



Rule for Procedure for Contested Case Hearings and Declaratory Rulings

Summary of Proposed Changes to Title 149, Series 1

The members of the Law Enforcement Professional Standards (LEPS) Subcommittee, a subcommittee of the Governor's Committee on Crime, Delinquency and Correction, in recognition of the need to make necessary changes to the current rule to allow for it to properly reflect the current practices concerning appeals and the hearing of such appeals concerning the Subcommittees, to include the LEPS Subcommittee, of the Governor's Committee on Crime Delinquency and Correction (GCCDC), met April 22-23, 2014 to address proposed changes to this rule. As a result of the discussion of the subcommittee members, a quorum being present and it being the unanimous decision of those present as to each proposed change, a series of changes were set forth to the current rule.

The changes proposed set forth address statutory authority, definition and procedural related changes concerning appeals, and hearings on such appeals, as to decisions of the Subcommittees to bring the rule current with accepted and standard practices. The changes also seek the removal of the section addressing declaratory rulings in that this process is no longer applicable concerning the decisions of the Subcommittees and the GCCDC.

Questions concerning the proposed changes should please be directed to Retired Captain Chuck Sadler, LET Coordinator, at (304) 558-8814, ext 53315, (304) 941-9644 (cell) or Charles.A.Sadler@wv.gov

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule for Procedure for Contested Case Hearings and Declaratory Rulings

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Governor's Committee on Crime, Delinquency and Correction

Address: c/o West Virginia Division of Justice and Community Services (DJCS)  
1204 Kanawha Boulevard East  
Charleston, WV 25401  
Questions may be directed to Retired Captain Chuck Sadler at

Phone Number: (304) 558-8814, ext 53315 Email: Charles.A.Sadler@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed changes to this existing rule will have no impact on the costs and revenues of state government. The changes are designed to keep the rule current with current practices and administrative hearing procedures relating to the appeal of decisions from the three Subcommittees of the Governor's Committee on Crime, Delinquency and Correction.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule for Procedure for Contested Case Hearings and Declaratory Rulings

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

- 3. Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

Not applicable, the rule will have not cause any change or have any impact on the costs and revenues of state government.

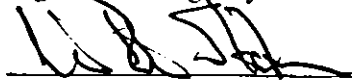
### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The proposed changes do not address areas relating to the cost of the operation of the program responsible for the oversight of the training and certification of law enforcement officers within the state.

Date: 4 Aug 14

Signature of Agency Head or Authorized Representative



W. Richard Staton, Executive Director



**TITLE 149  
LEGISLATIVE RULE  
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY  
AND CORRECTION**

**SERIES 1  
RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS  
AND DECLARATORY RULINGS**

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**STATEMENT OF FACTS AND CIRCUMSTANCES**

Questions should please be directed to:  
Retired Captain Chuck Sadler  
(304) 558-8814, ext 53315 (work)  
(304) 941-9644 (cell)  
[Charles.A.Sadler@wv.gov](mailto:Charles.A.Sadler@wv.gov)

The below amendments to 149CSR1 are being proposed. It is recognized that this is a procedural rule, but the rule is being filed for review as the changes recommended do related to the property rights of law enforcement officers in this state as to their ability to be certified or not and thereby to ability to work or not.

**Title**

Removing the words "And Declaratory Rulings" As reflected in the balance of this statement of facts and circumstances the full section addressing Declaratory Rulings, 149-1-12 is being recommended to be removed.

**§149-1-1. General**

- 1.2

Removing the code citation "29A-4-1 and" and markings after original W. Va. Code. The only section of State Code applicable to this section



### **§149-1-3. Definitions**

- **3.3.**  
Removed the word “Training” and added the words “Professional Standards” and “or LEPS Subcommittee” to refer to current name of the law Enforcement Professional Standards (LEPS) Subcommittee.

Added the word “-nine” to reflect the correct Code citation relating to the LEPS Subcommittee.

