

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

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2003 SEP 29 P 4:41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §§ 33-2-10 & 29A-3-3

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

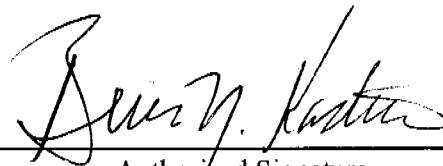
TITLE OF RULE BEING AMENDED: Rules of Practice and Procedure for Hearings Before
the West Virginia Insurance Commissioner

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS October 29, 2003


Authorized Signature

114CSR13
WEST VIRGINIA PROCEDURAL RULE
INSURANCE COMMISSIONER

SERIES 13
RULES OF PRACTICE AND PROCEDURE FOR
HEARINGS BEFORE THE WEST VIRGINIA
INSURANCE COMMISSIONER

Section

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- 113-12-3. Hearings.
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114CSR13
WEST VIRGINIA PROCEDURAL RULE
INSURANCE COMMISSIONER

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SERIES 13
RULES OF PRACTICE AND PROCEDURE FOR
HEARINGS BEFORE THE WEST VIRGINIA
INSURANCE COMMISSIONER

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-13-1. General.

1.1. Scope. -- The purpose of this rule is to set forth rules of practice and procedure to be followed in connection with administrative hearings conducted by the Insurance Commissioner, or his or her duly appointed representative, pursuant to authority granted the commissioner in W. Va. Code §33-2-13. These rules are intended to meet the requirements of W. Va. Code §29A-5-1 (State Administrative Procedures). These rules shall be applied in connection with any hearing conducted by the commissioner, or his or her representatives, to accomplish any purpose deemed necessary by the commissioner for the performance of his or her duties. This rule does not apply to hearings held under the "Insurance Tax Procedures Act," W. Va. Code §§33-43-1 et seq., or investigative hearings held under W. Va. Code §33-2-9, which are subject to the requirements in subsection 33-2-9(k).

1.2. Authority. -- W. Va. Code §§33-2-10 and 29A-3-3.

1.3. Filing Date. -- September 29, 2003.

1.4. Effective Date. -- October 29, 2003.

§114-13-2. Definitions.

As used in this regulation:

2.1. "Commissioner" means the Insurance Commissioner of West Virginia.

2.2. "Hearings Examiner" means the person conducting a hearing by the authority of the Insurance Commissioner.

2.3. "Hearing" means any proceeding held under authority granted the commissioner by law and conducted in accordance with the rules set forth in this regulation. A hearing may be designated by the commissioner as either a Category (A) or Category (B) proceeding.

2.4. "Category (A) Hearing" means a hearing the purpose of which is:

a. To determine whether the license of an individual insurance producer, insurance agency, excess line broker or solicitor is to be revoked, suspended, nonrenewed, or placed on probation and/or a penalty levied; or

b. To determine whether the license of an insurer is to be revoked, suspended or nonrenewed or a fine levied in lieu thereof. For the purpose of this regulation, "Insurer" shall be deemed to include any legal entity holding a license to make and issue contracts of insurance.

2.5. "Category (B) Hearing" means a hearing the purpose of which is to determine any other matter not the subject of a Category (A) Hearing.

2.6. "Individual" means any private or natural person as distinguished from a partnership, corporation, limited liability company or other legal entity.

2.7. "Insurance agency" means an individual, corporation, partnership, association, limited liability company, or other legal entity except for an employee of the individual, corporation, partnership, association, limited liability company, or other legal entity, and other than an insurer or an adjuster as defined by W. Va. Code §33-12B-1, which employs individuals licensed to engage in activity or whose members engage in any activity be performed only by a licensed individual insurance producer or solicitor. It shall not include sole proprietor or partnerships in which there is only one licensed insurance producer.

2.8. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

2.9. "Insurer" means every person engaged in the business of making contracts of insurance under W. Va. Code §33-1-2.

2.10. "W. Va. Code" mean the code of West Virginia, 1931 as amended.

§114-13-3. Hearings.

3.1. General. -- The commissioner may call and hold hearings for any purpose deemed necessary by him or her for the performance of his or her duties. The commissioner shall hold hearings when required by law or upon a written demand therefore by a person claiming to be aggrieved by any act or failure to act by the commissioner or by any rule or order of the commissioner.

3.2. Demand for hearing; form required. -- Any written demand filed pursuant to subsection 3.1 of this section by a person claiming to be aggrieved shall specify the grounds to be relied upon as basis for the relief to be requested at such hearing.

3.3. Hearing on written demand. -- When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

a. Would involve an exercise of authority in excess of that available to him or her

under law; or

b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W. Va. Code §33-2-14.

