

THE SUPREME COURT of OHIO

3.16 SPECIAL COMMISSION Frequently Asked Questions

A 3.16 Special Commission is a panel of retired judges who are appointed by the Chief Justice of the Supreme Court of Ohio to determine whether a public official should be suspended from office based on felony charges pending against the official. This publication is designed to answer frequently asked questions about the 3.16 Special Commission process. This information is not intended to be a complete representation of the process provided for under Section 3.16 of the Ohio Revised Code. For specific information, refer to the complete text of that statute, which is available at codes.ohio.gov/ohio-revised-code/section-3.16.

Who are the “public officials” to whom the 3.16 Special Commission process applies?

The 3.16 Special Commission process applies to those persons who are elected to office in a political subdivision of the state of Ohio. Political subdivisions include, but are not limited to, municipal corporations, townships, counties, school districts, and any other body corporate and politic responsible for governmental activities in a geographic area smaller than the state.¹ The 3.16 Special Commission process does not apply to the governor, members of the Ohio General Assembly, elected heads of the state agencies, or judges.

What starts the 3.16 Special Commission process?

When a public official is charged with a felony in a state or federal court and the attorney prosecuting the case determines that the felony relates to the official’s public office, that prosecuting attorney can ask the Chief Justice of the Supreme Court of Ohio to form a 3.16 Special Commission.²

What happens after the prosecuting attorney asks the Chief Justice to form a 3.16 Special Commission?

The Chief Justice must form the Special Commission as requested, but cannot do so until at least 14 days after the prosecuting attorney’s request.

Within that 14-day period, the public official can (but does not have to) file with the prosecuting attorney a written statement either agreeing to be suspended from office pending the Commission’s decision on the matter, or setting forth the reasons why the public official should not be suspended from office.

1 See [R.C. 2744.01\(F\)](#) for the complete definition of “political subdivision,” which includes other government bodies than those listed herein.

2 That request, together with the charging documents, should be filed with the Clerk of the Supreme Court of Ohio. It should be noted, however, that even though filed with the Clerk of the Supreme Court of Ohio, the matter is not a court case; as such, it is not given a case number, and no other number is assigned to the matter.

If the public official agrees to be suspended from office pending the Commission's decision, the prosecuting attorney must process a judgement entry to that effect for issuance in the public official's criminal case. The judge in that case must sign and file the entry, at which time the public official is suspended from office pending the Commission's decision.

Regardless of whether the public official agrees to suspension, objects to suspension, or takes no action whatsoever during the initial 14 days of the process, the Chief Justice must still form the Commission and the Commission must still determine whether the public official should be suspended from office.

Who are the 3.16 Special Commission members?

Every 3.16 Special Commission consists of three members, all of whom are retired justices or judges of a court of record. At least one of the members must be of the same political party as the public official.

Are the 3.16 Special Commission members paid?

Yes. The 3.16 Special Commission members are paid an hourly rate for their work, and they are reimbursed for any expenses they incur in connection with that work. These payments are made from funds appropriated to the Ohio Attorney General's Office.³

What must the 3.16 Special Commission decide?

The Commission must determine "whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office."

This is first decided as a preliminary determination, which the Commission must make within 14 days after the Chief Justice establishes the Commission. If the answer to the question is in the negative, the preliminary determination is final. If the answer is in the affirmative, the Commission must issue a written final determination on the same question after the public official has had an opportunity to contest the preliminary determination (see "What opportunities does the public official have to defend him/herself against suspension?" below for more information).

What documents or facts can the 3.16 Special Commission consider in making its decision?

The commission *must* review (1) the document that charges the public official with the felony, (2) all other documents and materials pertaining to the matter that were provided by the Chief Justice, and (3) the facts and circumstances related to the offense charged.

3 [R.C. 3.16\(C\)\(1\)](#).

The documents and materials that may come from the Chief Justice include the prosecuting attorney's request for the 3.16 Special Commission, the charging documents, and (usually) the notice of the request, which the prosecuting attorney is required to send to the public official.

