

SECOND NOTICE OF PROPOSED RULEMAKING

- 1) AGENCY: Illinois Law Enforcement Training Standards Board.
- 2) TITLE OF RULE/CODE CITATION: Rules of Procedure in Administrative Hearings/20 Ill. Adm. Code 1790.
- 3) DATE NOTICE PUBLISHED IN ILLINOIS REGISTER: 48 Ill. Reg. 14491, October 11, 2024.
- 4) TEXT AND LOCATION OF ANY CHANGES MADE IN THE RULE DURING THE FIRST NOTICE PERIOD: *See attached, Exhibit A.*
- 5) RESPONSE TO RECOMMENDATIONS FROM THE ADMINISTRATIVE CODE DIVISION: No recommendations received.
- 6) DOES THIS RULEMAKING INCLUDE ANY INCORPORATION BY REFERENCE PURSUANT TO SECTION 5-75 OF THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT: None.
- 7) FINAL REGULATORY FLEXIBILITY ANALYSIS:
 - a) Summary of the issues raised by small businesses during the First Notice period: This rulemaking does not affect small businesses or not-for-profit corporations as it applies only to police officers and law enforcement agencies.
 - b) Description of actions taken on any alternatives to the proposed rulemaking suggested by small businesses during the First Notice period, including reasons for rejecting any alternatives: Not applicable; see response to 7(a) above.
- 8) STATEMENT OF THE METHODS USED BY THE AGENCY TO COMPLY WITH SECTION 5-30 OF THE ACT AND SECTION 220.285 OF THIS PART: The rulemaking will have an impact on small municipalities – a small municipality’s law enforcement agency may appeal refusals of reactivation and emergency orders of suspension. Small municipalities have been advised of these changes through announcements made at Board meetings, the posting of the proposed rules on the Board’s website, the Illinois Municipal League was contacted, and 3 public meetings that allowed any small municipalities to direct comments and concerns to the Board (a representative of the Illinois Municipal League was at one of the meetings).
- 9) AGENCY'S EVALUATION OF THE COMMENTS PRESENTED TO THE AGENCY BY INTERESTED PERSONS DURING THE FIRST NOTICE PERIOD:

a) A list of all persons or organizations making comments on the proposed rulemaking:

JoAnn Johnson, Illinois State Police (Ret.) and cochair of the Sonya Massey Commission

Rick Stewart, Legal Counsel of the Illinois Sheriffs' Association

Keith Karlson, Police Benevolent Labor Committee

Brian Clauss, Moderator of the meeting/Mediator

Dave Amerson, Staff Attorney at the Police Benevolent Labor Committee

Tamara Cummings, IL FOP Labor Council, General Counsel

Ray Garza, Metropolitan Alliance of Police, Attorney

Tom Edstrom, Supervising Legal Counsel for AFSCME Council 31

Sharon R. Fairley, Professor from Practice of the University of Chicago Law School

Mark McQueary, Director of Legal Affairs of the Metropolitan Alliance of Police

John Catanzara, Jr., Illinois FOP, Chicago Lodge No. 7

Amy Thompson, Impact for Equity, Staff Counsel

David Milton, Co-Chair of the Chicago Council of Lawyers' Civil Liberties Committee & Police Accountability Committee

Carlton T. Mayers II, Mayers Strategic Solutions, LLC

Aisha N. Davis, ACLU of Illinois, Senior Policy Counsel

Lindsay Sonenthal, City of Chicago Department of Law, Assistant Corporation Counsel, Legal Counsel

Damon Nikolopoulos, Skokie Police Department

Michael Abraham, Teamsters Local 700, Staff Attorney

Ashley Hokenson, Office of the Illinois Attorney General, Deputy Attorney General (Policy)

b) A list of specific criticisms, suggestions, and comments raised by interested persons, and the Board's analysis of each of these criticisms, suggestions, and comments: See attached, Exhibit B.

c) Any changes to the rules by the agency as a result of the criticisms, suggestions, and comments made by interested persons: *See attached, Exhibit B.*

d) The names of all the persons or organizations requesting a public hearing and the date of any public hearings held on the proposed rulemaking: No persons or organizations requested a public hearing, but public meetings were held on October 11, 2024, October 17, 2024, and October 29, 2024.

10) JUSTIFICATION AND RATIONALE FOR THE PROPOSED RULEMAKING:

a) Citations to changes in Illinois law that require the rulemaking: Sections 6.3(h), 8.1(b), 8.2(b), and 8.3(c).

b) An explanation of changes in agency policies and procedures that require the rulemaking: None.

c) Citations to federal laws, rules, or regulations, or to funding requirements, that require the rulemaking: None.

d) Citations and copies of court orders or decisions that require the rulemaking: None.

e) A complete explanation of any other reasons for the proposed rulemaking: The purpose of these changes is to bring the Board's existing rules into compliance with Sections 6.3(h), 8.1(b), 8.2(b), and 8.3(c) of the Illinois Police Training Act.

11) NAME OF THE AGENCY REPRESENTATIVE WHO WILL RESPOND TO THE JOINT COMMITTEE'S QUESTIONS REGARDING THE PROPOSED RULEMAKING:

John R. Keigher
Chief Legal Counsel
Illinois Law Enforcement Training Standards Board
500 S. 9th Street
Springfield, IL 62701
O: 217-782-4540
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12) If Requested by the Joint Committee, Completion of State Mandates Act Questionnaire for the Proposed Rulemaking: *See attached, Exhibit C.*

13) If Requested by the Joint Committee, Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: *See attached, Exhibit D.*

14) Any new or revised form referenced in a proposed rulemaking if those forms are not included within that rulemaking: None

EXHIBIT A

FIRST NOTICE CHANGES

AGENCY: Law Enforcement Training Standards Board

RULEMAKING: 17 Ill. Adm. Code 1790; 48 Ill. Reg. 14491, October 11, 2024

CHANGES:

1. In line 12, change "**Papers**" to "**Documents**".
2. In line 17, after "**Complaints**", add "**and Requests**".
3. In line 20, after "**Joinder**", add "**of Complaints**".
4. In line 29, change "**Contumacious**" to "**Willfully Disobedient**".
5. In line 30, change "**Consent Decree**" to "**Victim Notification and Impact Statement**".
6. In line 32, delete "**Formal Complaint**".
7. In line 38, delete "**Contested**".
8. In line 41, before "**Certification Review Panel**", add "**Illinois Law Enforcement**".
9. Change lines 46-47 to "Implementing and authorized by Section 6.3 of the Illinois Police Training Act [50 ILCS 705/6.3].".
10. In line 49, change "48" to "49".
11. Change lines 53-55 to "This Part shall apply to all administrative hearings concerning discretionary decertification, denials of reactivation, and emergency orders of suspension conducted under the jurisdiction of the Illinois Law Enforcement Training and Standards Board pursuant to Sections 6.3(h), 8.1(b), 8.2(b), and 8.3(c) of the Illinois Police Training Act [50 ILCS 705/6.3(h), 8.1(b), 8.2(b), and 8.3(c)].".
12. Change lines 59-61 to ""Administrative Law Judge" or "ALJ" means an attorney licensed to practice law in the State of Illinois who has been retained by the Board for a term no greater than 4 years to conduct any hearings governed by this Part who has received Board training required by law relating to the subject matter of the hearings conducted under this Part.".
13. Below line 65, add the following:

""Charges of misconduct" means the violations alleged against an officer in a complaint, refusal of reactivation, or emergency order of suspension, as applicable.

"Complaint" means a formal complaint described in Section 6.3(g) of the Illinois Police Training Act [50 ILCS 705/6.3(g)].

"Complainant" means (i) the Board or its employees for hearings on formal complaints for decertification; (ii) the officer or law enforcement agency contesting refusal of reactivation; or (iii) the law enforcement agency contesting an emergency order of suspension."

14. In lines 74-76, delete "'Complainant" is a party who, by written petition, seeks decertification, certification, or activation under any provision of the Police Training Act or any rule, order, or determination of the Board."
15. In line 78, replace "those matters" with "documents, objects, testimony, and any other matter that is".
16. In line 87, insert "Illinois Law Enforcement" before "Certification"; and before "Police", insert "Illinois".
17. Change lines 90-92 to "'Respondent" means: (i) the officer for hearings on formal complaints for decertification; or (ii) the Board for hearings contesting refusal of reactivation and emergency orders of suspension."
18. Below line 93, add "'Review Committee" means the Committee created under Section 3(a-5) of the Illinois Police Training Act [50 ILCS 705/3(a-5)]."
19. In line 99, add after the period "'Statement" does not include a statement of objection."
20. In line 109, change "10." to "10, including complaints filed by the Panel, requests for hearings on refused reactivation filed by an officer or law enforcement agency, and requests for hearings on an emergency order of suspension filed by an officer."
21. In line 111, change "12." to "12 and subsection c)".
22. Change lines 115-117 to "The Panel shall cause a notice of the due date for an answer, the prehearing conference date, and the hearing date before the ALJ and, for a complaint, the additional notice requirements under Section 6.3(h)(1) of the Illinois Police Training Act to be served on the respondent in any manner authorized by the Code of Civil Procedure or by subsection c)".
23. Change lines 119-130 to the following:
 - "c) Service:
 - 1) The Panel may serve a complaint on the respondent by personal service, email, or mail, postage fully prepaid:

- A) For mail, to the last known address of the respondent; or
 - B) For email, to the last known email address of the respondent.
- 2) The complainant for a request for a hearing on a denial of reactivation or emergency order of suspension may serve the Board by any of the means allowed under paragraph (1).
 - 3) The Panel's or non-Board complainant's certificate of mailing, emailing, or delivery, or other service affirmatively acknowledged by the respondent or counsel for the respondent, is sufficient proof of service."

24. In line 132, change "**Papers**" to "**Documents**".

25. By changing lines 135-136 to "they are filed. Documents shall be filed electronically in letter-quality print on letter-sized paper and shall be signed by".

26. In line 140, change "(b)" to "a)".

27. In line 142, change "(c) for the record; and " to "b) for the record."

28. In lines 144-145, delete " One copy of each document filed shall be signed by the party or by its authorized representative or attorney."

29. In line 145, change "documents" to "pleadings".

30. In line 147, change "document," to "pleading".

31. Changes lines 151-152 to "After an ALJ is assigned to the matter under Section 1790.450, a prehearing conference shall be scheduled within 60 to 90 days of the assignment."

32. In line 154, change "will" to "shall".

33. In lines 155-157, delete "Participation by any Board member or an ALJ will not affect his or her right to participate in a subsequent hearing on the matter. The requesting party shall be responsible for the court reporter's attendance and costs."

34. Below line 189, insert the following:

"e) Any expert witnesses and expert opinions not listed or disclosed in the prehearing conference must be disclosed in accordance with Section 1790.410(b) and disclosed no later than 21 days before the hearing."

35. Change lines 192-195 to "All Prehearing Conferences shall be initiated by the issuance of a written Notice of Prehearing Conference, which shall be served upon all known parties

as provided in Section 1790.140. Hearings relating to discretionary decertification or an emergency order of suspension [50 ILCS 705/6.3 & 8.3] shall take priority over all other hearings."

36. In line 197, change "served:" to "served on parties as provided in Section 1790.140."
37. Delete lines 199 through 208.
38. In line 210, change "Part" to "Section".
39. In line 225, add "a" before "written notice".
40. In lines 228-229, replace "Supreme Court registration" with "Attorney Registration and Disciplinary Commission".
41. In line 248, change "individual" to "party".
42. In lines 251-252, delete "In addition to that service, a copy may be served on the licensee."
43. In line 257, change "will authorize" to "authorizes".
44. In line 264, change "report an attorney's misbehavior" to "reporting an attorney's misconduct".
45. In line 267, change "(h)" to "(g)".
46. In line 272, change "Director" to "Panel".
47. Change lines 276-279 to "Absent a compelling reason, failure to appear at the time and place set for hearing shall be deemed a waiver of the right to present evidence unless otherwise reflected by order of the ALJ. After presentation by the nondefaulting party of proof that the defaulting party was given proper notice and the nondefaulting party has been given an opportunity to present evidence that would have been presented at the hearing in which the default occurred, the ALJ shall make his or her decision as required under Section 1790.630."
48. In line 281, delete the space between the period and "**260**"; after "**Complaints**", add "**and Requests**".
49. In line 285, before "ALJ" add "the opposing party and".
50. Change lines 292-294 to "The Board may withdraw a complaint or a complainant may withdraw a request for a hearing on an emergency order of suspension or denial of

recertification at any time prior to the hearing. After a hearing has begun, a complaint or a request for a hearing may be withdrawn only with leave of the ALJ."

51. Change line 309 to "The answer shall be filed with the ALJ and Panel."
52. In line 311, change "other parties" to "the other party".
53. In lines 320-321, delete "Documents received pursuant to 50 ILCS 705/ 9.2 shall be submitted under seal and not subject to FOIA until the matter leads to decertification".
54. In lines 331-333, delete "Two copies of all motions shall be filed with the ALJ, and at least one copy shall be served on each additional party, if any, to the hearing."
55. In line 335, change "seven" to "14".
56. In line 336, add "electronically" before "file".
57. In line 341, add "electronically" before "filed".
58. In line 342, change "will be no" to "may not be".
59. In line 346, change "will" to "shall".
60. In line 350, change " revoke" to "quash".
61. In line 352, change "and/or" both times it appears to "or".
62. Change lines 355-356 to "a statement of objection filed with the Panel no later than 15 days after the date of the ALJ decision."
63. In line 370, after "**Joinder**", add "**of Complaints**".
64. Delete lines 372-373.
65. Change lines 375-376 to the following:

"If two or more instances of conduct that would be deemed a violation of the Illinois Police Training Act for decertification are known to the Board at the time of the filing of a complaint with the Panel, then all known instances of conduct that would be deemed a violation of the Illinois Police Training Act shall be included in the formal complaint filed with the Panel and heard in a single hearing."
66. By deleting lines 392-396.

