



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Ethics Commission

TITLE-SERIES: 158-17

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Hearings

CITE STATUTORY AUTHORITY: W. Va. Code §§ 6B-2-2 and 6B-2-4

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 04/13/2018

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Rebecca L Stepto

ADDRESS: 210 Brooks Street Suite 300 Charleston WV 25301

EMAIL: theresa.m.kirk@wv.gov

PHONE NUMBER: 304-558-0664

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The Rule establishes the practice and procedure for conducting hearings on complaints.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The Rule has not been updated since 2005. The primary changes are to clarify that the Hearing Examiner's recommended decision shall contain only proposed findings of fact and conclusions of law; require Hearing Examiners to have a minimum of five years of experience in the practice of law; change the Code cite and the standard of proof required to conform to recent changes to the Ethics Act, and make the language more concise.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Based upon information and belief, the Rule has no fiscal impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

TITLE 158
PROCEDURAL RULE
WEST VIRGINIA ETHICS COMMISSION

SERIES 17
HEARINGS

§ 158-17-1. General Provisions.

1.1. Scope. -- This ~~legislative~~ Procedural Rule ~~rule sets forth~~ establishes the practice and procedure ~~established by the West Virginia Ethics Commission~~ for conducting hearings pursuant to W. Va. Code § 6B-2-4.

1.2. Authority. -- W. Va. Code §§ 6B-2-2 and 6B-2-4.

1.3. Filing Date. -- ~~August 9, 2005.~~

1.4. Effective Date. -- ~~September 9, 2005.~~

§ 158-17-2. Notice of Hearing.

~~2.1. If the Review Board finds probable cause to believe a violation of the Act has occurred, the Executive Director shall serve respondent by certified mail, return receipt requested, a notice of the hearing at least eighty (80) days prior to the date of the hearing.~~

~~2.2. The notice shall contain a statement of the charges, and provide the date, time, and place of the hearing.~~

2.1. If the Review Board finds probable cause to believe a violation of the Act has occurred, the Executive Director shall serve Respondent by certified mail, return receipt requested, with a Statement of Charges and a Notice of Hearing setting forth the date, time, and place of the hearing.

2.2. The Statement of Charges and Notice of Hearing shall be served at least eighty days prior to the date of the hearing.

§ 158-17-3. Continuances.

~~3.1. The scheduled hearing may be continued only upon a showing of good cause by either party prior to the hearing or at the convenience and on motion of the Commission members who will make up the hearing board.~~

3.1. The Hearing Examiner may only continue the hearing for good cause.

§ 158-17-4. Hearing Board and Hearing Examiner.

~~4.1. The Commission members shall comprise a hearing board responsible for adjudicating the case. A hearing examiner may be employed by the Commission to preside at the taking of evidence at the hearing and issue a recommended decision, unless the hearing board orders that it will both preside at~~

~~the taking of evidence and adjudicate the case. The hearing examiner, or the hearing board if a hearing examiner is not employed, shall be known as the "presiding officer" at the hearing as that term is used in these rules. The Commission may employ a Hearing Examiner to preside at the hearing and to issue a recommended decision containing proposed findings of facts and conclusions of law.~~

4.2. Hearing ~~examiners~~ Examiners must be attorneys licensed to practice law in West Virginia, with a minimum of ~~three years~~ five years' experience in the practice of law.

4.3. The ~~hearing examiner~~ Hearing Examiner shall comply with the Administrative Law Judge Code of Conduct, ~~158 C.S.R. 13.~~ W. Va. Code § 6B-2-5a and W. Va. Code R. §§ 158-13-1 through 11.

4.4. The Hearing Examiner shall be selected by the Executive Director. ~~The hearing examiner will be selected by the chairperson of the Commission, subject to approval at the next meeting by a majority vote of the Commission members present and voting.~~

4.5. The hearing board or hearing examiner presiding at a hearing may:

~~4.5.a. administer oaths and affirmations;~~

~~4.5.b. compel the attendance of witnesses;~~

~~4.5.c. compel the production of documents;~~

~~4.5.d. examine witnesses and parties;~~

~~4.5.e. rule on offers of proof;~~

~~4.5.f. rule on evidentiary matters;~~

~~4.5.g. regulate the course of the hearing;~~

~~4.5.h. hold conferences for the settlement or simplification of issues by consent of the parties;~~

~~4.5.i. dispose of procedural requests or similar matters;~~

~~4.5.j. accept stipulated agreements;~~

~~4.5.k. take other action authorized by the Ethics Commission consistent with the provisions of the Act; and,~~

~~4.5.l. continue the hearing date upon motion of the respondent or Commission where good cause is shown.~~

§ 158-17-5. Disqualification of Hearing Examiners.