### **§149-1-4. Hearings.**

- **4.1.**

Removed the words “who demands” and “as required by law” and added the words “appealing a decision to the Agency or to the Director” and “The party seeking a hearing” to reflect the current process for submitting a request to appeal a decision.

- **4.4.(i).**

Added the word “and” for grammatical reasons/flow of this section of the rule.

### **§149-1-12.**

- **12 through 12.5**

Removed this entire section as the ability to have a declaratory ruling issued as previously set forth in this rule is not in line with the current practice and procedures concerning such requests and petitions. There is not a need to have a process establishing the ability for declaratory rulings to be issued concerning actions of the Governor’s Committee or its Subcommittees.

### **§149.1.12. Appeal**

With the removal of the Declaratory Ruling; Procedures section, the prior 149-1-12, 149-1-13 becomes 1491-12.

### **§149-1-13. Severability.**

With the removal of the Declaratory Ruling; Procedures section, the prior 149-1-12, 149-1-14 becomes 1491-13.

FILED

TITLE 149  
PROCEDURAL RULE  
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY  
AND CORRECTION

2014 AUG -4 P 1:12

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1  
RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS AND  
DECLARATORY RULINGS

**'149-1-1. General.**

1.1. Scope. -- These rules establish the general procedures for conducting contested case hearings and the issuance of declaratory rulings. The purpose of these rules is to facilitate the resolution of contested cases in a just, speedy and inexpensive manner and to provide for declaratory rulings in accordance with section one, article four, chapter twenty-nine a of the West Virginia Code of 1931, as amended.

1.2. Authority. -- ~~W.Va. Code 29A-4-1~~ and W.Va. Code 29A-5-1(a).

1.3. Filing Date. -- ~~December 21, 1982.~~

1.4. Effective Date. -- ~~January 21, 1983.~~

**'149-1-2. Application.**

These rules shall apply to every person, partnership, association, corporation or public corporation affected by any rules, regulations or statutes enforceable by the Governor's Committee on Crime, Delinquency and Correction.

**'149-1-3. Definitions.**

3.1. "Agency" means the Governor's Committee on Crime, Delinquency and Correction created by section one, article nine, chapter fifteen of the Code.

3.2. "Director" means the Executive Director of the Governor's Committee on Crime, Delinquency and Correction.

3.3. "Law Enforcement Training Professional Standards Subcommittee" or "LEPS Subcommittee" means the subcommittee of the Governor's Committee on Crime, Delinquency and Correction created by section two, article twenty-nine, chapter thirty of the Code.

3.4. "Hearing Examiner" means the person conducting a hearing by the authority of the executive Director of the Governor's Committee on Crime, Delinquency and Correction.

3.5. "Hearing" means any proceeding held under authority granted the Executive Director by law and conducted in accordance with the rules set forth in this regulation.

**'149-1-4. Hearings.**

4.1. Demand for hearing; form required. -- Any party appealing a decision to the Agency or to the Director who demands may demand a hearing to have determined any legal rights, duties, interests or privileges of specific parties as required by law. The party seeking a hearing shall specify in writing the grounds relied upon as a basis for the relief requested and must do so within fifteen (15) days from the date of action from which the party is appealing.

4.2. Hearing on written demand. -- When the Director is presented with a demand for a hearing as described in Subsection 4.1 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 Director 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 twenty (20) days of the receipt of such demand enter an order refusing to grant the hearing as requested, incorporating therein his reason for such refusal. Appeal may be taken from such order as provided in section four, article five, chapter twenty-nine-a of the West Virginia Code of 1931, as amended.

