Agency Name: South Carolina Criminal Justice Academy

Statutory Authority: 23-23-10 et seq.

Document Number: 4523

Proposed in State Register Volume and Issue: 38/11

House Committee: Judiciary Committee

Senate Committee: Judiciary Committee

120 Day Review Expiration Date for Automatic Approval: 06/02/2015

Final in State Register Volume and Issue: 39/6

Status: Final

Subject: Article 5, Adjudication of Misconduct Allegations

History: 4523

By Date Action Description Jt. Res. No. Expiration Date

- 11/28/2014 Proposed Reg Published in SR

- 02/02/2015 Received by Lt. Gov & Speaker 06/02/2015

H 02/03/2015 Referred to Committee

S 02/03/2015 Referred to Committee

S 03/04/2015 Resolution Introduced to Approve 506

- 06/02/2015 Approved by: Expiration Date

- 06/26/2015 Effective Date unless otherwise

provided for in the Regulation

Document No. 4523

**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY**

CHAPTER 37

Statutory Authority: 1976 Code Sections 23‑23‑10 et seq.

37-101 through 37-110. Article 5, Adjudication of Misconduct Allegations

**Synopsis:**

S.C. Code §23-23-80 authorizes the Law Enforcement Training Council to make regulations necessary for the administration of S.C. Code §23-23-10 et seq. The proposed additions to the regulations will formalize the agency level contested case hearing process, including requests for contested case hearing, failure to request a contested case hearing, docketing, discovery, hearing format and requirements; failure to appear at contested case hearing, final decision by the Law Enforcement Training Council, sanctions, recusal of Council members, and right to be represented by counsel.

Notice of Drafting for the proposed amendments was published in the *State Register* on August 22, 2014. Proposed Regulations were published in the *State Register* on November 28, 2014. Public Hearing regarding the Proposed Regulations was held on January 28, 2015 before the Law Enforcement Training Council.

Section-by-Section Discussion

Article 5 (New)

37-101 This section deals with requests for contested case hearings.

37-102 This section deals with what happens is an officer fails to request a contested case hearing.

37-103 This section deals with prosecution of the allegation of misconduct and docketing of the contested case hearing.

37-104 This section deals with discovery in preparation for the contested case hearing.

37-105 This section deals with the mechanics of how the contested case hearing will run, including notice of the hearing and issuance of a recommendation after the hearing.

37-106 This section deals with failure of the agency or the officer to appear at the contested case hearing.

37-107 This section deals with the Council’s issuance of the final agency decision.

37-108 This section outlines the sanctions available in cases of misconduct, including a voluntary consent to sanctions provision.

37-109 This section deals with recusal of Council members and/or the Director in certain situations.

37-110 This section deals with a candidate/officer’s right to be represented by Counsel.

**Instructions:**

Add new regulations.

**Text:**

ARTICLE 5

ADJUDICATION OF MISCONDUCT ALLEGATIONS

37-101. Request for Contested Case Hearing.

A. Any candidate/officer/operator whom has an allegation of misconduct as defined by R.37-025, R.37-026, R.37-073 and/or R.37-074 made against them, upon being employed as a law enforcement officer as defined in S.C. Code 23-23-10(E)(1), may request a contested case hearing on a form prescribed by the Council. A request for contested case hearing must be served on the Academy within thirty (30) days after receipt of the written notice advising them of their right to a contested case hearing due to the allegation of misconduct. The written notice advising the candidate/officer/operator of their right to a contested case hearing due to the allegation of misconduct shall be sent by certified mail to the candidate/officer/operator’s address currently on file at the Academy, return receipt requested, as soon as practicable after the Academy has received notice the candidate/officer/operator is employed as a law enforcement officer as defined in S.C. Code 23-23-10(E)(1). It is the responsibility of every candidate/officer/operator as described in Chapter 37 of these regulations to notify the Academy of his or her current address. All such notices required to be made to the candidate/officer/operator as prescribed in Chapter 37 of these regulations is effective upon mailing as required in this section.

B. A request for contested case hearing under this section must satisfy Rule 262(a), SCACR and Rule 263, SCACR.

37-102. Failure to Request Contested Case Hearing.

Any candidate/officer/operator who fails to request a contested case hearing pursuant to R.37-101, shall have a judgment by default made against him/her and the Council may immediately proceed with determining a final agency action.

37-103. Prosecution and Docketing.

A. When a candidate/officer/operator has requested a contested case hearing pursuant to R.37-101, the Agency making the allegation of misconduct shall handle the prosecution of the claim during the contested case hearing as provided below.

B. Upon receipt of a request for contested case hearing pursuant to R.37-101, a docket number shall be assigned to the case.

37-104. Discovery.

A. Any party to a contested case hearing requested pursuant to R.37-101 may engage in discovery only as allowed by this section or the Administrative Procedures Act.

