

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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2014 OCT 29 P 1:36

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: Governor's Committee on Crime, Delinquency and Correction (GCCDC) TITLE NUMBER: 149

CITE AUTHORITY: West Virginia State Code 29A-5-1(a)

RULE TYPE: PROCEDURAL XX INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES XX NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rule for Procedure for Contested Case Hearings

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 December
~~November 5, 2014~~



Authorized Signature

W Richard Staton, Executive Director

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

SERIES 1
RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS

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149-1-1. General.

1.1. Scope. -- These rules establish the general procedures for conducting contested case hearings to facilitate the resolution of contested cases in a just, speedy and inexpensive manner.

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

1.3. Filing Date. -- October 29, 2014.

1.4. Effective Date. -- ~~November~~ ^{December} 5, 2014.

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 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 may demand a hearing to have determined any legal rights, duties, interests or privileges of specific parties. 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. 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.

149-1-13. 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.