision to the Court of Appeals.

APPROVED AND PASSED THIS 26 Day of May, 2016

SALT LAKE COUNTY
PEACE OFFICER MERIT COMMISSION

By: 
Kenneth Wallentine, Chair