

LOUISIANA STATE POLICE COMMISSION

Docket No. 21-249-RV

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APPEAL ON BEHALF OF TROOPER RANDALL DICKERSON,  
TROOPER GEORGE HARPER AND TROOPER DAKOTA DEMOSS

BRIEF IN SUPPORT OF APPEAL

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**TO: Executive Director of the State Police Commission  
5825 Florida Blvd., Suite 1180  
Baton Rouge, LA 70806**

NOW INTO COURT, through undersigned counsel, come Petitioners, Randall Dickerson, George Harper, and Dakota DeMoss, who offer the following Brief in Support of their Appeal:

**Overview**

The central question is: Does the State Police have to follow the law???

The Office of State Police incorrectly contends that the Louisiana State Police Commission (the "Commission") is powerless to enforce its Rules. The Office of State Police cannot deny that the administrative investigations at issue violate LSPC Rule 12.18 inasmuch as they were not initiated timely. The State Police further cannot deny that LSPC Rule 12.18 sets forth a mandatory timeframe within which administrative investigations must be initiated. Nevertheless, the State Police argues that the Commission is powerless to enforce its Rules and stop these illegal investigations. Indeed, the State Police incorrectly suggests that the Commission's Rules are merely guidelines or suggestions, without the force or effect of law that it can elect to follow or disregard as it desires. If the State Police is allowed to openly, blatantly and flagrantly disregard the Commission's Rules, then the power of the Commission will be neutered. The State Police will be authorized by this precedent to disregard any Commission Rule and to pick and choose if, how and when it will follow the mandates set forth in the Commission Rules.

**APPLICABLE LAW**

The Commission is established pursuant to the Louisiana Constitution. See La. Const. Ann. Art. X, § 43. The Louisiana Constitution empowers the Commission with the authority to create and promulgate rules governing the administration and regulation of the state police service. See La. Const. Ann. Art. X, § 48(A)(1). The Commission's Rules offer strict, specific guidelines concerning the timing, notice and conduct of administrative investigations and the procedural requirements thereof. The Rules promulgated by the Commission are not merely recommendations or guidelines. On the contrary, the Louisiana Constitution expressly provides that the Rules

promulgated by the Commission “shall have the effect of law . . .” See La. Const. Ann. Art. X, § 48(A)(4).

The Commission’s authority to enforce its Rules, and in this case, to enjoin the unlawful investigations, is expressly set forth in Commission Rule 2.9(c), which defines the Commission’s powers. This Rule expressly provides that the Commission is empowered:

To conduct investigations whenever it has reason to believe the provisions of the State Police Service Article or **Rules are being violated or have been violated by any person or Department of Public Safety & Corrections, Office of State Police**; and to hold public hearing when charges of such violations have been filed with it . . . (Emphasis added).

Rule 2.9(c) further provides that when the Commission has confirmed that its Rules have been violated, “The Commission may issue **appropriate orders** in **any** such case... (Emphasis added). The authority to issue injunctive relief, an equitable remedy, is set forth in Rule 2.9(e), which authorizes the Commission:

To provide decisions that are consistent with the basic tenets of the merit system, the State Police Service Article, the State Police Commission rules, existing jurisprudence and **equity** and improve the appeal and discipline process. (Emphasis added).<sup>1</sup>

Rule 13.1(c), entitled Appeals to the Commission, provides that “[a]n appeal may be made by any person in the Classified State Police Service who is alleged to have been **adversely affected by the violation of any provision of the State Police Commission Article or of any State Police Commission Rule** other than a rule in Chapter 10.” (Emphasis added). Both the United States Constitution and the Louisiana Constitution confer upon Petitioners Due Process rights, procedural and substantive, guaranteeing that they cannot be deprived of their liberty or property without the fair application and due process of law. See U.S. Const. amend. 14; La. Const. art. 1, § 2.

Petitioners are civil servants and thus have a property interest in their jobs. See *Lange v. Orleans Levee District*, 10-0140 (La. 11/30/10), 56 So.3d 925, 930; *Ray v. Dep’t of Labor*, 2008-0309 (La. App. 1 Cir. 11/3/08), 998 So. 2d 206, 209; *Hudson v. Dep’t of Pub. Safety & Corr., Louisiana State Penitentiary*, 96-0499 (La. App. 1 Cir. 11/8/96), 682 So. 2d 1314, 1318, writ denied, 96-2942 (La. 1/31/97), 687 So. 2d 408.

