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**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY**

CHAPTER 37

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

37‑105. Contested Case Hearing.

**Synopsis:**

S.C. Code Section 23‑23‑80 authorizes the Law Enforcement Training Council to make regulations necessary for the administration of S.C. Code Section 23‑23‑10 et seq. The proposed regulation will define misconduct for the denial of certification for misconduct.

Notice of Drafting for the proposed amendments was published in the *State Registe*r on July 23, 2021.

Section‑by‑Section Discussion:

37‑105. This section addresses contested case hearings.

**Instructions:**

Print the regulation as shown. All other items remain unchanged.

**Text:**

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 or R.37‑026, the hearing officer must find misconduct has been proven by the preponderance of 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.

**Fiscal Impact Statement:**

There will be no fiscal impact from this change.

**Statement of Rationale:**

Revisions to these regulations are necessary to update contested case procedures.