67. In line 398, change "b)" to "a)".
68. In line 403, change "c)" to "b)"; and change "the formal" to "a".
69. In lines 404 and 407, delete "formal" each time it appears.
70. In line 407, add a comma after "agreement".
71. Change lines 412-413 to the following:
 - "a) The parties may exchange known documents, including any written statements or expert opinions, before the prehearing conference; however general discovery (e.g., depositions, interrogatories, or requests to produce or admit) is not permitted."
72. In line 417, change "pre-hearing" to "prehearing".
73. Change lines 420-425 to "commencement of the hearing, each party shall provide the other party with a copy of any document and disclose other evidence that the party may offer into evidence, including any statements as defined by Section 1790.120. This subsection (b)(1) does not require any party to provide copies of documents already provided or disclose evidence already disclosed. Each party shall provide newly discovered documents or disclose other evidence to the opposing party as they become known to the party intending to introduce the document or introduce the other evidence."
74. In line 428, change "all parties" to "the other party".
75. In line 435, change "ALJ" to "Director".
76. Change lines 438-442 to "documents. Applications for subpoenas shall be filed with the Director and the opposing party. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued."
77. In lines 449 and 452, change "petition" each time it appears to "motion".
78. In lines 449-452, change "revoke" each time it appears to "quash".
79. In line 451, change "petitions" to "motions".
80. In line 457, change "will" to "shall".
81. In line 462, delete the comma between "required" and "or".
82. In line 465, change "ALJ." to "ALJ pursuant to Section 1790.560(b).".

83. In line 478, change "a court of appropriate jurisdiction" to "circuit court".

84. In line 480, change "those summoned by" to "employees of".

85. By deleting lines 485-486.

86. By changing lines 490-499 to the following:

- "a) The Board shall retain at least two attorneys, licensed to practice in Illinois, to serve as ALJs on behalf of the Board. The ALJ shall conduct the hearing, question witnesses, make rulings on motions and objections, and submit Findings of Fact, Conclusions of Law, and his or her recommendation to the Panel.
- b) The ALJ is bound by the Administrative Law Judge Code of Professional Conduct."

87. In line 503, change "shall have" to "has".

88. In line 512, change "exchange" to "exchanges".

89. In line 525, change "Act and rules," to "laws and rules, including".

90. Change lines 531-534 to "member of the Board regarding matters pending before an ALJ. However, a party not represented by an attorney or attorney for a party may engage in communications with the other party (if not represented by an attorney) or the attorney for a party".

91. In lines 539-540, change "parties" both times it appears to "party".

92. In line 543, add a comma after "matters".

93. In line 544, delete "or opportunities to inspect the file".

94. In lines 547-549, replace "A member of the Board may communicate with other members of the Board and a Board member or ALJ may have the aid and advice of one or more personal assistants." with "The ALJ and Board staff may communicate in order for Board staff to provide administrative support to the ALJ, such as making copies, technical matters, and other such administrative matters.".

95. By replacing lines 553-561 with the following:

- "a) At any time prior to the issuance of the ALJ's decision or recommendations, a party may move to disqualify the ALJ on the grounds of bias or conflict of interest. The motion shall be made in writing, shall be accompanied by an affidavit signed and dated by the party or party's attorney, shall be filed according to Section 1790.190, and shall set out

the specific instances of bias or conflict of interest. The Panel shall assign the matter for a determination to an ALJ not challenged in the motion. The case shall be suspended until a neutral ALJ rules on the motion.

- b) Prior adverse rulings against a party or its attorney in other matters shall not, in and of themselves, constitute grounds for disqualification. The ALJ's retention as an ALJ by the Board is not, in and of itself, a conflict of interest. On satisfactory evidence submitted by the party in support of the motion to disqualify, the reviewing ALJ shall remove the original ALJ and provide for the reassignment of the case to another ALJ to continue the hearing, including himself or herself. An ALJ may voluntarily disqualify himself or herself upon determining that bias or conflict of interest exists. Grounds for disqualification of an ALJ shall include, but not be limited to:
- 1) Financial interest or pecuniary benefit derived from any result of a hearing;
 - 2) Personal friendship with any of the parties, witnesses, or attorneys involved;
 - 3) Past representation of any of the parties or witnesses involved; or
 - 4) Demonstrable predisposition on the issues.
- c) If the motion to disqualify an ALJ is denied, the other ALJ shall set forth in writing the reasons for the denial and the original ALJ shall proceed with the hearing. The motion to disqualify the ALJ and the reasons for the denial of the motion are part of the administrative record in the appeal of a final administrative decision upon conclusion of the hearing."

96. In line 563, change "**Contumacious**" to "**Willfully Disobedient**".

97. In line 565, change "Contumacious" to "Willfully Disobedient".

98. In line 569, delete "those".

99. In line 575, replace "**Consent Decree**" with "**Victim Notice and Impact Statement**".

100. Replace lines 577-581 with "The Director shall cause written notification of the date, time, and place of the hearing to any individuals or entities that were affected by the respondent's alleged misconduct, including to any person who submitted a Notice of Violation. An affected individual or entity shall be informed that they may attend the complaint hearing and shall be offered an opportunity to either provide oral testimony or a written statement about the impact of the misconduct that will become part of the official record of the proceedings."

101. Change lines 585-586 to "The ALJ may not change, amend, or modify a settlement agreement of the parties to the proceeding."

102. In line 588, delete "**Formal Complaint**".
103. In line 590, before "public", add "open to the".
104. In line 592, delete "contested".
105. In line 598, delete "Formal".
106. In line 608, change "cross-examination." to " cross-examination and redirect.".
107. In line 610, change "party." to "party in the same manner as the case in chief.".
108. By replacing lines 616-617 with the following:
- "c) After the hearing is concluded, the ALJ shall prepare a written decision, including findings of fact, conclusions of law, and recommended disposition to the Panel as provided in Section 1790.630.
 - d) Documents received pursuant to 50 ILCS 705/9.2 shall be submitted under seal and not subject to disclosure under the Freedom of Information Act until the matter leads to decertification.
 - e) An attorney, licensed in Illinois, shall represent the Board in all hearings and be employed or retained by the Board."
109. Change lines 631-633 to "b) The ALJ may at any time on his or her own initiative, or on motion of any party or witness, enter a protective order, as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression or to prevent exposure in the public domain of records or other information that is of a sensitive or confidential nature. As used in this subsection, "information that is of a sensitive or confidential nature" means information or facts expected and intended to be kept private or protected by an existing privilege in the Code of Civil Procedure."
110. In lines 636-637, change "defined in 50 ILCS 705/6.3" to "described in 50 ILCS 705/6.3(b)".
111. Below line 637, insert the following:
- "d) Evidence from investigations shared by a law enforcement agency with the Board after the Board has notified the law enforcement agency that it is investigating an officer pursuant to Section 6.3(f)(4) of Illinois Police Training Act is admissible for its bearing on any matter to which it is relevant. Such information that the law enforcement agency must share with the Board that may be admissible includes,

but is not limited to, information obtained by subpoena, witness interviews, and reports concerning the officer and investigation."

112. In line 644, after "notified", by adding "of the taking of official notice".
113. In line 651, change "hostile or unwilling or adverse" to "hostile, unwilling, or adverse".
114. In line 660, change "shall be admissible. A business record is:" to "are admissible in a hearing. A business record must be:".
115. In line 664, add a comma after "record".
116. In line 677, delete "Business records include, but are not limited to, police reports.".
117. In line 679, change "will" to "shall".
118. In line 680, change "photo copy" to "photocopy".
119. In line 687, change "order." to "order and make his or her decision as provided in Section 1790.630; if the default occurred at a hearing, the ALJ shall make his or her decision after review of any evidence presented as provided in Section 1790.250".
120. In line 689, delete "**Contested**".
121. Change line 696 to "2) An electronic recording of the hearing, a transcript of the hearing, if any, and all evidence received, except that the ALJ may issue a protective order preventing public release of any recording, transcript, or evidence as provided in Section 1790.560(b);".
122. In line 702, change "acceptance" to "conclusions".
123. In line 717, delete "and".
124. In line 720, change the period to "; and".
125. Below line 720, add "6) Statements of objection filed pursuant to Section 1790.310(d)."
126. In lines 728-729, delete ", consistent with the Director's responsibility for an expeditious decision".

127. Change lines 734-735 to "a) No later than 60 days following the hearing, the ALJ shall issue a decision in writing and include findings of fact, conclusions of law, and recommended disposition to the Panel. The findings of".
128. Replace lines 741-742 to "b) If the ALJ finds that no allegations supporting one or more charges of misconduct are proven by clear and convincing evidence, then the ALJ shall recommend to the Panel that the complaint be dismissed, recommend to the Panel reactivation of the officer, or recommend to the Panel that an emergency order of suspension be reversed or reduced. If the ALJ finds that the allegations supporting one or more charges of misconduct are proven by clear and convincing evidence, then the ALJ shall recommend decertification, recommend no reactivation, or recommend sustaining the emergency order of suspension."
129. In line 744, before "**Certification Review Panel**", add "**Illinois Law Enforcement**".
130. In line 747, delete the comma after "officer".
131. In line 748, change "meeting." to "meeting or, after receiving the ALJ's decision on an emergency order of suspension, a meeting relating to the emergency order of suspension."
132. In line 751, change "and recommended disposition" to "recommended disposition, and any submitted objections".
133. In line 755, delete "in the complaint".
134. Change lines 758-759 to "dismissed, recommend to the Board reactivation of the officer, or reverse or reduce the emergency order of suspension. If a simple majority of the Panel finds that the allegations supporting one or more charges of misconduct are proven by clear and".
135. In line 760, change "decertification." to "decertification, recommend no reactivation, or sustain the emergency order of suspension."
136. Replace lines 768-773 with "Upon receipt of the Panel's order and recommendation relating to a complaint or a reactivation refusal and upon the Board, by majority vote, finding that no allegations supporting one or more charges of misconduct are proven by clear and convincing evidence, the Board shall order the complaint be dismissed or reactivation of the officer. If the Board, by majority vote, finds that the allegations supporting one or more charges of misconduct are proven by clear and convincing evidence, then the Board shall confirm the decertification or denial of reactivation. If the Board makes a final decision contrary to the recommendations of the Panel, the Board shall set forth a final written decision with specific reasons for not following the Panel's recommendations. A copy of the Board's final decision also shall be

delivered to the last employing law enforcement agency, the complainant (if not the Board), and the Panel."

137. In line 777, change "decision," to "decision under Section 1790.650,".

138. By changing lines 785-807 to the following:

"c) Briefs. Each brief shall:

- 1) Set forth specifically the questions of procedure, fact, law or policy to which objection is made;
- 2) Identify that part of the ALJ's decision to which objection is made;
- 3) Designate by precise citation of page the portions of the record relied on;
- 4) Concisely state the grounds for the objection;
- 5) Be limited to 15 pages;
- 6) Include a specification of the questions involved and to be argued, together with a reference to the specific objections to which they relate; and
- 7) Include an argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on."

139. In line 810, after "Any", add "brief in support of an".

140. In line 823, delete "The answering brief shall be limited to 15 pages.".

141. In line 825, replace "objection" with "motion for reconsideration".

142. In line 826, change "parties" to "party".

143. In line 828, replace "objections" with "motion for reconsideration".

144. In lines 829-830, replace "for all purposes" with "in all related proceedings before the Board".

145. Replace lines 840-847 with "Actions for judicial review under this Part shall be filed where the hearing proceedings took place, which is in the circuit court of either Cook County or Sangamon County."

EXHIBIT B

List/Analysis of Interested Persons' Criticisms, Suggestions, & Comments

| | <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILETSB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Criticism/Suggestion/Comment | Hearings Date or Written Submission: | October 11th October 17th October 29th Written Submission |
| 1 | In 1790.100 (Applicability). Cummings: It is not clear what circumstances hearings apply. Stewart: 1790.100 would make these rules apply to training waivers. | Cummings and Stewart | This Section has been clarified to include applicability to all hearings allowed by the Illinois Police Training Act (50 ILCS 705): Section 6.3(h)(formal complaints for decertification), Section 8.1(b)(1) (refusal of reactivation of a full-time officer), Section 8.2(b)(1) (refusal of reactivation of a part-time officer), and Section 8.3(c)(emergency order of suspension). |
| 2 | In 1790.100 (Applicability), it is not clear the kind of conduct that triggers this type of hearing, including that these provisions are very broad and could cover almost anything: | Sonenthal | This Section has been clarified to include applicability to all hearings allowed by the Illinois Police Training Act (50 ILCS 705): Section 6.3(h)(formal complaints for decertification), Section 8.1(b)(1) (refusal of reactivation of a full-time officer), Section 8.2(b)(1) (refusal of reactivation of a part-time officer), and Section 8.3(c)(emergency order of suspension). |

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| <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILETSB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The "respondent" definition of 1790.120 (Definitions) is unclear.</p> <p>Davis: Add "For the purposes of 50 ILCS 705/6.3, the Respondent is the law enforcement officer against whom an order or complaint is directed by the Board."</p> | <p>Johnson and Davis</p> | <p>The definition of "respondent" has been clarified, but the clarifications made are consistent with the requirements for hearings on formal complaints and hearings on requests for hearings for denials of reactivation and emergency orders of suspension.</p> |

| <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILETSB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
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| <p>4</p> <p>In 1790.120 (Definitions): Fairley: (1) In the "complainant" definition, it is not clear who is the complainant as the definition of "complainant" could apply to the individual to submits the notice of violation with the way it is worded: 1790.130 should be changed to the Board (not complainant) bears the burden of proof. (2) It isn't clear who will be prosecuting these cases before the ALJ: "[S]pecify who is prosecuting Complaints against officers at hearing" (Abraham) (3) There are a number of terms that appear in statute that are inconsistent or undefined in the Rules. Add definitions for "ALJ Findings and Recommendations Report", "Disorderly Conduct", "Formal Complaint", "Notice of Alleged Violation", "Review Committee", and "Summary Report" and modify other definitions already present.</p> <p>Davis/Sonenthal: "Complainant" definition is unclear/confusing. Davis: "We recommend changing the language in Section 1790.120 Definitions and Section 1790.130 Burden and Standard of Proof to clearly state that ILETSB is the Complainant, and the law enforcement officer is the Respondent in the discretionary decertification process. This additional clarity will also bring the Proposed Rule into better alignment with the Statute."</p> <p>Hokenson: "As the proposed regulations cover all contested cases, the current definition of complainant refers to whomever is seeking not only decertification, but certification and activation. We would recommend clarifying that the complainant for all discretionary decertification is the Board and their employees."</p> | <p>Fairley, Fairley, Davis, Sonenthal, Abraham (only to (2)), and Hokenson</p> | <p>(1) and (2): The definition of "complainant" has been clarified to address these issues, but the changes made are consistent with the requirements for hearings on formal complaints and hearings on requests for hearings for denials of reactivation and emergency orders of suspension.</p> <p>(3): While a definition for "Review Committee" is being added, the other definitions are not necessary because the law or the rules already adequately address those terms (and the rules do not use disorderly conduct).</p> |
| <p>5</p> <p>In 1790.120 (Definitions), "decertifiable conduct" is not defined.</p> | <p>Thompson</p> | <p>50 ILCS 705/6.3(b) defines what decertification conduct means and this term is not used in the rules.</p> |