4.3. Notice of hearing. -- Upon the receipt of a demand for a hearing as described in Subsection 4.1 of this section, the Director shall, within twenty (20) days, provide the party making such demand with a notice of hearing providing the Director has not entered an order denying a hearing as provided in Subsection 4.2 of this section. Such notice shall contain:

(a) The date, time and place of the hearing;

(b) A short plain statement of the matters asserted; and

(c) A statement of intention to appoint a hearing examiner, if one is to be appointed, pursuant to Section 8 herein; such notice shall be given at least ten (10) days in advance of the date of the hearing.

4.4. How hearings conducted. -- Hearings shall be conducted as follows:

(a) Any party shall have the right to be represented by an attorney at law, duly qualified to practice in the State of West Virginia;

(b) The agency may be represented by the Office of the Attorney General;

(c) The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed;

(d) 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;

(e) The agency shall be bound by the rules of privilege recognized by law;

(f) Documentary evidence may be received in the form of copies or excerpts or by incorporation of reference;

(g) Initially the appellant shall be given the opportunity to present evidence including testimony,

papers, records and documents in support of his position;

(h) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence;

(i) The agency shall have the right to cross-examine witnesses providing rebuttal testimony; and

(j) Following the presentation of all the evidence, every party, including the agency, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the Director or the hearing examiner.

**' 149-1-5. Continuation and Adjournment.**

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.

**' 149-1-6. 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 agency 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 Director. 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 agency 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 agency or any party assigning error or omission in any part of any transcript, the agency, through the Director 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.

**' 149-1-7. Submission of Proposed Findings of Fact and Conclusions of Law; Time for Submission.**

Any party, including the agency, may submit to the Director or his 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.

**' 149-1-8. Appointment of Hearing Examiner; Function of Hearing Examiner.**

The Director may, in his discretion, appoint a hearing examiner who shall be empowered to request the

presence of witnesses and documents, 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 as provided in Section 4 herein.

**' 149-1-9. Conferences; Informal Disposition of Cases.**

At any time prior to the hearing or thereafter, the Director, or his duly appointed hearing examiner 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 Director, or his duly appointed hearing examiner, may cause such conferences to be held on his own motion or by the request of a party.

**' 149-1-10. Depositions Permitted.**

Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this State.

**' 149-1-11. Orders; Content.**

Every final order entered by the Director, 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 finding of fact and conclusions of law.

~~**' 149-1-12. Declaratory Ruling; Procedures.**~~

~~12.1. On petition of any interested person, the Director may issue a declaratory ruling with respect to the applicability to any person, property or state of facts or any rule, regulation or statute enforceable by the Governor's Committee on Crime, Delinquency and Correction.~~

~~12.2. Any interested person shall petition the Director in writing, succinctly stating the issues upon which the declaratory ruling is requested.~~

~~12.3. Upon receipt of such petition, the Director may cause a hearing to be held for the presentation of arguments and evidence within thirty (30) days of receipt of such petition. The Director shall notify the parties thereto and set a time, a place and a date for such hearing.~~

~~12.4. A declaratory ruling issued after argument and stated to be binding shall be binding between the Governor's Committee on Crime, Delinquency and Correction and the petitioner on the state of facts alleged unless altered or set aside by a court in accordance with section two, article four, chapter twenty-nine-a of the West Virginia Code of 1931, as amended. Furthermore, such declaratory ruling shall not be binding on any other person.~~

~~12.5. A declaratory ruling issued upon petition, proper notice and argument shall not preclude the petitioner from seeking a contested case hearing in accordance with the provisions of these rules of procedure for contested case hearings and declaratory rulings. Such declaratory ruling shall serve only to explain or to elucidate the applicability to any person, property or state of facts or any rule or statute enforceable by the Governor's Committee on Crime, Delinquency and Correction.~~

**'149-1-1312. Appeal.**

An appeal from any final order or ruling entered in accordance with these regulations shall be filed within sixty (60) days and in accordance with the provisions of section four, article five, chapter twenty-nine-a of the West Virginia Code of 1931, as amended.

**'149-1-1413. Severability.**

If any provision of these rules or the application thereof to any person or circumstances 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.