

555 CMR 1.00: PROCEDURAL RULES

Section

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1.01: Review of Complaints by Agency

(1) Transmittal of Complaint by Agency to Commission. The head of an agency shall, within two days of their receipt of a complaint, which is any credible report, written or oral, evidencing or alleging the misconduct of an officer from a member of the public, personnel at the agency, or any other source, do the following:

(a) if the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions and the complaint does not involve evidence or an allegation of: bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level; excessive, prohibited, or deadly force; or an action which resulted in serious bodily injury or death;

1. refer the complaint for resolution under the agency's internal resolution policy, which shall comply with any minimum requirements established by the commission; if the agency does not have an internal resolution policy, if the agency's internal resolution policy is not in compliance with the minimum requirements established by the commission, or if the matter cannot be resolved under 555 CMR 1.01(1)(a)1. for any other reason;

2. the agency shall maintain any documentation of the complaint, the name and commission certification identification number of the subject officer, a brief summary of the nature of the conduct that is the subject of the complaint, and any other documentation that the agency deems material to an understanding of the complaint and the agency's handling of the complaint or that the commission directs the agency to maintain; and

3. make any such complaint available to the commission upon request, or under any policy that may be established by the commission.

(b) if the complaint does not relate to minor matters as described in 555 CMR 1.01(1)(a), transmit a description of the complaint, whether or not the complaint was written, and a copy of any documentation of the complaint to the division of standards, and provide the following information, if known, in a form to be prescribed by the commission:

1. the name and commission certification identification number of the subject officer;

2. the date and location of the incident giving rise to the complaint;

3. the identity of the alleged victim of the misconduct described in the complaint;

4. the alleged victim's race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, socioeconomic or professional level, and any other relevant demographic information if the victim volunteered such information, provided that nothing herein should be construed to require that such information be elicited from the alleged victim or complainant; and

5. whether the complainant alleges that the officer's conduct:

a. was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status or socioeconomic or professional level;

1.01: continued

- b. was unprofessional;
  - c. involved excessive, prohibited or deadly force; or
  - d. resulted in serious bodily injury or death.
- (c) notwithstanding the foregoing:
1. Anonymous complaints that do not provide an adequate basis for investigation need not be forwarded to the commission.
  2. An agency need not forward to the commission any investigatory materials that were necessarily compiled out of the public view by law enforcement or other investigatory officials, the disclosure of which materials to the commission would prejudice the possibility of effective law enforcement to the extent that such disclosure would not be in the public interest.
  3. An agency shall forward any pattern of complaints alleging the misconduct of an officer to the commission.
  4. An agency may forward any complaint other than those set out in 555 CMR 1.01(1)(b) at the agency's discretion.

(2) Minimum Standards for Internal Investigation by Agency.

(a) The agency shall commence, as soon as practicable, but in any case within 14 days of the receipt of the complaint by the agency, an internal investigation of the subject matter of any complaint forwarded to the division of standards under 555 CMR 1.01(1)(b). If the agency anticipates that the investigation cannot be commenced within 14 days due to investigatory efforts by another governmental body, the agency shall promptly request an extension of time from the division of standards and provide in the request a proposed schedule for commencing the investigation and the reasons for the need for additional time to commence the investigation, prior to the expiration of the 14 days.

(b) The internal investigation may, but in the case of a complaint alleging an officer-involved injury or death, improper use of force, or biased behavior shall, be assigned to an investigator employed by the agency or to an outside investigator retained by the agency. The investigator shall be free from conflict of interest, bias, prejudice, or self-interest, and shall report, for the purpose of the investigation, directly to the head of the agency, or to a designated official immediately subordinate to the head of the agency, unless the head of the agency or immediate subordinate is the subject of, or implicated by, the complaint, or is otherwise unable to supervise the investigator due to conflicts of interest, or the potential for bias, prejudice, or self-interest whether apparent or perceived.

(c) The investigator shall:

1. begin the investigation by taking all reasonable steps necessary to preserve, and consider, all potentially relevant evidence including, but not limited to, documents, e-mails, text messages, photographs, audio and video recordings, and the like;
2. after taking all reasonable steps necessary to preserve all potentially relevant evidence as described in 555 CMR 1.01(2)(c)1., as soon as reasonably possible, to the extent it will not prejudice the internal investigation, notify the officer and the head of their collective bargaining unit that an internal investigation is being conducted; and
3. conduct, to the extent feasible, interviews of relevant witnesses, including but not limited to the complainant, the alleged victim if different from the complainant, the officer implicated by the complaint, and all other officers and individuals who were present at or witnessed the incident. Such interviews should be audio recorded if feasible. Officers and other interviewees shall have the right to be represented by counsel, union representatives, or other representatives, to the same extent they would under their Agency's policies or other applicable authority. The agency shall, at its expense, provide translation services where necessary to conduct an interview.

