

## Chapter WFSB 2

### PROCEDURES IN THE ADMINISTRATION OF S. 289.33, STATS.

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**WFSB 2.01 Special rules.** Chapters [WFSB 3](#) to [11](#) set forth special rules applicable to the proceedings described in chs. [WFSB 3](#) to [11](#). This chapter sets forth general rules applicable to all types of proceedings.

**History:** Cr. [Register, November, 1984, No. 347](#), eff. 12-1-84; correction made under s. 13.93 (2m) (b) 7., Stats., [Register, November, 1988, No. 395](#).

**WFSB 2.02 Resolution of conflicts.** In any conflict between a general rule in ch. [WFSB 2](#) and a special rule in another chapter applicable to a particular type of proceeding, the special rule shall govern.

**History:** Cr. [Register, November, 1984, No. 347](#), eff. 12-1-84.

**WFSB 2.03 Initiation of proceedings, method, forms, where to file.** A proceeding may be initiated by filing an appropriate document as specified in these rules. Standard language for initiating proceedings under s. [289.33](#), Stats., is set forth in chs. [WFSB 3](#) to [11](#) governing particular proceedings. The initiating document shall be submitted to the board at its Madison office.

**History:** Cr. [Register, November, 1984, No. 347](#), eff. 12-1-84; correction made under s. 13.93 (2m) (b) 7., Stats., [Register, November, 1988, No. 395](#); correction made under s. 13.93 (2m) (b) 7., Stats., [Register, October, 1999, No. 526](#).

**WFSB 2.04 Consolidation and severance of proceedings.** Whenever the board deems it necessary, in order to effectuate the purposes of s. [289.33](#), Stats., or to avoid unnecessary costs or delay, proceedings under several subsections of s. [289.33](#), Stats., may be combined into a single proceeding or severed by issues.

**History:** Cr. [Register, November, 1984, No. 347](#), eff. 12-1-84; correction made under s. 13.93 (2m) (b) 7., Stats., [Register, October, 1999, No. 526](#).

**WFSB 2.05 Form of documents other than correspondence. (1) TITLE.** Documents shall clearly show the title of the proceeding and the docket number. Titles are found in chs. [WFSB 3](#) to [11](#) governing specific proceedings. Docket numbers will be assigned at the office of the board when the initiating petition is received. Docket numbers may be obtained from the board at its Madison office.

**(2) WHERE TO SUBMIT.** All documents and papers submitted prior to hearing shall be submitted to the board at its Madison office. During the course of the hearing, all matters shall be submitted to the examiner. After the close of the hearing, all matters shall be submitted to the board at its Madison office.

**(3) NUMBER OF COPIES; FORM.** Except as otherwise provided in these rules, any document submitted to the board, prior to, during, or after hearing shall be submitted with 9 copies in addition to the original. All matters submitted to the board shall be printed, typed or otherwise legibly duplicated.

**(4) SIGNATURE.** The original of each document submitted shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party itself, or by

an officer of the party if it is a corporation or an unincorporated association.

**History:** Cr. [Register, November, 1984, No. 347](#), eff. 12-1-84; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., [Register, November, 1988, No. 395](#).

**WFSB 2.06 Submission of papers other than letters. (1) EXTENSION OF TIME.** The examiner may, by agreement of the affected parties for good cause shown, extend any time limit prescribed or allowed in chs. [WFSB 3](#) to [11](#). Any such request to extend any time limit shall be in writing and, except for good cause shown, be received at least 3 working days before the expiration of such time limit. This section does not apply to deadlines prescribed in s. [289.33](#), Stats.

**(2) METHOD OF SUBMISSION.** Notices of hearings, decisions, orders, and other process or papers issued by the examiner, or required to be submitted thereby, shall be submitted to parties residing or located in the state by certified mail and proof of submission established by return post office receipt.

**(3) COMPLETION OF SUBMISSION.** Papers required by s. [289.33](#), Stats., this chapter, any other chapter, or order of the board, to be submitted to the examiner shall be deemed submitted when:

(a) Delivered in person, or

(b) Left at the principal office or place of business of the person served, or

(c) Addressed to the last known address of the person served and deposited in the United States mail, certified, return receipt requested, or

(d) Addressed to the last known address of the person served and deposited with a telegraph company.

**(4) TO WHOM SUBMITTED.** All papers, except papers relating to subpoenas, shall be submitted to all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law, and upon the board. Submission upon such counsel or representative shall constitute submission upon the party.

