

TITLE 107
PROCEDURAL RULE
WEST VIRGINIA BOARD OF BANKING AND FINANCIAL INSTITUTIONS
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)

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

2.3. Briefs. -- Petitioner 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. -- If petitioner 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.

2.5. 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.

2.6. Applicability of decision. -- Any ruling by the Board 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.

2.7. 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.

3.2. Place of hearing. -- The Board shall determine the site 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 Vir-

ginia.

3.4. Hearing tribunal. -- Any matter requiring a hearing may be heard by the Board or by a Board member 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.

3.5. Conduct of hearings. -- All hearings shall be conducted in accordance with statutory provisions set forth in West Virginia Code, article five, chapter twenty-nine-a.

3.6. Contested hearings. -- When an intervenor has qualified as a party pursuant to the provisions of West Virginia Code, subsection (c), section three, article three, chapter thirty-one-a, he 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.

3.7. Presentation of evidence. -- Any petitioning party shall, not later than twenty (20) days prior to the hearing date, and any intervenor shall, not less than ten (10) 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.

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. 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.

3.8. 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.

3.9. Time allotted for presentation. -- Parties shall be allotted one (1) hour for presentation of evidence and fifteen (15) minutes for argument subject to enlargement for good cause shown upon request prior to the start of the hearing.

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, then the record shall be transcribed at Board expense for use by the Board in making its decision.

3.11. Decision. -- The Board shall render its decision within thirty (30) days after a case is heard 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 shall be by a majority of Board members receiving and reviewing such transcript.

3.12. Finality of decision. -- After a final decision upon any matter, 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.

3.13. Reapplication. -- Any party seeking privileges, rights or authority to act from the Board 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.

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.

3.16. Other interested persons. -- Any person not a party who may have an interest in any matter on hearing before the Board, may upon request to the Commissioner prior to the start of the hearing be ac-

corded an opportunity to be heard within the discretion of the Board and upon such terms and conditions as may be determined by the Board.

3.17. Disqualification. -- Any Board member may disqualify himself from participating in any hearing or decision and such disqualification and nonparticipation shall be noted on the record.