

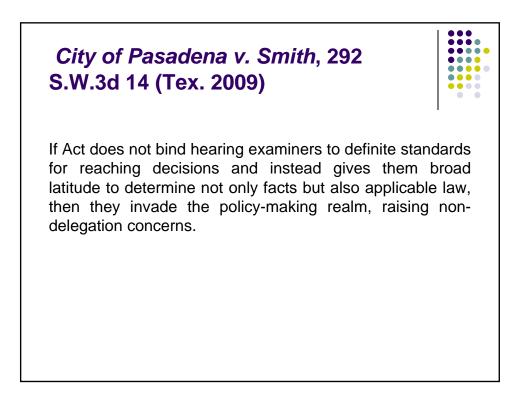
# *City of Pasadena v. Smith*, 292 S.W.3d 14 (Tex. 2009)

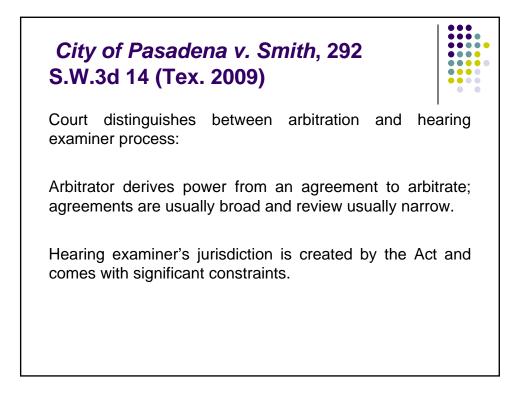


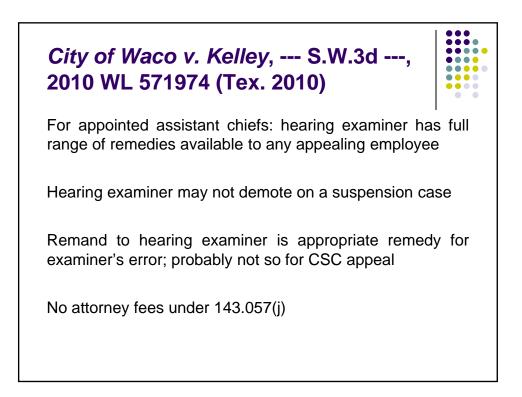
*Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W.2d 454 (Tex. 1997):

The Texas Legislature may delegate its powers to agencies established to carry out legislative purposes, as long as it establishes reasonable standards to guide the entity to which the powers are delegated.

Pasadena Court focused on whether hearing examiner's actions are subject to meaningful review by a branch of state government.



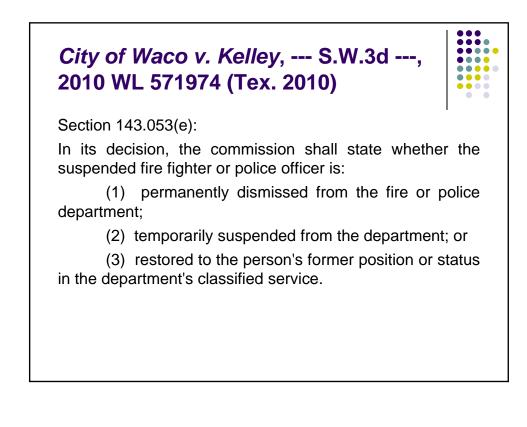




## *City of Waco v. Kelley*, --- S.W.3d ---, 2010 WL 571974 (Tex. 2010)

*City of Laredo v. Leal*, 161 S.W.3d 558 (Tex.App.-San Antonio 2004, pet. denied).

Section 143.053(f) of the Texas Local Government Code provides that, "[i]f the commission finds that the period of disciplinary suspension should be **reduced**, the commission may order a reduction in the period of suspension." So far as we have been able to determine, this authority is not limited by any statutory provision; and it has not been limited by any court decision.

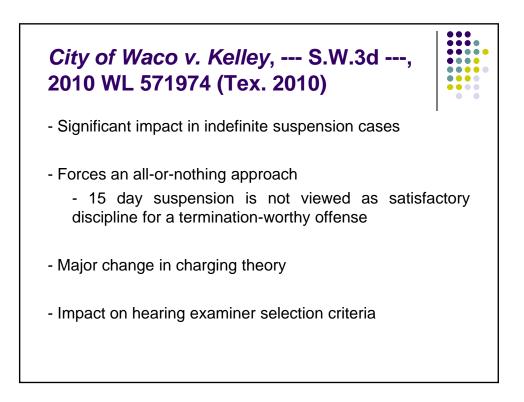


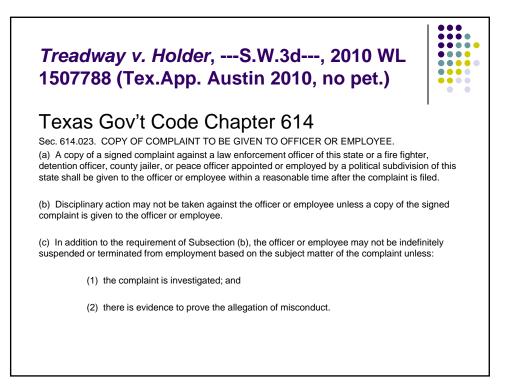


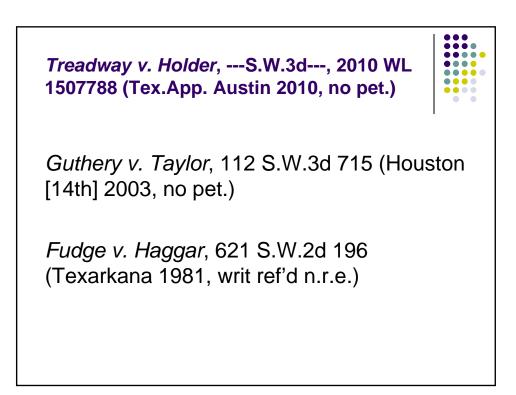
Supreme Court views the assignment of the number of days in the suspension period as not merely a **reduction** of a suspension but as an **imposition** of a suspension.

