

**CIVIL SERVICE 101
COMMON PITFALLS CHAPTER 143
A PANEL DISCUSSION**

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Scope of The Panel Presentation

This presentation will address a handful of issues the commonly arise in the civil service context. The presentation will be a panel format staff by a Chief of Police, an HR and Civil Service Director, and Civil Service Legal Counsel. The issues presented will be addressed from the perspective of each panelist: a civil service attorney, an HR Director, and a Chief of Police.

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Select Topics

- Section 143.056 – Temporary Suspension
- Section 143.081 – Fitness for Duty
- Section 143.089 – Personnel File
- TPIA / G File / Brady / Michael Morton
- Disciplinary & Non-Disciplinary Separations

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**Temporary Suspensions Under
143.056, TLGC**

Leave Status; 143.056(a)

➤(a) If a fire fighter or police officer is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the department head **may** temporarily suspend the person with or without pay for a period not to exceed 30 days after the date of **final disposition** of the specified felony indictment or misdemeanor complaint.

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**Temporary Suspensions Under
143.056, TLGC**

Leave Status; 143.056(b)

➤(b) The department head **shall notify** the suspended fire fighter or police officer in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

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**Temporary Suspensions Under
143.056, TLGC**

Leave Status; 143.056(c)

➤c) If the action **directly related** to the felony indictment or misdemeanor complaint occurred **or was discovered** on or after the 180th day before the date of the indictment or complaint, the department head **may, within 30 days after the date of final disposition** of the indictment or complaint, bring a charge against the fire fighter or police officer for a violation of civil service rules

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**Temporary Suspensions Under
143.056, TLGC**

Leave Status; 143.056(d)

- d) A fire fighter or police officer indicted for a felony or officially charged with the commission of a Class A or B misdemeanor who has also been charged by the department head with civil service violations **directly related** to the indictment or complaint **may delay** the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint

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**Temporary Suspensions Under
143.056, TLGC**

Leave Status; 143.056(e)

- e) If the department head temporarily suspends a fire fighter or police officer under this section and the fire fighter or police officer **is not found guilty** of the indictment or complaint in a court of competent jurisdiction, the fire fighter or police officer may appeal to the commission or to a hearing examiner for recovery of back pay. The commission or hearing examiner may award all or part of the back pay or reject the appeal.

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**Temporary Suspensions Under
143.056, TLGC**

Leave Status; 143.056(f)

- (f) Acquittal or dismissal of an indictment or a complaint does not mean that a fire fighter or police officer has not violated civil service rules and does not negate the charges that may have been or may be brought against the fire fighter or police officer by the department head.

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**Temporary Suspensions Under
143.056, TLGC**

Leave Status; 143.056(g)

- (g) Conviction of a felony is cause for dismissal, and conviction of a Class A or B misdemeanor may be cause for disciplinary action or indefinite suspension.

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**Temporary Suspensions Under
143.056(h), TLGC**

Deferral Based on Criminal Investigation

(h) The department head may order an indefinite suspension based on an act classified as a felony or a Class A or B misdemeanor after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the department head intends to order an indefinite suspension after the 180-day period, the department head must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred

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**Temporary Suspensions Under
143.052, TLGC**

Limitations Period; Criminal Activity

- h) [180 day rule] ... If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the fire fighter or police officer is subject to a criminal penalty, the department head may not complain of an act that is **discovered** earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. The department head **must allege** that the act complained of is related to criminal activity

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Sec. 143.081 FITNESS FOR DUTY

- Sec. 143.081. DETERMINATION OF PHYSICAL AND MENTAL FITNESS.
- (a) This section does not apply to a municipality with a population of 1.5 million or more.
- (b) If a question arises as to whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties, the fire fighter or police officer shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.
- (c) If the commission, the department head, or the fire fighter or police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the commission, the department head, and the person.

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Sec. 143.081 FITNESS FOR DUTY

- (d) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the fire fighter's or police officer's personal physician, psychiatrist, or psychologist, as appropriate, the commission shall appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the fire fighter or police officer. The board's findings as to the person's fitness for duty shall determine the issue.
- (e) The fire fighter or police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.

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**Personnel Files Under
143.089 (a) (f) and (g), TLGC**

- (a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:
 - Commendation; Misconduct, etc.
- (f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law

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**Personnel Files Under
143.089 (a) (f) and (g), TLGC**

- g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

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**TPIA / Brady / Michael Morton
Disclosures**

- A TPIA request qualifies as an "order" sufficient to satisfy the requirement under 143.089 (f) that release be required by law.
- Brady and Michael Morton disclosures typically arise in the context of criminal prosecution and defense where the issue of officer misconduct that bears on credibility becomes the focus of an evidentiary issues between the parties.
- The department typically receives a subpoena, or a request for disclosure, of disciplinary material bearing on the officer's credibility.

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**Disciplinary and Non-Disciplinary
Separations**

- Disciplinary separations turn on a rule violation that requires a fact-finding process and a charging instrument that pleads a case that must be proven if appealed. Disciplinary separations are appealable.
- Non-Disciplinary separations depend on the loss of some objective qualification or condition precedent to hold the appointment.
- Non-Disciplinary separations are not appealable under civil service. They do not prevent or preclude a lawsuit alleging some other violation.

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THE END

QUESTIONS?

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