

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box

**FILED**

JUN 22 8 59 AM '95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Board of Banking & Financial Institutions TITLE NUMBER: 107

RULE TYPE: Procedural; CITE AUTHORITY W. Va. Code 31A-3-2(a), 29A-3-1(7), and 29A-4-1

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Procedural Rules- West Virginia Board of Banking and Financial Institutions

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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 July 24 AT 5:00 pm

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Division of Banking

State Capitol Complex

Bldg. 3, Rm. 311

Charleston, WV 25305

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

*Sharon L. Bies*

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

5.40



## DIVISION OF BANKING

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • (304) 558-2294  
FAX: (304) 558-0442

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### PROCEDURAL RULES WEST VIRGINIA BOARD OF BANKING AND FINANCIAL INSTITUTIONS

#### RULES OF WEST VIRGINIA BOARD OF BANKING AND FINANCIAL INSTITUTIONS

107 CSR 1

#### Statement of Circumstances

The proposed amendments to this procedural rule are necessitated by their failure in current form to coincide with present expedited hearing procedures, and to adequately explain the process by which matters are brought to hearing before the Board for which the staff of the Division of Banking does not recommend approval.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Procedural Rules - WV Bd of Banking and Fin. Institutions

**Type of Rule:**      Legislative      Interpretive   x   Procedural

**Agency** WV Board of Banking and Financial Institutions

**Address** C/o WV Division of Banking

State Capitol Complex - Bldg. 3, Rm 311

Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	DECREASE	DECREASE	CURRENT	NEXT	THREE-YEAR
<b>ESTIMATED TOTAL COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>PERSONAL SERVICES</b>	-	-	-	-	-
<b>CURRENT EXPENSE</b>	-	-	-	-	-
<b>REPAIRS &amp; ALTERNATIONS</b>	-	-	-	-	-
<b>EQUIPMENT</b>	-	-	-	-	-
<b>OTHER</b>	-	-	-	-	-

**2. Explanation of above estimates:**

This rule merely amends the present procedural rules of the WV Board of Banking and does not directly result in any additional cost the the Board.

**3. Objectives of these rules:**

To clarify the procedures for conducting hearings before the WV board of Banking, especially expedited hearings and hearings in which the staff of the Div. of Banking wishes to oppose the transaction.

**Rule Title:** Procedural Rules - West Virginia Board of Banking and Financial Institutions

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

None

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

None

**C. Economic Impact on Citizens/Public at Large.**

None

**Date:**

June 19, 1995

**Signature of Agency Head or Authorized Representative**

Sharon S. Bed



**DIVISION OF BANKING**

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

**CONSENT TO FILE RULE**

June 19, 1995

TO WHOM IT MAY CONCERN:

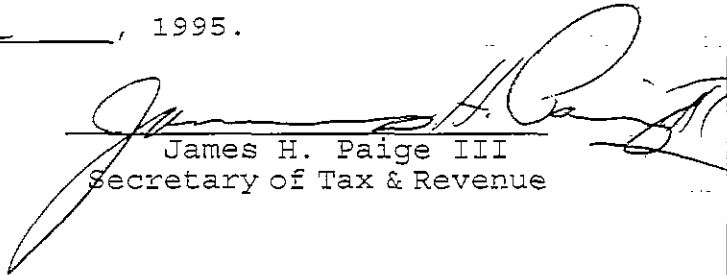
Title of Rule: Procedural Rules -- West Virginia Board of Banking  
and Financial Institutions

Title Number: 107

Series Number: 1

Pursuant to West Virginia Code §§ 5F-2-2(a) and 64-7-4(c), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 21<sup>st</sup> day of June, 1995.

  
James H. Paige III  
Secretary of Tax & Revenue



## DIVISION OF BANKING

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

### PROCEDURAL RULES WEST VIRGINIA BOARD OF BANKING AND FINANCIAL INSTITUTIONS

#### RULES OF WEST VIRGINIA BOARD OF BANKING AND FINANCIAL INSTITUTIONS

107 CSR 1

#### Summary of Proposed Procedural Rule Changes

These proposed amendments to this procedural rule are required to clarify the procedure for handling full and independent hearings before the Board and to set forth expedited hearing procedures for non-controversial application matters which better mirror present practice.

In particular, the present rule does not adequately provide for the situation where the Division of Banking opposes an application, or seeks enforcement action against a financial institution.