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| <p>In 1790.1790.120 (Definitions), definitions for "charges", "complaint", and "re-activate" or "reactivation" are provided along with a change to "complainant":</p> <p>“Charges” means formal notice issued by the Board to a certified law enforcement officer containing the factual and legal basis for potential decertification.</p> <p>“Complaint” means an allegation made against a certified police officer and filed with ILETSB by a Complainant.</p> <p>"Complainant" is a person who complains of a certified law enforcement officer’s conduct to the Board under any provision of the Police Training Act or any rule, order, or determination of the Board.</p> <p>“Re-activate” or “Reactivation” means a law enforcement officer's certification becomes inactive upon termination, resignation, retirement, or separation from the officer's employing law enforcement agency for any reason" as well as the statutory requirements for reactivation.</p> | <p>Karlson</p> | <p>Definitions for "charges of misconduct" and "complaint" are being added and the definition of "complainant" is being modified, all worded consistent with the requirements of the Illinois Police Training Act rather than the suggested definitions. No definition for "re-activate, or "reactivation" is necessary because the context of the Illinois Police Training Act and rules adequately explain these terms.</p> |

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| 7 | <p>In 1790.130 (Burden and Standard of Proof):</p> <p>(1) "neither the statute nor the Rules outline the criteria for assessing whether the Board should exercise its discretion to decertify the law enforcement officer for having committed the alleged misconduct.": "The Board shall bear the burden of proof. The standard of proof for factual findings made based on evidence presented at a Formal Complaint Hearing conducted pursuant to these rules shall be by clear and convincing evidence."</p> <p>(2) Provided that the Board, as complainant, shall have the burden of proof and the standard of proof for any factual findings of misconduct (rather than hearing conducted) shall be by clear and convincing evidence. Allows the Respondent to provide mitigating evidence, which standard of proof shall also be clear and convincing evidence.</p> | <p>Fairley (1) and Davis (2)</p> | <p>(1) and (2): The complainant (either the Board, officer, or law enforcement agency, depending on the type of case and who files a request for a hearing on a refusal for reactivation or emergency orders of suspension) shall have the burden of proof to establish their case by clear and convincing evidence. The definitions have been modified to make this clear as well as the standards for review by the ALJ and Board under Sections 1790.630 and 1790.650.</p> <p>(2) The ALJ, Panel, and Board have the may view and weigh any mitigating evidence, but the burden remains on the complainant.</p> |
| 8 | <p>In 1790.140 (Filing and Service), who will serve a deputy or sheriff that is the subject of investigation?</p> | <p>Stewart</p> | <p>The cross-referenced 735 ILCS 5/2-202 allows for service by the county coroner if the sheriff is disqualified or, upon "motion and in its discretion, the court may appoint as a special process server a private detective agency." Additionally, the Rules allow service by email and mail.</p> |
| 9 | <p>In 1790.140 (Filing and Service), the filing requirements per Supreme Court Rules 9, 10, 11, and 12 are too complicated for the average person. Filing rules under 80 Ill. Adm. Code 1240.50 could be considered instead.</p> | <p>Stewart</p> | <p>The proposed Rules are consistent with ARDC rules 213 and 214, and no change is necessary.</p> |

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| <p>In 1790.140 (Filing and Service) relating to email service, the email the Board has may be an employer email. Use personal email addresses for service only and include a 2-step verification process.</p> | <p>Amerson</p> | <p>50 ILCS 705/6.3(h)(2) allows email service to the "email address specified by the law enforcement officer in the officer's last communication with the Board." Should service by email not be successful, Section 1790.140(b) authorizes service by personal service, mail, or any other manner authorized by the Code of Civil Procedure.</p> |

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| <p>(1) In 1790.140 (Filing and Service), the rules should require that electronic filings are the only way documents will be filed. Add "the parties are not required to file copies of any pleading, motion, brief or document that is electronically filed." (2) The "Rules should clarify the timeframe in which the officer should be provided a notice of violation and the content of such notice." (3) The law states the Panel, not the investigator, notifies the officer. Add a "notice of alleged conduct" definition and adding that a respondent is the law enforcement officer against whom a notice of alleged violation or a formal complaint has been filed (rather than a respondent is a person, agency, or other legal entity against whom a complaint or notice of initiating a proceeding is filed or to whom an order or complaint is directed by the Board).</p> | <p>Fairley and Fairley</p> | <p>(1) Section 1790.140 already requires this in accordance with Supreme Court Rules 9 and 10 and other sections have been clarified to removes instances that might be interpreted to mean a hard copy needs to be filed (see next response). (2) The content of the notice has been clarified, but no timeframe for service of the complaint and notice has been included. (3) The investigator has been replaced by the Panel as required by statute and the definition of "respondent" has been clarified as explained above. "Notice of alleged conduct" isn't used in the rules.</p> |
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| 12 | <p>"In Section 1790.140, the Proposed Rules states that "[a]ll pleadings, motions, briefs, and documents shall be electronically filed with the Board." However, throughout the Proposed Rules, there is reference to paper copies of documents: Section 1790.150 Form of Papers Filed; Section 1790.200 Notice of Prehearing Conference; 1790.210 Appearance; 1790.300 Answer; and 1790.310 Motions. We recommend including language in the aforementioned sections – and throughout the Proposed Rule – that makes it clear that all filings may be submitted electronically. Alternatively, if ILETSB decides not to have all filings submitted electronically, we recommend clarifying what is or is not able to be filed electronically, as the Proposed Rule is unclear as drafted."</p> <p>1790.150(a) "presented" should be "filed electronically"; In 1790.150(c), 1790.300, and 1790.310 remove "One copy of", "An original and one copy of", and "Two copies of", respectfully and add electronically.</p> | Davis | Changes have been made to remove instances that would indicate paper filings, including Section 1790.150 as suggested in (a), but removing the first sentence of subsection (c) as that is repetitive of subsection (a); in 1790.300, modified as proposed; and, in Section 1790.310, added electronically as proposed, but deleted the last sentence in subsection (a) as repetitive (required service on opposing parties is covered under Section 1790.140). |
| 13 | In 1790.140 (Filing and Service), the rules do not include a clear burden of proof or quantum of proof. | McQueary | Section 1790.140 already contains both, so no changes are necessary. |
| 14 | In 1790.140 (Filing and Service), there is no provision to address if the postal service does not deliver the copy of complaint and the last email address on record with the Board might not be accessible to the respondent; therefore, these methods don't guarantee the respondent would be served. Service should be made in person by a Board Investigator the same way that Orders of Protection are served by Civil Process Deputies. | Nikolopoulos | Section 1790.140(b) authorizes service by "any manner authorized by the Code of Civil Procedure", which includes personal service should email or postal service not be successful in serving a respondent. |

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| 15 | In 1790.140 (Filing and Service), (1) remove email service: "To the last known email address respondent recorded with the Board." in (c)(1)(B) should be deleted as well as "emailed" in (c)(2). (2) Add service by "other service affirmatively acknowledged by the Respondent or counsel for the Respondent." | Karlson | (1) 50 ILCS 705/6.3 allows the Board to effect service by email and this is being retained. (2) This has been included. |
| 16 | 1790.150 (Form of Papers Filed) conflicts with 1790.140 because its describes how documents may be printed on one side only of letter-sized paper (everything is filed electronically). | Fairley and Fairley | "Paper" has been changed to "document" for clarification and "on one side only" has been removed. |
| 17 | Change 1790.150 (Forms of Papers Filed) to: (a): "All pleadings, motions, and documents filed electronically shall clearly state a title of the proceedings for which they are filed and shall bear the signature of the party or the party's authorized representative." (b): "Exhibits, appendices, and attachments to all filings, shall be reduced or enlarged to conform to the electronic filing size requirements, unless doing so is impracticable. A party is not prohibited from enlarging an exhibit for presentation at any proceedings for demonstrative purposes as long as the exhibit is included the electronic record" (c): "All pleadings, motions, and documents filed in these proceedings shall bear the business address, e-mail address, fax number, if any, and telephone number of the attorney or party filing the document" | Fairley | Changes are not necessary to this Section, except as it relates to removal of referenced to paper filings or service, as this rule is consistent with other State agency rules, e.g., 23 IAC 475.20 (ISBE) and 56 IAC 120.140 (Dept. of Labor). |
| 18 | In 1790.150 (Form of Papers Filed), modify wording for electronic filing only, remove subsection (b), and remove the signature requirement a party or party representative. Remove language indicative of paper filings, signatures shall be made in a manner accepted by Illinois courts, remove subsection (b), and remove the first sentence of subsection (c). | Karlson | Language indicative of paper filings and electronic clarifications have been made, and the first sentence of subsection (c) has been removed, but the others suggested were not included. |

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| 19 | In 1790.170 (Prehearing Conferences): (1) When is 30 days "after the case is instituted"? This should be clear that this is after a complaint has been filed, if that is what is intended. (2) Responses to complaints are also due 30 days after the complaint is filed. Prehearing conference should be later than 30 days after the complaint is filed. | Stewart | (1) The wording has been modified to address this issue. (2) This has been changed to 60 to 90 days after the case has been assigned. |
| 20 | In 1790.170 (Prehearing Conference), the 30 days for the prehearing conference is too rigid. | Amerson | This has been changed to 60 to 90 days after the case has been assigned. |
| 21 | In 1790.170(d) (Prehearing Conference), if you don't have an expert listed, have you waived calling an expert witness? Is a scheduling order issued after the prehearing conference? The expert witness should be more in line of with the Supreme Court rules. 1790.410 should requiring each party to contain a witness list at least 35 days prior to the hearing. Use "charges are filed" rather than "a case is instituted". The Board should be responsible for the court reporter's attendance, transcript, and costs. | Karlson and Karlson | A subsection e) has been added to address this concern and Section 1790.140 has been clarified to include other requirements of the initial notice. A "case is instated" has been changed to when an ALJ is assigned to the matter. The language requiring the requesting part to be responsible for the court reporter's attendance and costs has been removed. |
| 22 | In 1790.170 (Prehearing Conference), allowing a Board member to participate in the prehearing conference erodes the Board member's ability to take an objective view of the case and render an opinion. Board members should not be permitted to involve themselves in the pre-hearing process. | Nikolopoulos | The portion in subsection (b) about participation by any Board member is being removed. |

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| 23 | In 1790.170 (Prehearing Conference), participation should be limited to the ALJ and only one Board member. | Catanzara | The portion in subsection (b) about participation by any Board member is being removed. |
| 24 | <p>In 1790.170 (Prehearing Conference):</p> <p>(1) It should be specified who schedules the prehearing conference: The ALJ should schedule.</p> <p>(2) this is inconsistent with 50 ILCS 705/6.3(h)(1), which requires the Panel to "set the matter for an initial hearing in front of an administrative law judge."</p> <p>(3) The ALJ should schedule a prehearing conference within 30 days of service of the Formal Complaint, but no later than 120 days after service unless the ALJ finds that a later date would be in the interests of justice; the prehearing conference should be conducted as a matter of record; and the prehearing conference may include identification or clarification of the factual disputes to be resolved at the Hearing, as described in Section 1790.550; negotiation admissions or stipulations; identification of witnesses or evidence; exchange of exhibits; acknowledgement of agreed dispositions; joinder of allegations; presentation of any prehearing motions; an exchange by the parties of witness and exhibit lists that include only those witnesses the party in good faith intends to call; disclosure of expert witnesses; and discussion of any other matter that may aid the efficient disposition of the case.</p> | Fairley | <p>(1) and (2) Section 1790.140 has been modified to specify that the Panel, per 50 ILCS 705/6.3(h)(1), sets the initial date for the prehearing conference</p> <p>(3) These additional changes are not necessary to this Section other than those changes made under (1) and (2). This rule is consistent with other State agency rules, e.g., 69 IAC 1110.150 (IDFPR)</p> |
| 25 | In 1790.170(b) (Prehearing Conference), the conference should be recorded. | Davis | Conferences such as these are generally informal and not recorded. |

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| 26 | <p>In 1790.200 (Notice of Prehearing Conference):</p> <p>(1) This is inconsistent with 50 ILCS 705/6.3(h)(1), which requires the Panel to "set the matter for an initial hearing in front of an administrative law judge."</p> <p>(2) The priority of emergency orders of suspension and discretionary decertification shall be considered when scheduling; notice shall be served on all parties; and changes to the notice of prehearing conference, including the authority under which the evidentiary hearing (rather than hearing) is to be held.</p> | Fairley | <p>(1) Section 1790.140 has been modified to specify that the Panel, per 50 ILCS 705/6.3(h)(1), sets the initial date for the prehearing conference.</p> <p>(2) Changes were not made as the Panel will consider the nature of the case of each pretrial hearing when scheduling under Section 1790.140 and the ALJ will consider the nature of the cases on the hearing date. A prehearing conference isn't an evidentiary hearing.</p> |
| 27 | <p>In 1790.200(a) (Notice of Prehearing Conference), changes were submitted that adds automatic decertification, denial of waiver, and denial of reactivation hearings to also taking priority. Requires the Notice of Prehearing conference to be served on an attorney who has filed an appearance. Adds that the notice must include a "plain statement of the factual and legal matters asserted."</p> | Karlson | <p>References to denials of reactivation suspension have been added throughout the Rules. The Illinois Police Training Act does not allow automatic decertification or denial of waivers to be heard under the administrative hearing system; for denials of waivers, the Act allows the law enforcement agency to request the Board review the waiver denial. Section 1790.210(f) already requires filings to be served on attorneys-of-record. The phrase "plain statement of the matters asserted" is consistent with other State agency rules, e.g. 56 IAC 120.200 (Dept. of Labor)</p> |

