

From: [Anil Karia](#)
To: [Boss Frederick](#); [Slauson Michael](#)
Cc: [ORLawEnf Commission](#)
Subject: LESC, Commissioner Karia Comments/Notes RE Proposed Rules
Date: Monday, September 19, 2022 6:54:49 PM
Attachments: [KARIA EDITS Notice of Proposed Rulemaking - OAR 265 \(Division 5\) 9.19.22.docx](#)
[KARIA EDITS Notice of Proposed Rulemaking - OAR 265 \(Division 10\) 9.19.22.docx](#)

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Fred and Michael –

I will be at the airport and boarding a plane as the 9/21/22 meeting is being held. I will try to call-in, but no guarantees that I can meaningfully participate while the flight attendants are telling me what to do with my flotation device for a “water landing.”

In any event, I’ve gathered some of my notes about the proposed rules and included them in track changes format (attached). I have tried to reflect “clean-ups” that I believe are appropriate while staying true to the votes of the Commission.

I recall during our last meeting that Michael was working on a revised rule for single/multiple instances of misconduct. If Michael has that draft rule language available, is there any chance I can get a sneak peek at it so I can provide written comments before Wednesday?

Thanks,
Anil

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Drafted, using share screen, during September 21, 2022 Commission Meeting

265-005-0020

Multiple Instances of Misconduct

(1) For purposes of an arbitration proceeding concerning multiple instances of alleged misconduct by a law enforcement officer, if the arbitrator finds that a disciplining body has not met its burden of proof by a preponderance of the evidence to show that:

(a) The officer engaged in one or more of the instances of alleged misconduct, or

(b) That the disciplinary action taken against the officer was with just cause, as defined in ORS 236.350, for one or more of the instances of misconduct, the arbitrator must rescind the disciplinary action imposed on those allegations of misconduct and refer the matter back to the disciplining body.

(2) The disciplining body may, at its discretion, amend the disciplinary action on any instances of misconduct upheld by the arbitrator.

(3) Nothing in this rule precludes the exclusive representative of the law enforcement officer from continuing the arbitration proceeding regarding a disciplinary action imposed after the referral by the arbitrator.

(4) An arbitrator who refers a matter back to the disciplining body under paragraph (1), shall retain jurisdiction over any arbitration proceeding initiated under paragraph (3).

New Rule

(1) In determining the reasonableness of a disciplinary action imposed by a disciplining body, including the appropriateness of the discipline imposed, the arbitrator shall rescind the discipline imposed and refer the matter back to the disciplining body if the arbitrator finds that the disciplinary action was arbitrary and capricious.

(2) Nothing in this rule precludes the exclusive representative of the law enforcement officer from continuing the arbitration proceeding regarding a disciplinary action imposed after the referral by the arbitrator.

(3) An arbitrator who refers a matter back to the disciplining body under paragraph (1), shall retain jurisdiction over any arbitration proceeding initiated under paragraph (2).

New Definition

Exclusive representative has the meaning given that term in ORS 243.650(8).

Truthfulness

No member shall knowingly or willfully be dishonest or untruthful in giving a statement or testimony, in creating a report, in any official oral or written communication, or in giving any statement about actions taken that relate to the member's own or another member's employment or position. Being dishonest or untruthful **in a manner that reflect adversely on the ability of the member to perform the duties of a law enforcement officer** ~~that includes~~ means knowingly or willfully: making false statements, or falsifying work-related records or official documents, or omitting material facts or material information, or answering questions or providing information in a manner that is ~~incomplete~~, evasive, deceptive, or misleading.

Commissioner Mark Makler proposed edits 092622

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