



DEPARTMENT HEARING OFFICER, AMENDED

This rule is issued to establish a procedure for the designation of hearing officers pursuant to M.G.L. c. 31, s. 41. This law permits the Police Commissioner to designate hearing officers to conduct hearings to determine whether a tenured employee shall be discharged, suspended, required to perform punishment duty, laid off, or have his office or position abolished. The designated hearing officer is required to report findings forthwith to the appointing authority for action. This rule becomes effective immediately.

Sec. 1 All designations of hearing officers shall be made by the Police Commissioner in writing and shall specify the name of the hearing officer and the employee who is the subject of the proposed hearing. The designation shall be filed with the Chief Clerk and the Internal Affairs Division.

Sec. 2 Upon receipt of a written designation, the Internal Affairs Division shall cause to be served upon the employee the notice as to the time, date and place of the hearing, the person who has been designated as the hearing officer, the statement of the reasons for the proposed action, and copies of M.G.L. C. 31, ss. 41-45 (all employees), and s. 62 (sworn personnel. In addition, the Internal Affairs Division may arrange for either the presence of a stenographer or an electronic recording device to preserve the testimony. Prior to the scheduled date of the hearing the Internal Affairs Division shall designate an employee to serve as clerk during the hearing. The clerk shall be responsible for marking and preserving all evidence introduced at the hearing.

Sec. 3 The hearing shall be informal and administrative. The hearing officer need not apply the rules of evidence observed by law. Evidence which reasonable persons are accustomed to rely on in the conduct of their affairs may be considered. Unduly repetitious evidence may be excluded. Documentary evidence may be admitted in the form of copies or excerpts or by incorporation by reference. The hearing officer may establish reasonable rules to expedite the hearing.

Sec. 4 The hearing officer shall hear and consider all evidence offered by the parties which is relevant to the statement of the reasons for the proposed action. The employee shall have the opportunity to offer written, oral and real evidence and to examine and cross-examine all witnesses who testify before the hearing officer. Witnesses shall be sworn or make an affirmation before testifying.

Sec. 5 Upon completion of the hearing, the hearing officer shall forthwith submit a written report to the Police Commissioner with a copy to the Internal Affairs Division. That report shall summarize the evidence introduced by the parties, make specific findings of fact and make recommendations as to the disposition of the charges including recommendations as to the appropriate discipline, if any.

Sec. 6 The Police Commissioner shall immediately review the report of the hearing officer. He may return it to him for elaboration, further explanation or for further hearings and findings of fact, if necessary and practicable, within the time limits required by law. Recommendation made by the hearing officer will not be binding on the Police Commissioner. Within seven days after filing of the report of the hearing officer, the Police Commissioner shall give to the employee a written notice of his decision, stating fully and specifically the reasons therefore.

Sec. 7 At any time the employee may waive his right to a hearing and sign a written statement that he waived his right to a hearing under M.G.L. C. 31, s. 41 (all employees), and s. 62 (sworn personnel), and review under M.G.L. C. 31, ss. 42, 43 and 44, and agree to accept a suspension, discharge or imposition of punishment duty. Said waiver and agreement shall be subject to the approval of the Police Commissioner.

NOTE: Chapter 393 of the Acts and Resolves of 1978 amended M.G.L. c. 31.

This recodification necessitated changes in Rule No. 108 as follows:

Preamble-MGL, c. 31, S 43(a), changed to M.G.L. C31, s.41.

Section 2-M.G.L, c.31 ss.43, 45, 45a, changed to M.G.L. C.31, ss.41-45 (all employees) and s. 62 (sworn personnel).

Section 7-M.G.L, C.31, s. 43 (a) changed to M.G.L, C.31, s. 41 (all employees) and s. 62 (sworn personnel). Changed M.G.L. C. 31, ss45 and 46 A to M.G. L. C. 31, ss 42, 43 and 44.