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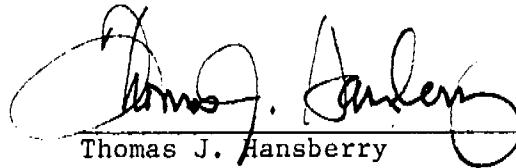
WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Commissioner of Banking

West Virginia Code §31A-8-1 and West Virginia Code §29A-5-1
Series X
(1983)

Subject: Procedural rules of the Commissioner of Banking.

STATEMENT OF EMERGENCY

Pursuant to West Virginia Code §29A-3-15(a), the Commissioner of Banking has determined that an emergency exists, as defined in West Virginia Code §29A-3-15(e), requiring the promulgation of this emergency procedural rule. An emergency exists in that a particular hearing cannot be conducted unless such procedural rule is effective. The promulgation of this procedural rule is necessary to prevent substantial harm to the public interest.



Thomas J. Hansberry
Acting Commissioner of Banking

October 3, 1983

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Oct. 3, 1983
Administrative Law Division

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Section 1. General

1.01. Scope - These regulations shall govern the procedure and practice before the Commissioner of Banking [or any hearing examiner appointed pursuant to West Virginia Code §31A-8-1] with regard to declaratory rulings and contested case hearings.

1.02. Authority - These rules are issued under authority of West Virginia Code §29A-5-1(a).

1.03. Filing Date - October 3, 1983

1.04. Effective Date - October 3, 1983

Section 2. Declaratory Rulings

2.01. The Permissive Parties - Pursuant to West Virginia Code §29A-4-1, any person with a bona fide interest in any state of facts or any rule or statute enforceable by the Commissioner of Banking may, by proper petition, request a declaratory ruling from the Commissioner of Banking upon such matter.

2.02. Form of Petition - The petition shall be typewritten, shall concisely state the matters upon which a declaratory ruling is sought, shall state why petitioner seeks such ruling, and shall be verified by

petitioner's, authorized agent or petitioner's attorney. Three (3) copies of such petition shall be filed with the Commissioner of Banking.

2.03. Briefs - Petitioner shall prepare a brief or memorandum of law and three (3) copies of such shall be filed with the Commissioner of Banking simultaneously with the filing of the petition.

2.04. Hearings - If petitioner seeks a hearing before the Commissioner of Banking, he shall so state in his petition, in which event the Commissioner of Banking shall hear petitioner at a time and place to be determined by the Commissioner of Banking within sixty (60) days from the date of request, giving petitioner at least ten (10) days written notice of the date, time and place of the hearing.

2.05. Decision - The Commissioner of Banking shall render a written ruling upon the matter requested by petitioner within thirty (30) days after a hearing, if such is held, or within sixty (60) days after the filing of a petition, if no hearing is requested.

2.06. Applicability of Decision - Any ruling by the Commissioner of Banking shall be binding upon the Commissioner of Banking and upon the party requesting the ruling upon the state of facts set forth in the petition, but shall not be binding upon any other person.

2.07. Appeal - A declaratory ruling of the Commissioner of Banking shall be subject to review as provided for in West Virginia Code §29A-4-2.

Section 3. Contested Case Hearings

3.01. Conduct of Hearing - Any contested case hearing before the Commissioner of Banking shall be conducted pursuant to West Virginia Code §29A-5-1 et seq. and West Virginia Code §31A-8-1.

3.02. Notice of Hearing - Notice of the time and place of any

hearing shall be given to all parties who may be interested in any hearing as provided for in West Virginia Code §31A-8-1, West Virginia Code §29A-5-1 and West Virginia Code §29A-7-2. All notices required by statute or these rules to be served on parties to a contested case hearing shall be sufficient if served upon that party or his attorney of record, in person or by registered or certified mail. Hearings may be continued by the Commissioner of Banking on his own motion or for good cause shown without further notice.

3.03. Place of Hearing - The Commissioner of Banking shall determine the site of any hearing.

3.04. Hearing Tribunal - Pursuant to West Virginia Code §31A-8-1, any matter requiring a hearing may be heard by the Commissioner of Banking or by a hearing examiner appointed by him.

3.05. Presentation of Evidence - Seven (7) days prior to the hearing date, each party to the hearing shall file with the Commissioner of Banking three (3) copies of the following items and shall simultaneously supply opposing parties with one (1) copy:

1. The basic petition document or answer to that petition and supporting exhibits which the party may wish to file in support or furtherance of that petition or answer to that petition.

2. A list of all witnesses proposed to be called with the identity of each witness and a concise summary statement of each witness' testimony.

At any hearing, all items previously filed as hereinabove required shall become a part of the record and shall not require further authentication, but may be traversed by an opposing party. No witness not previously listed shall be heard except for good cause shown. The provisions of West Virginia Code §29A-5-2 shall govern the presentation

of all evidence at a contested case hearing.

3.06. Stipulations - Seven (7) days prior to the hearing date, parties to the hearing shall file with the Commissioner of Banking three (3) copies of a signed joint stipulation setting forth the following:

1. Issues to be decided;
2. Statement of undisputed facts, including facts to which each witness will testify;
3. Statement of disputed facts, including facts to which each witness will testify; and
4. Exhibits to be introduced, with or without objection.

It shall be within the Commissioner of Banking's discretion to waive this signed joint stipulation requirement.

3.07. Record - A record shall be made of all reported testimony and evidence in a contested case hearing but need not be transcribed unless requested by a party, in which case the cost of the transcription shall be borne by such party.

3.08. Decision - The Commissioner of Banking shall render his decision within thirty (30) days after a contested case is heard or within thirty (30) days after proposed findings of fact and conclusions of law and exceptions to those proposed findings of fact and conclusions of law are filed. An order accompanied by findings of fact and conclusions of law (in conformity with that decision of the Commissioner of Banking) shall be entered in accordance with the provisions of West Virginia Code §29A-5-3.

3.09. Finality of Decision - After a final decision is rendered pursuant to 3.08 above, the Commissioner of Banking shall not grant a rehearing upon the same matter, but an aggrieved party shall have recourse to an appeal pursuant to West Virginia Code §29A-5-4.