



Department of Public Safety  
(West Virginia State Police)  
South Charleston, West Virginia 25309

*Emergency*

John A. Rockefeller III  
Governor

Executive Office  
September 6, 1984

Colonel John W. O'Rourke  
Superintendent

The Honorable A. James Manchin  
Secretary of State  
State Capitol Complex  
Charleston, West Virginia 25305

Dear Mr. Secretary:

The Legislature in its last session, amended Section 15-2-6 of the West Virginia Code of 1931, effective July 1, 1984, to change the composition of Department of Public Safety Boards of Appeal. Recently several appeals have been filed by members of the department, requiring the interpretation and application of the statute in question. Therefore, please accept the enclosed set of interpretive rules for filing in the State Register as Emergency Legislative Rules. These rules are necessary to protect the procedural rights of the members of the department and to insure the efficient and expeditious resolution of the matters in question.

Respectfully,

*John W. O'Rourke*  
COLONEL JOHN W. O'ROURKE  
SUPERINTENDENT

JWO/mjg

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 9/6/84  
Administrative Law Division

WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF PUBLIC SAFETY

Chapter 15-2  
Series X  
(1984)

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 9/6/84  
Administrative Law Division

Subject: Regulation Relating to the Selection of Department  
Boards of Appeal.

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Section 1. General

1.01. Scope - The purpose of this regulation is to specify the means by which Departmental Boards of Appeal are to be selected and impaneled. This Regulation is required to bring the procedures into compliance with the recently revised statute and practice. This rule supplements previously filed rules of procedure and in no way replaces them.

1.02. Authority - This legislative rule is issued under the authority of Chapter 15, Article 2, Section 25 of the Code of West Virginia of 1931, as amended.

1.03. Filing Date - This emergency legislative rule was promulgated on the 6th day of September 1984, and was filed on the 6th day of September 1984, in the Office of the Secretary of State.

1.04. Effective Date - This emergency legislative rule becomes effective on the 6th day of September 1984.

Section 2. Board of Appeals Selection.

2.01. A Board of Appeals shall consist of seven sworn members of the Department.

2.02. One member of each Board of Appeals shall be of the rank of Trooper.

2.03. The remaining six members of each Board of Appeals shall be one member from each of the six consecutive ranks above Trooper.

2.04. The ranks for purposes of Boards of Appeals selection and composition shall be;

- a) All Troopers on active duty.
- b) All Troopers First Class on active duty.
- c) All Corporals and Technical Corporals on active duty.
- d) All Sergeants and Technical Sergeants on active duty.
- e) All Master Sergeants and First Sergeants on active duty.
- f) All Lieutenants on active duty.
- g) All Captains on active duty.

2.05. For the purpose of selecting members to serve on a Board of Appeals the names of all members of a specific rank shall be listed on similar slips of paper cut out from a roster of all active members of that rank. The slips of paper for each rank shall be placed in seven envelopes of sufficient size and the Superintendent shall choose by blind selection one slip of paper from each envelope/rank until a Board is fully constituted. Any name drawn that is ineligible to serve, will be discarded and another name shall be drawn immediately.

2.06. A Board of Appeals shall only be drawn after written notice of appeal has been filed with the Superintendent by the aggrieved member.

2.07. A civilian employee of the Department who is a notary public shall observe and oversee the selection process and certify by affidavit that it was conducted according to these rules.

2.08. No member from the same detachment, district or immediate operational unit as the appealing member, may serve on said Board of Appeal. Further, no supervisor of the appealing member, who has investigated, reported,

or given a recommendation concerning the incident or order from which the member appeals may serve on the Board of Appeals.

2.09. Any challenge for cause of any member of a Board of Appeals, whether made by the Superintendent or the appealing member, must be made within 48 hours of the initial selection of the Board and notice to the appealing member, or in compliance with any schedule for such matters as the chairman of the Board of Appeals may set. In such a case, the Chairman of the Board of Appeals will decide the suitability of any member for continued service after the opportunity for written argument by the appealing member or his attorney or representative and the Superintendent's attorney or representative.

2.10. All challenges to the selection process, any element of the selection process or the resulting Board composition, or to any particular member of any Board must be made prior to any hearing on the merits of the appeal, or be waived for purposes of further appeal.

2.11. These rules are to be interpreted in such a way as to encourage the impaneling of a fair and neutral tribunal, but not so as to become an impediment to the orderly, efficient and expeditious decision on the merits of any appeal. The strong presumption is that any member will fairly judge the actions of another member, when so charged, and should be discharged from such service only for clear and convincing reasons.