

Chapter RACE 3

APPEALS, HEARINGS AND ENFORCEMENT PROCEEDING

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RACE 3.01 Purpose. These rules shall apply to all hearings conducted by the board pursuant to ch. 562, Stats:

- (1) To review final decisions, orders, rulings, recommendations or actions of the stewards of any race meeting;
- (2) To hearings on the propriety of the exclusion of persons pursuant to s. 562.02 (2) (e), Stats.;
- (3) To all enforcement proceedings and matters initiated by the board within the jurisdiction of the board including but not limited to proceedings instituted by petition for rule to show cause;
- (4) To all contested cases as provided for in ch. 227, Stats.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90.

RACE 3.02 Computation of time. The computation of time in computing any period of time prescribed in this chapter, including acts of default, shall be governed by s. 990.001 (4), Stats. Papers received by the board for filing after 5:00 p.m. shall be considered as filed the following day.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90.

RACE 3.03 Request for hearing. (1) All requests for hearings:

- (a) Shall be in writing;
- (b) Shall contain an address and telephone number where the person requesting the hearing may be notified of the time and place of the hearings; and
- (c) Shall set forth the reasons why the decision of the stewards should be reversed or modified, or why the relief requested should be granted. The documents should take the form of a pleading in a civil case, where practicable.

(2) Requests for hearing from orders of the stewards suspending an occupation licensee, recommending denial or revocation of an occupation licensee, imposing a forfeiture on an occupation license or from orders of the stewards excluding an occupation licensee shall be instituted by filing a written request for a hearing no later than 45 days after notice of the suspension, forfeiture or exclusion has been communicated to the licensee. A request for hearing shall not stay enforcement of the decision of the stewards. If the party requesting the appeal desires that the director stay the decision of the stewards, the party shall specify in the request for hearing the reasons supporting the issuance of the stay. The director shall decide whether to grant the stay within 48 hours of receipt of the request.

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(3) All other requests for hearing shall be instituted by filing a written request for hearing no later than 15 days after receipt of notice of the action of the board or stewards.

(4) Requests for hearing may be filed in person or by certified mail to the board's administrative office at 150 E. Gilman, P.O. Box 7975, Madison, WI 53707-7975. Requests submitted by certified mail shall be deemed timely if they are postmarked within the applicable time frame for filing an appeal.

(5) Any party appealing an action affecting the distribution of a purse shall serve all other owners of an animal in the race, as identified in the official program, with a copy of the request for hearing. A copy of such notices shall be filed with the request for hearing.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90.

RACE 3.04 Determination of parties and appearances. (1) **PARTIES.** (a) The board, any person requesting a hearing pursuant to s. RACE 3.03, and any person against whom a proceeding is initiated by the board shall be considered parties to the hearing for purposes of s. 227.53, Stats.

(b) Any other person may petition the board to be admitted as a party to the hearing. The board shall grant such a motion upon a determination that the movant has substantial interests to which the order of the board in the contested case will apply and affect.

(2) **APPEARANCES.** (a) A person who files a request for hearing need not be represented by an attorney.

(b) Except as provided in pars. (c) and (d) no one may appear before the board in a representative capacity except those licensed to practice law in Wisconsin or any other state.

(c) A partnership may be represented by any partner on behalf of the partnership.

(d) A corporation may be represented by an officer or director of the corporation.

(3) **SERVICE.** (a) Service of all documents and exhibits filed in connection with a hearing to be made part of the record shall be served on all parties as provided in s. 801.11, Stats., or by certified mail to last known address of the party or their attorney.

(b) No documents or exhibits shall be accepted or considered by the hearing officer or board unless they are admitted into evidence and served on all parties.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90.

RACE 3.05 Conduct of hearings of the board. Board hearings shall be conducted in conformance with this chapter and, as to all aspects not specified in this chapter, in conformance with ch. 227, Stats.;

(1) **SELECTION OF HEARING OFFICER.** (a) *Powers and duties.* Hearing officer shall be appointed pursuant to s. 227.46 (1), Stats. The hearing officer shall have all the powers and duties enumerated in ch. 227, Stats. In addition, a hearing officer appointed pursuant to this section may:

1. Exclude evidence that is relevant but merely cumulative;

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2. Upon objection to the admissibility of evidence, receive the disputed evidence subject to a subsequent ruling by the board;

3. Exclude evidence upon the hearing officer's motion or motion of either party, but a party offering evidence that is ruled inadmissible shall be permitted to make a brief offer of proof with such ruling being subject to subsequent ratification by the board. Unless expressly overruled, such decision by the hearing officer shall be deemed ratified.