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| 28 | In 1790.200(a) (Notice of Prehearing Conference), it is not clear how the Notice of prehearing conference will be served (paper or electronically). | Davis | Provided that the notice shall be served as provided in Section 1790.140, which details the rules for service of all pleadings, motions, briefs, and documents . |
| 29 | A new Section should be added to replace 1790.210 (Appearance) titled "Notice of Formal Complaint Hearing" similarly to the contents of Section 1790.200's Notice of Prehearing Conference format. | Fairley | This suggested new Section has not been added because Section 1790.140(b) (Filing and Service) has been modified to provide for the additional notice statutory requirements for formal complaints. |
| 30 | In 1790.210 (Appearance): (1) is subsection (f) needed because everything is filed electronically? If it is left in, "licensee" in the second sentence should be changed to "respondent". (2) Change the title of the Section to include "Attendance" and add a subsection (j): "Public attendance at an Evidentiary Hearing is permitted. However, in the ALJ's discretion, portions of the Evidentiary Hearing during which evidence will be presented or discussed that includes confidential or law enforcement sensitive information may be closed to the public." | Fairley | (1) The second sentence has been removed, but the first sentence of subsection (f) is required when an attorney is retained. (2) The addition of subsection (j) was not included because public attendance at hearings is already required by Section 1790.550(a) and Section 1790.560(b) allows is the issuance of a protective order on an ALJ's own initiative or on motion of any party, which may include restriction of public access to an evidentiary hearing. |
| 31 | In 1790.210 (Appearance), change reference to "Supreme Court registration number" to "Attorney Registration and Disciplinary Commission number". A party sanctioned under the Section should request the decision be reviewed by the Panel, not the Director. | Karlson | The changes have been included. |

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| 32 | In 1790.210(f) (Appearance), does "shall be served" mean paper or electronic? | Davis | Section 1790.170 governs how service may be had, but this subsection is only requiring service on the attorney not describing how service is to be made. |
| 33 | In 1790.250 (Failure to Appear), if a person has a compelling reason not to appear at the hearing, failure to appear should not be deemed a waiver. | Karlson | This change has been included. |
| 34 | Change 1790.250 (Failure to Appear) to "A Respondent's failure to appear at the time and place set for a Formal Complaint Hearing, or any other proceeding at which evidence will be presented, shall be deemed a waiver of the right to present evidence unless otherwise reflected by order of the ALJ. After presentation by the Board of proof that the Respondent was given proper notice, the Board may proceed with the presentation of evidence and the ALJ may proceed with making findings and a recommendation pursuant to these rules despite the Respondent's failure to participate in the proceedings." | Fairley | This Section has been modified to clarify that the nondefaulting party (rather than the Board) shall may present evidence that would have been presented at the specified hearing where default occurred. |
| 35 | In 1790.260(a) (Amendment and Withdrawal of Complaints), this sentence seems to be out of place: "Documents received pursuant to 50 ILCS 705/9.2 shall be submitted under seal and not subject to FOIA until the matter leads to decertification". Delete this Sentence. Possibly move to Section 1790.550 (Conduct of Formal Complaint Hearings). | Fairley | This sentence has been deleted in Section 1790.260 and moved to Section 1790.560(b). |

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| 36 | In 1790.260(a) (Amendment and Withdrawal of Complaints), allow formal complaints to be amended up to one week prior to the evidentiary hearing with the ALJ allowed to grant leave to amend after this. Require a paper copy to be provided to the opposing party and ALJ (rather than only the ALJ) for in-hearing amendments. Require a continuance when an amendment "includes material additions, deletions or revisions or when the respondent makes a reasonable representation that his or her presentation of evidence and ability to defend against the allegations will be prejudiced without such continuance" | Fairley | The proposed rule is consistent with other State agency rules, e.g., 68 IAC 1110.110 (IDFPR) and no changes are necessary, except to the extent that a motion to amend a pleading during the course of a hearing shall also be provided to the opposing party in addition to the ALJ. |
| 37 | In 1790.260 (Amendment and Withdrawal of Complaints): (1) Amendments to complaints should always require the leave or approval of the ALJ, even before the hearing. (2) Require that leave to amend at a hearing shall be granted if it does not materially prejudice the respondent and require a continuance upon the respondent's request: "(a) The complaint may be amended at any time, except in the course of the hearing without leave or approval of the ALJ. During the course of the hearing, a motion for leave to amend the complaint may be presented to the ALJ. Leave to amend shall be granted if it does not materially prejudice the Respondent. At Respondent's request, a continuance shall be granted whenever the complaint is amended." (3) Allow a complaint for hearing to be withdrawn at any time: "(b) A Complaint for Hearing may be withdrawn at any time." | Nikolopoulos (1) and Karlson (2 and 3) | (1) and (2) The proposed rule is consistent with other State agency rules, e.g., 68 IAC 1110.110 (IDFPR) and no changes are necessary (3) Section 1790.260(b) allows withdrawal of any time prior to a hearing. The Board and the officer or agency may agree, even during a hearing, for the withdrawal of a complaint or a request for a hearing under Section 1790.545. If there is no agreement, then it would be left up to the ALJ. |
| 38 | In 1790.300 (Answer), allow a motion to dismiss a complaint. | Karlson | This is not advisable in the administrative hearing process. |

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| 39 | In 1790.300 (Answer), "Rules should allow for the officer to request an extension of time to answer the filed Complaint upon 30 days of receiving the Complaint (Section 1790.300). Circumstances may arise such that an officer may need additional time to file an answer, and due process demands that an officer be afforded an opportunity to answer the Complaint filed against him or her." | Abraham | Section 1790.310 would allow for such a motion. |
| 40 | In 1790.300 (Answer), remove the last sentence in subsection (b). | Fairley | The last sentence in subsection (b) has been removed. |
| 41 | In 1790.310(c) (Motions), 1790.620 (Briefs), and 1790.650(c)(E), and (e) (Final Action by the Board), the 15-page brief limit is too short. A staggered page limit should be used, such as a high page limit to start and lower for replies. | Stewart | If additional pages are necessary, Section 1790.310 would allow for a motion for additional pages. |

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| 42 | <p>In 1790.310 (Motions):</p> <p>(1) The requirement in subsection (a) that copies of motions must be filed with the ALJ, and at least one copy shall be served on each party is inconsistent with all things being filed electronically. Delete this sentence</p> <p>(2) Subsection (d) needs modification: (i) The exception for motions to revoke becoming part of the record was removed. (ii) Provides that motions or objections may (rather than shall) be considered by the Panel when reviewing the record (iii) "if exception to the ruling or order is included in either party's response to the ALJ's written findings and recommendations that may be filed pursuant to Section 1790.630"</p> <p>(3) In subsection (f), there is a question about what this subsection does. Changes were suggested to clarify the subsection: the filing of an answer or motion shall not stay any proceedings (rather than the proceeding) or extend the time for the performance of any actions required by these rules (rather than performance of any act).</p> <p>(4) In subsection (g) relating to emergency motions, "[e]mergency to do what?"</p> | Fairley | <p>(1) This sentence has been deleted.</p> <p>(2) and (3) This rule is consistent with other State agency rules (e.g., 56 IAC 120.301 (Dept. of Labor)) and general motion practice that filing of pleadings do not automatically stay proceedings or extend any other date unless so ordered by the court. So, no changes are needed, except changing "revoke" to "quash" and the change identified in (2)(iii), but modifying the wording to just state "is included in a statement of objection filed with the Panel no later than 15 days after the date of the ALJ decision."</p> <p>(4) The motion would state what emergency exists and what action is requested (e.g., a hearing needs to be delayed), and the ALJ will make a determination if he or she agrees that an emergency exists and that the requested action is necessary.</p> |
| 43 | <p>In 1790.310(b) (Motions), length of time to respond to a motion should be longer than 7 days. It should be 14 days.</p> | Cummings/Stewart | <p>This has been changed to 14 days.</p> |

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| <p>In 1790.320 (Joinder):</p> <p>(1) Change subsection (a) to "When the same event, act, or course of conduct of the Respondent may establish the commission of more than one offense that qualifies as conduct subject to discretionary decertification, the Complaint may allege each and every such offense."</p> <p>(2) In subsection (b), who is the prosecuting attorney referenced or the "prosecutor" actually the complainant? Recommends the Board and, if the Board is aware of several offenses at the time of the filing of the formal complaint, then all of the offenses shall be made a part of that formal complaint. Also allow an ALJ to amend the complaint to add additional allegations if it won't unduly prejudice the respondent.</p> <p>(3) In subsection (a), may be prosecuted for each such offense in the same action. In subsection (b), clarify who the "proper prosecuting attorney" is. Recommends, in subsection (a), to add "in the same action" and, in subsection (b), replace "proper prosecuting attorney" with "complainant, Board, and/or ILETSB Investigator" and replace "prosecution" with "action".</p> | <p>Fairley (1) and (2) and Karlson (3)</p> | <p>(1) Subsection (a) is being removed, and other clarifying language is being added to subsection (b).</p> <p>(2) The Board has been substituted for "proper prosecuting attorney", and a new subsection (e) is being added to Section 1790.550 to provide that an attorney licensed in Illinois shall represent the Board in all hearings and be employed or retained by the Board. The changes recommended relating to amendments have not been included as they are covered under Section 1790.260.</p> <p>(3) Subsection (a) has been removed and subsection (b) has been clarified to replace "proper prosecuting attorney" with the Board (since this only applies to formal complaints) along with removal of the word "prosecution".</p> |

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| <p>In 1790.320 (Joinder): "All related conduct that is subject to decertification MUST be held in a single prosecution. Any other discovery at a later date , and for the same incident or pattern of conduct, SHALL NOT be allowed."</p> | <p>Catanzara</p> | <p>Subsection (a) has been removed and subsection (b) has been clarified to provide that all instances of conduct known to the Board that would be deemed a violation of the Act shall be included in the formal complaint. Section 1790.260 allows for amendments to complaints, which could address new conduct not known to the Board at the time of filing.</p> |
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| 46 | <p>In 1790.400 (Remote Proceedings):</p> <p>(1) All formal hearings must be in-person only, including testimony of witnesses, and should not occur by web conference or teleconference.</p> <p>(2) The ALJ should be required to permit witnesses who are otherwise unable to testify in person to testify via teleconference or videoconference.</p> | <p>Catanzara/Catanzara (1) and Karlson (2)</p> | <p>(1) and (2) Remote proceedings are consistent with other State agency rules, e.g., 68 IAC 1110.155 (IDFPR) and no changes are necessary except for removal of subsection (a) as repetitive.</p> |
| 47 | <p>In 1790.400 (Remote Proceedings):</p> <p>(1) In subsections (a) and (b), removes the ability of the prehearing conference to be conducted by teleconference (permits only by recorded videoconference), but allows recorded teleconference and videoconferences.</p> <p>(2) In subsection (c), remove the allowance for agreement by the parties, with approval of the ALJ, for full or partial hearings to be conducted remotely.</p> | <p>Fairley</p> | <p>(1) Subsection (a) has been removed as repetitive and the allowance for teleconference is being retained (with no requirement that it be recorded).</p> <p>(2) This allowance has been retained, but "formal" has been removed from the subsection.</p> |
| 48 | <p>In 1790.410 (Discovery), all witness statements should be provided to the other party. Karlson believes failure to disclose all witness statements could be unconstitutional.</p> <p>Karlson suggests an example of language at 68 Ill. Adm. Code 1110.130.</p> <p>Abraham: The exception to disclosure of witness statements be eliminated and "that the parties be required to exchange witness statements before the hearing to eliminate the risk of unfair surprise to either party."</p> <p>Hokenson: "Witness statements should be tendered upon discovery. This will allow both parties to be better prepared for hearings."</p> | <p>Stewart, Karlson, Garza, McQueary, Abraham, Fairley, and Hokenson</p> | <p>The exception from providing witness statements with other newly discovered documents has been removed.</p> |

Interested Person's Criticism, Suggestions, & Comments

**Interested
Person**

**ILETSB's Analysis and Changes Made in
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In 1790.410 (Discovery), there are liberty concerns/substantial due process concerns in allowing other, similar conduct being introduced as evidence, including similarities to denial of licensure in a profession of your choice. ILRB language should be used for procedural due process concerns.

Karlson

The proposed Rule is consistent with other State agency rules (e.g. 56 IAC 120.410 (Dept of Labor)) and the ALJ can exclude any evidence that poses constitutional concerns.

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In 1790.410(a) (Discovery), discovery should be permitted.

Cummings/
Stewart

Language has been included to allow exchange of documents prior to the pretrial, but full discovery is not advisable in the administrative hearing process. The proposed Rule is consistent with other State agency rules, e.g., 56 IAC 120.410 (Dept of Labor).

