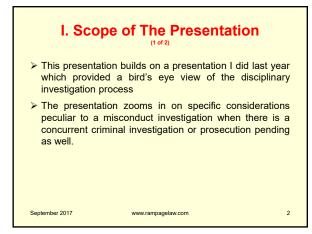
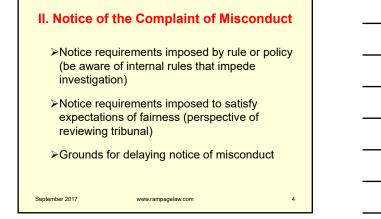
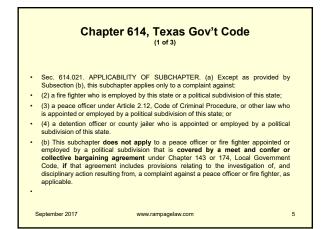
CIVIL SERVICE DISCIPLINARY INVESTIGATIONS WITH CRIMINAL INVESTIGATIONS AND POSSIBLE PROSECUTION PENDING

Ric J. Navarro Denton, Navarro, Rocha, Bernal & Zech P.C. Rio Grande Valley Office 701 E. Harrison, Ste. 100 Harlingen, Texas 78550 (956) 421-4904; (956) 421-3621 (fax) rinavarro@rampage-rgv.com









Chapter 614, Texas Gov't Code

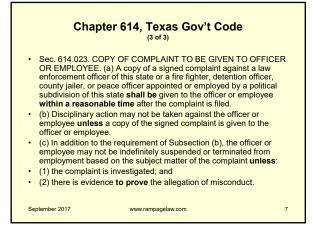
Texas Gov't Code:

 Sec. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT. To be considered by the head of a state agency or by the head of a fire department or local law enforcement agency, the complaint must be:

www.rampagelaw.com

- (1) in writing; and
- (2) signed by the person making the complaint.

September 2017





Leave Status; 143.056(a)

September 2017

>(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 <u>may</u> temporarily suspend the person with or without pay for a period not to exceed 30 days after the date of <u>final disposition</u> of the specified felony indictment or misdemeanor complaint.

www.rampagelaw.com

Leave Status; 143.056(a); Caselaw

- > Rough v Ojeda, 954 S.W.2d 127 (Tex. Civ. App – San Antonio, 1997)
- >(entry of deferred adjudication is not "final disposition" of criminal case)
- ≻Query: Here, all steps occurred within 180 days of arrest. What if discipline had occurred after 180 days?

www.rampagelaw.com

III. Factors Affecting the Administrative Investigation; 143.056, TLGC

Leave Status; 143.056(b)

September 2017

September 2017

>(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.

www.rampagelaw.com

III. Factors Affecting the Administrative Investigation; 143.056, TLGC Leave Status; 143.056(b): Questions >Does the writing have to be filed with the CSC? What are pros and cons of doing so. >What is impact under 143.089 if criminal case is dismissed? >Does an appeal from a temporary suspension have to be filed separately from an appeal from a disciplinary action? September 2017

www.rampagelaw.com

12

10

Leave Status; 143.056(c)

September 2017

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

www.rampagelaw.com

13

II. Factors Affecting the Administrative Investigation; 143.052(h), TLGC Limitations Period; 143.052(h); Question "The department head <u>must allege</u> that the act complained of is related to criminal activity" Does this mean that it only has to be alleged? Does it also have to be proved as criminal activity? What is the standard of proof here?

III. Factors Affecting the Administrative Investigation; 143.052(h), 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 <u>discovered</u> earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. The department head <u>must allege</u> that the act complained of is related to criminal activity

www.rampagelaw.com

September 2017

Leave Status; 143.056(d)

September 2017

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 <u>directly related</u> to the indictment or complaint <u>may delay</u> the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint

16

17

III. Factors Affecting the Administrative Investigation; 143.056, TLGC

www.rampagelaw.com

Leave Status; 143.056(d); Caselaw

- Amarillo v Fenwick, 19 S.W.3d 499 (Tex. Civ. App. Amarillo 2000, no writ)
- (term "directly related" to be given normal customary meaning; emphasis is on whether underlying facts for criminal and administrative violations are materially linked)
- (employee entitled to delay civil service appeal pending resolution of motion to revoke deferred adjudication of criminal charges; denial of delay resulted in reinstatement)

www.rampagelaw.com

September 2017

III. Factors Affecting the Administrative Investigation; 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.

www.rampagelaw.com

September 2017

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.

www.rampagelaw.com

19

20

September 2017

September 2017

III. Factors Affecting the Administrative Investigation; 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.

III. Factors Affecting the Administrative Investigation; 143.056, TLGC

www.rampagelaw.com

Leave Status; 143.056(h)

>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.

Leave Status; 143.056(h)

h) ... 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.

www.rampagelaw.com

September 2017

22

It is the second second

IV. Investigative Tools

- > Orders to respond in writing
- Garrity statements
- > Other affidavits and interviews of witnesses
- Relevant documentary proof, including photographs, video, and other recordings
- Polygraph orders

ember 2017

Misconduct in the investigation process (how to address)

www.rampagelaw.com

TPCA - Waco

VI. Discipline Decision: Pleading the Case (2 of 2)

≻The disciplinary order

September 2017

- ≻The recitation of relevant facts
- Linkage of facts to relevant rule, regulation, or policy;
- >Whether to avoid pleading violation of penal statutes or civil rights statutes

www.rampagelaw.com

 VI. Discipline Decision: Pleading the Case (3 of 3)
 Pleading civil service and administrative violations
 Avoid over-charging
 Avoid pleading civil rights violations
 Avoid pleading criminal violations
 Avoid pleading tort claims act violations

VII. Discipline Decision: Assessing Discipline (1 of 1)

- >The requirement of proportionality
- ≻The requirement of consistency
- Discipline for punishment versus discipline for correction
- Prior misconduct, including reprimands, warnings, suspensions

27

25

26

September 2017

TPCA - Waco