(b) *Official notice.* The board and hearing officer may take official notice of:

1. The customs and usages of racing upon which pari-mutuel wagering is conducted; and

2. Matters within its specialized knowledge and expertise.

(c) *Pre-hearing conference.* If the hearing officer determines that a party has refused in bad faith or for purposes of delay to stipulate to facts that are not fairly in dispute, or has otherwise abused the hearing process so as to impede the board in the discharge of its functions, the hearing officer shall recommend to the board, in the memorandum prepared pursuant to s. 227.44 (4) (b), Stats., that the party appear before the board to show cause why a forfeiture should not be imposed pursuant to s. 562.02 (2) (f), Stats. In making this determination, the hearing officer may consider any difficulty in obtaining evidence due to the closure of a race meet, which difficulty was occasioned by a delay in requesting a hearing until near the end of the race meet.

Note: It is in the interest of the board that all evidentiary matters not fairly in dispute be admitted into evidence pursuant to stipulation of the parties. Consequently, the board encourages the utilization of the pre-hearing conference procedures as contained in s. 227.44 (4), Stats.

(2) **SUBPOENAS.** (a) Subpoenas for the attendance of witnesses from any place in Wisconsin or for the production of books, papers, accounts or documents, either during or prior to a hearing shall be issued by the board or hearing officer upon its own motion, or upon verified application of a party showing that a subpoena is reasonably required.

(b) Verified applications for subpoenas to compel the production of books, papers, accounts or documents shall identify the material sought.

(c) Witness fees shall be as set forth in s. 814.67, Stats., or as agreed to by the parties.

(3) **DEPOSITIONS AND INTERROGATORIES.** (a) No deposition shall be taken of a witness in a proceeding except upon verified application to the board or hearing officer showing that the proposed deposition is reasonably required and setting forth the information sought or the facts to be proved. The application may be waived by agreement of the parties provided that the taking of depositions shall not be cause for postponement of hearings or delay of the board's disposition of the proceeding.

(b) Parties may serve interrogatories, requests to produce documents for inspection and copying, and requests for the admission or denial of material facts upon written application to the board or hearing officer showing good cause and certifying that an effort has been made to obtain the requested material from the party from whom it is sought. If the hearing officer grants leave to serve interrogatories, requests to produce

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documents or requests to admit or deny material facts, the hearing officer shall set a reasonable time for compliance with the order to answer or to produce the requested material.

(c) At the request of either party, the hearing officer shall require that a person subject to the board's jurisdiction submit to examination upon written interrogatories at a reasonable time and place. Answer to questions propounded upon written interrogatories shall be received in evidence by agreement of the parties or when the person who has answered the interrogatories is out-of-state, ill, or otherwise incapable of testifying in person at the hearing, and if the answers are relevant to the hearing.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90.

RACE 3.06 Decisions. (1) **PROPOSED DECISIONS.** (a) In all cases in which a proposed decision is required by s. 227.46 (2), Stats., the hearing officer shall within 7 working days of the close of the presentation of evidence and arguments by the parties, prepare and submit to the board a proposed decision meeting the requirements of s. 227.46 (2), Stats. Within 24 hours of receipt of the decision the board shall serve on all parties a copy of the proposed decision. Each party adversely affected by the proposed decision shall, within 7 working days of receipt of the proposed decision, file any objections to the proposed decision in writing.

(b) In all other cases, unless otherwise directed by the chairperson pursuant to written order upon appointment of a hearing officer, the board shall base its decision on the record certified to it by the hearing officer without a proposed decision as set forth in s. 227.46 (3) (b), Stats., subject to any rulings on motions or objections.

(2) **FINAL DECISION.** The board shall review the record in its entirety before rendering a decision.

History: Cr. Register, March, 1990, No. 411, eff. 4-1-90.