Among the matters clarified by the proposed amendments are: the applicant/petitioning party carries the burden of proof; the standard for determination of decisions is generally the preponderance of evidence; the inability of the Commissioner of Banking sitting as chairperson of the Board to vote in contested hearing matters before the Board; and the ability of the staff of the Board of Banking to maintain the confidentiality of certain bank examination report information.

FILED

TITLE 107  
PROCEDURAL RULES  
WEST VIRGINIA BOARD OF BANKING AND FINANCIAL INSTITUTIONS

JUN 22 8 59 AM '95  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1  
RULES OF WEST VIRGINIA BOARD OF BANKING  
AND FINANCIAL INSTITUTIONS

§107-1-1. General.

1.1. Scope. -- These rules shall regulate practice and procedure before this Board with regard to hearings and the discharge of general administrative duties.

1.2. Authority. -- W. Va. Code §31A-3-2(a), and §29A-3-1(7) and §29A-4-1.

1.3. Filing Date. -- ~~December 11, 1974~~

1.4. Effective Date. -- ~~January 10, 1975~~

1.5. Amendments. -- These rules may be amended by action of this Board in conformity with West Virginia Code, article three, chapter twenty-nine-a.

1.6. Applicability. -- These rules and any repeals or amendment thereof shall apply in the form obtaining at the time any matter subject hereto shall first be initiated.

1.7. Conflict. -- These rules shall be controlling in all matters before this Board except insofar as any rule may be in conflict with the provisions of the Constitution or any statute of the State of West Virginia, in which event such constitutional or statutory provisions shall take precedence over any rule.

§107-1-2. Declaratory rulings.

2.1. The permissive parties. -- Any person with a bona fide interest in any state of facts or any rule or statute enforceable by this Board may by proper petition request a declaratory ruling from this Board upon such matter.

2.2. 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 the petitioner, his/her authorized agent or attorney. Eight (8) copies of petition shall be filed with the Banking Commissioner.

2.3. Briefs. -- Petitioner for a declaratory ruling may file a brief and if such is done it may be printed or typewritten, and eight (8) copies shall be lodged with the Commissioner simultaneously with the filing of the petition.

2.4. Hearings on declaratory petitions. -- If petitioner for a declaratory ruling seeks a hearing before the Board, he shall so state in his petition, in which event the Board shall hear petitioner at a time and place to be determined by the Board within ninety (90) days from the date of request, giving petitioner ten (10) days notice of the hearing date and place. Unless specifically provided for under other sections of this rule, declaratory ruling hearings by the Board shall be governed exclusively by section two (2) of this rule and the subsections and subdivisions thereof.

2.5. Presentation of position. -- A petition for a declaratory ruling cannot present any facts in controversy for determination, but may present a set of facts presumed to be true for the purposes of rendering a declaratory ruling based on those presumed facts. Witnesses may therefore not be called at a declaratory ruling hearing. However, the petitioner or a representative of the petitioner has the right to appear and make a brief oral statement, answer any questions the Board may have, and offer additional material for the Board's consideration. Members of the public or other interested parties may also be recognized and provided the opportunity to make a brief oral statement and the opportunity to offer additional material for the Board's consideration. There is no right on the part of any petitioner to cross-examine persons appearing before the Board at a declaratory ruling hearing. The petitioner should, however, be afforded the opportunity to briefly speak in rebuttal to any opposing party or person in closing.

2.6. ~~2-5-~~ Declaratory ruling decisions Decision. -- The Board 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.

2.7. ~~2-6-~~ Applicability of decision. -- Any declaratory ruling by the Board that is stated to be binding, shall be binding upon the Board 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.

2.8. ~~2-7-~~ Appeal. -- A declaratory ruling of the Board shall be subject to review as provided by law.

### §107-1-3. Hearings.

3.1. Notice of hearing. -- Notice of time and place shall be given to all parties who may be interested in any hearing as provided by law, except for emergencies as provided by West Virginia Code, subsection (e), section three, article three, chapter thirty-one-a. ~~Hearings may be continued by the Board on its own motion or for good cause shown without further notice.~~

All notices required by statute or rule shall be sufficient if served as required by law upon a party or his attorney of record.

3.2. Place of hearing. -- The Board or its designee shall determine the site, location and time of any hearing. All hearings shall be open to the public.

3.3. Representation. -- A party may represent himself if a natural person, but if a corporation or association or other entity, must be represented by an attorney duly licensed to practice in the State of West Virginia.