§114-13-4. Conferences; Informal Disposition of Cases.

4.1. Conferences. -- At any time prior to the hearing or thereafter, the commissioner or a person conducting the hearing by his or her authority, may hold conferences:

- a. To dispose of procedural requests or similar matters;
- b. To simplify or settle issues by consent of the parties; or
- c. To provide for the informal disposition of cases by stipulation, agreed settlement or consent order.

The commissioner may cause such conferences to be held on his or her motion or by request of a party.

4.2. The commissioner, upon agreement of the parties, may require mediation or other alternative dispute resolution technique to assist the parties in identifying, clarifying and resolving issues regarding a category (B) hearing. Mediation may be requested at any time prior to the hearing. All of the information that is provided by parties during mediation is and shall remain confidential. Mediators may not be called as witnesses to provide testimony in unresolved issues that proceed to a hearing, and any hearing examiner involved in a mediation process may not hear the case or be consulted regarding the merits of the case.

§114-13-5. Notice of Hearing and Complaints.

5.1. All Category (A) hearings conducted under these rules shall be initiated by the issuance of a formal written complaint containing a short and plain statement of the matters asserted. If the commissioner is unable to state the matters in detail at the time the complaint is served, the initial complaint may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The formal written complaint shall be given at least fifteen (15) days in advance of the date of the hearing.

5.2. Service of the complaint in connection with Category (A) hearings shall be given either by personal delivery thereof to the agency or person to be so notified, or by depositing the complaint in the United States Mail, postage prepaid, in an envelope addressed to the agency or person at the last known address of the agency or person or by any other manner permitted by law. With respect to complaints issued in connection with Category (A) Hearings, wherein the party respondent is a licensee of the commissioner, the complaint, if mailed, shall be addressed to the principal place of business or residence of the licensee as last of record in the

commissioner's office.

5.3. All Category (B) hearings conducted under these rules shall be initiated by the issuance of a formal written notice of hearing containing a short and plain statement of the matters asserted. If the commissioner is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

5.4. Notice of Category (A) and Category (B) hearings shall be given at least fifteen (15) days in advance of the hearing, by personal delivery thereof to the agency or person to be so notified, or by depositing the notice in the United States Mail, postage prepaid, in an envelope addressed to the agency or person at the last known address of the agency or person or by any other manner permitted by law. A notice of Category (A) or Category (B) hearing shall contain the date, time and place of the hearing. With respect to notices issued in connection with Category (A) Hearings, wherein the party respondent is a licensee of the Commissioner, the notice, if mailed, shall be addressed to the principal place of business or residence of such licensee as last of record in the Commissioner's office.

5.5. A complaint issued in connection with a Category (A) Hearing may be in the form of a notice to show cause stating that a proposed action may be taken unless the respondent shows cause, at a hearing to be held as specified in the notice, why the proposed action should not be taken. In addition to the requirements detailed in subsections 5.1 and 5.2 of this section, Category (A) Complaints shall include:

- a. A statement of the purpose of the hearing and, where possible, a statement of charges, including the individual facts or conduct alleged which warrants the actions;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular section of the statute or rule involved; and
- d. A statement that the party or parties respondent may file a written verified answer in person or through counsel within ten (10) days from the service of the complaint or notice.

5.6. Answers, where filed, may be filed by personal delivery to the commissioner or by certified mail, return receipt requested.

Answers shall contain a general or specific affirmation or denial of each charge, allegation or matter asserted in the complaint or notice; or a denial of any knowledge or information thereof sufficient to form a belief. An answer may also contain a statement of any matter believed to constitute a defense.

Any charge, allegation or matter asserted in the complaint or notice which is not denied or admitted in the answer, unless the respondent states in the answer that he is without

knowledge or information, shall be deemed admitted.

§114-13-6. Conduct of Hearings.

6.1. General. -- An opportunity shall be afforded all parties to present evidence and argument with respect to the matters and issues involved. All hearings shall be conducted in an impartial manner. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons directly affected by the hearing may appear in person or by counsel, may be present during the giving of all evidence, and shall have a reasonable opportunity to inspect all documentary evidence, to examine witnesses, to present relevant evidence, and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence.

6.2. Who shall conduct. -- Hearings shall be conducted by the commissioner or the person designated by him or her to be the Hearings Examiner. The person conducting the hearing shall have the power to:

- a. Administer oaths and affirmations;
- b. Rule upon offers of proof and receive relevant evidence;
- c. Regulate the course of the hearings;
- d. Hold conferences for the settlement or simplification of the issues by consent of the parties; and
- e. Dispose of procedural requests or similar matters.