The Rules created and promulgated by the State Police Commission are the means by which Petitioners’ Due Process rights are preserved and protected. Actions which violate the Commission’s

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<sup>1</sup> Injunctive relief is well-established as an equitable remedy. *Salazar v. Buono*, 559 U.S. 700, 714, 130 S. Ct. 1803, 181 (citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982); *Hecht Co. v. Bowles*, 321 U.S. 321, 329, 64 S.Ct. 587, 88 L.Ed. 754 (1944)6, 176 L. Ed. 2d 634 (2010); *United States v. Swift & Co.*, 286 U.S. 106, 114, 52 S.Ct. 460, 76 L.Ed. 999 (1932)).

Rules are thus an abrogation of Petitioners' constitutional rights. Once Petitioner's Due Process rights have been violated, they cannot be restored.

#### ARGUMENT

As detailed in Petitioners' Appeal, the Commission's Rules are clearly and presently being violated. The State Police's blatant disregard for Commission Rules threatens Petitioners' Constitutional right of Due Process, both procedurally and substantively, as the process which governs the deprivation of their property interests is not being observed. Thus, this case satisfies Rule 13.1(c) and is properly before the Commission.

Furthermore, Rule 13.1(c) is clear in its language. It does not contemplate or demand the filing of an appeal only *after* the violation of Commission Rules has concluded. Rather, Rule 13(c) clearly contemplates an appeal to the Commission as a means of relief to classified State Police Service personnel who have been adversely affected by the violation of *any* Commission Rule.<sup>2</sup>

The Commission has the expansive authority to "issue appropriate orders in any such case" involving a violation of its Rules. Notably, this authority is broad, and it grants the Commission the power to take corrective actions as it sees fit in enforcing its own Rules. The "appropriate orders" the Commission is authorized to issue are not limited. On the contrary, this expansive power encompasses the full plethora of remedies necessary to address a violation of its Rules. This naturally includes the ability to stop, suspend or even outright dismiss investigations which are being conducted in clear violation of these Rules, as interpreting 2.9(c) to the contrary would cripple the Commission's ability to address even the most flagrant and severe disregard or violations of its Rules, so long as such actions were ongoing, and would strip the protections away from the civil servants the Rules were promulgated to protect.

A determination that the Commission cannot enjoin or halt a violation of its Rules ignores the clear intent of the law, as stated above. Furthermore, such a finding would lead to an unreasonable, untenable situation wherein the Commission would be powerless to enforce its Rules – the very Rules that Louisiana's Constitution specifically empowered it to create, administer, and enforce and to which it gave the force and effect of law. The State Police is in effect saying that it does not have to follow the law and that the Commission is powerless to say otherwise. If this were true, the Commission would be relegated to the role of a toothless tiger, forced to watch as the State Police chose which rules to follow and which to disregard. The State Police would argue that Petitioners

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<sup>2</sup> Excluding, as stated in the Rule, violations of Chapter 10.

have appeal rights once it concludes these illegal investigations. Such an assertion is incredulous and ignores the fact that once Petitioners' Due Process rights have been abrogated, they cannot be fully restored. Such a finding would grant the State Police, the most powerful law enforcement agency within the state, carte blanche to act as it wishes, with the only check to its power available after the damage has been done. In other words, if the power of the Commission is so limited that it cannot intervene and cease clear violations of its Rules – the law – then its role has been reduced and it cannot fulfill its Constitutional mandate.

Thus, the Commission has the power to intervene in the instant case and halt or even outright dismiss ongoing investigations if those investigations violate the laws the Commission has established. This power is a necessary one, as the Commission's ability to administer, regulate, and adjudicate issues such as these would be incomplete without it.

**CONCLUSION**

The answer to the central question is that the State Police does have to follow the law, and the Commission has the ability to enforce its Rules to ensure that the State Police does so.

Respectfully submitted:

Breithaupt, DuBos & Wolleson, LLC  
1811 Tower Drive  
Monroe, Louisiana 71201  
Telephone: (318) 322-1202  
Facsimile: (318) 322-1984  
Email: [michael@bdw.law](mailto:michael@bdw.law)  
Email: [adam@bdw.law](mailto:adam@bdw.law)

Adam Karamanis

Michael L. DuBos (#23944)  
Adam R. Karamanis (#39544)

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**MAR 09 2021**

**State Police Commission**