(d) The investigation shall be conducted confidentially to the extent permitted by law.

(e) The investigation shall be completed as soon as practicable, but in any case, within 90 days of the agency's receipt of the complaint. If the agency anticipates that the investigation will take longer than 90 days, the agency shall promptly request an extension of time from the division of standards and provide in the request a proposed schedule for completion of the investigation and the reasons for the need for additional time to complete the investigation, prior to the expiration of the 90 days.

1.01: continued

(3) Internal Investigation Reports. Upon completion of the internal investigation, the head of the agency shall immediately transmit an investigation report signed by the investigator to the division of standards, in a form to be prescribed by the division of standards, which shall include:

- (a) a statement of the evidence or allegation of the complaint;
- (b) a description of the investigation and disposition of the complaint, including any disciplinary action recommended by the investigator or a supervising officer to the head of the agency and any disciplinary action imposed by the head of the agency;
- (c) a list of any witnesses interviewed, whether each interview was recorded and if not, the reasons for not recording the interview, and a description of all evidence collected;
- (d) whether any witness or evidence was inaccessible and a description of the circumstances evidencing the unavailability of said witness, and whether any relevant evidence was destroyed or lost and a description of the circumstances of such a destruction or loss;
- (e) the facts found by the investigator;
- (f) a determination by the investigator of whether the facts sufficiently reflect conduct proscribed by law or standards applicable to officers;
- (g) the reasons for any delay in completion of the investigation report beyond the 90 days set forth in 555 CMR 1.01(2)(e);
- (h) if any disciplinary action recommended by the investigator or a supervising officer, or imposed by the head of the agency included retraining, suspension, or termination, a recommendation by the head of the agency as to whether and how the commission should impose the recommended disciplinary action, including but not limited to retraining, suspension, or revocation of the officer's certification; and
- (i) whether the officer is represented by counsel or other authorized representative.

(4) Final Disposition of Internal Investigations by an Agency. Upon determining the final disposition of the complaint and final discipline to be imposed by the agency, if any, the head of the agency shall immediately transmit to the division of standards a final report in a form to be prescribed by the commission, which shall include:

- (a) a description of the adjudicatory process;
- (b) any disciplinary action initially recommended by the investigator or a supervising officer;
- (c) any discipline imposed by the head of the agency;
- (d) if the disciplinary action recommended by the investigator or a supervising officer, or imposed by the head of the agency included retraining, suspension, or termination, a recommendation by the head of the agency with supporting facts based on the investigation report and other relevant information as to whether and how the commission should impose the recommended disciplinary action, including but not limited to, retraining, suspension, or revocation of the officer's certification; and
- (e) whether the officer is represented by counsel or other authorized representative.

(5) Notice of Officer Resignation Pending Agency Internal Investigation or Discipline. If an officer resigns prior to the conclusion of an internal investigation by the agency or prior to the imposition of agency discipline:

- (a) The head of the agency shall immediately transmit to the division of standards a report in a form to be prescribed by the commission, which at a minimum shall include:
  - 1. the officer's full employment history including, dates of hire, resignation, retirement, any promotions and assignments; a chronology of any complaints, internal investigations, reprimands, discipline imposed, retraining, or other applicable sanctions; and any commendations and awards received by the officer related to his or her duty as an officer.
  - 2. a description of the circumstances, events or complaints surrounding the officer's resignation;
  - 3. the status or results of any investigation as of the date of the transmission of the report to the commission regarding those events or complaints; and
  - 4. a recommendation by the head of the agency as to whether and how the commission should impose disciplinary action by the commission, including suspension or revocation of the officer's certification, or the conditions the officer must meet prior to applying for any reinstatement or certification, if such reinstatement or certification is appropriate.

1.01: continued

(b) The agency shall, nonetheless, complete the investigation regardless of the officer's resignation, and, once the investigation is completed, transmit a report that conforms to 555 CMR 1.01(3) to the division of standards.