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| 51 | <p>In 1790.410(b) (Discovery):</p> <p>(1) The entire investigation file needs to be turned over: "Within 14 days of filing charges, the Charging Party shall provide Respondent with the entire investigation file, all evidence, communications, statements, and reports relating to the charges in possession of the Charging Party, Investigator, and Board. Said evidence shall be provided in commonly accessible formats (e.g. PDF, MP3, MP4, etc.) that can be used without the purchase of proprietary software. Charging party shall also disclose the names, addresses, telephone number, email address, and short summary of expected testimony of any person the Charging Party may call to testify at hearing."</p> <p>(2) Newly discovered witnesses and evidence should also be disclosed at least 21 days prior to the hearing: "Each party shall provide newly discovered documents, witnesses, and evidence as they become known to the party intending to introduce the document"</p> <p>(3) Witness lists shall be provided at least 35 (rather than 21 days) before the hearing.</p> | Karlson and Karlson | <p>(1) and (3) Subsection (b)(1) requires disclosure of any document that may be offered into evidence and, for witness lists, this is consistent with subsection (b)(1), so these changes are not necessary. This rule is consistent with other State agency rules, e.g., 56 IAC 120.410 (Dept of Labor).</p> <p>(2) Subsection (b)(1) has been modified to provide for the disclosure of newly discovered evidence (rather than documents) that the party intends to introduce. Subsection (b)(2) already covers disclosure of newly discovered witnesses.</p> |
| 52 | In 1790.410(b) (Discovery), "All parties" and "other parties" is confusing if there are only two parties to the hearing proceedings. | Sonenthal | These instances have been corrected. |
| 53 | In 1790.410(b) (Discovery), witness "statements MUST be provided to the parties." | Cummings/Stewart | Added that witnesses statements must be provided under this subsection. |

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| 54 | <p>In 1790.410(b) (Discovery):</p> <p>(1) In subsection (b)(1), require that newly discovered evidenced be provided 21 days prior to the hearing.</p> <p>(2) In subsection (b)(2), add "Upon a showing of good cause, the ALJ may determine that the name and address of a witness should not be disclosed until the day preceding the Evidentiary Hearing"</p> | Fairley | <p>(1) Evidence may be found less than 21 days before a hearing, so this change is not being added.</p> <p>(2) To the extent such a situation would exist, a motion for a protective order could be made under Section 1790.310. This change is not needed.</p> |
| 55 | <p>In 1790.420 (Subpoenas), who must pay a witness subpoenaed by an ALJ?</p> | Stewart | <p>Subsection (e) states who must pay those fees (the party requesting the subpoena).</p> |
| 56 | <p>In 1790.420 (Subpoenas):</p> <p>(1) The Director, and not the ALJ, should issue subpoenas.</p> <p>(2) In subsection (b), does "petitions to revoke subpoenas" mean a motion to quash a subpoena? Fairley: Change to "all petitions to quash or modify a subpoena". Karlson: Use quash.</p> <p>(3) In subsection (c) where the ALJ can protect from disclosure, is this disclosure to the party requesting the information or public disclosure? Change to "The ALJ can deny or limit the subpoena request upon good cause."</p> <p>(4) In subsection (d), what law authorizes enforcement of a subpoena in a court of appropriate jurisdiction. Change the sentence to "The ALJ can deny or limit the subpoena request upon good cause."</p> <p>(5) In subsection (e), how can witnesses be summoned before the ALJ but not be summoned by the Board?</p> <p>(6) What does subsection (f) mean?</p> | Fairley (1 through 6) and Karlson (2) | <p>(1): Subpoena power under the Illinois Police Training Act, 50 ILCS 705/6.i, is given to the Board. The Director has authority to issue subpoenas on behalf of the Board; therefore, this has been changed to the Director from the ALJ.</p> <p>(2): This has been changed to quash, including in Section 1790.310(d).</p> <p>(3) Subsection (c) has been clarified.</p> <p>(4): 50 ILCS 705/6.k.</p> <p>(5) Subsection (e) and Section 1790.560(b) have been clarified.</p> <p>(6) Subsection (f) has been removed.</p> |

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| 57 | <p>In 1790.420 (Subpoenas):</p> <p>(1) (a) The Director should not issue subpoenas (Remove the sentence giving the Director the authority to sign and issue subpoenas on behalf of the Board.) and (b) subpoena applications should not be made ex parte. (Remove this sentence).</p> <p>(2) Require law enforcement agencies to share information with all parties: "Law enforcement agencies in the State shall share information and investigative means such as subpoenas, witnesses and reports with the Board and the parties."</p> | Karlson | <p>(1)(a) Subpoena power under the Illinois Police Training Act, 50 ILCS 705/6.i, is given to the Board. The Director has authority to issue subpoenas on behalf of the Board; therefore, this has been changed to the Director from the ALJ.</p> <p>(1)(b) This has been removed.</p> <p>(2) This provision has been moved to Section 1790.560(d). 50 ILCS 705/6.3(e)(1) does not allow law enforcement agencies to share this information with persons other than the Board.</p> |
| 58 | <p>In 1790.420 (Subpoenas):</p> <p>(1) In subsection (a), subpoenas should not be allowed to be requested ex parte. This language for ex parte should be struck.</p> <p>(2) In subsection (b), the length of time to move to squash subpoenas should be more than 5 days. Cummings/Stewart: 10 days</p> | Cummings/Stewart (both (1) and (2) and Hokenson (only (1)) | <p>(1) This has been removed.</p> <p>(2) The proposed Rule is consistent with other State agency rules, e.g., 56 IAC 120.420 (Dept. of Labor).</p> |

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| 59 | <p>In 1790.420 (Subpoenas):</p> <p>(1) The Board should be responsible for all costs associated with application for enforcement of a subpoena.</p> <p>(2) Witness fees and mileage shall be paid by the Board.</p> | Catanzara | <p>(1) Subsection (d)'s requirement that the party seeking enforcement shall be responsible for preparing an application for enforcement and filing is consistent with other State agency rules, e.g., 56 IAC 120.420 (Dept. of Labor).</p> <p>(2) Subsection (e)'s requirement that witness fees and mileage shall be paid by the party at whose instance the witnesses appear is consistent with rules of civil and criminal procedure and other State agency rules, e.g., 56 IAC 120.420 (Dept. of Labor)</p> |
| 60 | <p>In 1790.450 (ALJ), include an impartial selection process that incorporates both appropriate qualifications and disqualifications for individuals to serve as ALJ, including qualifications, such as litigation expertise and expertise in policing matters and disqualifications and how close they are to the law enforcement community or labor unions.</p> <p>Fairley: The ALJ should have prior litigation experience and that it would be "beneficial for the ALJ to have at least some subject matter expertise in policing and police accountability" and an ALJ with current or prior associations with a law enforcement entity, law enforcement union, or support organization or who has served as an arbitrator in police disciplinary matters should be ineligible to serve.</p> <p>Thompson: The "rules must also ensure that the ALJs can remain impartial by ensuring their backgrounds do not involve current or former associations with a law enforcement entity or law enforcement union or support organization."</p> | Fairley, Thompson, Thompson, Fairley, and Abraham | <p>The proposed Rule is consistent with other State agency rules, e.g., 68 IAC 1110.170 (IDPR). Qualifications and extent of prior associations will be evaluated on a case-by-case basis and addressed when retaining the ALJ.</p> |

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| <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILETSB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
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| <p>In 1790.450 (ALJ), Establish "a process for selecting Administrative Law Judges (ALJs) that protects against unfair conflicts of interest." "First, (1) remove language that would permit an ILETSB employee to serve as an ALJ and (2) add "language to the definition of "Administrative Law Judge," Section 1790.450 Administrative Law Judge, and Section 1790.520 Disqualification of Administrative Law Judge, stating that ILETSB will select a neutral ALJ from the Illinois Bureau of Administrative Hearings. (3) We further recommend that the Rules prohibit any person from serving as an ALJ in a discretionary decertification hearing if they also participate in any way (as a representative or neutral) in law enforcement disciplinary arbitrations or grievance processes. It would be an inherent conflict of interest for an ALJ who is hearing discretionary decertification proceedings to also be a union or management representative or an adjudicator in a law enforcement agency's disciplinary process. (4) Second, to bring the Proposed Rule into alignment with the Statute, we recommend including the language within the statute on both training and term limits for ALJs in the definition of "Administrative Law Judge"</p> | <p>Davis</p> | <p>(1) The language has been removed. (2) The proposed Rule is open-ended on the ALJ selection process to allow the Board the broadest options in retaining ALJs, including selecting a neutral ALJ from the Illinois Bureau of Administrative Hearings. (3) The proposed Rule is consistent with other State agency rules, e.g., 68 IAC 1110.170 (IDPR). Qualifications and extent of prior associations will be evaluated on a case-by-case basis and addressed when retaining the ALJ. Disqualification should be reviewed on a case-by-case basis. (4) The definition of "ALJ" has been revised to include these items, but the list of specified training that an ALJ must receive was not included as that is found in 50 ILCS 705/6.3(h)(6).</p> |

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| 62 | <p>In 1790.450 (ALJ):</p> <p>(1) the Rules are inconsistent with the statutory language regarding the hiring and appointment of attorneys to serve as an ALJ. Two ALJs are needed because 1790.520 (Disqualification of Administrative Law Judge) requires a 2nd ALJ to examine the disqualification request.</p> <p>(2) Change to: "The Director shall appoint and employ at least two attorneys, licensed to practice in Illinois, to serve as ALJ on behalf of the Board. . The ALJ shall be empowered to conduct the Formal Complaint Hearing and related proceedings, question witnesses, make rulings on motions and objections. At the conclusion of the Formal Complaint Hearing, the ALJ must submit Findings of Fact, Conclusions of Law regarding whether the alleged qualifying misconduct was proven by clear and convincing evidence and must also provide a recommendation regarding whether the Board should pursue decertification of the Respondent."</p> | Fairley | (1) and (2): The language has been modified to be consistent with the statutory requirements and also that at least two ALJ will be retained. Language relating to how the ALJ should reach his or her decision has been added to Section 1790.630. |
| 63 | In 1790.450 (ALJ), the ALJ is supposed to be independent of the parties, which includes the Board. The ALJ should not be a Board employee. | Nikolopoulos | Subsection (b) is being removed. |
| 64 | In 1790.450 (ALJ), the "selection of Administrative Law Judges MUST ensure that they are absolutely neutral, with no connection to ILET SB, the Board, the Director, or the parties" The comment also cited 1790.120 (Definitions) and 1790.520 (Disqualification of Administrative Law Judge), but no proposed language was provided. | Cummings/Stewart | Subsection (b) is being removed. Disqualification of an ALJ due to a conflict of interest due to a connection with any party is covered under Section 1790.520. |

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| 65 | In 1790.450 (ALJ): (1) The Board should include the fact that judges are bound by the ALJ Code of Professional Conduct. She suggested to include this as subsection (c). (2) The Board should create a process for selecting ALJ. She recommend using 11 IAC 1800.625 as a reference. | Hokenson | (1) This is replacing subsection (b). (2) Subsection (a) is similar to 1800.625(a) and subsections (b) and (c) of 1800.625 have been added to Section 1790.520 (Disqualification of ALJ). |
| 66 | In 1790.450 (ALJ), The ALJ shall only serve on behalf of the Board. There is no reason for the Director to appoint an ALJ to also "conduct a hearing in his or her stead". | Catanzara | The sentence allowing appointment of an ALJ in the Director's stead has been removed. |
| 67 | In 1790.510 (Ex Parte Communications), there shouldn't be ex parte communication between the ALJ and Board members. Model instead after 80 Ill. Adm. Code 1240.170. | Stewart | Section 1790.510 does not allow Board member to ALJ ex parte communication, but only allows party to party ex parte communication, Board member to Board member ex parte communication, and communication between a Board member or ALJ and that Board member's or ALJ's personal assistant. But Section 1790.510 is being revised to remove Board member to Board member communication and to clarify party to party communication. |

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| 68 | In 1790.510 (Ex Parte Communications): (1) In subsection (a), it is inappropriate for Board representatives to engage in communications with the other party outside the presence of the ALJ. Remove that sentence. (2) In subsection (c)'s allowance for the ALJ to communicate ex parte about routine matters relating to "opportunities to inspect the file", what file? | Fairley | (1) This sentence is being revised to clarify that party to party communication is not ex parte communications and remove the references to Board member to Board member communication. (2) This phrase is being removed. |
| 69 | In 1790.510 (Ex Parte Communications), remove "(excluding the Administrative Law Judge)" from subsection (a) | Davis | This phrase is being removed. |
| 70 | In 1790.510 (Ex Parte Communications): (1) Board members should not have the ability to communicate with each other about a hearing going on (2) Board members may not engage in communications with the other party outside the presence of the ALJ. (3) a Board member or ALJ may only have aid but not advice of one or more personal assistant. | Catanzara (1) and Catanzara (1), (2), and (3) | (1) The provisions of the Open Meeting Act would govern Board member to Board member communication with each other and such communication is not "ex parte communication". (2) Subsection (a) provides that no party may engage in any ex parte communication with any member of the Board regarding matters pending before an ALJ. (3) Sentence in subsection (c) relating to aid and advice of one or more personal assistants is being replaced with language allowing Board staff to provide administrative support to the ALJ. |
| 71 | In 1790.510(b), "All parties" and "other parties" is confusing if there are only two parties to the hearing proceedings. | Sonenthal | "Parties" is being changed to "party". |

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| 72 | In 1790.520 (Disqualification of Administrative Law Judge), require motions for disqualification to set out the specific evidence of bias (rather than specific instances of bias). Also, this Section requires at least two ALJ (the 2nd to rule on the disqualification motion). | Fairley | While "specific instances" was retained, a requirement of at least two ALJs was added to Section 1790.450. |
| 73 | In 1790.530 (Contumacious Conduct), what does "contumacious conduct" mean? Johnson: "Insubordinate". Fairley: "Disorderly". Davis: "Willfully disobedient." | Johnson Davis, and Fairley | "Contumacious" is being changed to "willfully disobedient". |
| 74 | Section 1790.530(b) (Contumacious Conduct) could compel an officer to testify in violation of Garrity v. N.J., 385 U.S. 493 since the compelled statement could interfere with criminal proceedings. | Stewart | The ALJ, by motion or sua sponte, can address any such issue. |
| 75 | In 1790.540 (Consent Decree), this Section should be deleted. She proposed replacing the language with a new Section relating to victim impact statements: "The Director shall cause written notification of the date, time and place of the Formal Complaint Hearing to any individuals or entities that were affected by the Respondent's alleged misconduct. Any affected individual or entity shall be informed that they may attend the Formal Complaint Hearing and will be offered an opportunity to either provide oral testimony or a written statement about the impact of the misconduct that will be come part of the official record of the proceedings." | Fairley | This Section is being deleted and replaced with a Section on victim impact statement based upon the language suggested. |

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| 76 | In 1790.545 (Settlement Agreements), this Section should be deleted. | Fairley | The proposed Rule is consistent with other State agency rules, e.g., 56 IAC 120.545 (Dept. of Labor) and it should not be deleted. |
| 77 | In 1790.550 (Conduct of Hearings), it isn't clear on how closing arguments would proceed. | Stewart | Section 1790.550(b)(2)(E) ("Closing Statements") provides that closing statements may be made and in what order. |
| 78 | In 1790.550 (Conduct of Formal Complaint Hearings): (1) All hearings should be public (the rules are unclear as to public access to hearings). (2) All hearings should take place in Sangamon County. | Catanzara/Catanzara | (1) Section 1790.550(a) provides: "All hearings shall be public unless required by statute to be otherwise." (2) Hearings are planned to be held at ILETSB's offices in Chicago and Springfield. |
| 79 | In 1790.550 (Conduct of Formal Complaint Hearings), the sole and exclusive prosecutor for all formal complaint hearings shall be an attorney, licensed in the State of Illinois, and employed of the Board. | Karlson | A provision that an Illinois-licensed attorney that is employed or retained by the Board shall represent the Board in the hearings has been added. |

