

Chapter Ins 5

RULES OF PROCEDURE FOR HEARINGS

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Ins 5.01 Definitions. (1) "Hearing" as used herein includes both hearings and rehearings, and these rules shall cover both so far as applicable, except where otherwise specifically provided by statute or in these rules.

(2) "Commissioner" as used herein includes the deputy commissioner whenever detailed by the commissioner or discharging the duties and exercising the powers of the commissioner during his absence or a vacancy in the office of the commissioner, all as provided by s. 601.11 (1) (b), Stats.

(3) "License" as used herein means any license, permit, certificate of authority or certificate of registration.

History: 1-2-56; am. (2), Register, September, 1973, No. 213, eff. 10-1-73.

Ins 5.02 Place. Unless otherwise specifically provided by law or ordered in the notice of hearing, all hearings shall be held at the office of the commissioner in the state capitol at Madison, Wisconsin.

Ins 5.03 Conduct of hearings. All hearings shall be conducted and presided over by the commissioner or such subordinate as is designated to hear the matter.

Ins 5.04 Continuances. Continuances and adjournments of hearings may be granted for cause by the commissioner or the subordinate designated to conduct said hearing.

Ins 5.05 Hearings public. All hearings shall be open to the public, except where otherwise specifically provided by statute or ordered by the commissioner or the subordinate conducting the same.

Ins 5.06 Subpoenas. The commissioner may sign and issue subpoenas for the attendance of a party or any witness at a hearing whether he is to conduct the hearing or not. The subordinate designated to conduct the hearing may sign and issue subpoenas for the attendance of witnesses or parties at such hearing.

Ins 5.07 Service. Service of notice of hearing, notice of order of the commissioner, and of any other notices during the process of and in relation to a hearing shall be given as provided by ch. 227, Stats. Service of any notice, paper or document in a proceeding after the entry of an appear-

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ance as provided by Ins 5.08 shall be made in such manner and may be on the party or on any agent, employe, officer or attorney appearing for or with the party, and for the purposes thereof the mail address of such party and of any agent, employe, officer or attorney appearing for or with such party as last entered in the record of such proceedings or furnished and in modification thereof shall be conclusive as the proper and correct mail address.

History: 1-2-56; am. Register, May, 1975, No. 233, eff. 6-1-75.

Ins 5.08 Appearances. Parties may appear in person or by a regularly employed employe or agent, or by a duly authorized attorney at law, and if a corporation by any of its active officers. Upon an appearance at a hearing the name and mail address of the party appearing and the name and mail address of any agent, employe, officer or attorney appearing with or for such party shall be furnished and entered in the record of the proceedings, and the said appearances so made and the mail addresses so given shall be binding on the party unless and except as modified by written notice to the commissioner or the subordinate conducting the hearing and to all other parties appearing therein served as provided by Ins 5.07 which when so modified shall in turn have the same force and effect as in the first instance.

Ins 5.09 Examination of witnesses. Witnesses may be examined on behalf of the commissioner by the commissioner or the subordinate conducting the hearing, or by an employe of the commissioner with the permission of the person presiding, or by a representative of the attorney-general acting as counsel for the commissioner or the state. Such witnesses may be cross-examined by a party or any one authorized and appearing therefor, but no more than one individual, whether the party or an agent, employe, officer or attorney appearing with or for such party, shall cross examine a witness except by special permission of the person conducting the hearing. The commissioner, the subordinate conducting said hearing, any employe of the commissioner or any representative of the attorney-general who shall be acting at said hearing, may call adversely any party, officer, agent or employe of a party and any witness on behalf of any party and may cross examine any witness or party testifying at such hearing. All witnesses shall be sworn by the commissioner or the subordinate conducting such hearing before testifying in the same manner as is provided by a statute in respect to the swearing of witnesses testifying in proceedings before courts of record.

Ins 5.10 Record. (1) **METHOD.** All the proceedings at a hearing in a contested case shall be recorded either mechanically, electronically or stenographically. The typed transcript of the record will be prepared when deemed necessary by the commissioner or other hearing officer or when requested as set out in sub. (2). The record in a contested case shall include the material listed in s. 227.07 (6), Stats.

(2) **COPIES.** If a transcript of the hearing is prepared for the commissioner or other hearing officer, copies will be furnished to all persons upon request upon payment of the fee authorized by s. 601.31 (21), Stats. If no transcript has been prepared by the commissioner or other hearing officer and a party requests that one be prepared, that party shall be responsible for all costs of transcript preparation. All requests for a transcript of the hearing shall be made in writing and presented to the hearing officer at the hearing.