1.02: Preliminary Inquiries

(1) Upon receipt and initial review of every complaint, the division of standards shall make a determination as to whether the complaint:

(a) does not involve evidence or an allegation of:

1. bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status or socioeconomic or professional level;
2. excessive, prohibited or deadly force; or
3. an action which resulted in serious bodily injury or death; and

(b) the complaint is related to minor matters, a category that includes discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions.

If the division of standards determines that the complaint has characteristics of 555 CMR 1.02(1)(a) and (b), then it shall not be required to take any further action relative to the complaint.

(2) If the division of standards cannot, upon receipt and initial review, make the determination described in 555 CMR 1.02(1), the division of standards shall present the complaint and any related information, report or evidence in the possession, custody or control of the division of standards that may be relevant to the consideration of the complaint, to the chair and the executive director for review. If, at any time, the division of standards, the executive director, or the chair recommends that the division of standards conduct a preliminary inquiry pursuant to M.G.L. c. 6E, § 8(c)(1), the chair shall place the question of whether to conduct such an inquiry on the next available commission agenda, or call a meeting of the commission for the purposes of discussion of that question.

(3) Notwithstanding 555 CMR 1.02(1) and (2), the commission shall direct the division of standards to conduct a preliminary inquiry if the head of an agency submits, at any time, an affirmative recommendation for disciplinary action by the commission, including retraining, or suspension or revocation of the officer's certification, or if the commission, at any time, concludes that there is sufficient credible evidence that the officer:

- (a) was involved in an officer-involved injury or death;
- (b) committed a felony or misdemeanor, whether or not the officer has been arrested, indicted, charged or convicted; or
- (c) engaged in conduct prohibited by M.G.L. c. 6E, § 14 or § 15.

(4) At the recommendation of the division of standards, the commission may, at any time, direct the division of standards to conduct a preliminary inquiry if the commission determines that there is sufficient evidence that the officer engaged in prohibited conduct other than the conduct described in 555 CMR 1.02(3)(a) through (c).

1.03: Confidentiality of Preliminary Inquiries.

All proceedings and records relating to a preliminary inquiry by the division of standards, including any internal review to determine whether there is sufficient credible evidence to initiate a preliminary inquiry, shall be kept strictly confidential pursuant to M.G.L. c. 6E, § 8(c)(2) and M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records, except that the executive director may provide evidence which may be used in a criminal proceeding or investigation to the attorney general, the United States Attorney, or a district attorney of competent jurisdiction. Nothing in 555 CMR 1.03 shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.

1.04: Required Notification of Preliminary Inquiries

The division of standards shall, within 30 days of the commission's vote to authorize a preliminary inquiry, notify the officer who is subject of the inquiry, the head of the agency, the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue. Nothing in 555 CMR 1.04 shall prevent the division of standards from notifying any other prosecuting attorney, upon reasonable request, of the commencement of the preliminary inquiry and the nature of the alleged conduct at issue.

1.05: Conduct of Preliminary Inquiries

(1) Collection of Information.

(a) The division of standards may, in connection with a preliminary inquiry, obtain or provide pertinent information, including any information regarding grants of immunity, regarding officers, agencies, witnesses, or complainants, from or to law enforcement agencies and other domestic, federal or foreign jurisdictions, including the Federal Bureau of Investigation, and may transmit or receive such information electronically or *via* other secure methods.

(b) To support its own preliminary inquiry the division of standards may request, by writing to the head of the agency, that the agency produce all records relating to its internal investigation of a complaint. The agency shall produce all such records to the division of standards within 15 days of the division of standards' demand, unless the division of standards allows a longer period of time.

(c) Upon written request by the division of standards, the agency shall make its best efforts to make witnesses available to the division of standards, or if requested by the division of standards, to coordinate its internal investigation with the division of standards' preliminary inquiry.

(2) Subpoenas. The division of standards is authorized in the name of the commission to issue subpoenas in the conduct of preliminary inquiries, to compel the attendance of witnesses, to compel the production of documents and records at any place within the commonwealth, to administer oaths, and to require testimony under oath. Subpoenas may be served by commission employees and agents, including contracted investigators. Any witness summoned may petition the commission to vacate or modify a subpoena issued in its name. After such investigation as the commission considers appropriate, the commission may grant the petition in whole or in part upon a finding that the testimony, or the evidence whose production is required, does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested. The commission shall exercise all legal remedies available to it to enforce any subpoenas issued under 555 CMR 1.05(2).