3.4. Hearing tribunal; Duties and powers. -- Unless otherwise provided by this rule, any Any matter requiring a hearing may be heard by the Board, by a panel of the Board, or by a single Board member or hearing examiner designated by the Board to conduct such hearing. In the event a hearing is conducted by a Board member, a transcript of the evidence and all exhibits shall thereafter be made available to the Board members for their consideration in rendering a decision. The Board or its designee shall be empowered to:

a) schedule and provide notice of the hearing and any pre-hearing conferences pursuant to law;

b) grant specific extensions of time, including the continuance of hearings, on its own motion or upon motion by a party, or by stipulation of all parties, for good cause shown, within the timelines established by law;

c) subpoena witnesses and documents;

d) administer oaths and affirmations;

e) examine witnesses under oath;

f) rule on evidentiary questions;

g) maintain order in the hearing room, and may inter alia exclude any person engaging in improper or disruptive conduct;

h) conduct all proceedings in a fair and impartial manner, and ensure that all hearings are conducted and completed in a timely manner;

i) issue a written decision containing findings of fact and conclusions of law.

3.5. Conduct of hearings. -- All hearings other than hearings on declaratory rulings shall be conducted in accordance with statutory provisions set forth in West Virginia Code, article five, chapter twenty-nine-a, unless waived by the applicant(s), parties, and any intervenor(s) qualified under section three, article three, chapter thirty-one-a of the West Virginia Code.

3.5.1. Timely waiver. -- A request for a waiver from a full hearing is considered timely if made at least five days prior to the deadline for the Board giving notice of the hearing.

3.5.2. Presumption of waiver. -- If a transaction application pending before the Board is recommended for approval by the Division of Banking acting as staff for the Board and no qualified intervenor in opposition has appeared, a presumption of waiver by the applicant(s) and the Division of Banking from a full hearing will arise, and the hearing will be conducted under the expedited procedures set forth in this rule, unless there has previously been filed a full hearing request by a party to the proceeding.

3.5.3. Full Hearing Request. -- If a full hearing request or a request for further information pursuant to W. Va. Code § 31A-4-7 is filed by a party or Board member after notice of the hearing has already been given, the Board may treat that request as a motion of continuance to allow the scheduling of a full hearing.

3.5.4. Expedited hearing procedure.

(a) Under an expedited hearing procedure, staff of the Division of Banking will provide each member of the Board a summary of the transaction sought by the Applicant together with any recommendation at least five (5) days prior to the hearing.

(b) An expedited hearing shall be held before a quorum of the full Board.

(c) The person at the Division of Banking in charge of analyzing the application, or their designate will present to the Board at the expedited hearing the agency's summary of the relevant materials filed in connection with the application, as well as any proposed findings, recommendations and conclusions. Any member of the Board may also introduce into evidence any items or information in his or her possession and any papers, records, agency staff memoranda and documents in the possession of the agency. Counsel to the Board may act as the hearing examiner under these expedited procedures with the authority to draft the order for the Board's signature, which order reflects the decision and findings of the Board.

(d) The Applicant or a representative of the Applicant and any properly qualified party/intervenor who has waived their right to a full hearing, has the right to appear and make a brief oral statement, answer any questions the Board may have, and offer additional material for the Board's consideration. Members of the public or other interested parties may also be recognized and provided the opportunity to make a brief oral statement and the opportunity to offer additional material for the Board's consideration. There is no right on the part of any applicant or qualified party/intervenor to cross-examine persons appearing before the Board. The Applicant should, however, be afforded the

opportunity to briefly speak in rebuttal to any opposing party or person in closing.

(e) If an application has not been recommended for approval by agency staff at the time of the hearing, the applicant shall be afforded the right at the commencement of the hearing to request a continuance and obtain a full hearing under the procedures of W. Va. Code § 29A-5-1 et seq.

(f) If an application is denied under the expedited hearing procedure, the applicant shall be afforded the right to request and obtain a full de novo hearing under the procedures of W. Va. Code § 29A-5-1 et seq., upon motion for a rehearing made within ten days of entry of the Board's decision.

(g) For purposes of this rule a "transaction application" shall include any application requiring the Board's approval regarding a merger, acquisition, branch, financially related service, conversion, or charter by any bank, bank holding company, or financial institution.

3.6. Contested Hearings Hearings contested by intervenor. --  
When an intervenor in a full hearing has qualified as a party pursuant to the provisions of West Virginia Code, subsection (c), section three, article three, chapter thirty-one-a, he/she shall be given ample opportunity to be heard. However, since such hearings are administrative and not adversary in nature, all parties are requested to waive cross-examination of witnesses of other parties.

