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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

NOTICE OF AGENCY ADOPTION

RULE TITLE: COMMISSION ON CHARITABLE ORGANIZATIONS
RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS
RULE TYPE: PROCEDURAL
THE ATTACHED RULE CONSTITUTES THE OFFICIAL RULE ADOPTED BY THE COMMISSION ON CHARITABLE ORGANIZATIONS
ON OCTOBER 20, 1986 AND FILED WITH THE
SECRETARY OF STATE.

FILED

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SECRETARY OF STATE

KEN HECHLER, CHAIRMAN
COMM. ON CHARITABLE ORGANIZATION

FILED

~~PROPOSED~~

Title 172

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WEST VIRGINIA PROCEDURAL RULES
Commission on Charitable Organization
Series 1

OFFICE OF THE SECRETARY OF STATE

Title: Rules of Procedure for Contested Case Hearings Dealing
With Suspensions, Denials, Revocation of Authority to
Solicit for Charitable Contributions

Section 1. General

1.1 Scope -- These procedural rules establish the general procedures for conducting contested case hearings dealing with denials, suspensions, or revocations of authority to solicit for charitable contributions under the WV Solicitation of Charitable Funds Act.

1.2 Authority and Related Code Citations -- WV Code §29-19 et seq.; § 29A-5 et seq.

1.3 Filing Date *October 20, 1986*

1.4 Effective Date *November 19, 1986*

Section 2. Definitions

2.1 All definitions within WV Code §29-19-2 are incorporated by reference.

2.2 Secretary -- shall mean the West Virginia Secretary of State.

Section 3. Hearings; Requests; Denial of Hearing

3.1 Any party who requests a hearing under §29-19-9(d) shall specify in writing the grounds for the request and the relief sought.

3.2 Requests received by the Secretary after the expiration of fifteen (15) days pursuant to §29-19-9(d) may be rejected by the Secretary for untimely filing.

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3.3 Any party who requests a hearing under §29-19-7(c) shall specify in writing the grounds for the request and the relief sought.

3.4 Requests received by the Secretary after the expiration of thirty (30) days pursuant to §29-19-7(c) may be rejected by the Secretary for untimely filing.

3.5 The Secretary may deny a request for a hearing if he determines that the hearing demanded would involve an exercise of authority in excess of that available to him under the law.

3.6 In all cases when a hearing is denied, the Secretary shall within five (5) days of receipt of the request for hearing enter an Order stating the denial and the reason for such denial. Appeal may be taken from such Order as provided in Chapter 29A, Article 5, Section 4 of the WV Code of 1931, as amended.

Section 4. Notice of Hearing

4.1 Upon the receipt of a timely and appropriate request for a hearing under WV Code §29-19-7, a hearing shall be held within thirty (30) days of receipt of the hearing request.

4.2 Upon the receipt of a timely and appropriate request for a hearing under WV Code §29-19-9, a hearing shall be held within fifteen (15) days of receipt of the hearing request.

4.3 Notice of hearing in all cases shall be given at least ten (10) days prior to the date of the hearing; stating

- (1) the time, day, and location of the hearing
- (2) a short plain statement of the matter asserted
- (3) a statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 9.

Section 5 How Hearings Are to be Conducted

5.1 Any party shall have the right to be represented by an attorney at law, duly qualified to practice in the state of West Virginia.

5.2 The commission and the Secretary may be represented by the office of the attorney general.

5.3 The rules of evidence as applied in civil cases in the circuit courts of this state shall be followed.

5.4 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.

5.5 The commission shall be bound by the rules of privilege recognized by law.

5.6 Documentary evidence may be received in the form of copies of excerpts or by incorporation of reference.

5.7 Initially the Secretary shall be given opportunity to present evidence, including testimony, papers, records, Secretary staff memoranda and documents in the possession of the Secretary in support of his position.

5.8 Every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the agency's presentation, shall have the right to submit rebuttal evidence.

5.9 The Secretary shall have the right to cross-examine witnesses providing rebuttal testimony.

5.10 Following the presentation of all the evidence, every party, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the commission or the hearing examiner.

Section 6. Continuation and Adjournment

6.1 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 that is the subject of the continuance motion.

6.2 Each party shall be permitted only one motion for a continuance related to any particular hearing.

6.3 Any continuance shall not exceed fifteen (15) days from the last scheduled date of the hearing.

Section 7. Transcription of Reported Testimony and Evidence

7.1 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.

7.2 Request from any Party -- Upon the request to the Commission from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

7.3 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 commission. Any parties requesting a copy of a transcript prepared pursuant to this Subsection shall be furnished a copy at their expense.

7.4 Responsibility for Transcript -- The Secretary 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.

7.5 Correction of Error in Transcript -- Upon the motion of the Commission or any party assigning error or omission in any part of any transcript, the commission through the Secretary or its 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.

Section 8. Submission of Proposed Findings of Fact and Conclusion of Law; Time for Submission -- Any party, including the Secretary may submit to the Commission proposed findings of fact and conclusion 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.

Section 9. Appointment of Hearing Examiner; Function of Hearing Examiner -- The commission may, in its discretion, appoint a hearing examiner who shall be empowered to 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.

Section 10. Commission Serving as Hearing Officers

10.1 The commission may, in its discretion serve as hearing officers as a body.

10.2 In such cases the number of commissioners to comprise a lawful hearing shall be that number required to constitute a quorum.

10.3 One of the members present shall serve as spokesman and generally be empowered to carry out the duties of hearing examiner and generally conduct the hearing.

Section 11. Conferences; Informal Disposition of Cases -- At any time prior to the hearing and thereafter, the Commission, or its duly appointed hearing examiner may hold conferences:

- (A) to dispose of procedural request 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 Commission, or its duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

Section 12. Orders; Content -- Every final order entered by the Secretary following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of Chapter 29A, Article 5, Section 3 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 findings of fact and conclusions of law.

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Section 13. Appeal -- an appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of Chapter 29A, Article 5, Section 4 of the West Virginia Code of 1931, as amended.

Section 14. 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 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.