(3) Contractor Investigators. The commission may retain qualified contractor investigators, either directly or pursuant to contracts with private investigative businesses or other qualified entities, to assist the division of standards in conducting preliminary inquiries. Before a contractor investigator can participate in any preliminary inquiry, the investigator shall execute a certification acknowledging: the investigator's full understanding and acceptance of the authority given; the investigator's freedom from conflict of interest, bias, prejudice or self-interest; applicable confidentiality provisions; and appropriate limits to the investigator's authority.

1.06: Suspension of Certification Pending Preliminary Inquiry

(1) If at the time the commission authorizes a preliminary inquiry, or at any time during the course of the preliminary inquiry, the division of standards concludes that the suspension of the officer's certification is warranted pending completion of the preliminary inquiry, the division of standards shall recommend such a suspension to the chair and provide to the chair the evidence supporting that recommendation. If, based on such evidence, the chair agrees with the division of standards' recommendation that the officer's certification be suspended pending completion of the preliminary inquiry, the chair shall place the question of whether to suspend the officer's certification pending completion of the preliminary inquiry on the next available commission agenda, or call a meeting for the purposes of deciding that question.

(2) The commission may suspend an officer's certification pending completion of the preliminary inquiry if it determines by a preponderance of the evidence that such suspension is in the best interest of the health, safety, or welfare of the public.

(3) Any suspension issued by the commission pursuant to 555 CMR 1.06 shall continue in effect until issuance of the final decision of the commission or until the suspension is revoked by the commission.

1.07: Reports Following Preliminary Inquiries

(1) Any preliminary inquiry by the division of standards pursuant to 555 CMR 1.05 through 555 CMR 1.06 shall be completed within 60 days of the commission's vote to authorize such a preliminary inquiry, or within any such additional time as authorized by the chair. Within ten days of the completion of the preliminary inquiry by the division of standards, the division of standards shall provide the commission with a detailed report on the conclusions and determinations resulting from its preliminary inquiry. The report on the preliminary inquiry shall include, at a minimum:

- (a) a copy of any written complaint that is the basis of the preliminary inquiry;
- (b) a clear statement of all the evidence or allegations considered by the division of standards;
- (c) the material relative to the complaint and evidence or allegations contained therein that were obtained by the division of standards from the agency, and whether any material was withheld, lost or otherwise inaccessible;
- (d) any investigative report issued by the agency;
- (e) a list of witnesses subpoenaed, interviewed, or contacted to testify by the division of standards, and if any witnesses were unavailable or did not appear for interview or to testify, the reasons therefor;
- (f) the facts found by the division of standards to support any recommendations or conclusions of the division of standards as a result of the preliminary inquiry; and
- (g) whether the division of standards recommends a suspension of the officer's certification and the reasons therefor.

(2) The division of standards' report on its preliminary inquiry, shall remain confidential to the extent permitted by law, including but not limited to the redaction of certain information pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definitions of public records, except that the executive director may provide the report for use in a criminal proceeding or investigation to the attorney general, the United States Attorney, or a district attorney of competent jurisdiction.

1.08: Suspensions of Certifications following Arrests, Criminal Charges or Indictments for Felonies, or following Preliminary Inquiries

(1) The commission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony. A sworn statement by the arresting officer, or a certified copy of the charge or indictment, shall be sufficient evidence for immediate commission action pursuant to 555 CMR 1.08.

1.08: continued

(2) In addition to issuing suspensions under 555 CMR 1.08(1), the commission, within 30 days of its receipt of a report of the division of standards following a preliminary inquiry:

(a) shall immediately vote to suspend the officer's certification if the commission concludes by a preponderance of the evidence that the report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that the officer has engaged in conduct that could constitute a felony;

(b) may suspend the certification of the officer if the commission concludes by a preponderance of evidence that the division of standards' report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that an officer has been arrested, charged or indicted for a misdemeanor that affects the fitness of the officer to serve; or

(c) may suspend the certification of the officer if the commission concludes by a preponderance of the evidence that the division of standards report on the preliminary inquiry, and any supplemental information provided by the division of standards, reflect that suspension of the officer is in the best interests of the health, safety, or welfare of the public.