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| 80 | In 1790.550 (Conduct of Formal Complaint Hearings): (1) Hearings shall be open to the public (rather than public). (2) Changes were made to make this Section specific to hearings on formal complaints, including deleting references to the prehearing conference and the ALJ's decision. | Fairley | (1) This change has been included. (2) These changes were not made as the Section was clarified to apply to all applicable hearings, including hearings on denials of reactivation and emergency orders of appeal. |
| 81 | In 1790.550 (Conduct of Formal Complaint Hearings) and 1790.610 (Record in Contested Cases), the hearings shall be recorded. | Davis | The requirement for recording a hearing is being added in Section 1790.610. |
| 82 | In 1790.560(a) (Rules of Evidence), why only use the Rules of Evidence to the extent practicable? Stewart: Review 80 Ill. Adm. Code 1240.70(e) for parity. Cummings/Stewart: "The rules of evidence MUST apply." Karlson: In subsection (a), delete the provisions allowing Rules of Evidence to be used to the extent practicable and the provisions on how the ALJ would apply the rules to prevent injustice or preclude the introduction of evidence. | Stewart, Cummings/Stewart, Karlson | The proposed Rule is consistent with other State agency rules, e.g., 56 IAC 120.560 (Dept of Labor), and these provisions should not be removed. Pursuant to the Illinois Bureau of Administrative Hearings: "Administrative hearings units often have relaxed rules of procedure regulating how a case moves forward and are heard...to make it easier for individuals, often not represented by attorneys, to present their case." |
| 83 | In 1790.560(a) (Rules of Evidence), provides that, if the ALJ determines that an application of an evidentiary rule would result in manifest injustice (rather than an injustice). Requires (rather than allows) any objections to be stated orally. | Fairley | The proposed Rule is consistent with other State agency rules, e.g., 56 IAC 120.560 (Dept of Labor) and the changes are not necessary. |

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| 84 | In 1790.560(b) (Rules of Evidence), the rules should explicitly identify the standard when records and information is kept out of public domain. This should include defining "sensitive" and "confidential.". She recommend looking at Supreme Court Rule 201(c)(1) or the Federal Rules of Civil Procedure 26 (c)(1). | Hokenson | S.Ct. Rule 201(c)(1) has been incorporated and "information of a sensitive and confidential nature" has been defined. |
| 85 | In 1790.560(c) (Rules of Evidence): (1) There is a concern with allowing the introduction of evidence of prior misconduct. Don't allow, except in certain circumstances, in subsection (c): "Evidence of other misconduct or acts is not admissible to prove the character of the Respondent in order to show action in conformity with the allegations alleged in the complaint. Such evidence may also be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." (2) there must be limits on the use of prior misconduct. The limits should be similar to the limits on the use of prior bad acts in criminal trials. | Karlson (1), Karlson (1), and Cummings/Stewart (2) | (1) The proposed Rule is consistent with other State agency rules, e.g., 56 IAC 120.560 (Dept of Labor) and the ALJ can limit evidence consistent with the law. (2) The ALJ can limit evidence, including evidence of misconduct, consistent with the law. |
| 86 | In 1790.560(c), change to: "Evidence of <u>similar</u> any misconduct is admissible for its bearing on any matter to which it is relevant, including the officer's <u>similar</u> history of conduct..." | Catanzara | Any admissible misconduct that is relevant on any matter should be admissible. |
| 87 | In 1790.570 (Official Notice), the "Board's "specialized knowledge" or "expertise" should have absolutely no bearing on a matter." "It is incumbent upon the party bearing the burden of proof to elicit via its own witnesses any expert of specialized testimony." | Cummings/Stewart | The proposed Rule is consistent with other State agency rules, e.g., 56 IAC 120.570 (Dept. of Labor), and changes are not necessary. |

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| 88 | <p>In 1790.590(b) (Documents), police reports should not be allowed.</p> <p>Karlson: Keep police reports excluded because there are good reasons police reports are generally excluded from evidence. Add "police reports are inadmissible." under subsection (a). Delete reference to police reports being business records.</p> <p>Abraham: "Under the Illinois Rules of Evidence, police reports are not admissible as business records. We ask that the Rules be made to fully align with the Illinois Rules of Evidence and not allow police reports to be admissible as business records."</p> | <p>Karlson, McQueary, Abraham, and Karlson</p> | <p>The inclusion of police reports as business records has been removed, but police reports should not be added as inadmissible.</p> |
| 89 | <p>In 1790.610 (Record in Contested Cases):</p> <p>(1) Clarify that all proceedings should be recorded and that recording be made part of the record.</p> <p>(2) Reword a)(2), and add an a)(3): 2): "A transcript of any and all proceedings before the ALJ" and 3) "A transcript of the Formal Complaint Hearing, if any, and all evidence received"</p> <p>(3) What does (a)(5) mean ("Any proposed findings and acceptance")?</p> | <p>Fairley and Fairley</p> | <p>(1) This has been included.</p> <p>(2) (a)(2) has been reworded to include an electronic recording of the hearing and additionally that the ALJ may issue a protective order. Adding 3) is unnecessary.</p> <p>(3) This has been modified to be "findings and conclusions"</p> |
| 90 | <p>In 1790.610 (Record in Contested Cases), there "must be clarification of what constitutes "the record". Will there be audiotaping? Stenographer? Etc." The comment also cited 1790.170 (Prehearing Conference); 1790.210(h) (Appearance); and 1790.310 (Motions), but no proposed language was provided.</p> | <p>Cummings/Stewart</p> | <p>Section 1790.610(a)(2) has been modified to clarify that there will be an electronic recording of the hearing.</p> |

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| 91 | In 1790.610 (Record in Contested Cases), recordings shall be maintained in accordance with the Board's records retention policies. | Davis | The recordings will be public records and retained according to statutory requirements for records retention. |
| 92 | In 1790.620 (Post-Hearing Briefs), 15 days isn't enough time for a transcript of the hearing to be ready. The 15 days should start once the transcript arrives. | Stewart | Section 1790.620 allows for the ALJ to determine another reasonable timeframe to submit written briefs. |
| 93 | In 1790.620 (Briefs): (1) Are closing briefs in addition to or instead of closing arguments? (2) More than 15 days should be allowed for the submission of closing briefs. 30 days should be allowed. | Cummings/Stewart | (1) Section 1790.550(B)(2)(E) ("Closing Statements") provides that closing statements may be made and in what order; also, the Section allows parties to submit written briefs after the close of the hearing. (2) The Section allows the ALJ to change the number of days to submit a closing brief, if necessary. |
| 94 | In 1790.620 (Briefs), provide that the ALJ may require or allow parties to submit written briefs after the conclusion of the hearing. | Fairley | The sentence already provides for this: "after the close of the hearing or other reasonable time as the ALJ shall determine." |

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| 95 | <p>In 1790.630 (Administrative Law Judge's Decision) and 1790.650 (Final Action by the Board), there is no criteria in the rules addressing how the ALJ should evaluate the facts to make his or her decision and how the Board will use its discretion. Also, "neither the statute nor the Rules outline the criteria for assessing whether the Board should exercise its discretion to decertify the law enforcement officer for having committed the alleged misconduct." Change as follows: 1790.630: Require the ALJ to issue a decision within 60 days of the hearing and base that decision on clear and convincing evidence based upon at least one act that constitutes misconduct (which establishes a rebuttable presumption that the Board should proceed with decertification). Allows the rebuttable presumption to be rebutted by substantial mitigating evidence. A list of illustrative examples of mitigating evidence is included. Allows the parties to provide a written response to the ALJ's findings within 15 days of the ALJ's decision.</p> <p>1790.645: Requires the Panel to schedule a certification review meeting within 30 days after receipt of the ALJ's findings or statement of objection, whichever is later. Provides that the Panel shall make a de novo determination. Allows the Panel to remand the case to the ALJ. Requires the Panel's summary report no later than 30 days after the meeting and requires an explanation if the Panel's decision differs from the ALJ's decision.</p> <p>1790.650: See Row 102 for additional comments relating to 1790.650.</p> | Fairley and Fairley | <p>Language clarifying the decision-making standards have been added into Sections 1790.630 and 170.650, including requiring the ALJ to issue a decision no later than 60 days following the hearing and a standard for the ALJ to follow in his or her decision-making (based upon the statutory language found in 1790.645(c) rather the suggested language). The language for a written response (statement of objection) has instead been simplified and incorporated into 1790.310(d) and 1790.610(b)(6).</p> <p>For 1790.645, the recommended changes are not necessary as the rule contains the standards required by statute. The statute does not allow remand back to the ALJ.</p> |
| 96 | <p>In 1790.630 (ALJ's Decision), 1790.645 (Certification Review Panel), and 1790.650 (Final Action by the Board), the process where the ALJ makes a recommendation to the Certification Review Panel who then makes a recommendation to the Board for a final decision could be streamlined and it should be required that the Board has to take final action by more than a majority vote. The first two steps (ALJ and Panel) should be combined and at least 3/5 Board vote should be required.</p> | Catanzara/Catanzara | <p>A separate ALJ recommendation, Certification Review Panel recommendation, and final Board action is required by 50 ILCS 705/6.3(h)(7) through (9), including explicitly by "simple majority vote" in (h)(8) and by "majority vote" (h)(9).</p> |

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| In 1790.630 (ALJ's Decision), there "should be specific standards laid out upon which the ALJ, the Panel and the Board can make its findings and conclusions." The comment also cited 1790.645 (Certification Review Panel) and 1790.650 (Final Action by the Board), but no proposed language was provided. | Cummings/Ste wart | Language clarifying the decision-making standards have been added into Sections 1790.630 and 1790.650 and were already contained in Section 1790.645. |
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| In 1790.1790.630 (ALJ's Decision), requires ALJ's findings and recommendations within 60 days of the hearing and provides a standard for the decision-making process, including that the ALJ shall consider and explain how the recommendation promotes uniformity in similar discretionary decertification cases. | Davis | A requirement for the ALJ's decision post-hearing has been added along with language clarifying the decision-making standards in accordance with the statutory requirements and Section 1790.645, which does not include consideration and explanation how the recommendation promotes uniformity in similar discretionary decertification cases. |
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| In 1790.645 (Certification Review Panel) and 1790.650 (Final Action by the Board), parameters need to be set for greater transparency in decision making, such as that the Certification Review Panel is not required to explain why they are going against ALJ's recommendation, but the Board is only required to explain if they disagree with the Certification Review Panel. Both the Certification Review Panel as well as the Board need to explain their decision, regardless of whether they disagreed with the ALJ judge. Also, the "The rules must also make clear that formal hearings, CRP open sessions, and any ILETSB deliberations will be available to the public online, either livestreamed or recorded." | Thompson and Thompson | The Board needs to "set forth in its final written decision the specific written reasons for not following the Panel's recommendations" under 50 ILCS 705/6.3(h)(9) and there is no similar requirement for the Panel in (h)(8). However, the Panel is required to state reasons for a denial of a motion for reconsideration under (h)(10). |
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| <p>In 1790.645 (Certification Review Panel):</p> <p>(1) "It is unclear in which ways the process is discretionary if the CRP is only required to review the ALJ's report and rule in one way or the other without being required to review evidence and testimony that may include pertinent evidence for a discretionary decertification;"</p> <p>(2) The Rules' clear and convincing evidentiary standard "leaves a gap for what evidentiary standard is required for any mitigating evidence presented by the Respondent when considered by the ALJ or reviewed by the CRP and ILETSB....it is unclear what evidence a responding law enforcement officer must show to overcome the clear and convincing evidence provided by ILETSB...." The evidentiary standard should be clarified for both the Complainant and Respondent by including language in Section 1790.130 Burden and Standard of Proof, Section 1790.630 Administrative Law Judge's Decision, Section 1790.645 Certification Review Panel, and Section 1790.650 Final Action by the Board. We also recommend including language in Section 1790.630 Administrative Law Judge's Decision, Section 1790.645 Certification Review Panel, and Section 1790.650 Final Action by the Board to encourage greater transparency for the ALJ, CRP, and ILETSB by including information about any mitigating or exacerbating circumstances that influence their decision and whether it conforms to previous decisions or not. We further encourage ILETSB to specify that the ALJ's written decision should consider the outcomes of discretionary certification proceedings in similar cases, to ensure uniformity.</p> | <p>Davis</p> | <p>(1) The Panel has discretion to determine whether or not a person has committed decertification conduct based upon the ALJ's report and all evidence per 50 ILCS 705/6.3(h)(8) and Section 1790.645(b): "and may deliberate on all evidence and testimony received and may consider the weight and credibility to be given to the evidence received."</p> <p>(2) The clear and convincing standard is consistent with other State agency rules, e.g., 56 IAC 120.660 (Dept. of Labor). The law does not require specified mitigating factors to be used, but, rather, the ALJ, Panel, and Board may deliberate on all evidence and testimony received and may consider the weight and credibility to be given to the evidence received.</p> |

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| <p>In 1790.645(b) (Certification Review Panel), there "should be an exception to consider additional post hearing evidence if there was a truly new development."</p> | <p>Cummings/Stewart</p> | <p>50 ILCS 705/6.3(h)(8) and (9) prohibit introduction of new or additional evidence in front of the Panel or Board.</p> |
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| <p>In 1790.650 (Final Action by the Board), the "Rules should clarify the basis for the Board's exercise of discretion including by outlining the specific mitigating factors the Board will consider when weighing the appropriateness of decertification in light of the nature and seriousness of the proven qualifying misconduct and the harm to any victims of the misconduct and the community". Add "If a simple majority of the Board finds that (1) the allegations in the complaint supporting one or more allegations of misconduct are proven by clear and convincing evidence, and (2) there are no mitigating factors that significantly outweigh the nature and seriousness of the proven qualifying misconduct and the impact of the misconduct on the affected persons or entities, the Board shall proceed with decertification of the Respondent."</p> | <p>Fairley</p> | <p>The language from Section 1790.650 is taken almost verbatim from 50 ILCS 705/6.3(h)(9). Additionally, language clarifying the decision-making standards (consistent with 50 ILCS 705/6.3) has been added.</p> |