B. Discovery shall be conducted pursuant to Rules 26-37, SCRCP, except:

1. Requests for Admission pursuant to Rule 36, SCRCP are not allowed;

2. Interrogatories pursuant to Rule 33, SCRCP shall be limited to twenty-five (25) interrogatories. In determining the number of interrogatories subparts shall be included, but the standard interrogatories contained in Rule 33(b), SCRCP shall not be included;

3. Physical and mental examinations pursuant to Rule 35, SCRCP do not need to meet the $100,000 amount in controversy;

4. No more than three (3) depositions may be taken by either party unless the parties consent, with specificity, in writing, to the taking of additional depositions.

C. All discovery must be concluded at least thirty (30) days prior to the contested case hearing provided for in R.37-105.

37-105. Contested Case Hearing.

A. The contested case shall be held upon thirty (30) days notice to the candidate/officer/operator and Agency making the allegation of misconduct.

B. The contested case hearing shall conform to Rule 43(a), (c)(1), (d), (e), (f), (h), (i), SCRCP, except, counsel is not required to stand during examination.

C. Subpoenas may be issued by the candidate/officer/operator or the Agency making the allegation of misconduct to compel attendance and/or production of evidence at the contested case hearing so long as the subpoena complies with Rule 45, SCRCP and is on a form prescribed by the Council.

D. During the contested case hearing both parties are entitled to cross examine witness and are entitled to present evidence. The candidate/officer/operator is not required to present evidence during the hearing.

E. The contested case hearing shall follow the format of:

1. Opening Statement by the Agency making the allegation of misconduct;

2. Opening Statement by candidate/officer/operator;

3. Presentation of case in chief by the Agency making the allegation of misconduct;

4. Presentation of case in chief by the candidate/officer/operator;

5. Rebuttal evidence as appropriate;

6. Closing Argument by the Agency making the allegation of misconduct; and

7. Closing Argument by candidate/officer/operator.

F. The hearing officer may accept evidence that conforms to Rule 6, SCRCrim.P. All other evidence accepted by the hearing officer shall conform to the South Carolina Rules of Evidence, unless otherwise agreed to by the parties.

G. All testimony must be presented under oath.

H. All documentary evidence accepted shall be numbered and labeled “State” or “Respondent” as appropriate.

I. The contested case hearing shall be documented by a court reporter.

J. Any objections during the contested case hearing shall be ruled on by the hearing officer.

K. In order for a candidate/officer/operator to have a recommendation made against them finding they did commit misconduct pursuant to R.37-025, R.37-026, R.37-073 and/or R.37-074, the hearing officer must find misconduct has been proven by substantial evidence.

L. The hearing officer shall issue a recommendation to the Council based on the evidence accepted during the hearing. The recommendation must include the following:

1. Recommended Findings of Fact;

2. Recommended Conclusions of Law; and

3. If appropriate, recommended sanction pursuant to R.37-108.

M. A copy of the hearing officer’s recommendation to the Council shall be provided to the both parties, sent by certified mail to the candidate/officer/operator’s address currently on file at the Academy or to the candidate/officer/operator’s counsel and sent by certified mail to the Agency’s address currently on file at the Academy or the Agency’s counsel, return receipt requested, as soon as practicable after the recommendation has been issued. It is the responsibility of every candidate/officer/operator and Agency as described in Chapter 37 of these regulations to notify the Academy of his, her, or its current address. All such notices required to be made to the candidate/officer/operator and Agency as prescribed in Chapter 37 of these regulations is effective upon mailing as required in this section.

N. Duplicate of such notice shall be sent, in the same manner as prescribed in paragraph (M) above, to the current sheriff or chief executive officer of the employing agency or department of the law enforcement officer.

37-106. Failure to Appear at the Contested Case Hearing.

A. Any candidate/officer/operator or Agency making the allegation of misconduct notified pursuant to R.37-105(A) who fails to appear at the contested case hearing, shall have a judgment by default made against them by the hearing officer, shall have waived their right to present evidence at the contest case hearing, and the hearing officer shall not be required to issue a recommendation pursuant to R.37-105(L). Additionally, when the candidate/officer/operator notified pursuant to R.37-105(A) fails to appear at the contested case hearing, the Council may immediately proceed with determining whether the candidate/officer/operator committed misconduct pursuant to R.37-025, R.37-026, R.37-073 and/or R.37-074 and, if misconduct has been committed, a sanction pursuant to R.37-108 for the misconduct. When the candidate/officer/operator notified pursuant to R.37-105(A) fails to appear, the evidence submitted to the Council shall not be required to conform to the Rules of Evidence.

37-107. Final Decision by Law Enforcement Training Council.

A. All Council members, unless recused, shall be provided with a complete transcript of the contested case hearing, copies of all exhibits accepted into evidence during the contested case hearing, and a copy of the hearing officer’s recommendation.

B. A quorum of the Council must be present for a final agency decision to be made. A simple majority vote of the quorum of Council members present shall be binding for a final decision issued pursuant to R.37-107(D).