(3) Any commission decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards shall be transmitted immediately to the officer involved, the head of the agency, the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction and shall be effective upon head of the agency's receipt of that decision, or the officer's receipt of that decision, whichever occurs first. Nothing in 555 CMR 1.08(3) shall prevent the commission from transmitting to any other prosecuting attorney, upon reasonable request, the commission's decision to suspend the certification of an officer pending or following a preliminary inquiry by the division of standards.

(4) Any suspension issued by the commission pursuant to 555 CMR 1.08 shall continue in effect until issuance of the final decision of the commission or until the suspension is revoked by the commission.

1.09: Single Commissioner Review of Suspensions

(1) An officer whose certification is suspended by the commission pursuant to 555 CMR 1.06 or 1.08 may request a hearing before a single commissioner pursuant to M.G.L. c. 6E, § 9(d) in accordance with 555 CMR 1.09.

(2) All requests for a hearing pursuant to 555 CMR 1.09 must be filed by the officer or their counsel or other representative with the executive director no later than five days from the date of the officer's notice of the commission's suspension, unless the officer is granted an extension of the time to request a hearing. Such a request for an extension of time shall be made in writing to the commission within the same period of five days, and shall include the bases for the request. A request for an extension of time shall be determined by a single commissioner upon review of the request, and shall be granted only upon a demonstration of good cause. The failure to timely request a hearing or an extension of time to request a hearing may result in a waiver of the right to a hearing.

(3) The request for a hearing shall include:

(a) The name and contact information of the officer and the commission certification identification number of the officer;

(b) the name and contact information of counsel or other individual representing the officer, if any;

(c) the agency at which the officer was employed when the complaint was filed and the head of that agency;

(d) a brief description of the basis for the request for the hearing; and

(e) a statement regarding whether the officer seeks to invoke or waive the officer's right under M.G.L. c. 6E, § 9(d) to a hearing within 15 days of the effective date of the suspension.

## 1.09: continued

(4) The executive director shall, immediately upon a receipt of a request for a hearing under 555 CMR 1.09: notify the chair of that request; schedule a hearing not less than five days and not more than 15 days after the effective date of the suspension if the officer has not waived the right to a hearing in the time frame set forth in M.G.L. c. 6E, § 9(d); and notify the requesting party and the chair of the date thereof. The chair shall, within two days after receiving the request for a hearing and the scheduled hearing date from the executive director, assign any single commissioner to conduct the requested hearing.

(5) The single commissioner assigned to conduct a hearing under 555 CMR 1.09 shall be selected pursuant to a policy to be established by the commission.

(6) Hearings held before a single commissioner pursuant to 555 CMR 1.09 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 1, 8 and 10 through 14. All hearings shall comply with 555 CMR 1.05, as applicable, and 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply, and that the following additional rules shall supersede any inconsistent rules provided in 801 CMR 1.01:

(a) Standard of Proof. The single commissioner shall affirm the suspension of the certification of an officer unless the single commissioner determines by a preponderance of the evidence presented to the commission and additional evidence provided by the officer, the suspension is not warranted. If the single commissioner so determines, the single commissioner shall stay the commission's suspension of the officer's certification.

1. The rules of evidence observed by courts shall not apply to hearings held by the single commissioner, but the rules of privilege recognized by law shall be observed.

2. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.

The single commissioner may exclude irrelevant, unreliable, and repetitive evidence.

(b) Discovery. No discovery shall be permitted in connection with a hearing held pursuant to 555 CMR 1.09 except upon a motion made to the single commissioner at least seven days before such hearing, which motion shall be granted for good cause shown.

(c) Public Access.

1. Records. The single commissioner shall treat all documents submitted to or created by them as confidential to the extent permitted by law, including by, but not limited to, withholding or redacting such records pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definition of public records.

2. Hearings. During the course of an adjudicatory hearing conducted under 555 CMR 1.10, the single commissioner shall make all reasonable efforts to protect the confidentiality of any documents submitted or considered during the course of a hearing, to the extent permitted by law and as described in 555 CMR 1.09(6)(c)1. A hearing conducted under 555 CMR 1.09 shall be open to the public unless the single commissioner determines that closure is necessary to protect privacy interests and will not be contrary to the public interest.

(d) Decisions. Upon completion of the hearing, the single commissioner shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the single commissioner shall be the final decision of that single commissioner. The filing of any appeal of a final decision of the single commissioner shall be to the Superior Court in accordance with M.G.L. c. 30A, § 14.

