

### **67C.323 Review of disciplinary actions -- Hearings -- Appeal.**

In all cases provided for in KRS 67C.321, the action of the chief shall be final except in the following cases:

- (1) Every action in the nature of a dismissal, suspension, or demotion of a nonprobationary officer made by the chief shall be subject to review by the board at the request of any officer affected by KRS 67C.301 to 67C.327. An appeal to the board of a dismissal, demotion, or forty (40) hour or more suspension of a nonprobationary officer shall be heard by the full board. The board shall give notice and hold a public hearing. After the hearing, the board shall retire in executive session to discuss the evidence introduced at the hearing and to make its determination and conclusion. While in executive session, the board shall not receive any further evidence or communication from any source prior to reaching its determination and conclusion. The board, while in executive session, may request and receive legal advice from board counsel on specific legal issues which may arise during deliberations. If a majority of the members of the board are of the opinion that the action of the chief is unjustified or unsupported by proper evidence, the order of the chief may be set aside and revoked by the board, and the board may impose the penalty or punishment it deems necessary and appropriate, if any; provided however, the board shall not impose a penalty or punishment in excess of the action of the chief. No officer shall be removed or dismissed except as provided for in this section.
- (2) An appeal to the board of a suspension of a nonprobationary officer of less than forty (40) hours may be heard by the full board or any hearing officer secured by the board. If the appeal is heard by a hearing officer, all rules established by the board relating to appeals of disciplinary actions shall be applicable. After the hearing, the hearing officer shall complete and submit to the board, no later than thirty (30) days after the hearing, a written recommended order which shall include his findings of fact, conclusions of law, and recommended disposition of the appeal, which may include recommended penalties. The recommended order shall also include a statement advising the appealing officer and chief fully of their exception and appeal rights. A copy of the hearing officer's recommended order shall be sent to the appealing officer and chief. Each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the board. The board shall consider the record including the recommended order in any exceptions duly filed to a recommended order, and accept and adopt or reject or modify, in whole or in part, the recommended order, or remand the appeal of the matter, in whole or in part, to the hearing officer for further proceedings as appropriate. The final order of the board shall be in writing. If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The board shall render a final order in an administrative hearing within thirty (30) days after receipt of the hearing officer's recommended order.
- (3) (a) Every action of a dismissal, suspension, or demotion made by the board shall be final, except that any person aggrieved may, within thirty (30) days after

the action, appeal to the Circuit Court of the county in which the board meets. The board shall be named respondent as the consolidated local government police force merit board, and service shall be had on the chairman of the board. The appeal taken to the Circuit Court shall be docketed by the clerk as a civil action with appropriate judicial review of an administrative action or decision.

- (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to the appeal to the Court of Appeals shall be the same as in any civil action.

**Effective:** March 18, 2003

**History:** Amended 2003 Ky. Acts ch. 118, sec. 10, effective March 18, 2003. -- Created 2002 Ky. Acts ch. 339, sec. 12, effective July 15, 2002.