(3) **COPIES FOR INTERESTED PARTIES.** Parties who are impecunious who require and request a transcript for appeal or for other purposes deemed reasonable by the commissioner or hearing officer shall be furnished with a transcript of the hearing at the expense of the office of the commissioner of insurance upon the filing of a verified petition stating the purpose for which the transcription is needed and that the person is without means to purchase a transcript.

History: 1-2-56; r. and recr. Register, March, 1977, No. 255, eff. 4-1-77.

Ins 5.11 Evidence. All evidence, testimony and exhibits must be of reasonable probative value to the subject matter of the hearing and all immaterial, irrelevant or unduly repetitious evidence, testimony or exhibits will be excluded.

Ins 5.12 Stipulations. All stipulations or agreements in reference to a matter the subject of a hearing or entered into at a hearing shall be either dictated at length into the record, or reduced to writing, signed by the persons or parties stipulating, and filed as a part of the record of the proceedings. Controversies, or matters which may be the subject of or cause for a hearing may be disposed of by stipulation, agreed settlement or consent orders.

Ins 5.13 Motions. Except during a hearing, motions shall be made in writing and signed by the party or a person authorized and appearing in the proceedings therefor, or if the party is a corporation by an active officer of the corporation. At least 3 days notice thereof shall be given to the commissioner or the subordinate designated to preside at the hearing, and to each and every other party to the proceeding, served as prescribed by Ins 5.07.

Ins 5.14 Form and style of papers. All papers filed at or in reference to any hearing shall be either printed or typewritten and, except such parts thereof as may be on official forms or other forms or documents in regular use in the insurance business, all pleadings, notices, exhibits, papers and documents filed or presented at any hearing shall be on paper not more than 8½ inches wide and 11 inches long and shall weigh not less than 16 pounds to the ream. They shall not be bound with stiff covers or backs and all copies thereof served, filed or used in said proceedings shall be legible. The proper caption shall be placed upon all papers filed, except as otherwise provided. An original and 2 copies thereof shall be filed with the commissioner or the subordinate conducting the hearing, and a copy thereof also shall be served, or furnished as the case may be, to each other party or person interested who enters an appearance in said proceeding. The original of all such papers (except exhibits offered as evidence) shall be signed with the handwritten signature of the party, or of an officer, agent, employe or attorney appearing for or with such party in the proceeding, and the name and mailing address of the party or of the representative appearing signing the same shall be printed or typed immediately following such written signature.

Ins 5.15 How proceedings instituted. Proceedings to revoke or suspend licenses, or for a hearing upon a matter may be initiated in any of the following ways:

(1) On a verified complaint by any individual, corporation or association which is aggrieved, or by any officer required by law to enforce the

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law involved, filed in triplicate (original and 2 copies) with the commissioner of insurance.

(2) By the commissioner on his own motion whenever his investigation discloses probable grounds therefor.

History: 1-2-56; r. (3), Register, May, 1975, No. 233, eff. 6-1-75.

Ins 5.16 Caption or pleadings and notices. All pleadings, notices, orders and other papers filed in reference to any hearing shall be captioned "Before the Commissioner of Insurance of the State of Wisconsin" and shall be entitled "In the Matter of the ----- (here to be inserted the license or other matter that is involved) of ----- (here insert name of the party), Respondent." The party whose license, practice, conduct, etc., is involved shall be known and designated as the "Respondent."

Ins 5.17 Form of allegations. If the alleged offense, conduct or action is a continuing one, its general nature and the approximate time covered shall be stated so far as possible in the complaint and in the notice of hearing where these rules prescribe the stating thereof in said notice. If a specific incident or act is relied upon it shall be alleged with such particularity as to time, place and circumstances as may be necessary to enable the respondent to refute, admit or defend the same, and in any case may be alleged in the language of the statute or rule claimed to have been violated, concluding "contrary to section ----- (here to be inserted the section, subsection and subdivision number) of the statutes" or "contrary to rule ----- (here to be inserted the number) of the rules and regulations of the commissioner of insurance of the state of Wisconsin" or both. Separate charges, acts, or matters shall be stated in separate paragraphs and numbered consecutively.

Ins 5.18 Procedure upon filing complaint. Upon the filing of a complaint as prescribed by Ins 5.15 the commissioner shall cause an investigation to be made of the matters alleged, to determine whether there is sufficient cause for action by him and if he determines that there is such, he shall order a hearing. If he determines that no further action is warranted he shall so notify the complainant in writing.

