

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Procedural; CITE AUTHORITY §29C-7-101

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: Rules of Procedure for Contested Case
Hearings Dealing with Denials and Revocations of Notary
Public Commissions

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 17, 1989 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Bob Wilkinson

Secretary of State's Office

State Capitol

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Robert E. Wilkinson

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 153
PROCEDURAL RULES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 22
RULES OF PROCEDURE FOR CONTESTED CASE
HEARINGS DEALING WITH DENIALS AND
REVOCATIONS OF NOTARY PUBLIC COMMISSIONS

§153-22-1. General

1.1. Scope.-- These procedural rules establish the general procedures for conducting contested case hearings dealing with denials and revocations under the West Virginia Uniform Notary Act.

1.2. Authority.-- W. Va. Code §29C-7-101.

1.3. Filing Date.

1.4. Effective Date.

§153-22-2. Definitions.

2.1. All definitions within West Virginia Code chapter twenty-nine-c are incorporated by reference.

2.2. "Secretary" shall mean the West Virginia Secretary of State.

§153-22-3. Notice of hearing.

3.1. Notice of hearing in all cases shall be given at least ten (10) days prior to the date of the hearing; stating

(1) The time, day and location of the hearing;

(2) A short plain statement of the matter asserted;

(3) A statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 8 of these rules.

§153-22-4. How hearings are to be conducted.

4.1. Any party shall have the right to be represented by an attorney-at-law, duly qualified to practice in the State of West Virginia, or to represent himself.

4.2. The Secretary of State's staff may be represented by the office of the Attorney General and can serve as the complainant.

4.3. The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed as provided for in §29A-5-2 of the West Virginia Code of 1931.

4.4. When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall 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.

4.5. The Secretary shall be bound by the rules of privilege recognized by law.

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

4.7. Initially the complainant shall be given opportunity to present evidence, including testimony, papers, records, staff memoranda and documents in the possession of the Secretary in support of its position.

4.8. Every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the agency's presentation, shall have the right to submit rebuttal evidence.

4.9. The complainant shall have the right to cross-examine witnesses providing rebuttal testimony.

4.10. Following the presentation of all the evidence, every party, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the Secretary or the hearing examiner.

§153-22-5. Continuation and adjournment.

5.1. Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date that is the subject of the continuance motion.

5.2. Each party shall be permitted only one (1) motion for a continuance related to any particular hearing.

5.3. Any continuance shall not exceed fifteen (15) days from the last scheduled date of the hearing.

§153-22-6. Transcription of reported testimony and evidence.

6.1. What reported. -- All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

6.2. Request from any party. -- Upon the request to the Secretary from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

6.3. Transcription in the event a hearing examiner is

appointed. -- In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the Secretary. Any parties requesting a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at their expense.

6.4. Responsibility for transcript. -- The Secretary shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event transcription is required pursuant to this section it shall be accomplished with all dispatch.

6.5. Correction of error in transcript. -- Upon the motion of the Secretary or any party assigning error or omission in any part of any transcript, the Secretary or his duly appointed hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated, so as to make it conform to the whole truth.

§153-22-7. Submission of proposed findings of fact and conclusion of law, time for submission.

Any party may submit to the Secretary or duly appointed hearing examiner, proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available.

§153-22-8. Appointment of hearing examiner, function of hearing examiner.

The Secretary may in his discretion, appoint a hearing examiner who shall be empowered to administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings. The hearing examiner shall submit a recommended order along with the case record within thirty (30) days of the submission of all materials necessary to decide the case.

§153-22-9. Conferences; informal disposition of cases.

At any time prior to the hearing and thereafter, the Secretary or his duly appointed hearing examiner may hold conferences.

- (a) To dispose of procedural request 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 Secretary, or his duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

§153-22-10. Orders; content.

Every final order entered by the Secretary following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of section three, article five, chapter twenty-nine-a, of the West Virginia Code of 1931, as amended.

Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law.

§153-22-11. Appeal.

An appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of section four, article five, chapter twenty-nine-a, of the West Virginia Code of 1931, as amended.

§153-22-12. Severability.

If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.