

WEST VIRGINIA ADMINISTRATIVE REGULATION  
INSURANCE COMMISSIONER

No. 13  
1975

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

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FILED IN THE OFFICE OF  
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Administrative Law Div

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~~WEST VIRGINIA ADMINISTRATIVE REGULATION~~  
INSURANCE COMMISSIONER

Serial No. 13  
~~1975~~

Rules of Practice and Procedure for Hearings  
Before the West Virginia Insurance Commissioner

Section 1. General

1:01 Identification of Rule - This regulation is a Procedural Rule, as defined by the provisions of Chapter 29A, Article 1, Section 2(g) of the Code of West Virginia of 1931, as amended.

1:02 Reference - This regulation relates to Chapter 33, Article 2, and Chapter 29A, Article 3 of the Code of West Virginia of 1931, as amended.

1:03 Authority - This regulation is promulgated under the authority vested in the Insurance Commissioner by Chapter 33, Article 2, Section 10 and Chapter 29A, Article 3, Section 3 of the Code of West Virginia of 1931, as amended.

1:04 <sup>Scope</sup> ~~Purpose~~ - The purpose of this regulation is to set forth rules of practice and procedure to be followed in connection with administrative hearings conducted by the Insurance Commissioner, or his duly appointed representative, pursuant to authority granted the Commissioner in Chapter 33, Article 2, Section 13 of the West Virginia Code (1931, as amended). These rules are intended to meet the requirements of Section 1(a), Article 3, and Section 1(a), Article 5 of Chapter 29A of the said West Virginia Code [State Administrative Procedures]

1:05 ~~Applicability and Scope~~ - These rules shall be applied in connection with any hearing conducted by the Commissioner, or his representatives, to accomplish any purpose deemed necessary by him for the performance of his duties.

1:06 Effective Date - This regulation shall be effective thirty (30) days following filing in the Office of the Secretary of State.  
JUNE 22, 1975

1:07 Filing Date - This regulation was filed in the Office of the Secretary of State on May 23, 1975.

1:08 Certification - This regulation is certified authentic by the Insurance Commissioner of West Virginia by Certificate Number 13.

Section 2. Definitions - As used in this regulation:

2:01 Commissioner - Shall mean the Insurance Commissioner of West Virginia.

2:02 Hearings Examiner - Shall mean the person conducting a hearing by the authority of the Insurance Commissioner.

2:03 Hearing - Shall mean 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 a Category (B) proceeding.

2:04 Category (A) Hearing - Shall mean a hearing the purpose of which is:

(A) To determine whether the license of an agent, broker, or solicitor is to be revoked, suspended or nonrenewed or a fine levied in lieu thereof; 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.

2:05 Category (B) Hearing - Shall mean a hearing the purpose of which is to determine any other matter not the subject of a Category (A) hearing.

Section 3. Hearings

3:01 General - The Commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties. He shall hold hearings when required by law or upon a written demand therefor by a person claiming to be aggrieved by any act or failure to act by the Commissioner or by any rule, regulation or order of the Commissioner.

3:02 Demand for Hearing; Form Required - Any written demand filed pursuant to Subsection 3:01 of this Section by a person claiming to be aggrieved shall specify the grounds to be relied upon as a basis for the relief to be requested at such hearing.

3:03 Hearing on Written Demand - When the Commissioner is presented with a demand for a hearing as described in Subsections 3:01 and 3:02 of this Section, he shall conduct a hearing within forty-five (45) days of receipt by him 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 under law; or

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

#### Section 4. Conferences; Informal Disposition of Cases

4:01 Conferences - At any time prior to the hearing or thereafter, the Commissioner, or a person conducting the hearing by his 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 own motion or by request of a party.

#### Section 5. Notice of Hearing

5:01 General - All hearings conducted under these rules shall be initiated by the issuance of a formal written notice of hearing containing the date, time, and place of the hearing and 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. Such formal written notice shall be given at least fifteen (15) days in advance of the date of the hearing.

5:02 Service of Notice - Notice shall be given either by personal delivery thereof to the agency or person to be so notified, or by depositing such Notice in the United States Mail, postage prepaid, in an envelope addressed to such agency or person at the last known address of such agency or person. With respect to Notices issued in connection with Category (A) hearings, wherein the party Respondent is a licensee of the Commissioner (specifically insurers, agents, brokers, and solicitors), 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.

5:03 Category (A) Hearings; Additional Provisions;  
Answers -

(A) A Notice 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 5:01 and 5:02 of this Section, Category (A) Notices shall include:

(1) 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 action;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular Section of the statute, rule or regulation involved; and

(4) 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 such Notice of Hearing.

(B) Answers may be filed by personal delivery to the Commissioner or by Certified Mail, Return Receipt Requested.

(C) Answers, where filed, shall contain a general or specific affirmation or denial of each and every charge, allegation or matter asserted in the 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.

(D) Any charge, allegation or matter asserted in the Notice which is not denied or admitted in the answer, unless the Respondent shall state in the answer that he is without knowledge or information, shall be deemed admitted.

Section 6. Conduct of Hearings

6:01 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.

6:02 Who Shall Conduct - Hearings shall be conducted by the Commissioner or the person designated by him 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 hearing;
- (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.

6:03 Place of Hearing - Hearings shall be held at such places as the Commissioner may designate.

6:04 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 desires to avail himself, 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.

6:05 Stipulations - Written stipulations may be introduced in evidence, if signed by the persons sought to be bound thereby, or by their attorneys. Oral stipulations may be made on the record as permitted by the Hearings Examiner.

6:06 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.

6:07 Memorandums and Briefs - The Hearings Examiner may permit parties to submit legal memorandums or briefs within such time as he shall deem appropriate.

6:08 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.

6:09 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 West Virginia Code §33-2-4, the Commissioner, or any person conducting a hearing by his authority, shall have power to issue subpoenas and subpoenas duces tecum. Such process shall be issued in conformity with the provisions of Sections 5, 6, 7, and 8 of Article 2, Chapter 33 of the West Virginia Code, and Section 1(b), Article 5, Chapter 29A of the said Code.

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.

## Section 7. Record; Transcript; When Required

7:01 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 any 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.

#### Section 8. Orders

8:01 Content - Every final order entered by the Commissioner, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of West Virginia 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.

8:02 Service - Copies of orders shall be delivered to all parties by Certified Mail, Return Receipt Requested.

#### Section 9. Separability

9:01 Partial Invalidity - If any provision of this regulation shall be held invalid, the remainder of the regulation shall not be affected thereby.