Ins 5.19 Form of notices. Notices of hearing shall include a statement of the issues and shall be in substantially the following form: (1) If on a complaint filed with the commissioner a copy thereof shall be attached to a notice in the following form:

"To:

(Name)

(Street Address)

(City)

(State)

Respondent

Take notice that a hearing will be held on the ----- day of -----, 19 --- at the office of the Commissioner of Insurance, Room No. -----, Capitol, at the City of Madison, Wisconsin (or other proper designation of the place where the hearing will be held) at --- o'clock in the ---M. or as soon thereafter as the matter may be

reached, on the (here to be stated briefly the substance of the subject matter of the hearing, such as whether the license of the respondent shall be suspended or revoked, or other brief recital that covers the particular matter). The issues involved and the matters there to be considered are [as set forth in the attached copy of the complaint] to which you are required to make answer in writing at least ---- days before the time set for said hearing.

Dated at Madison, Wisconsin, this ----- day of -----, 19 -----.

COMMISSIONER OF INSURANCE

(Signature)

or
By (Signature)

Proper title of subordinate designated by the Commissioner.

If on only part of the matters set forth in such complaint, the form of notice shall be as set forth in subsection (1) of this rule, but altered by inserting in lieu of the matter enclosed in brackets the following: "As set forth in paragraphs -----, -----, -----, and ----- of the complaint of which a copy is attached."

(2) If initiated on the commissioner's own motion or investigation the form of notice shall be as set forth in subsection (1), but altered by inserting in lieu of the matters enclosed in brackets the following: (Here to be inserted a summation of the charges or matters involved, stated with particularity but as briefly as possible each separate matter being given a separate paragraph number and numbered consecutively.)

(3) If in part on complaint and in part on the initiative of the commissioner, the notice shall be in the form set forth in subsection (1) of this rule, but altered by inserting in lieu of the matter enclosed in brackets the following: "As set forth in the complaint of which a copy is attached, (or paragraphs -----, ----- and ----- of the complaint of which a copy is attached) together with the following additional issues (and charges): (Here to be inserted comparable content to that provided in subsection (2) hereof for insertion in the notice where the matter is solely upon the initiative of the commissioner)".

History: 1-2-56; r. (4), Register, May, 1975, No. 233, eff. 6-1-75.

Ins 5.20 Answer. The respondent shall be required to make answer to any notice within the time therein specified and failure so to do shall constitute a default. The commissioner may, however, upon proper showing, excuse such failure to answer upon such terms as he shall determine to be just and permit the party to make answer within such time as he shall prescribe, provided, however, that no party shall be relieved from such default after a hearing has been concluded and an order entered or other disposition made of the matter. The answer shall be verified by the respondent individually, or if a corporation by a proper officer of such corporation, unless an admission of the allegations might subject the person or party to prosecution for a felony, and shall be filed with the

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commissioner in triplicate (original and 2 copies) within the time prescribed in the notice of hearing.

History: 1-2-56; am. Register, May, 1975, No. 233, eff. 6-1-75.

Ins 5.21 Contents of answer. Answer must contain:

(1) A specific denial of each material allegation of the charges, factual situations or matters which the respondent controverts.

(2) A statement of any new matter constituting a defense or mitigating the offense or matter charged, which the respondent wishes to have considered.

(3) Every material allegation not controverted as prescribed shall be taken as true, but any new matter set forth in the answer shall be deemed controverted without any reply being served or filed.

Ins 5.22 Paragraph numbering. In all pleadings each paragraph shall be separately numbered consecutively.

Ins 5.23 Variances. The provisions of s. 802.09, Stats., with reference to variances between allegations and proof shall apply to proceedings under these rules.

History: 1-2-56; am. Register, March, 1979, No. 279, eff. 4-1-79.

Ins 5.24 Default. In case the respondent fails to submit an answer as required by Ins 5.20, or fails to appear at a hearing at the time and place fixed therefor, the charges or matters specified shall be taken as true and the commissioner may make findings and enter an order on the basis thereof. The default of a party in answering or in appearing shall not preclude the commissioner from hearing said matter, taking such evidence as he shall deem necessary and proper, and disposing of the matter.

Ins 5.25 Arguments. The commissioner or subordinate conducting the hearing may hear oral arguments and limit the time thereof. Except as provided in s. 227.12, Stats., all arguments shall be submitted in writing unless otherwise ordered. Where permitted, such written arguments shall conform in size of paper and other requirements to the provisions of Ins 5.14 hereof. At least 3 copies of all briefs or written arguments shall be furnished to the commissioner or the subordinate conducting such hearing. The time for filing such arguments shall be fixed by the commissioner or the subordinate presiding at the hearing.