5.1. ~~A party seeking the disqualification of a hearing examiner must file a written, verified motion stating the facts and reasons for disqualification. The motion should be filed at least thirty days prior to a scheduled hearing or state, with particularity, why it is filed later. A party may seek to disqualify the Hearing Examiner by filing a written motion asserting the grounds for disqualification. The motion must~~

be filed at least thirty days prior to the scheduled hearing.

~~5.2. The hearing examiner may disqualify himself or herself without a hearing or may refuse to do so and inform the parties that a hearing is necessary. The Hearing Examiner may hold a hearing on the Motion for Disqualification. If the Hearing Examiner denies the Motion for Disqualification, he or she shall set forth the grounds for denial in writing. If a moving party's Motion for Disqualification is denied, he or she may request a hearing before the Commission Chairperson or his or her designee who shall review the Motion for Disqualification de novo and decide the Motion.~~

~~5.3. The Commission chairperson, or at his or her direction the vice chairperson, shall hear and decide a motion for disqualification. The hearing shall be held no sooner than three days and no later than seven days after the motion is filed, unless the parties agree to a shorter or longer time period.~~

~~5.3. 5.4. The party seeking disqualification of to disqualify the hearing examiner Hearing Examiner may request that a full record be made. make a full record. The costs thereof, including the cost of court reporter services, witness fees and expenses shall be borne by the moving party unless the moving party prevails on the motion or makes a showing of indigence. This subsection does not, however, bar the Commission from ordering the Respondent to pay this cost in accordance with W. Va. Code § 6B-2-4(s)~~

~~5.4. 5.5. The chairperson or vice chairperson shall issue a written decision on the motion as soon as practicable, but no later than seven days after the motion was heard. If a motion is granted the Commission chairperson or vice chairperson shall appoint a new hearing examiner no later than seven days after the decision on the motion is received. If the motion is denied the hearing examiner shall proceed to hear the case within the time frame set forth in the notice of hearing or, if necessary and upon a showing of good cause, shall reschedule the hearing to a later date.~~

The Chairperson or his or her designee shall issue a written decision on the Motion for Disqualification as soon as practicable. If a motion is granted, the Executive Director shall appoint a new Hearing Examiner. If the motion is denied, the Hearing Examiner shall proceed to hear the case within the time frame set forth in the Notice of Hearing or may for good cause reschedule the hearing to a later date.

~~5.5. 5.6. The decision on the merits of a motion to disqualify a hearing examiner Hearing Examiner is interlocutory shall be considered interlocutory in nature and is not subject to direct or immediate appeal, except that this rule shall not prohibit any party from seeking redress by appropriate extraordinary remedy.~~

§ 158-17-6. Prehearing Discovery.

6.1. Information which is exempt from discovery includes, but is not limited to, the following:

~~6.1.a. any record, report, memorandum, or communication dealing with the internal practice, policy and procedure of the Commission.~~

~~6.1.b. any record, report, memorandum, or communication of the staff or Commission member regarding the institution, progress or result of an investigation of a complaint.~~

~~6.1.c. the work product of an investigator or other staff member made in the course of an~~

~~investigation of a complaint, or in preparation for the Review Board or in anticipation of or in preparation for a hearing on the complaint.~~

~~6.1.d. any memorandum, statement or opinion prepared or directed to be prepared by legal counsel to the Commission.~~

~~6.1.e. the identity of a confidential informant unless he or she is the complainant or will be a witness for the Commission at the hearing.~~

6.1.1. Any record, report, memorandum or communication dealing with the internal practice, policy or procedure of the Commission;

6.1.2. Any record, report, memorandum, or communication of Commission staff or members regarding the institution, progress or result of an investigation of a Complaint or made in anticipation of or in preparation for a hearing;