C. In order for a candidate/officer/operator to have a final decision issued finding that they did commit misconduct pursuant to R.37-025, R.37-026, R.37-073 and/or R.37-074, the Council must find misconduct has been proven by substantial evidence.

D. The Council shall issue a final decision based on the evidence accepted during the contested case hearing and the applicable statutes and regulations. The Council may consider the hearing officer’s recommendation. The Council’s final decision must include the following:

1. Findings of Fact;

2. Conclusions of Law; and

3. If appropriate, sanction(s) pursuant to R.37-108.

The Council may adopt the hearing officer’s recommendation as the Council’s final decision.

E. The Council may refer the matter back to the hearing officer for further proceedings or may order further evidentiary proceedings before the Council.

F. A copy of the Council’s final decision shall be provided to the candidate/officer/operator and the Agency making the allegation of misconduct, sent by certified mail to the candidate/officer/operator’s address currently on file at the Academy or to the candidate/officer/operator’s counsel and sent by certified mail to the Agency’s address currently on file at the Academy or to the Agency’s counsel, return receipt requested, as soon as practicable after the final decision has been issued. The candidate/officer/operator shall be informed of his/her right to appeal the Council’s final decision pursuant to Sections 1-23-380(B) and 1-23-600(D) of the South Carolina Code of Laws. It is the responsibility of every candidate/officer/operator and Agency as described in Chapter 37 of these regulations to notify the Academy of his, her, or its current address. All such notices required to be made to the candidate/officer/operator and Agency as prescribed in Chapter 37 of these regulations is effective upon mailing as required in this section.

G. Duplicate of such notice shall be sent, in the same manner as prescribed in paragraph (F) above, to the current sheriff or chief executive officer of the employing agency or department of the law enforcement officer.

37-108. Sanctions.

A. If any candidate/officer/operator is found by substantial evidence to have committed misconduct as defined by R.37-025, R.37-026, R.37-073 and/or R.37-074, such candidate/officer/operator may be sanctioned by the Council as follows, in any combination:

1. Permanent denial and/or revocation (withdrawal) of certification;

2. Denial and/or revocation (withdrawal) of certification for a specified amount of time;

3. Certification granted with probation;

4. Certification granted with any additional requirements deemed just and proper by the Council; and/or

5. Public reprimand.

B. Any candidate/officer/operator may at any time voluntarily consent to sanctions under this section. Any such consent must:

1. Be in writing on a form prescribed by the Council;

2. Be signed by the candidate/officer/operator;

3. If the candidate/officer/operator has legal counsel at the time they consent to sanctions, then the candidate/officer/operator must be allowed to consult with their legal counsel regarding the consent to sanctions and the consent to sanctions must be signed by the legal counsel;

4. If criminal prosecution is declined in consideration of the consent to sanctions, then the consent to sanctions must specifically state the same;

5. Must be notarized; and

6. Must be approved by Council.

37-109. Recusal of Council Members.

A. If a member of the Council filed the allegation of misconduct or is the current sheriff or chief executive officer of the employing agency or department of the candidate/officer/operator, that Council member shall recuse themselves from participating in any hearing, final agency decision, or consent agreement entered into after allegations of misconduct have been filed regarding the matter. That member of the Council shall also be prohibited from discussing the issue with other Council members, except as a witness or party, until after the Council has issued its final agency action and the time for appeal has lapsed or the appeal rights have been exhausted. These prohibitions should not be construed as prohibiting the filing of any documents as required or allowed under Chapter 23 of Title 23 or Chapter 37 of the South Carolina Code of Regulations.

B. If any member of the Council has a personal relationship to the candidate/officer/operator or some other personal connection to the issue before them, then that Council member shall recuse themselves from participating in any hearing, final agency decision, or consent agreement entered into after allegations of misconduct have been filed regarding the matter. That member of the Council shall also be prohibited from discussing the issue with other Council members, except as a witness or party, until after the Council has issued its final agency action and the time for appeal has lapsed or the appeal rights have been exhausted. These prohibitions should not be construed as prohibiting the filing of any documents as required or allowed under Chapter 23 of Title 23 or Chapter 37 of the South Carolina Code of Regulations.

37-110. Right to be Represented by Counsel.

A. During all stages under R.37-100 through R.37-108, the candidate/officer/operator and Agency is entitled to be represented by legal counsel.

B. If the candidate/officer/operator or Agency are represented by legal counsel, a notice of such representation must be sent to the Academy and other party.

**Fiscal Impact Statement:**

There will be no increase in costs to the Academy as the requirements put forth by these regulations track those created by the Administrative Procedures Act.

**Statement of Rationale:**

Revisions to these regulations are necessary to formalize the agency level contest case hearing process, including requests for contested case hearing, failure to request a contested case hearing, docketing, discovery, hearing format and requirements; failure to appear at contested case hearing, final decision by the Law Enforcement Training Council, sanctions, recusal of Council members, and right to be represented by counsel.