

## 1034. DECERTIFICATION, DISCIPLINARY ACTION, AND HEARINGS

### (1) DECERTIFICATION

- (a) Certificates remain the property of the Commission and the Commission shall have the power to revoke or recall any certificate, including eligibility for certification, and ability to act as a law enforcement officer, as provided by law.
- (b) The Commission may revoke the certification, eligibility for certification, or ability to act as a law enforcement officer of any law enforcement officer after written notice and a hearing for any of the following reasons:
  - (i) The law enforcement officer was separated from his or her employment due to a failure to meet the minimum qualifications for employment or appointment as a law enforcement officer,
  - (ii) The law enforcement officer left employment due to conduct or involvement in any act which is punishable by law,
  - (iii) The law enforcement officer was dismissed from employment for a violation of the Rules or Regulations of the law enforcement agency for which he was employed
  - (iv) The law enforcement officer resigned while he was the subject of a pending internal investigation.
  - (v) The law enforcement officer falsified any information required to obtain certification.
  - (vi) The certification was issued in error or mistake by the Division.
  - (vii) The individual has ceased to meet the minimum standards for employment or appointment as established by Rule 1002.
  - (viii) Committed a violation of the Law Enforcement Code of Ethics.
- (c) The Commission shall notify a law enforcement officer in writing if the Commission believes there is a reasonable basis for revoking the law enforcement officer's certification, eligibility for certification, or ability to act as a law enforcement officer. If the officer wishes to contest the decertification, the officer may request a hearing within twenty (20) days of the date of the notice.

- (d) An individual who has been decertified by the Commission or by another state or who has surrendered a law enforcement certification in Arkansas or in another state is not eligible for certification in Arkansas until the commission, at its discretion and by majority vote, is satisfied that the individual is eligible for re-certification.
- (e) Recommendations to the Commission from a department head or other authorized entity requesting decertification of a law enforcement officer shall be supported by a letter of justification or other documentation as required by the Commission.

## (2) DISCIPLINARY ACTION

If an officer is determined by the Director or Deputy Director to be in noncompliance with minimum standards, the Director or Deputy Director will notify the employing agency in writing. The Director or Deputy Director shall give the individual and the employing agency a reasonable amount of time to remedy the deficiency. If, at the end of the period allowed for the individual to remedy the deficiency, including any extensions thereof, if the officer remains in noncompliance, the Director may:

- (a) Temporarily suspend the officer's ability to serve as a law enforcement officer.
  - i. If the Director issues a temporary suspension, the Director will promptly notify the law enforcement officer and the officer's employing law enforcement agency.
  - ii. The Director may lift the suspension upon the receipt of evidence showing that the noncompliance has been corrected, or the Director may set the matter for a hearing before the Commission; or
- (b) Provide written notice of the violation to the agency, which shall respond within thirty (30) days of receipt of the notice.
  - i. If the agency fails to respond within the required thirty (30) days, the Commission may issue a default order and administrative penalty against the agency.
  - ii. In its response to the notice of violation, the agency may request a hearing before the Commission to contest the allegations contained within the notice.

(c) Commence an action consisting of both (2)(a) and (2)(b).

### (3) ADMINISTRATIVE PENALTIES

(a) After notice and a hearing, or as otherwise provided by law, the Commission may assess an administrative penalty against an agency as follows;

- i. For appointing a person who does not meet minimum standards as a law enforcement officer, an administrative penalty or no more than one thousand dollars (\$1,000); and
- ii. For failing to timely submit any required appointment or separation documents, an administrative penalty or no more than three hundred fifty dollars (\$350).

(b) When determining the amount of an administrative penalty assessed against an agency, the Commission shall consider:

- i. The seriousness of the violation;
- ii. The agency's history of violations;
- iii. The amount the Commission believes is necessary to deter future similar violations;
- iv. Efforts made by the law enforcement agency to correct the violation; including the immediacy and degree of corrective action; and
- v. Any other consideration that the Commission believes important.

(c) The administrative penalties may be assessed on a per-day basis, with each day considered a separate violation.

### (4) HEARINGS

(a) All hearings before the Commission shall be conducted in accordance with the Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201 et seq.

(b) Should any portion of this procedure ever be in conflict with any provisions of the State Administrative Procedures Act, the State Administrative Procedures Act will be followed in every case.

### (5) SUBPOENAS

(a) The Commission Chair or Director shall sign a subpoena.

(b) A party seeking a subpoena shall have the burden of preparing the subpoena for signature, obtaining service of process, and tendering appropriate mileage fees and witness fees calculated in accordance with Rule 45 of the Arkansas Rules of Civil Procedure.