6.1.3. The work product of an attorney, investigator or other staff member made in the course of an investigation of a Complaint or in anticipation of or in preparation for a hearing on the Complaint, or any report, record, memorandum, or communication made by Commission staff, the Commission, or Review Board, during the investigation of a complaint or in anticipation of or in preparation for a hearing on the Complaint which is otherwise privileged;

6.1.4 Any memorandum, statement or mental impression prepared or obtained by the Commission's attorney or staff;

6.1.5. Any documents protected by the attorney-client privilege, and

6.1.6. The identity of confidential informants and sources, unless they are to be used as witnesses.

~~6.2. The parties shall exchange within sixty (60) days of the mailing and receipt of notice of the hearing to the respondent~~ The parties shall exchange within sixty days of the Respondent's receipt of the Notice of the Hearing:

~~6.2.a.~~ 6.2.1. reports of experts to be used at the hearing;

~~6.2.b.~~ 6.2.2 a list of witness the names of any witnesses the party expects to call at the hearing, including their names, addresses, and telephone numbers ~~as available to be used at the hearing;~~

~~6.2.c.~~ 6.2.3. copies of documents to be used at the hearing; and

~~6.2.d.~~ 6.2.4. results of any inspection of tangible objects to be used at the hearing.

~~6.3.~~ ~~6.3.a.~~ Witness Statements -- At least seven ~~(7)~~ days prior to the hearing, the parties shall exchange written and signed statements, ~~tape recorded~~ tape-recorded statements, and statements adopted by individuals who will be witnesses at the hearing which are within the ~~respondent's~~ Respondent's or Commission's possession.

~~6.3.b.~~ If a party fails to comply with subdivision 6.3.a of this rule to produce witness statements

in a timely manner, ~~the hearing examiner or hearing board shall~~ Hearing Examiner may bar that witness' testimony at the hearing unless good cause is shown for allowing the testimony. ~~can be shown and the hearing examiner or hearing board allows the witness' testimony.~~

6.4. Production of Witnesses

~~6.4.a. Each party is entitled to compel through subpoena the attendance of any witness whose testimony may be relevant and material, except that a party is not entitled to the presence of a witness who is determined unavailable. A witness is unavailable in, but not limited to, the following situations:~~

~~6.4.a.1. The witness is not subject to compulsory process in West Virginia by reason of non-residence within, or prolonged absence from the State of West Virginia;~~

~~6.4.a.2. The witness is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity;~~

~~6.4.a.3. The witness is exempted from testifying by ruling of a circuit court on the ground of privilege from testifying.~~

~~6.4.b. Where a subpoena is issued at the instance of a party to the hearing, the cost of service, and the witness and mileage fee shall be borne by the party at whose request the subpoena is issued, at the same rate as paid to witnesses in state circuit court proceedings. The party who uses an expert witness at the hearing is responsible for payment of the appearance fee of the witness.~~

~~6.4.c. The presence of a witness may be obtained by the issuance of a subpoena requiring the attendance of the witness at the designated place, time and hearing date. A subpoena for a witness may be issued by the Executive Director upon the written application of any party. It is the responsibility of the party requesting the issuance of a subpoena to serve the subpoena on a witness by personal service or certified mail, return receipt requested.~~

~~6.5. Production of Documents — Each party is entitled to compel through a subpoena duces tecum the production of documents which are relevant and material to the hearing. A subpoena duces tecum may be issued by the Executive Director upon written application of any party. It is the responsibility of the party requesting the issuance of a subpoena duces tecum to serve the subpoena on the authorized records custodian by certified mail or personal service.~~

6.4. Subpoenas and subpoenas duces tecum

6.4.1. The Commission may issue subpoenas and subpoenas duces tecum either at its own instance or upon written application of a party to the Executive Director whenever necessary to compel the attendance of witnesses and the introduction of books, records, correspondence, documents, papers or any other evidence which is relevant to the Complaint or Statement of Charges.

6.4.2. When a subpoena is issued at the request of a party to the hearing, the cost of service, witness and mileage fees shall be borne by the party at whose request the subpoena is issued. When the subpoena is issued at the instance of the Commission, the cost of service shall be borne by the Commission. This subdivision does not, however, bar the Commission from ordering the Respondent to pay the cost in accordance with W. Va. Code § 6B-2-4(s).