If the public official has provided that prosecuting attorney with a written statement either voluntarily allowing a judgment entry to provisionally suspend the public official from office, or setting forth the reasons why the public official should not be suspended from office, the prosecuting attorney must forward that document to the Chief Justice, who then must provide the document to the 3.16 Special Commission for its review in the matter.

What opportunities does the public official have to defend him/herself against suspension?

During the first 14 days of the 3.16 Special Commission process, the public official can file with the prosecuting attorney a written statement setting forth the reasons why the public official should not be suspended from office. That written statement, if submitted, goes to the 3.16 Special Commission for consideration on the question of suspension.

If the 3.16 Special Commission initially decides that the public official should be suspended from public office, the official has 14 days to contest that decision. If the public official so contests, the 3.16 Special Commission must hold a meeting within 14 days of the contest. The public official can appear at that meeting to contest the decision and present the official's position. The public official can have an attorney present for that meeting, but that attorney is not entitled to act as counsel or advocate for the official, or to present evidence or examine or cross-examine witnesses before the Commission.

If the 3.16 Special Commission ultimately decides that the public official should be suspended from public office, the official can appeal the decision to the Supreme Court of Ohio within 30 days of the Commission's final determination.

Are the 3.16 Special Commission meetings open to the public?

No. R.C. 3.16(C)(2) specifically provides that "all meetings of the special commission shall be closed to the public."

Where can members of the public obtain records relating to a particular 3.16 Special Commission?

The records of the 3.16 Special Commission cannot be made available to the public for inspection or copying until the Commission issues its final determination. After that time, the records of the Commission are available pursuant to Ohio's Public Records Law.⁴

⁴ As the 3.16 Special Commission is established not by Supreme Court rule but by statute, the records of the Commission are governed not by Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio, but rather by R.C. 149.43.

How long does the 3.16 Special Commission process last?

From the time the prosecuting attorney asks the Chief Justice to form a 3.16 Special Commission to the time the Commission issues its final determination typically takes 30 – 60 days depending on the actions of the Commission and the public official, and as dictated by the specific timeline established under [R.C. 3.16](#) (see “Timeline” below).

When does a suspension from public office take effect?

If the public official agrees to an initial, provisional suspension from office pending the 3.16 Special Commission’s decision, the suspension is effective immediately upon the criminal case judge’s issuance of the judgment entry to that effect.

If the 3.16 Special Commission decides that the public official should be suspended from public office, the suspension is effective upon the Commission notifying the public official of the decision. On its final determination, the Commission’s final written report and holding have the same force and effect as a judgment of a court of record.⁵

What does it mean if the public official is suspended from office?

During any time that the public official is suspended from office under [R.C. 3.16](#), the public official retains the title of the office and the compensation. The public official cannot, however, exercise any of the rights, powers, or responsibilities of the office.⁶ Additionally, the public official may be replaced during his/her period of suspension.⁷

How long does a suspension last?

A provisional suspension that is agreed to by the public official in the beginning of the 3.16 Special Commission process lasts until the Commission makes its preliminary determination on the matter; a preliminary determination for suspension lasts until the final determination issues; and a final determination lasts until one of the following events occur:

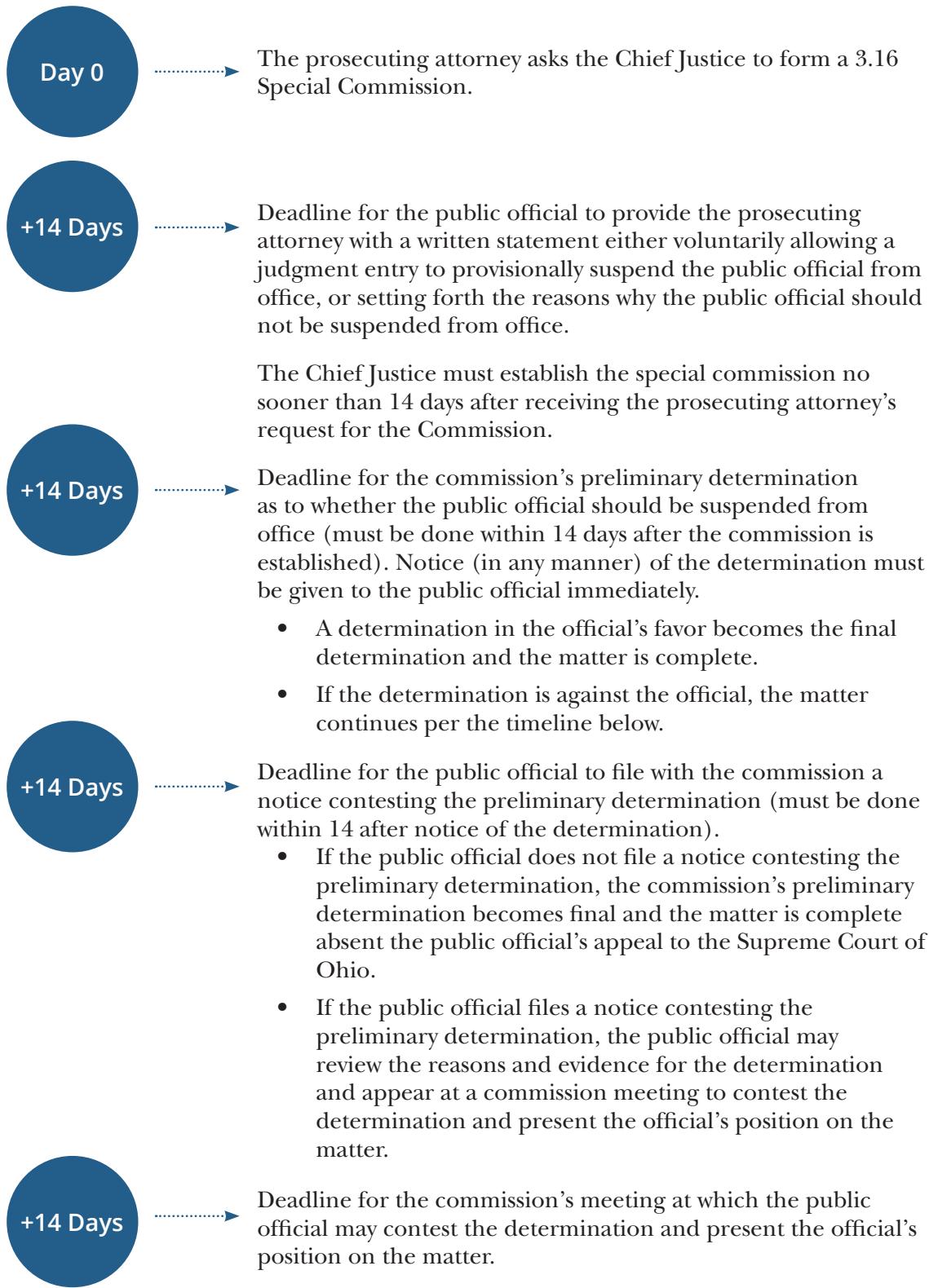
- The public official is reinstated to office by an appeal;
- All charges are disposed of by dismissal or by a finding or findings of not guilty;
- A successor is elected and qualified to serve the next succeeding term of the public official’s office.

⁵ It is important to note, however, that the 3.16 Special Commission is an administrative agency.

⁶ If the public official subsequently pleads guilty to or is found guilty of any felony with which the public official was charged, the public official is liable for any amount of compensation paid to the official during the suspension, with the liability relating back to the date of the original suspension under the Special Commission’s report and holding. The amount of that liability may be recovered by the political subdivision via a civil action.

⁷ See [R.C. 3.16\(E\)](#).

Timeline



At the conclusion of the meeting, the commission must make a final determination as to the question of suspension.

continued...

- X Upon the commission's determination being final, the commission must issue a written report that sets forth its findings and final determination. The report is effective immediately, and has the same force and effect as a court order.
- +30 Days Deadline for the suspended public official to file an appeal. The public official may include a written demand for the commission to file with the Supreme Court a certified transcript of the commission's proceedings.
- +30 Days Deadline for the commission to file the certified transcript with the Supreme Court (must be filed with the Court within 30 days after the public official files the written demand for the transcript to be filed).