3.6.1. Within ten (10) days of receipt of an official notification from the Board of an application to create a new bank or branch, or merge institutions, a banking institution/intervenor must file a petition with the Board of its intent to intervene in order to claim the right to be a qualified party.

3.6.2. The petition to intervene, if filed in opposition to the application, must contain a brief written statement on the grounds for the petitioner's opposition and summarize the facts or rationale in support of its position. A copy of this petition must also be provided to the applicant at the time it is filed with the Board.

3.7. Presentation of evidence. -- The following procedures shall govern the presentation of evidence in full hearings conducted by or on behalf of the Board.

3.7.1. When a hearing becomes a controverted matter solely as a result of the opposition of a qualified intervenor and a full hearing is to be held as originally scheduled, any Any

applicant/petitioning party shall not later than ~~twenty (20)~~ seven (7) business days prior to the hearing date, and any intervenor shall, not less than ~~ten (10)~~ five (5) business days prior to any hearing date, file with the Commissioner eight (8) copies of the following items and shall simultaneously supply opposing parties with one (1) copy:

(a) The basic petition document and supporting exhibits required by law or by these rules which the party may wish to file in support or furtherance of his petition.

(b) A list of all witnesses proposed to be called with identity of each witness and a concise summary statement of his testimony.

(c) A written statement or brief stating the position of the party and supporting arguments therefor.

If prior to the submission of the above items, the hearing has been continued or rescheduled to a date more than fourteen (14) days from its original hearing date, then these items shall be filed by the applicant/petitioning party not later than ten (10) business days prior to the rescheduled hearing date, and any intervenor shall so file not later than five (5) days prior to that rescheduled date. In any such controverted hearing the Division of Banking shall have the right to intervene to present its views in the matter.

3.7.2. When a hearing becomes a controverted matter as a result of the agency staff's declining to recommend a transaction application and a full hearing is to be held; or when a full hearing is requested by the transaction applicant despite no opposing party:

(a) The agency staff shall not later than seven (7) business days prior to any hearing date submit its summary analysis of the proposed application, together with a list of its witnesses to the Board and counsel for the Applicant and/or any other party to the proceeding, which witness list shall provide a concise summary statement of each such witness' expected testimony. The submission of these documents must be made at least ten (10) business days prior to any hearing which has been continued or rescheduled to a date more than fourteen (14) days from its original hearing date. Any other documents which the agency staff seeks to introduce at the hearing must be provided to the Applicant's and intervenor's counsel at least five (5) business days prior to the scheduled hearing.

(b) The Applicant will submit to the Board and counsel for the agency, as well as counsel for any intervening party to the proceeding, any written statement it may wish to present at the hearing which states in summary fashion the Applicant's position

and the supporting arguments therefor together with a list of its witnesses, if any, at least five (5) business days prior to the date of the scheduled hearing. The witness list shall provide a concise summary statement of each such witness' expected testimony. If any party has qualified as an intervenor in the matter, these materials shall also be provided to their counsel at that same time. Any other documents which the Applicant seeks to introduce at the hearing must also be provided to the agency's and intervenor's counsel at least five (5) business days prior to the scheduled hearing.

(c) Any person who becomes an intervening party to the proceeding shall submit their written statement of the case and witness list with expected testimony, and exchange documents they wish to introduce on the same basis as provided in subdivision (a) of this subsection if they seek to oppose the application; and on the same basis as provided in subdivision (b) of this subsection if they seek to support the application.

3.7.3. When a hearing involves a disciplinary or enforcement proceeding against a person or financial institution, the agency shall be viewed as the petitioning party and the respondent shall follow the same procedure as set forth for an intervenor under subsection 3.7.1 of this rule, while the agency shall follow said provisions as the petitioner. Provided, however, where a party is seeking to modify, end, or reverse any previous lawful order of the Board or Commissioner, then the position of that party shall be the petitioner under subsection 3.7.1 of this rule and the person or agency in opposition shall follow the same procedure as set forth therein for the intervenor.

3.8. Miscellaneous procedures. -- At any hearing all items previously filed as part of the final application or as herein required shall become a part of the record and shall not require further authentication but may be traversed by an opposing party. Documents filed as part of an application or created by another party to that hearing, may be listed by reference rather than copied and produced to that other party when exchanging documents for introduction pursuant to subsections 3.7.1 or 3.7.2 of this rule. No witness not previously listed shall be heard except for good cause shown. Any member of the Board may introduce into evidence any items or information in his possession and any papers, records, agency staff memoranda and documents in the possession of the agency.

