

## Chapter PC 4

## PREHEARING PRACTICE AND DISCOVERY

PC 4.01 Prehearing conferences  
 PC 4.02 Exchange of documents and witness lists prior to hearing  
 PC 4.03 Discovery

PC 4.04 Ex parte communications  
 PC 4.05 Attendance of witnesses

**PC 4.01 Prehearing conferences. (1) PURPOSE.** Prehearing conferences are intended to provide an opportunity to formulate a statement of the issue or issues presented by a case, to identify potential witnesses, to attempt to reconcile differences among the parties and promote the settlement of cases and to perform any other functions in aid of the disposition of the case.

**(2) HOW CONDUCTED.** Prehearing conferences may be conducted by telephone conference call or in person. A commissioner or member of the commission's staff shall preside.

**(3) REPORTS.** The person presiding at the conference shall prepare a memorandum or report that summarizes the results of the conference. Copies of the report shall be served on all parties.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; renum. from PC 1.05 and am. (1) and (2), cr. (3), Register, August, 1987, No. 380, eff. 9-1-87.

**PC 4.02 Exchange of documents and witness lists prior to hearing.** With the exception of rebuttal matter, names of witnesses and copies of exhibits shall be filed and served at least 3 working days before the commencement of the hearing. For the purpose of this section only, service is complete on receipt rather than on mailing. If no good cause is shown for the failure to comply with this section, the hearing examiner or commission may exclude the evidence after consideration of the following factors:

- (1) The prejudice or surprise experienced by the party against whom the evidence is being offered;
- (2) The ability of that party to cure any prejudice;
- (3) The extent to which waiver of the requirement would disrupt the orderly and efficient hearing of the case;
- (4) Bad faith or willfulness in failing to comply with the requirements; and
- (5) Other factors relevant to the determination.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; renum. from PC 2.01 and am., Register, August, 1987, No. 380, eff. 9-1-87.

**PC 4.03 Discovery.** All parties to a case before the commission may obtain discovery and preserve testimony as provided by ch. 804, Stats. For good cause, the commission or the hearing examiner may allow a shorter or longer time for discovery or for preserving testimony than is allowed by ch. 804, Stats. For good cause, the commission or the hearing examiner may issue orders to protect persons

or parties from annoyance, embarrassment, oppression or undue burden or expense, or to compel discovery.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87.

**PC 4.04 Ex parte communications.** As provided in s. 227.50, Stats., ex parte communications to the commission or to the hearing examiner are prohibited.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87.

**PC 4.05 Attendance of witnesses. (1) REQUESTS TO APPEAR.** At the request of any party or on its own motion, a commissioner or the hearing examiner may issue letters to state employees requiring them to appear and to testify at a hearing unless it is determined that their testimony will be irrelevant, immaterial or unduly repetitious. The commission shall mail the letters to the prospective witness unless the party requesting the letter asks to be responsible for personally serving the letters.

**(2) SUBPOENAS (a) Issuance.** Subpoenas, including subpoenas to compel the attendance of witnesses and subpoenas requiring the production of material, may be issued by a commissioner or the hearing examiner at the request of a party or on the commission's own motion, or may be issued by an attorney of record in a commission proceeding in the same manner as provided in s. 805.07, Stats. The commissioner or hearing examiner may review the reasonableness of any request before issuing a subpoena.

**(b) Service.** The party issuing or requesting a subpoena is responsible for service of the subpoena and for any costs related to service.

**(3) WITNESS FEES. (a) State civil service employees.** State civil service employees who attend hearings as witnesses are entitled to that compensation specified in s. PC 1.13 (2).

**(b) Persons subpoenaed.** Persons, other than state civil service employees, subpoenaed as witnesses to commission hearings shall receive for attendance the fees and mileage provided for witnesses in civil actions in courts of record under ch. 885, Stats., provided the hearing examiner or the commission certifies that the witness' testimony was relevant and material.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87.