(e) Judicial Review. Appeals to the Superior Court shall not stay enforcement of the single commissioner's decision, but by motion to the commission within ten days of the single commissioner's decision, the commission may for good cause lift the stay of the single commissioner pending appeal to the Superior Court, or pending the final decision of the commission pursuant to 555 CMR 1.10.

(f) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony and other evidence offered and accepted into evidence by the single commissioner shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to 555 CMR 1.09(6)(d). Any evidence offered at the hearing, but not accepted by the single commissioner, will be marked for identification purposes only and be included in the record.



1.10: Final Disciplinary Hearings and Appeals of Certification Decisions

(1) Applicability. The following types of adjudicatory hearings shall be held by the full commission, but may, in the chair's discretion, be heard in the first instance by a presiding officer selected pursuant to a policy established by the commission:

- (a) M.G.L. c. 6E, § 10(a) hearings regarding mandatory revocation of an officer's certification;
- (b) M.G.L. c. 6E, § 10(b) hearings regarding discretionary revocation or suspension of an officer's certification;
- (c) M.G.L. c. 6E, § 10(d) hearings regarding officer retraining; and
- (d) Appeals of a decision by the commission declining to certify or recertify a law enforcement officer pursuant to M.G.L. c. 6E, § 4.

(2) Timing of Revocation or Suspension Hearings.

- (a) The commission shall not institute a revocation or suspension hearing regarding a complaint against an officer until an officer's appointing agency has issued a final disposition regarding a complaint or one year has elapsed since the incident was reported to the commission, whichever is sooner.
- (b) If the officer notifies the commission that the officer wishes to suspend such hearing pending an appeal or arbitration of the appointing agency's final disposition, the commission shall suspend the hearing. Any such suspension of the hearing shall not exceed one year from the officer's notice to the commission; provided, however, that at any time during which the hearing is so suspended and upon a showing of good cause by the officer, the commission shall further suspend the hearing for a period of not less than six months and not more than the commission determines is reasonable; provided, however, that any delay in instituting a revocation or suspension hearing shall not exceed one year from the officer's request for further suspension.
- (c) If the officer notifies the commission that the officer wishes to suspend such hearing pending the resolution of criminal charges, including any conviction, the commission shall suspend the hearing; provided, however, that the officer's certification shall be suspended during the pendency of any suspension in the hearing.

(3) Timing of Appeals from a Decision Declining to Certify or Recertify.

- (a) An officer whose certification has not been granted or renewed by the commission pursuant to M.G.L. c. 6E, § 4 may request a hearing, which shall be conducted in accordance with 555 CMR 1.10(4).
- (b) All requests for a hearing pursuant to this section 555 CMR 1.10(3) must be filed by the officer or their counsel or other representative with the executive director no later than 30 days from the date of the commission's decision.
- (c) The request for a hearing shall include:
  - 1. The name and contact information of the officer and the commission certification identification number of the officer,
  - 2. the name and contact information of the officer's counsel or other representative, if any; and
  - 3. a brief description of the basis for the request for the hearing.

(4) Conduct of Hearings. Hearings held pursuant to 555 CMR 1.10 shall be adjudicatory proceedings conducted in accordance with M.G.L. c. 30A, §§ 1, 8 and 10 to 14, inclusive. All hearings shall further comply with 801 CMR 1.01: *Formal Rules*, except that the provisions of 801 CMR 1.01(1), (2), (6), (11) and (14) shall not apply and that the following additional rules shall supersede those provided in 801 CMR 1.01: (prescribed by M.G.L. c. 6E, §10(f)).

(a) Public Access.

- 1. Records. The commission shall treat all documents submitted to or created by the presiding officer or commission as confidential to the extent permitted by law, including by, but not limited to, withholding or redacting such records pursuant to M.G.L. c. 4, § 7, twenty-sixth, the exemptions to the definition of public records.

## 1.10: continued

2. Hearings. During the course of an adjudicatory hearing conducted under 555 CMR 1.10, the presiding officer and commission shall make all reasonable efforts to protect the confidentiality of any documents submitted or considered during the course of an adjudicatory hearing, to the extent permitted by law and as described in 555 CMR 1.10(4)(a)1. An adjudicatory hearing conducted under 555 CMR 1.10, except deliberations by a panel of presiding officers or the commission regarding a decision, shall be public except where the presiding officer or presiding officers determine that closure is necessary to protect privacy interests and will not be contrary to the public interest. All deliberations by a panel of presiding officers or the commission regarding a decision following an adjudicatory hearing conducted under 555 CMR 1.10 shall be closed to the public.

