

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

Form #5

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

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

CITE AUTHORITY: WV Code 31A-3-2(a), 29A-3-3, and 29A-4-1

RULE TYPE: PROCEDURAL  INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE \_\_\_\_\_  
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW \_\_\_\_\_

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 ADOPTED: \_\_\_\_\_

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS Aug. 31, 1995

Shawn L. Bin

6-20



## DIVISION OF BANKING

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

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(304) 558-2294

### 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		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	-	-	-	-	-
CURRENT EXPENSE	-	-	-	-	-
REPAIRS & ALTERNATIONS	-	-	-	-	-
EQUIPMENT	-	-	-	-	-
OTHER	-	-	-	-	-

**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. Bledsoe

DATE: July 28, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Timothy Winslow  
General Counsel  
WV Division of Banking

LEGISLATIVE RULE TITLE: Procedural Rules - WV Board of Banking and Financial Institutions

1. Authorizing statute(s) citation \_\_\_\_\_  
WV Code 31A-3-2(a), 29A-3-3, and 29A-4-1

2. a. Date filed in State Register with Notice of ~~Hearing~~ Comment Period  
June 22, 1995

b. What other notice, including advertising, did you give of the hearing?  
Sent to each person/business on the WV Division of Banking's "Official Notification" list.

c. Date of ~~Hearing~~ Comment Period \_\_\_\_\_  
June 22, 1995 to July 24, 1995

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached X No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)  
July 28, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:  
Timothy Winslow 558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



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CONSENT TO FILE RULE

July 25, 1995

TO WHOM IT MAY CONCERN:

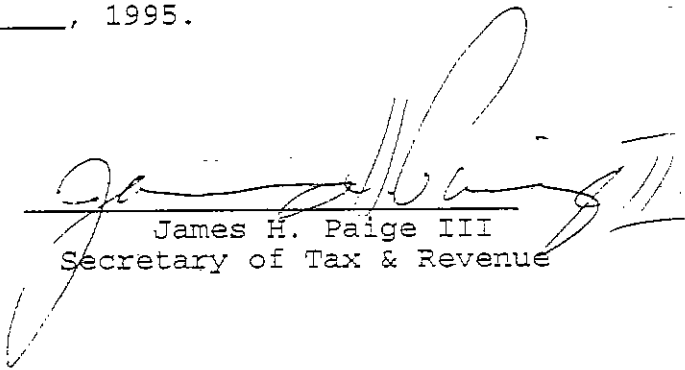
Title of Rule: Procedural Rules -- West Virginia Board of Banking  
and Financial Institutions

Title Number: 107

Series Number:  
\_\_\_\_\_

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 24<sup>th</sup> day of July, 1995.

  
\_\_\_\_\_  
James H. Paige III  
Secretary of Tax & Revenue



## DIVISION OF BANKING

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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

#### 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.

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

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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) 3 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 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. In either event, at least three voting Board members must participate in the decision in order for it to be valid. 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 ~~on 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.



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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

##### Comments Received

Only one written comment was received regarding the above cited proposed amended procedural rule. This comment which had to do with assuring that Board decisions had to be made by at least three Board members is attached.

An oral comment was also received from Deborah Sink, Esq. counsel for the WV Bankers Association, noting that the previous statutory cite of authority for the rule had changed, and the amended rule should be updated to refer to the correct cite.

##### Response to Comments

The proposed rule was amended to address these two comments.



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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

##### Amendments Made in Response to Comments

In response to the above referenced comments the rule was amended at 107 CSR § 1-1.2 so as to delete the cite to section 1, subsection 7 of article 3 of chapter 29A, and to replace it with a cite to section 3, article 3 of chapter 29A.

Further, language was added to 107 CSR § 1-3.14 stating that: "In either event, at least three voting Board members must participate in the decision in order for it to be valid."

##### Reasons for the Amendments

The amendment to 107 CSR § 1-1.2 was made to reflect the correct current statutory cite for the Board's authority to promulgate the rule.

The amendment to 107 CSR § 1-3.14 was made to clarify that decisions of the Board had to be made by at least three voting members, i.e., a majority of a quorum of the Board. The added language is to prevent any misreading of the rule which suggested that a single Board member could make a decision without the participation of at least two other voting members.

LAW OFFICES  
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DAVID K. HIGGINS  
DIRECT DIAL NO. (304) 347-8312

June 27, 1995



Tim Winslow, Esquire  
Division of Banking  
Building No. 3, Room 311  
State Capitol Complex  
1900 Kanawha Boulevard, E.  
Charleston, West Virginia 25305-0240

Re: Procedural Rules Amendments Dated June 22, 1995

Dear Tim:

Confirming our telephone conversation I would suggest that paragraph 3.14 of the proposed rules be clarified to provide that any decision by the Board must be by at least three members such being a majority of the quorum required by W. Va. Code, §31A-3-1(c). Even though such a requirement has always been the understanding of the Division, paragraph 3.14 seems to "leave the door open" for the possibility that less than three members of the board could make a decision.

Otherwise, and in general, I find the rules to be a significant improvement.

Best regards,

A handwritten signature in cursive script that reads "Dave".

David K. Higgins

DKH/ddd

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State



WILLIAM H. HARRINGTON  
Chief of Staff

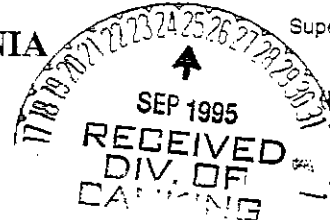
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Director, Administrative Law

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Plus all the volunteer help we can get)

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TO: Comm. Sharon G. Bias

AGENCY: Banking

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 21, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 107 Banking

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Judith C. Winkler

TITLE OF PERSON SIGNING: General Counsel

DATE: 9/26/95

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.