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| <p>In 1790.650 (Final Action by the Board), the criteria needs to be set forth set forth as to how the Board will make its decertification decisions as well as the weighting of other considerations, if any. It was suggested that the "criteria established should give due weight to the concerning conduct that can lead to discretionary decertification. Section 50 ILCS 705/6.3(b) outlines serious actions that, if committed, raise deep doubts about an officer's professionalism, judgement, credibility, and veracity. Overcoming the doubts raised should require meeting a demanding standard. Therefore, if the Board determines the officer engaged in conduct that fits within the 6.3(b) categories, there should be a strong presumption in favor of decertification. Any mitigating evidence presented must substantially outweigh the conduct at issue combined with any aggravating evidence."</p> | <p>Thompson and Thompson</p> | <p>The language from Section 1790.650 is taken almost verbatim from 50 ILCS 705/6.3(h)(9). Additionally, language clarifying the decision-making standards (consistent with 50 ILCS 705/6.3) has been added.</p> |
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| 104 | In 1790.650 (Final Action by the Board), add "If a simple majority of the Board finds that (1) one or more allegations in the complaint are proven by clear and convincing evidence, and (2) the Respondent has not established any mitigating factors that significantly outweigh the presumption of decertification, the Board shall decertify the Respondent." Requires specifications relating to mitigating facts in the final written decision and any information about similar cases in the interest of promoting uniformity. | Davis | The language from Section 1790.650 is taken almost verbatim from 50 ILCS 705/6.3(h)(9). Additionally, language clarifying the decision-making standards (consistent with 50 ILCS 705/6.3) has been added, which does not include consideration and explanation how the recommendation promotes uniformity in similar discretionary decertification cases or requirements relating to mitigating factors. |
| 105 | In Section 1790.660 (Reconsideration of Board's Decision), what is the Review Committee, and is the Review Committee's decision a final decision? | Johnson | A definition of "Review Committee" has been added to Section 1790.120 and 50 ILCS 705/6.3(h) does not allow for any action after the Review Committee's actions, so its decision is final. |
| 106 | In Section 1790.660 (Reconsideration of Board's Decision): (1) Remove (c)(2) and (c)(3) (2) In subsections (f) and (g), replace "objections" with "motion for reconsideration" and, in subsection (g), replace "for all purposes" with "in all related proceedings before the Board. | Fairley | (1) Subsection (c) has been reorganized, so paragraphs (2) and (3) do not need to be removed. (2) These changes have been made. |
| 107 | In 1790.660 (Reconsideration of Board's Decision), the "parties should be allowed to file motions for extensions of time and for filing longer briefs relative to motions to reconsider." | Cummings/Ste wart | Section 1790.310 would allow for such a motion. |

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| 108 | In Section 1790.670 (Judicial Review), appeals of administrative decisions should only be heard in Sangamon County and not in Cook County. | Catanzara/Catanzara | 50 ILCS 705/6.6(b) allows judicial review in both Sangamon County and Cook County. |
| 109 | In Section 1790.670 (Judicial Review), what is the deadline for filing an appeal in court? | Edstrom | Section 3-103 of the Code of Civil Procedure ((735 ILCS 5/3-103)) provides: "Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision...." |
| 110 | In 1790.670 (Judicial Review), delete subsection (a). | Karlson | Subsection (a) is being deleted. |
| 111 | In 1790.670(a) (Judicial Review), the "Board should provide copies of transcripts of the hearing, at no cost, to the parties." | Cummings/Ste wart | The party requesting a transcript is the party that usually pays for copies of the transcription. However, subsection (a) is being deleted. |

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| 112 | <p>Change 1790.670 (Judicial Review) to:</p> <p>(a) "Any party seeking judicial review of any discretionary decertification proceedings outlined herein will subject to payment for the actual cost of preparing the administrative record and filing it in court as outlined in an invoice to be issued and delivered by the Director. Payment shall be by certified check made payable to State of Illinois in response to such invoice."</p> <p>(b) "Actions for judicial review under this Section shall be filed with the circuit court of the county where the hearing proceedings took place, which will be either the circuit court Cook County or Sangamon County."</p> | Fairley | Subsection (a) is being deleted. The technical changes in subsection (b) are not necessary. |
| 113 | <p>Adds a new Section 1790.680 (Notice of Rule): "Upon finalization of this rule and prior to it going into effect, the Board shall develop and execute training for law enforcement agencies and officers to explain the rights and processes related to this rule. This training may take place in the course of other mandatory training for officers in accordance with 50 ILCS 705(6)."</p> | Davis | This rule is to go into effect immediately so that the Board may proceed with hearings as required under 50 ILCS 705/6.3. |

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| <p>(1) What the timelines are for issuing a decision.</p> <p>(2) "The Rules should include time limits for the issuance of the Administrative Law Judge's decision, the Certification Review Panel's summary report, and the Board's decision (Section 1790.630; 1790.645; 1790.650). The Rules currently allow for indefinite delay."</p> <p>(3) "The Rules should include time limits for the reactivation refusal hearing process. Again, the Rules currently allow for indefinite delay at multiple steps."</p> | <p>Clauss (1) and Abraham (2 and 3)</p> | <p>(1) and (2) An ALJ will be required to issue his or her decision no later than 60 days under Section 1790.630, the Panel is required to prepare its report "as soon as practicable after the completion of the meeting" pursuant to 50 ILCS 705/6.3(h)(8)), and the Board must take final action upon receipt of the Panel's recommendations under Section 1790.650 and 50 ILCS 705/6.3(h)(9).</p> <p>(3) The above time limits and timeline apply for hearings on reactivation.</p> |

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| <p>What is the process for Board member conflicts of interest.</p> | <p>Clauss</p> | <p>50 ILCS 705/3(b) requires a Board member to recuse himself or herself on issues of decertification or, upon failure to recuse himself or herself, the Board to recuse that member. 50 ILCS 705/3.1(g) contains a similar process for the Certification Review Panel.</p> |
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| 116 | The rules puts too many costs on the respondent. Other State agencies usually bear these costs. | Karlson | In Section 1790.170(b), the sentence requiring the requesting party to pay court reporter attendance and costs is being removed. Witness fees under Section 1790.420 are borne by the party requesting the witness. Judicial review costs under Section 1790.670 are borne by the party requesting judicial review. |
| 117 | There are substantive due process concerns with the neutrality of the ALJ since they are being appointed by a "political body". | Cummings | ILETSB is an independent board and the allowance for the ALJ to be an employee of the Board has been removed. |
| 118 | There are concerns with conflicts of interest as people on the Board have relationships with various people on the employment side as well as on the union side and that could result in unfairness quite often or at least the appearance of unfairness. | Cummings | 50 ILCS 705/3(b) requires a Board member to recuse himself or herself on issues of decertification or, upon failure to recuse himself or herself, the Board to recuse that member. 50 ILCS 705/3.1(g) contains a similar process for the Certification Review Panel. |

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| 119 | <p>(1) Employers hire someone with something that they think is small (e.g., a missed court appearance), the employer then applies for a training waiver, and someone at ILETSB who doesn't think they should be a police officer then denies the training waiver (for reasons other than or nothing to do with lack of training). The person doesn't have a substantive right to appeal.</p> <p>(2) When the Board doesn't grant a training waiver, they could deny entrance for retraining at the academy and that this is a due process concern because they can stop an officer from working as a law enforcement officer without going through the decertification process.</p> | Cummings (1) and Stewart (2) | (1) and (2): Hearings on denial of training waivers are not allowed under the Illinois Police Training Act. 50 ILCS 705/8.1(b)(4), 8.2(b)(4), and 8.4(a)(6) state that the law enforcement officer "is entitled to appeal the denial to the Board within 20 days of the waiver being denied." |
| 120 | There are concerns with denials of training waivers, including with seeing increases in denials, and this is a de facto decertification with no due process. | Garza | Hearings on denial of training waivers are not allowed under the Illinois Police Training Act. 50 ILCS 705/8.1(b)(4), 8.2(b)(4), and 8.4(a)(6) state that the law enforcement officer "is entitled to appeal the denial to the Board within 20 days of the waiver being denied." |
| 121 | <p>(1) The timeline for the hearing process is unclear</p> <p>(2) The rule organization is confusing.</p> | Stewart | <p>(1) An ALJ will be required to issue his or her decision no later than 60 days under Section 1790.630, the Panel is required to prepare its report "as soon as practicable after the completion of the meeting" pursuant to 50 ILCS 705/6.3(h)(8)), and the board must take final action upon receipt of the Panel's recommendations under Section 1790.650 and 50 ILCS 705/6.3(h)(9).</p> <p>(2) Rule reorganization is not necessary.</p> |

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| <p>Nothing in the rules creates the opportunity for victims to have a say in the matter, including: there is a "need to revise the rules to accommodate participation in the process by those who were directly impacted by the misconduct, which could include specific individuals, the employing law enforcement agency, or the local community. The Board should be required to consider any victim impact statements submitted pursuant to the Rules when making its decision on whether to decertify the officer. She provides that the process should include an invitation for victims to provide a written impact statement or provide testimony (with the statement or testimony to become part of the record that the Board must consider when making its decision). Add a "Victim Impact Statements" Section and add written notification of the Formal Complaint Hearing for the "individuals or entities that were affected" by the misconduct and offered the opportunity to provide a written or oral statement as part of the record.</p> | <p>Fairley and Fairley</p> | <p>Section 1790.540 is being replaced with a Section requiring victim notice and victim impact statements.</p> |
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| <p>The rules should: (A) define what kinds of mitigating evidence an officer may provide that the Board should or would be willing to consider; (B) list the criteria necessary for a complaint to be moved forward for full investigation; (C) explain how the Board will determine which complaints they will investigate verses referring back to the referring law enforcement agency; (D) "clarify the meaning of "reasonable basis to believe" [and] the Board's procedure for determining how this determination will be made. . .", including a definition of "formal complaint" that includes a reference to the Investigative Summary Report and the determination that there is a reasonable basis to believe that the law enforcement officer committed any conduct that would be deemed a violation of the Act, and that determination establishes the basis for a Formal Complaint Hearing. and (E) "specify the criteria by which the Board will make its decision on reactivation after a reactivation refusal hearing."</p> | <p>Fairley, Fairley ((A) to (D)), and Abraham ((A) and (E) only)</p> | <p>(A), (D), and (E): The ALJ, Panel, and Board have discretion to determine whether or not a person has committed decertification conduct based upon all evidence submitted and the law governing decertification conduct. The legal standard that will be used is a clear and convincing standard, which is consistent with other State agency rules. The law does not require specified mitigating factors to be used, but, rather, leaves it in the discretion of the reviewing entities.</p> <p>(B) and (C): The proposed Rules only apply to hearings, not the review of Notice of Violation or Investigation. However, 50 ILCS 705/6.3(b), (e), (f), and (g) specify the process used to review and investigate Notice of Violations.</p> |

| <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILET SB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
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| <p>(1) The rules should also explain any mitigating or aggravating factors it will consider. She suggested: "Mitigating evidence might include evidence showing the officer has taken substantial measures to acknowledge wrongdoing, express remorse, apologize to victims, and engage in restorative processes, or evidence showing the officer has taken substantial measures to correct gaps in knowledge, training, or skill that contributed to the conduct. Aggravating evidence might include prior history of discipline, misconduct, or unprofessional behavior; if the misconduct occurred while the officer was acting in their law enforcement capacity; lack of timely self-reporting in accordance with the Illinois Police Training Act; efforts to conceal the misconduct; failure to accept responsibility; or evidence of bias."</p> <p>(2) "The proposed rules include no further detail on how ILET SB will perform its preliminary review of incoming complaints." She suggested: "More needs to be said [in addition to what the statute says] about that standard and specifically what ILET SB will be evaluating."</p> <p>(3) "Further develop procedure for assigning and reviewing investigations [and] [e]laborate on when ILET SB will launch a Formal Complaint", including what circumstances under which the Board decides to take on an investigation; ILET SB should ensure that a local agency has an investigation policy beofre assigning an investigation to them; staff who assigned the investigation must review quarterly progress reports and follow-up for any missing information; require an agency to show cause if the investigation is longer than 12 months; and guidance on how to evauate a completed investigation.</p> | <p>Thompson</p> | <p>(1) The law does not require specified mitigating factors to be used, but, rather, leaves it in the discretion of the reviewing entities.</p> <p>(2) and (3) The proposed Rules only apply to hearings, not the review of Notice of Violation or Investigation. However, 50 ILCS 705/6.3(b), (e), (f), and (g) specify the process used in detail to review and investigate Notice of Violations.</p> |