6.4.3. Witness and mileage fees shall be the same as are paid witnesses in the circuit courts of this state.

6.4.4. It is the responsibility of a party requesting the issuance of a subpoena or subpoena duces tecum to serve it by personal service, registered or certified mail, return receipt requested, or registered or certified mail, return receipt requested with delivery restricted to the person to whom the subpoena or subpoena duces tecum is directed. A party required to prove service by registered or certified mail must prove service by producing or filing with the Ethics Commission a return receipt or acknowledgement signed by the person to whom the subpoena or subpoena duces tecum is directed.

6.5. ~~6.6.~~ Depositions

6.5.1. ~~6.6.a.~~ Depositions may be obtained by either party and used for evidentiary or discovery purposes.

6.5.2. ~~6.6.b.~~ Evidentiary objections may be made on the record during any deposition or at the time the deposition is offered into evidence.

6.5.3. ~~6.6.c.~~ ~~It is not necessary that a hearing examiner or the hearing board be present at the deposition.~~ There is no requirement that the Hearing Examiner attend a deposition.

6.5.4. ~~6.6.d.~~ A party may be permitted to take a deposition of a witness, within or without the State of West Virginia, upon written request to and approval by the Hearing Examiner. ~~hearing examiner or hearing board.~~ A request for deposition shall contain:

6.5.4.a. ~~1.~~ the name and address of the person whose deposition is requested;

6.5.4.b. ~~2.~~ a brief statement of the matters on which the person is to be examined; and

6.5.4.c. ~~3.~~ a brief statement of the reasons for taking the deposition.

6.5.6. ~~6.6.e.~~ ~~If approval is granted for the Hearing Examiner grants the request to take the deposition, the party taking the deposition shall provide reasonable notice of the deposition to the person deposed, all parties, and their counsel of record.~~

6.5.7. ~~6.6.f.~~ The notice shall be in writing and contain the date, time and place of the deposition, as well as the name and address of each person to be deposed.

6.5.8. ~~6.6.g.~~ The cost of court reporter services, witness fees and expenses shall be borne by the party taking the deposition. This subdivision does not, however, bar the Commission from ordering the Respondent to pay the cost in accordance with W. Va. Code § 6B-2-4(s).

6.5.9. ~~6.6.h.~~ The deposition shall be taken in the manner proscribed by the laws of West Virginia for taking depositions in civil cases in courts of record except as set forth in this Rule ~~rule~~.

§ 158-17-7. Hearing Procedure.

7.1. ~~The West Virginia Rules of Evidence shall be used in the hearing.~~ The West Virginia Rules of Evidence shall apply during the hearing.

~~7.2. A complainant may be assisted by a member of the Commission staff assigned by the Commission after a determination of probable cause. The hearing proceedings shall be electronically recorded. The Commission may employ the services of a court reporter to record and transcribe the proceedings by any means permitted in the circuit courts of this state.~~

~~7.3. The hearing proceedings shall be electronically recorded. The Commission may employ the services of a court reporter to record and transcribe the proceedings by any means permitted in the circuit courts of this state. The cost of preparing a transcript of the hearing shall be borne by the party requesting it. This subdivision does not, however, bar the Commission from ordering the Respondent to pay the cost in accordance with W. Va. Code § 6B-2-4(s).~~

7.4. Any party to a hearing has the right to be represented by an attorney duly qualified to practice in the State of West Virginia. A ~~respondent~~ Respondent may not be represented at a hearing by a spokesperson, lay representative or anyone else not ~~licensed or~~ authorized to practice law in the State of West Virginia.

7.5. The ~~respondent~~ Respondent may appear without counsel and represent himself or herself at the hearing. At the beginning of the hearing, the ~~presiding officer~~ Hearing Examiner shall ~~insure~~ ensure ~~that~~ the ~~respondent~~ Respondent does not desire to obtain counsel and is thoroughly advised of the sanctions which may be imposed in the event of a finding that the ~~respondent~~ the Commission finds that the Respondent committed a material violation of ~~chapter six B of the West Virginia Code. W. Va. Code §§ 6B-1-1 through 6B-3-11.~~

7.6. All ~~parties to hearings, their counsel, and spectators~~ persons at the hearing shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. The ~~presiding officer~~ Hearing Examiner may, in his or her discretion, recess or continue any hearing ~~in which the parties, attorneys, witnesses or spectators, conduct at which any person conducts~~ themselves in a disrespectful, disorderly or contemptuous any manner which interferes with or prevents the proper conduct of the hearing.