**(5) PROOF OF SUBMISSION; WHEN REQUIRED.** Proof of submission shall be submitted to the board only if the submission is challenged. In such a case, the party whose submission is challenged shall submit a copy of the return post office receipt to the board as proof.

**History:** Cr. [Register, November, 1984, No. 347](#), eff. 12-1-84; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., [Register, November, 1988, No. 395](#); corrections in (1) and (3) made under s. 13.93 (2m) (b) 7., Stats., [Register, October, 1999, No. 526](#).

**WFSB 2.07 Effect of failure to submit statement in response.** Any party who fails to submit a statement in response to a petition, within the time provided under the rules governing particular procedures or by any extension granted, shall be deemed to admit the accuracy of the factual allegations made in the petition, and shall, unless good cause be shown, be precluded

from introducing any evidence controverting any factual allegations in the petition.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

### **WFSB 2.08 Requests and statements in opposition.**

In ch. WFSB 2:

(1) "Request" means an application made, either in writing or orally, to the board, its agent, or hearing examiner for the purpose of obtaining a rule or order directing some act to be done in favor of the applicant.

(2) **PRESENTATION.** All requests shall be made in writing, except that requests made at a hearing may be stated orally on the record, and shall briefly state the order, ruling, or action sought and shall set forth specifically the reasons for the request. Alternate relief may be requested. Any party may request that the board or individual conducting the proceeding take any action which they are authorized to take by these rules. Any statement opposing a request shall be promptly filed and shall conform to the same requirements.

(3) **DISPOSITION.** Except for requests made at the hearing, the board shall rule upon requests submitted to it. Requests made during a hearing shall be ruled on by the individual conducting the hearing, except requests referred to the board, either during the hearing or at such time as the entire record is considered. All rulings on requests shall be in writing, or if announced at the hearing, may be stated orally on the record.

(4) **RULINGS AND ORDERS PART OF THE RECORD.** All requests, and any rulings or order thereon shall become part of the record.

(5) **TO RESCHEDULE HEARING.** A request by either party to reschedule hearing shall set forth

- (a) The reasons for the request,
- (b) Alternate dates for rescheduling, and
- (c) The positions of all other parties, if known.

(6) Except for good cause shown, any request for rescheduling must be received at least 2 working days before the date set for hearing.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

### **WFSB 2.09 Prehearing conference. (1) PURPOSE.**

Prehearing conferences are intended to provide an opportunity to consider:

- (a) Formulation of a statement of the issue or issues presented by a proceeding.
- (b) Whether the parties can reconcile differences and settle any issues among themselves.
- (c) The possibility of obtaining stipulations as to facts in the case.
- (d) Designation of time and place for the public meeting in an arbitration.
- (e) Which party shall present evidence first at public hearings and meetings.
- (f) Any other issues which shall aid the board in performing its duties.

(2) **MANDATORY DISCLOSURE.** At prehearing conferences, the parties shall submit and exchange lists of their witnesses, and the originals or copies of the documentary and other physical evidence which they intend to utilize at the hearing, if available at that time. If the prehearing conference is conducted by the conference telephone call, submission and exchange of these materials will be by mail. Following the prehearing conference, or if no prehearing conference is held, the parties are under a continuing obligation to submit and exchange lists of further witnesses and further evidentiary matter which they intend to utilize at the hearing. With the exception of rebuttal matter, names of witnesses and copies of exhibits must be submitted more than 2 working days before the

commencement of the hearing or will be subject to exclusion, unless good cause for the failure to comply is shown.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

### **WFSB 2.10 Depositions and discovery. (1)**

The examiner on application of any party may by issuance of a subpoena or other appropriate order authorize the taking of a deposition of a party or any other person for discovery or other purposes, in such manner and upon such terms and conditions as the examiner may prescribe. Such subpoenas or orders may require the production of documents or physical evidence. Depositions may be taken orally or in writing, or upon written interrogatories. Depositions may be authorized only for the purpose of obtaining information or evidence not otherwise readily available without the taking of a deposition, or which is reasonably calculated to lead to the discovery of admissible evidence. The taking of a deposition may be denied if it will result in undue delay of the proceedings. Upon motion of any party, or at any time the examiner determines, a proponent of procedures authorized in this section may be required to show good cause that such procedures are not being used for purposes of delay or are not otherwise unnecessary or duplicative.

(2) Depositions may be taken before any person having power to administer oaths. Examinations shall be conducted as on direct examination, except that adverse parties or hostile witnesses may be examined as under cross examination.

(3) Depositions under this section may be used as evidence if otherwise admissible under the same circumstances in which they may be admitted in civil actions in courts of law.