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| 125 | Clarify when and how discretion is used in the discretionary decertification process. | Davis | The ALJ, Panel, and Board have discretion to determine whether or not a person has committed decertification conduct based upon all evidence submitted and the law governing decertification conduct. The legal standard that will be used is a clear and convincing standard, which is consistent with other State agency rules, e.g., 56 IAC 120.660 (Dept. of Labor). |
| 126 | An average citizen should not be allowed to lodge a complaint against an officer to initiate a decertification hearing. | Catanzara | 50 ILCS 705/6.3(c)(2) allows any person to notify the Board of misconduct, but the complaint of misconduct does not automatically force a hearing, but, rather, the complaint first goes to a preliminary review under 50 ILCS 705/6.3(e). |
| 127 | There needs to be further fleshing out on the procedure for filing formal complaints and investigations; while Section 6.3(f) gives some guidelines, more guidelines are needed as to what circumstances allow the Board to take on the investigation, feeling that "beyond the reasons listed in the statute, there may be other reasons that exist". It is unclear who makes the decision to file a formal complaint, the full Board or staff members of the Board? She suggested to clarify decision-making on assigning complaint investigations, investigation, and reviews of complaints. There should be additional elaboration as to the procedures for Board staff to check into investigations to ensure they are quality investigations and to intervene when complaints begin to languish at the local level. | Thompson | The proposed Rules only apply to hearings, not the review of Notice of Violation or Investigation. However, 50 ILCS 705/6.3(b), (e), (f), and (g) specify the process used in detail to review and investigate Notice of Violations. Also, 50 ILCS 705/6.3(f)(1) requires detailed monitoring of law enforcement agency investigations. |

| | <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILETSB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
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| 128 | Mayers: The rules need provisions dedicated to the emergency order of suspension process because the standard of proof is different than the clear and convincing for decertification. Fairley: A separate set of rules should be created to govern the discretionary decertification since this applies to discretionary decertification and reactivation. | Mayers and Fairley | Language has been added to the proposed Rules which addresses emergency orders of suspension and reactivation. |
| 129 | There should be uniform protocols, practices, and legal standards related to handling complaints for decertifiable conduct. He suggested to look at 2017 Vermont Act 56, which requires all law enforcement agencies to adopt an internal affairs program. | Mayers | 50 ILCS 705/6.3(b), (e), (f), and (g) specify the process and legal standards used in handling complaints for decertifiable conduct. |
| 130 | ILETSB should "use this opportunity to include language in the proposed administrative rule on engaging the public more on how civilians, civilian oversight authorities, and state attorneys can play a role in both the automatic and discretionary decertification processes." He suggested allowing in-person and virtual options for Board meetings and requiring recordings of all Board meetings to be made available on ILETSB's website no later than a week after the meeting, including minutes and agendas, as other states do. | Mayers | Section 1790.540 is being replaced with a Section requiring victim notice and victim impact statements. Otherwise, the proposed Rules only apply to the hearing process. |
| 131 | There are concerns about witness statements not being turned over and felt the motion practice may be "wholly inadequate". See the rows above with suggestions by Karlson: 1790.260 (Row 37), 1790.300 (Row 38), and 1790.410 (Row 51). | Karlson | Provisions preventing witnesses statements have been removed and Section 1790.310's motion practice is consistent with other State agency rules, e.g., 56 IAC 120.301 (Dept. of Labor). |

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| 132 | With no timelines, reactivation could take years. | Karlson | An ALJ will be required to issue his or her decision no later than 60 days under Section 1790.630, the Panel is required to prepare its report "as soon as practicable after the completion of the meeting" pursuant to 50 ILCS 705/6.3(h)(8)), and the board must take final action upon receipt of the Panel's recommendations under Section 1790.650 and 50 ILCS 705/6.3(h)(9). |
| 133 | The rules need to have separate and different ascertainable standards for each of the areas of action the Board takes, including the initial certification process; the reactivation/deactivation process; reinstatement / recertification; the emergency decertification, automatic decertification, permissive decertification process; and the waiver process. | Karlson | Language has been added to the proposed Rules which addresses emergency orders of suspension and reactivation, which are the only two other areas other than discretionary decertification that the Illinois Police Training Act allows hearings. |

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| <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILETSB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
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| <p>(1) The rules should be revised to establish and/or clarify the criteria for assessing which complaint will receive full investigation, including what "sufficient information" means. The following has been proposed: "In addition to rules governing the conduct of administrative hearings, there should be rules governing the conduct of the investigations leading to charges including, but not limited to:</p> <ul style="list-style-type: none"> --What criteria is used to determine which investigations the Board will choose to conduct --The criteria for determining whether a complaint provides sufficient information to justify an investigation --When an investigation can be closed without making specific findings <p>Standards/content for the investigative reports</p> <ul style="list-style-type: none"> --Conflict of interest policy <p>All complaints should be resolved with a written determination that is issued to the complainant, regardless of whether an investigation was conducted."</p> <p>(2) The "Rules should be revised to clarify the kinds of facts and circumstances for which the Board would exercise its discretion to conduct the investigation." <i>See</i> Row 102 relating to Fairley's suggestions relating to 1790.650.</p> | <p>Fairley</p> | <p>(1) and (2) The proposed Rules only apply to hearings, not the review of Notice of Violation or Investigation. However, 50 ILCS 705/6.3(b), (e), (f), and (g) specify the process used in detail to review and investigate Notice of Violations.</p> |

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| <p>"In both the Proposed Rules and the Statute, law enforcement officers are permitted to challenge the findings and determination related to discretionary decertification. However, it is unclear how the officer would be able to present a full record of the hearing before the ALJ because there is no requirement that the pre-hearing conferences and hearings are recorded or memorialized."</p> | <p>Davis</p> | <p>Recorded hearings have now been included with the option to transcribe the hearings.</p> |
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| 136 | "Create a process by which law enforcement officers are trained on discretionary decertification and the administrative process related to discretionary decertification.". Do this by adding "a section on notice and training at the end of the Proposed Rules that would make training and education on the Proposed Rules part of the existing training that ILETSB oversees for law enforcement agencies across the state. By adding this section, officers will be more aware of their due process rights under the discretionary decertification policy and will know that the information is coming directly from the agency responsible for implementing the discretionary decertification policy. Additionally, this training will likely assuage some concerns that law enforcement organizations and unions have named about the lack of transparency and due process in the Proposed Rules.." | Davis | Rules relating to such instruction or training are not necessary. |
| 137 | (1) Would the officers pay out of pocket for counsel for these cases? (2) Would a collective bargaining agreement cover the representation for these issues/would the City's Department of Law be involved? (3) Would the FOP represent the officers given that this would be separate from City discipline and beyond contract provisions. (4) If ILETSB claims are filed concurrent with pending litigation or disciplinary proceedings, it might add unnecessary or harmful pressure for the City to settle. (5) If an administrative law judge makes findings contrary to the City's position in litigation, then the officer may be collaterally estopped from defense in the Civil case as officers are named individuals. | Sonenthal | (1), (2), and (3): The Board has no authority over how these issues would be handled. (4) and (5): These hearings are authorized and required by 50 ILCS 705/6.3. |
| 138 | "Although the statute specifies that entities must file a notice of alleged violation with the Board within 7 days of becoming aware of an officer's alleged violation, it does not specify when civilians must file a notice of alleged violation with the Board. In the absence of clear language from the statute, the Rules should specify a time frame for the filing of a notice of alleged violation by a civilian." | Abraham | The proposed Rules only apply to hearings. 50 ILCS 705/6.3(c)(2) does not limit when a civilian may file a Notice of Violation, unlike Section 6.3(c)(1), and such a requirement may not be added by rule in the absence of statutory authority. |

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| <p>"Since administrative rules and regulations often provide needed clarity to the public by interpreting vague statutory language, the Rules should include language interpreting of the following terms in 50 ILCS 705 Section 6.3(b)":</p> <p>a. Section 6.3(b)(3): the Rules should expound on the meaning of the phrase “duty to intervene.”</p> <p>b. Section 6.3(b)(4): the Rules should provide clarity on what it means to “tamper” with body-worn cameras, dash cameras, or data recorded by body-worn cameras or dash cameras (Section 6.3(a) defines the phrase “[t]ampers with or fabricates evidence” but does not define what it means to tamper with body-worn cameras, dash cameras, or data recorded by body-worn cameras or dash cameras).</p> <p>c. Section 6.3(b)(6): the Rules should provide clarity on the meaning of the phrase “unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public.”</p> | Abraham | <p>a. "Duty to intervene" is defined in 50 ILCS 705/6.3(a).</p> <p>b. The definition of "tampers with or fabricates evidence" in 50 ILCS 705/6.3(a) would cover tampering with cameras or recordings should camera recordings be evidence in a hearing.</p> <p>c. Those terms are self-explanatory and "unprofessional conduct" is defined in (b)(6).</p> |

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| <p>All reinstatements of any kind shall be done within 30 days and the officer made whole of any lost wages, benefits or associated costs.</p> | Catanzara | <p>Reinstatement and lost wages, benefits, or associated costs would be the responsibility of the employing law enforcement agency and are outside the scope of these rules.</p> |
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Interested Persons at Meetings or Interested Persons who Submissions Criticisms, Suggestions, or Comments:

- JoAnn Johnson, Illinois State Police (Ret.) and cochair of the Sonya Massey Commission
- Rick Stewart, Legal Counsel of the Illinois Sheriffs' Association
- Keith Karlson, Police Benevolent Labor Committee
- Brian Clauss, Moderator of the meeting/Mediator
- Dave Amerson, Staff Attorney at the Police Benevolent Labor Committee
- Tamara Cummings, IL FOP Labor Council, General Counsel
- Ray Garza, Metropolitan Alliance of Police, Attorney
- Tom Edstrom, Supervising Legal Counsel for AFSCME Council 31

| <u>Interested Person's Criticism, Suggestions, & Comments</u> | <u>Interested Person</u> | <u>ILETSB's Analysis and Changes Made in Response to Interested Person's Criticism, Suggestion, or Comment</u> |
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| Sharon R. Fairley, Professor from Practice of the University of Chicago Law School | | |
| Mark McQueary, Director of Legal Affairs of the Metropolitan Alliance of Police | | |
| John Catanzara, Jr., Illinois FOP, Chicago Lodge No. 7 | | |
| Amy Thompson, Impact for Equity, Staff Counsel | | |
| David Milton, Co-Chair of the Chicago Council of Lawyers' Civil Liberties Committee & Police Accountability Committee | | |
| Carlton T. Mayers II, Mayers Strategic Solutions, LLC | | |
| Aisha N. Davis, ACLU of Illinois, Senior Policy Counsel | | |
| Lindsay Sonenthal, City of Chicago Department of Law, Assistant Corporation Counsel, Legal Counsel | | |
| Damon Nikolopoulos, Skokie Police Department | | |
| Tamara Cummings/Rick Stewart (Cummings/Stewart), joint written submission | | |
| Michael Abraham, Teamsters Local 700, Staff Attorney | | |
| Ashley Hokenson, Office of the Illinois Attorney General, Deputy Attorney General (Policy) | | |

EXHIBIT C

STATE MANDATES ACT QUESTIONNAIRE

Agency: Law Enforcement Training Standards Board

Part/Title: Rules of Procedure in Administrative Hearings (20 Ill. Adm. Code 1790)

Illinois Register Citation: 48 Ill. Reg. 14491

1. Does this rulemaking affect any of the following (Municipality; Other Unit of Local Govt.; County; School District; Township; or Community College Dist.): These rules affect police departments maintained by municipalities, counties, public and private colleges, and other units of local government that hire and employ deputies or police officers. It does not affect townships or school districts. These rules do not mandate any additional costs to local governments.

2. Does this rule require any of the above entities to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues? No, these changes do not require additional expenditures.

If no, please explain why the rule does not necessitate such additional expenditures. The rules do not mandate any action by a local government. While a local governmental entity could voluntarily choose to expend moneys relating to administrative hearings relating to discretionary decertification, reactivation, or an emergency order of suspension, any such voluntary expending of moneys would be minimal.

3. Were any alternatives that do not necessitate additional expenditures considered? The requirement to conduct administrative hearings related to officer misconduct are required by the SAFE-T Act passed in 2021. These rules do not mandate any additional costs to local governments.

4. What are the policy objectives of rulemaking? To implement the changes of the SAFE-T Act by creating an administrative hearing process for discretionary decertification, reactivation, and emergency orders of suspension.

5. Please explain why the policy objectives of this rule cannot be achieved in the absence of the rule or through a rule that does not create a State Mandate. This rulemaking does not create any mandates nor expand the mandates of the SAFE-T Act.

EXHIBIT D

AGENCY ANALYSIS OF ECONOMIC AND BUDGETARY EFFECTS OF PROPOSED RULEMAKING

Agency: Law Enforcement Training Standards Board

Part/Title: Rules of Procedure in Administrative Hearings (20 Ill. Adm. Code 1790)

Illinois Register Citation: 48 Ill. Reg. 14491

Please attempt to provide as dollar-specific responses as possible and feel free to add any relevant narrative explanation.

- 1 Anticipated effect on State expenditures and revenues.
 - (a) The current cost to the Agency for this program/activity: Costs for improvement to Board facilities for hearings have already been completed and a Chief Certification Counsel (whose duties partially include prosecution and defense of the Board in hearings) has been hired on November 16, 2024 (total annual compensation of approximately \$154,752, plus benefits).
 - (b) If this rulemaking will result in an increase or decrease in cost, specify the fiscal year in which this change will first occur and the dollar amount of the effect. In addition to the hiring of the Chief Certification Counsel, the Board has begun the hiring process for two Assistant Certification Counsels whose duties will partially include prosecution and defense of the Board in hearings (each with a total annual anticipated compensation between \$95,592 and \$141,108, plus benefits) and anticipates beginning the retention process for approximately three administrative law judges (each with total anticipated annual compensation of approximately \$100,000) in Fiscal Year 2025; however, it is not expected that all three administrative law judges will be retained during Fiscal Year 2025.
 - (c) Indicate the funding source, including Fund and appropriation lines, for this program/activity. Board funding for operations and the enforcement of officer certification requirements are currently derived from the Law Enforcement Training Fund.
 - (d) If an increase or decrease in the costs of another State Agency is anticipated, specify the fiscal year in which this change will first occur and the estimated dollar amount of the effect. No, these changes will not result in any cost adjustments to other State Agencies.
 - (e) Will this rulemaking have an effect on State revenues or expenditures not already indicated above? Specify effects and amounts. No, these changes are not anticipated to effect State revenues or expenditures.

2. Economic effect on persons affected by the rulemaking.

- (a) Indicate the economic effect and specify the persons affected:

Positive X Negative X No Effect ___

Persons affected: This rulemaking will affect police agencies and police officers across the State.

Dollar amount per person: Because the hearings are new and the number of variables, including the number of hearings, whether an attorney is retained or not retained, and the location of the parties, a total dollar amount per person affected is not knowable.

Total Statewide cost: Because the hearings are new and the number of variables, including the number of hearings, whether an attorney is retained or not retained, and the location of the parties, a total Statewide cost to the persons affected is not knowable.

- (b) If an economic effect is predicted, please briefly describe how the effect will occur. Officers and agencies could have administrative hearing expenses that include travel to the hearing, attorney fees, and litigation fees, if any. Police agencies will save training and recruitment costs if an administrative hearing action is successful.
- (c) Will the rulemaking have an indirect effect that may result in increased administrative costs? No, such expenses are not anticipated.

Will there be any change in requirements, such as filing, documentation reporting, or completion of forms? Other than filing requirements relating to officers and agencies who chose to participate in administrative hearings, these changes do not result in any increased administrative actions.