7.7. All testimony to be considered by the ~~presiding officer~~ Hearing Examiner at the hearing shall be by sworn or affirmed testimony.

7.8. The purpose of the hearing is to further inquire into the matters set forth in the ~~statement of charges,~~ Statement of Charges and to record evidence and arguments in support of and in opposition to the charges so that the Commission may determine all issues.

7.9. Members of the Commission and its officers, agents and employees are competent to testify at the hearing as to material and relevant matters: ~~Provided, That no~~ but no member of the Commission who testifies at the hearing ~~shall~~ may thereafter participate in the deliberations or decisions of the Commission with respect to the case in which he or she testified.

7.10. Each party may make a brief opening statement setting forth the evidence he or she intends to prove.

7.11. ~~Initially the complainant~~ The Complainant or the ~~commission's~~ Commission's counsel shall first present competent and relevant evidence, including testimony and/or documents, in proof support of the ~~statement of charges~~ Statement of Charges.

7.12. The ~~respondent~~ Respondent or his or her counsel may present competent and relevant evidence following the conclusion of the Complainant's presentation of evidence. ~~complainant's case.~~

7.13. Each party has the right to cross-examine any witness who testifies.

7.14. Following the presentation of the ~~respondent's~~ Respondent's evidence, the ~~complainant~~ Complainant has the right to submit rebuttal evidence.

7.15. Following the presentation of all evidence, both parties have the right to make a closing argument ~~offer oral argument to summarize the evidence presented~~, not to exceed ten (10) minutes, ~~for each presentation, unless for good cause the period is extended by the presiding officer.~~ The Hearing Examiner may extend the time period upon a showing of good cause.

7.16. All exhibits offered into evidence shall be labeled and marked ~~as either "Complainant Exhibit," or "Respondent Exhibit".~~

7.17. All exhibits offered into evidence, or copies thereof, shall be appended to the record of proceedings, and if any exhibit is not susceptible to attachment or copying the Hearing Examiner may authorize the substitution of either a photograph, facsimile, or description of the exhibit ~~may be substituted.~~

7.18. ~~The presiding officer may order witnesses sequestered upon his or her own motion or on the motion of a party.~~ The Hearing Examiner may order that witnesses be sequestered.

7.19. The ~~respondent~~ Respondent is entitled to be present and to present evidence at the hearing; however, the ~~taking of evidence and a final determination of the issues shall not be prevented, and the respondent~~ Respondent shall be considered to have waived the right to be present if:

~~7.19.1.~~ 7.19.a. after being notified of the date, time and place of hearing he or she does not appear, ~~absent a prior showing of good cause~~ and fails to show good cause for his or her absence, or

~~7.19.2.~~ 7.19.b. after being advised by the ~~presiding officer~~ Hearing Examiner that disruptive conduct will cause removal from the hearing, he or she persists in conduct which justifies his or her exclusion from the hearing.

~~7.20. The cost of preparing a transcript of the hearing shall be borne by the party requesting it. Upon a showing of indigence by the respondent, however, the Commission may provide a transcript of the hearing without charge.~~

§ 158-17-8. Findings of Fact, Conclusions of Law, and Briefs.

~~8.1. Either party, within fifteen (15) days from the conclusion of the hearing, or during a time period established by the Commission, may submit proposed findings of fact, conclusions of law and a brief containing argument. All proposed findings of fact, conclusions of law and briefs shall be filed with the West Virginia Ethics Commission at 210 Brooks Street, Suite 300, Charleston, West Virginia 25301-1804. If the hearing board presided at the hearing, it is the duty of the executive director of the commission to provide each hearing board member with a copy of any party's proposed findings of fact, conclusions of law, and brief within one day of receipt.~~

8.1. Either party may, within fifteen business days from the conclusion of the hearing, file with the Commission proposed Findings of Fact, Conclusions of Law and a brief containing argument.

8.2. Findings of fact shall be limited to the facts admitted into evidence at the hearing or made part of the record and any facts found through judicial notice.

§ 158-17-9. ~~Decision if Hearing Examiner is Presiding Officer.~~ Decision of Hearing Examiner.

