WEST VIRGINIA CODE: §8-14A-1

§8-14A-1. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(1) "Accused officer" means any police officer or firefighter who is the subject of an investigation or interrogation which results in a recommendation of punitive action against him or her.

(2) "Civil service," when followed by the terms "department," "officer" or "accused officer", means any department, officer or accused officer who is subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(3) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.

(4) "Hearing board" means a board appointed to hold a hearing on a complaint against an accused officer. The hearing board shall consist of three members to be appointed pursuant to paragraph (a), (b) or (c) of this subdivision. Hearing board members appointed under paragraph (b) or (c) of this subdivision may be removed from office as provided under paragraph (d) of this subdivision.

(a) For civil service departments, the department chief shall appoint the first member, the members of the accused officer's department shall appoint the second member, and the first and second members shall appoint the third member by agreement. Should the first and second members fail to agree on the appointment of the third member within five days, they shall submit to the department's civil service commission a list of four qualified candidates from which list the commission shall appoint the third member. The appointment of members under this paragraph shall be subject to the following qualifications and limitations:

(1) No member shall have had any part in the investigation or interrogation of the accused officer;

(2) Each member shall be a police officer or firefighter within the accused officer's department, or, with the department chief's approval, a law-enforcement officer or firefighter from another law-enforcement agency or fire department;

(3) At least one member shall be of the same rank as the accused officer; and

(4) If there are fewer than three persons who meet the qualifications described in subparagraphs (1), (2) and (3) of this paragraph, then the department's civil service

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commission shall appoint as many citizens of the municipality in which the department is located as may be necessary to constitute the board.

(b) For noncivil service police departments, the hearing board shall be a standing hearing board. The department chief shall appoint the first member, the local fraternal order of police shall appoint the second member, and the local chamber of commerce or local businessmen's association shall appoint the third member. If there is no local fraternal order of police, the state fraternal order of police shall appoint the second member. If there is no local chamber of commerce or local businessmen's association, the first and second members shall appoint the third member by agreement. Of the three original appointments in each police department, the first member shall serve for six years from the date of his or her appointment; the second member shall serve four years from the date of his or her appointment; and the third member shall serve for two years from the date of his or her appointment. After the original appointments, all appointments shall be made for periods of four years each by the designated appointing authority. In the event that any member shall cease to be a member due to death, resignation, final removal or other cause, a new member shall be appointed within thirty days of the date the ex-member ceased to be a member. This appointment shall be made by the officer or body who in the first instance appointed the member who is no longer a member. When the hearing board is appointed, the three members shall elect one of their number to act as president of the board, who shall serve as president for one year. In the event that a member has had a part in the investigation or interrogation of an accused officer or is related by consanguinity or affinity to an accused officer, that member shall be recused from participation in the accused officer's hearing. In such an instance, the officer or body who in the first instance appointed the recused member shall appoint another person for sole purpose of the accused officer's hearing. No member shall hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county or other political subdivision thereof; nor shall any member serve on any political committee or take any active part in the management of any political campaign.

(c) For noncivil service fire departments, the hearing board shall be a standing hearing board. The department chief shall appoint the first member, the local international association of firefighters shall appoint the second member, and the local chamber of commerce or local businessmen's association shall appoint the third member. If there is no local international association of firefighters in the municipality, the local central body of the West Virginia Federation of Labor AFL-CIO shall appoint the second member. If there is no local central body of the West Virginia Federation of Labor AFL-CIO in the municipality, the West Virginia Federation of Labor AFL-CIO shall appoint the second member. If there is no local chamber of commerce or local businessmen's association, the first and second members shall appoint the third member by agreement. Of the three original appointments in each fire department, the first member shall serve for six years from the date of his or her appointment; the second member shall serve four years from the date of his or her appointment; and the third member shall serve for two years from the date of his or her appointment. After the original appointments, all appointments shall be made for periods of

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four years each by the designated appointing authority. In the event that any member shall cease to be a member due to death, resignation, final removal or other cause, a new member shall be appointed within thirty days of the date the ex-member ceased to be a member. This appointment shall be made by the officer or body who in the first instance appointed the member who is no longer a member. Each of the three members shall elect one of their number to act as president of the board, who shall serve as president for one year. In the event that a member has had a part in the investigation or interrogation of an accused officer or is related by consanguinity or affinity to an accused officer, that member shall be recused from participation in the accused officer's hearing. In such an instance, the officer or body who in the first instance appointed the recused member shall appoint another person for the sole purpose of the accused officer's hearing. No member shall hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county or other political subdivision thereof; nor shall any member serve on any political committee or take any active part in the management of any political campaign.

(d) Any member of a hearing board appointed under paragraph (b) or (c) of this subdivision may be removed as provided in this paragraph.

The mayor of the municipality may, at any time, remove any hearing board member for good cause, which shall be stated in writing and made a part of the records of the hearing board. However, within ten days of removing any member, the mayor shall file in the circuit clerk's office of the county in which the municipality is located a petition setting forth in full the reason for the removal and seeking the circuit court's confirmation of the mayor's removal of the member. The mayor shall file a copy of the petition with the removed member at the same time it is filed with the circuit clerk. The petition shall have precedence on the circuit court's docket and shall be heard as soon as practicable on the request of the removed member. All rights vested in a circuit court by this subsection may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time the petition is filed, and the judge thereof cannot be reached in the county in which the petition was filed, the petition shall be heard at the next succeeding circuit court term, whether regular or special, and the removed member shall remain removed until a hearing is held on the petition. The court or the judge thereof in vacation shall hear and decide the issues presented by the petition. The party affected adversely by the court's or judge's decision shall have the right to petition the Supreme Court of Appeals for a review of the decision as in other civil cases. If the mayor fails to file the petition with the circuit clerk's office within ten days as provided above, the removed member shall immediately resume his or her position as a hearing board member.

Any resident of the municipality shall have the right at any time to seek the removal of any hearing board member. To do so, the resident shall file a petition in the circuit clerk's office of the county where the municipality is located. The resident shall also serve a copy of the petition on the member sought to be removed. The petition shall be matured for hearing and heard by the circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard. Any party adversely affected by the circuit court's or judge's decision shall have the right to petition the Supreme Court of

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Appeals for a review of the decision as in other civil cases.

(5) "Noncivil service," when followed by the terms "department," "officer" or "accused officer", means any department, officer or accused officer who is not subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(6) "Police officer or firefighter" or "officer" means any police officer or firefighter of a police or fire department employed by the city or municipality, but shall not include (a) the highest ranking officer of the police or fire department or (b) any noncivil service officer who has not completed the probationary period established by the department by which he or she is employed.

(7) "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

(8) "Under investigation" or "under interrogation" means any situation in which any police officer or firefighter becomes the focus of inquiry regarding any matter which may result in punitive action.

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