(b) Evidence.

1. The rules of evidence observed by courts shall not apply to hearings held under 555 CMR 1.10, but the rules of privilege recognized by law shall be observed.
2. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The presiding officer may exclude irrelevant, unreliable, and repetitive evidence.

(c) Standard of Proof.

1. The commission may not order the revocation or suspension of an officer's certification unless the commission finds by clear and convincing evidence that such revocation or suspension is warranted pursuant to M.G.L. c. 6E, § 10(a) or § 10(b).
2. The commission may not order the retraining of an officer unless the commission determines, based on substantial evidence, that retraining is warranted pursuant to M.G.L. c. 6E, § 10(d).
3. The commission may not reverse a prior decision to deny the certification or recertification of an officer unless the commission determines, based on substantial evidence, that certification is warranted pursuant to M.G.L. c. 6E, § 4.

(d) Collection of Information, Subpoenas and Testimony for Use in Hearings. The commission is authorized to use the same investigatory tools, including the collection of documents, issuance of subpoenas, and requirement for testimony under oath in connection with hearings under 555 CMR 1.10 as it is permitted to use with respect to preliminary inquiries pursuant to 555 CMR 1.05.

(e) Decisions.

1. Upon completion of a hearing held before the full commission, the commission shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the full commission shall be the final decision of the commission. The filing of any appeal of a final decision of the full commission shall be to the Superior Court in accordance with M.G.L. c. 30A, § 14. Appeals to the Superior Court shall not stay enforcement of the commission's decision, but by motion to the commission within ten days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court. A motion for reconsideration before the full commission shall not toll the 30-day requirement for the filing of any appeal of a final decision of the full commission to the Superior Court in accordance with M.G.L. c. 30A, § 14.
2. Upon completion of a hearing held before a presiding officer other than the full commission, the presiding officer shall render a decision as provided in M.G.L. c. 30A § 11(8). The decision of the presiding officer shall be called an "initial decision".
  - a. The presiding officer shall promptly provide the officer, the officer's counsel or other authorized representative, the head of the officer's agency, the head of the officer's collective bargaining unit, and a district attorney of competent jurisdiction with a copy of the presiding officer's initial decision and file a copy of the same with the commission.

1.10: continued

b. Upon receipt of the presiding officer's initial decision, if there is objection by the officer in writing to the executive director regarding the presiding officer's findings and recommendations, the commission shall set dates for submission of briefs and for any further hearing which the commission in its discretion deems necessary. The commission shall review, and may revise, the findings of fact, conclusions of law and recommendation of the presiding officer, giving deference to the presiding officer's evaluation of the credibility of the testimony and other evidence presented at the hearing. Failure by the officer to object to the presiding officer's initial decision within 30 days shall constitute a waiver of the officer's right to appeal under M.G.L. c. 30A, § 14.

c. The commission may affirm and adopt the initial decision in whole or in part, and it may recommit the matter to the presiding officer for further findings or a revised initial decision as it may direct. The same procedural provisions applicable to the initial filing of the initial decision shall apply to any refiled or revised initial decision after recommittal. If the commission does not affirm and adopt the whole of the initial decision, as originally submitted or as revised, it shall provide an adequate reason for rejecting those portions of the initial decision it does not affirm and adopt.

d. The final written decision of the commission upon review of the initial decision shall be the final decision of the commission. The filing of any appeal of a final decision of the commission shall not stay enforcement of the commission's decision, but by motion to the commission within ten days of the commission's decision, the commission may for good cause shown stay enforcement pending appeal to the Superior Court.

e. The commission shall issue a final decision within 180 days or (30 days in the case of the denial of certification or recertification) of the presiding officer's filing or refiling of the initial decision. In the event that the commission is unable to issue a final decision within the 180 or 30 day period, the executive director shall notify all parties.

(5) Administrative Record for Judicial Review. Pursuant to M.G.L. c. 30A, § 11(4), all documents, testimony, and other evidence offered and accepted into evidence by the presiding officer shall become part of the administrative record. For purposes of judicial review, the record shall include the final decision issued pursuant to 555 CMR 1.10(4)(e). Any evidence offered at the hearing, but not accepted by the presiding officer, will be marked for identification purposes only and be included in the record.

REGULATORY AUTHORITY

555 CMR 1.00: M.G.L. c. 6E, § 3(a)(28).