3.9. 3-8. Stipulations and depositions. -- By agreement of all parties, any matter pertinent to the issues may be stipulated on the record. Evidence of witnesses may be received by deposition in the same manner as in a court of record.

3.10. 3-9. Time allotted for presentation. -- Parties in a full hearing shall be allotted ~~one (1) hour~~ three (3) hours for presentation of evidence [exclusive of time for sufficient and necessary cross-examination] and ~~fifteen (15)~~ thirty (30) minutes for argument both subject to enlargement for either good cause shown upon request preferably made prior to the start of the hearing, or by agreement of the parties. Parties in a declaratory ruling hearing shall be allotted one hour and fifteen minutes (1 hr. 15 mins.) to present their case, subject to enlargement for good cause shown upon request prior to the start of the hearing.

3.11. Burden of proof. -- The Applicant seeking approval of a transaction shall carry the burden of proof at hearings before the Board. In a disciplinary or enforcement proceeding, the person petitioning for Board action shall carry the burden of proof. Unless otherwise required by law, the standard for determination shall be the preponderance of evidence.

3.12. Confidential materials. -- The Board or hearing examiner may issue appropriate protective orders to prevent disclosure of confidential material. Examination report material may be provided by the agency staff to the Board or hearing examiner without disclosure to any other party not privy to that information under law.

3.13. 3-10 Record. -- A record shall be made of all testimony in a contested case but need not be transcribed unless requested by a party, in which event the cost of the transcription shall be borne by such party. If the hearing is conducted by a Board member, panel, or hearing examiner without the Board present, then the record shall be transcribed at Board expense for use by the Board in making its decision and a copy thereof furnished to any requesting party at that party's expense.

3.14. 3-11. Decision. -- The Board shall render its decision within thirty (30) days after ~~either-- the~~ a case is heard; or after submission of all documents and materials necessary for proper adjudication of the matter, including transcripts-- whichever is later, and an order reciting findings of fact and conclusions of law in conformity with the decision of the Board shall be entered by the Commissioner within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) after the decision of the Board is made. All decisions of the Board shall be by majority of the Board members participating in any hearing in person. Decisions made upon a transcript of a hearing conducted by a Board member, panel, or hearing examiner without the Board present, shall be by a majority of Board members receiving and reviewing such transcript. The Commissioner of Banking may not vote on hearing matters before the Board, but

shall be counted in constituting a quorum of the Board for any meeting or hearing.

~~3.15. 3-12-~~ Finality of decision. -- After a final decision upon any matter following a full hearing, the Board shall not grant a rehearing upon the same matter but an aggrieved party may have recourse to an appeal as provided by law.

~~3.16. 3-13-~~ Reapplication. -- Any party seeking privileges, rights or authority to act from the Board through a transaction application who has been refused by final order of the Board may reapply de novo to the Board after the expiration of six (6) months from the date of the refusal order. The Commissioner has the authority on behalf of the Board to reject, without comment or hearing, any reapplication under this section filed within two years of the Board's prior order on the matter. To the extent that no consideration of the new application is provided by the Board due to such a rejection, the Commissioner shall return any monies submitted in connection with the application and notify the Applicant of the summary rejection.

~~3.14. Notices.~~ All notices required by statute or rule shall be sufficient if served as required by law upon a party or his attorney of record.

~~3.15. Orderly hearings.~~ In all hearings set before the Board or a Board member, the presiding officer shall maintain order in the hearing room and shall have the authority to exclude or eject from the hearing room any person who engages in improper or disruptive conduct.

~~3.17. 3-16-~~ Other interested persons. -- In a declaratory or expedited hearing any Any person not a party who may have an interest in any such matter en hearing before the Board, may upon request to the Commissioner prior to the start of the hearing be accorded an opportunity to be heard within the discretion of the Board and upon such terms and conditions as may be determined by the Board.

~~3.18. 3-17-~~ Recusal Disqualification. -- Any Board member may disqualify recuse himself or herself from participating in any hearing or decision and such disqualification recusal and nonparticipation shall be noted on the record.

~~3.19.~~ Appeal Rights. -- An appeal from any final order or ruling entered in accordance with these rules shall be governed by the provisions of W. Va. Code §29A-5-4.

§107-1-4. 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 the rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared severable.