6.3. Place of hearing. -- Hearings shall be held at such places as the commissioner may designate.

6.4. Evidence.

a. In contested cases irrelevant, immaterial or unduly repetitious evidence shall be excluded. Generally, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed: Provided, however, That whenever possible, formal rules of pleading or evidence need not be strictly observed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.

b. All evidence, including papers, records and documents in the possession of the commissioner, of which he or she desires to avail himself or herself, shall be offered and made a part of the record in the case and no other factual information or evidence shall be considered in

the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

6.5. Stipulations. -- Written stipulations may be introduced in evidence, if signed by the persons sought to be bound thereby or by their attorneys. Oral stipulation may be made on the record as permitted by the Hearings Examiner.

6.6. Motions and objections. -- Motions made during a hearing and objections with respect to the conduct of a hearing, including objections to the introduction of evidence, shall be preserved in the record.

6.7. Memorandums and briefs. -- The Hearings Examiner may permit parties to submit legal memorandums or briefs within such time as he shall deem appropriate.

6.8. Improper conduct. -- The Hearings Examiner may exclude from the place of hearing or from further participation in the hearing any person who engages in improper conduct.

6.9. Continuation and adjournment. -- The Hearings Examiner may continue a hearing from one day to another or adjourn it to a later date or to a different place by announcement thereof at the hearing or by appropriate notice to all parties.

6.10. Subpoenas. -- In accordance with the provisions of W. Va. Code §33-2-4, the commissioner, or any person conducting a hearing by his or her authority, shall have power to issue subpoenas and subpoenas duces tecum. Such process shall be issued in conformity with the provisions of W. Va. Code §§33-2-5, 6, 7 and 8 and 29A-5-1(b).

6.11. Failure to appear. -- Notwithstanding the failure of any party to appear at a hearing in accordance with notice provided, the commissioner may proceed to hold a hearing at the time and place specified in said notice and may make findings of fact and conclusions of law and enter an order upon the testimony and evidence taken at the hearing.

6.12. Rehearing. -- In the discretion of the commissioner, a rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty (30) days of the entry of an order.

6.13. Pro hac vice admission. - - Representation or appearance of parties in all formal proceedings pending before the commission shall be only by attorneys at law admitted to practice before the courts of this state, before the courts of last resort of other states, or before the Supreme Court of the United States; provided that attorneys appearing before the commission who are not licensed to practice in West Virginia shall have sought and obtained permission to practice before the commission in compliance with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia; provided, however, that an individual may appear for and represent himself or herself, or a partner may represent his or her partnership, upon permission granted in the discretion of the commission. Documentation of permission granted by the West Virginia State Bar shall be supplied to the commission before

such attorney files any pleading or makes any appearance before the commission.

§114-13-7. Record; Transcript; When Required.

7.1. Record; transcript; when required. -- All of the testimony and evidence taken at any hearing before the commissioner shall be reported by stenographic notes and characters or by mechanical means. The commissioner shall prepare an official record of each hearing, to include reported testimony, exhibits, notices of hearing, answers, stipulations, motions, orders and staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless:

- a. Requested in writing by a person directly affected by a hearing at the expense of such person;
- b. Required for purposes of rehearing; or
- c. Required for judicial review.

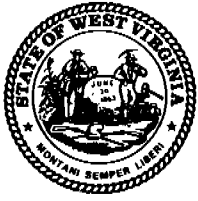
§114-13-8. Orders.

8.1. Content. -- Every final order entered by the commissioner, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of W. Va. Code §29A-5-3. Such orders shall be entered within forty-five (45) days following the completion of a hearing unless the time be extended by mutual consent. For the purposes of this section, a hearing shall be deemed completed at such time as the commissioner has concluded the taking of evidence and has received any briefs, memoranda, or motions, which may have been submitted by parties following the hearing.

8.2. Service. -- Copies of orders shall be delivered to all parties by certified mail, return receipt requested.

§114-13-9. Separability Severability.

9.1. Partial invalidity. -- If any provision of this regulation shall be held invalid, the remainder of the regulation shall not be affected thereby.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

September 29, 2003

JANE L. CLINE
Insurance Commissioner

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Judy:

Please find herewith one (1) copy each of the following for filing of our Series 13 procedural rule:

- 1) Notice of Agency Adoption (Form #5) and Consent of Cabinet Secretary of Tax and Revenue;
- 2) Agency adopted rule; and
- 3) Disk containing the agency adopted rule.

Please contact me if further information is required.

Sincerely,


Jane L. Cline
Insurance Commissioner

JLC/jz
Attachments