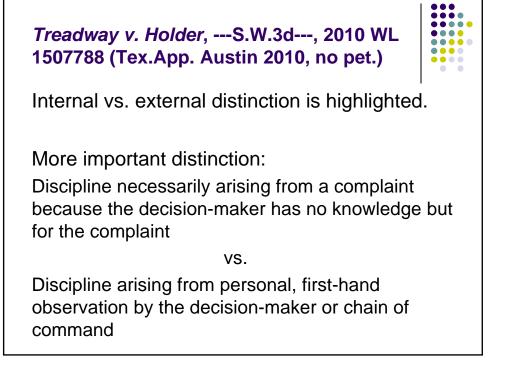
Court held that hearing examiner's and CSC's authority under 143.053(e)(2) must be construed in the context of the remainder of the disciplinary subchapter.

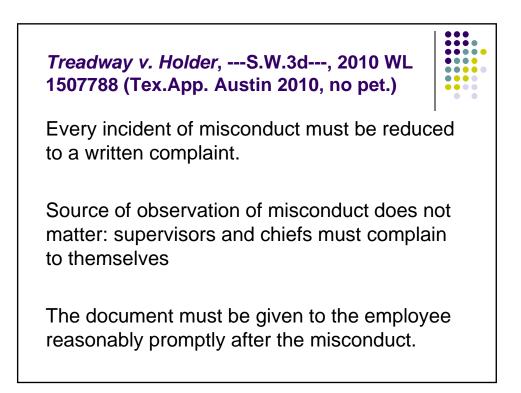
Court found no legislative intent to allow hearing examiner or CSC to **impose** a suspension longer than one that could be imposed unilaterally by the chief under 143.052(b).











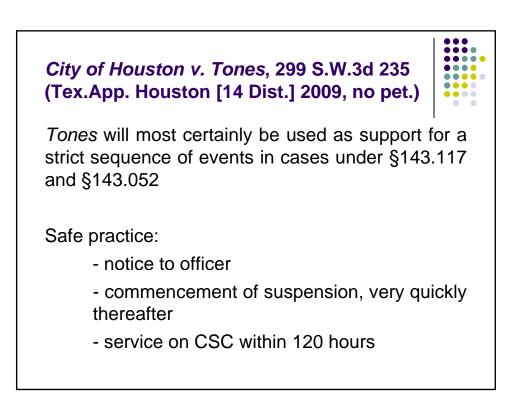
### *City of Houston v. Tones*, 299 S.W.3d 235 (Tex.App. Houston [14 Dist.] 2009, no pet.)

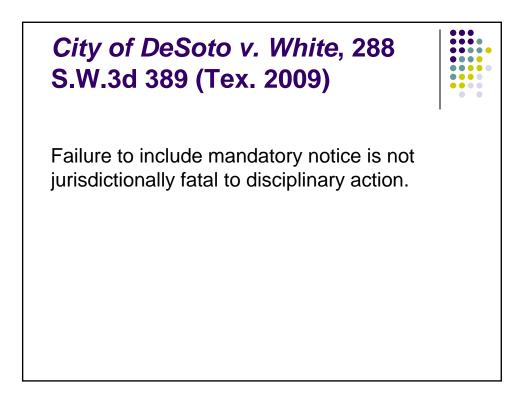
Sec. 143.052. DISCIPLINARY SUSPENSIONS.

(c) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the hour of suspension, file a written statement with the commission giving the reasons for the suspension. The department head shall immediately deliver a copy of the statement in person to the suspended fire fighter or police officer.

Sec. 143.117. DISCIPLINARY SUSPENSIONS.

(c) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the fire fighter or police officer is notified of the suspension, file a written statement of action with the commission.







Who bears the burden to invoke the tribunal's jurisdiction?

"...focus must always be on the officer's actions."

What does it mean if department fails to invoke jurisdiction?

# *City of DeSoto v. White*, 288 S.W.3d 389 (Tex. 2009)



Consider the result in *Tones*. Just because requirement is not jurisdictionally fatal doesn't mean that hearing examiner can't make it procedurally fatal. If hearing examiner does so, it is probably not an excess of his jurisdiction, and therefore lies beyond review.

Steubing v. City of Killeen, 298 S.W.3d 673 (Tex.App. - Austin 2009, pet. filed)

Another endorsement of remand to the hearing examiner as an appropriate remedy.

Court applied abuse-of-discretion standard to attorney fee question. But fees should no longer be allowed under *City of Waco v. Kelley*.

#### Steubing v. City of Killeen, 298 S.W.3d 673 (Tex.App. - Austin 2009, pet. filed)



Section 143.057(j):

A district court may hear an appeal of a hearing examiner's award only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by *fraud*, *collusion*, *or other unlawful means*.