9.1. ~~The hearing examiner has forty five (45) days from receipt of the proposed findings and conclusions from the parties to issue his or her recommended decision.~~ The Hearing Examiner must issue proposed Findings of Facts and Conclusions of Law (hereinafter "Recommended Decision") within forty-five days from receipt of the parties' proposed Findings of Fact, Conclusions of Law and briefs.

9.2. ~~The hearing examiner shall make copies of this recommended decision available to the parties, and submit the recommended decision along with the entire record to the Commission for final decision by the hearing board.~~ The Hearing Examiner shall provide a copy of the recommended decision to the Executive Director who shall provide a copy of it to the parties and the Commission.

9.3. The parties may submit briefs to the Commission ~~Commission's hearing board~~ in support of or in opposition to the ~~hearing examiner's~~ Hearing Examiner's recommended decision within fourteen ~~(14)~~ days of receipt of the recommended decision.

9.4. The ~~Commission's hearing board~~ Commission shall then have forty-five days ~~(45)~~ within receipt of the entire record to make a final decision on behalf of the Commission.

9.5. Either party may request an opportunity to make an oral argument to the Commission ~~hearing board members~~ prior to their deliberations on the ~~hearing examiner's~~ Hearing Examiner's recommended decision and the imposition of appropriate sanctions, if applicable. The request must be made in writing and submitted within fifteen business days from the conclusion of the hearing. ~~with the party's brief regarding the hearing examiner's recommended decision filed pursuant to section 11.2 of this rule.~~

§ 158-17-10. ~~Decision When Hearing Board is the Presiding Officer.~~ Commission as a Hearing Board.

~~10.1. If the Commission chose not to employ a hearing examiner to hear the evidence and prepare a recommended decision and the presiding officer was the hearing board, no additional oral argument beyond what is allowed pursuant to section 9 of this rule shall be necessary.~~

~~10.2. The hearing board shall have twenty one (21) days following receipt of the entire record to make a final decision on behalf of the Commission.~~

10.1. In lieu of employing a Hearing Examiner, the Commission may sit as a hearing board to preside at the hearing.

10.2. The Chairperson or his or her designee may serve as the Presiding Officer of the Hearing Board and may exercise all powers of the Hearing Examiner for purposes of handling prehearing matters and conducting the hearing.

10.3. If the Commission sits as a Hearing Board, it shall issue a final decision in writing within twenty-one days following the close of evidence, including receipt of the proposed Findings of Fact and Conclusions of Law of the parties.

§ 158-17-11. Administrative Record.

11.1. The exclusive record for decision is:

11.1.a. the transcript or recording of testimony at the hearing;

11.1.b. exhibits introduced into evidence at the hearing;

11.1.c. all documents or evidentiary depositions filed in the proceeding, and

11.1.d. any the proposed decisions Findings of Facts and Conclusions of Law and any briefs submitted by the parties, including briefs submitted in support of or in opposition to the Hearing Examiner's recommended decision.

~~11.2. A party permitted by the Commission to take and file an evidentiary deposition, or otherwise exercise discovery may make that part of the record.~~

§158-17-12. Final Decision.

~~12.1. All final decisions of the Commission must be in writing and copies mailed within three days of the final decision by certified mail, return receipt requested.~~

~~12.1.a. the respondent or respondent's counsel, if any, and~~

~~12.1.b. complainant.~~

12.1. The Commission's final decision must be in writing. Within three business days of issuing a final decision, the Commission must mail a copy of it to the Respondent or Respondent's counsel by certified mail, return receipt requested. A copy must also be provided to the Complainant.

12.2. A final decision must be approved by at least ~~seven~~ six members of the Commission. ~~Commission's hearing board.~~

§158-10-13. Sanctions.

~~13.1. In its final decision the Commission may impose sanctions in accordance with W. Va. Code §6B-2-4(r) if it finds, by evidence beyond a reasonable doubt, that the charges are true and constitute a material violation of the Act.~~

13.1. The Commission may impose sanctions in accordance with W. Va. Code § 6B-2-4(s) if it finds by clear and convincing evidence that the facts alleged in the Complaint are true and constitute a material violation of the Act.

13.2. The Commission may institute civil proceedings in the circuit court of the county ~~wherein~~ in which a violation occurred for the enforcement of sanctions imposed in its final decision.