(4) If any part of a deposition is put in evidence, any party may require the production of the remainder, or any other portion of the deposition. Depositions under this section may be used for impeachment purposes.

(5) Copies of all written interrogatories and cross interrogatories shall be submitted to the examiner. Each interrogatory shall be fully and completely answered in writing and under oath. Answers, including objections, if any, shall be submitted to the requesting party, with a copy to the examiner, within 10 days after service of the interrogatory, or such other period as the examiner may specify. The requesting party may move for an order overruling objections which are without merit and compelling an answer within such period of time as may be designated by the examiner.

(6) In lieu of or in addition to procedures under sub. (5), any party may serve upon any other party, with a copy to the examiner, a demand to admit or deny the genuineness of relevant documents or the existence or truthfulness of relevant facts. If the party upon whom demand is made fails or refuses to comply with the demand or file objections setting forth grounds for such objections within 10 days after service of the demand, the facts included in the demand shall be taken as true. Answers or objections shall be under oath. The party making the demand may move for an order overruling objections which are without merit, and compelling an admission or denial in accordance with the demand.

(7) Upon failure of the party served to answer as required under subs. (5) and (6), the examiner may, upon motion of the requesting party, enter such order as may be fair and just, including:

(a) An order that designated facts and documents shall be taken to be established in accordance with the claim of the party serving the demand to admit or deny.

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence.

(c) An order striking out pleadings or parts thereof.

(8) **VIDEOTAPE DEPOSITIONS.** Depositions recorded by videotape are governed by ss. 885.40 to 885.47, Stats.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84; cr. (8), Register, July, 1991, No. 427, eff. 8-1-91.

**WFSB 2.11 Hearings, transcripts.** (1) PUBLIC HEARING. All hearings shall be public.

(2) RESCHEDULING OF HEARING. Upon its own motion or proper cause shown by any of the parties, the board may, prior to the opening of the hearing, reschedule the date of such hearing.

(3) RIGHTS OF PARTIES AT HEARING. Any party shall have the right to appear by counsel or by any other representative to present his case by oral, documentary, or other evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. Any party shall be entitled, upon request, to a reasonable period for oral argument at an appropriate time during the hearing.

(4) EFFECT OF FAILURE TO APPEAR. Any party failing to appear and participate after certified receipt of notice shall be deemed to have waived the rights set forth in sub. (2), to admit the accuracy of the uncontradicted evidence put forth by the parties present, and shall, unless good cause be shown, be precluded thereafter from introducing any evidence controverting any contentions or allegations. The examiner may rely on the record as made.

(5) OPENING STATEMENTS. Opening statements are optional and shall be confined to a brief summary of the nature of the case, the evidence intended to be offered, and the controlling legal authorities.

(6) EVIDENCE. Rules of evidence are governed by ss. 227.45 and 885.40 to 885.47, Stats.

(7) WITNESSES. (a) Normally, a witness shall be examined first on direct examination by the party calling the witness, unless the witness is called adversely, in which case the witness shall be first examined adversely by the party calling the witness.

(b) Witnesses may testify either by answers to questions or in narrative form.

(c) Cross-examination shall not be limited to matters to which the witness testified on direct.

(d) A person examining or cross-examining a witness shall not approach the witness stand except to show the witness an exhibit.

(e) Examination and cross-examination should be confined to questioning the witness and should not be interspersed with argument or commentary on the testimony. A party not represented by counsel should not make evidentiary statements while examining or cross-examining a witness. Such evidentiary statements should be restricted to the part of the case where the party is testifying on his or her own behalf.

(8) STIPULATIONS. Parties may stipulate to some or all of the facts, and the board may base its order upon such stipulation.

(9) EXHIBITS. All exhibits shall be marked and made available for inspection by the opposing party before being shown to the witness, unless the exhibit shall have been marked and a copy made available to the opposing party prior to the hearing.

(10) CONTINUANCES. Continuances, postponements, adjournments, recesses and extensions of time may be granted or directed by the board or individual conducting the hearing. Hearings may be recessed or adjourned at the request of any party adversely affected by the introduction of evidence constituting undue surprise to afford such party a fair and reasonable opportunity to examine and study such evidence.

(11) TRANSCRIPTS. A stenographic, electronic or other record of hearings and such other proceedings as the board may designate shall be recorded. The typed transcript or other record will be available in the board office for the use of the parties. Copies of the tape recordings, transcripts or other records shall be furnished upon request, at cost.

(12) CORRECTIONS OF TRANSCRIPT. Corrections of the official transcript may be made only when they involve errors affecting

substance and shall be made only in the manner provided here. Proposed corrections shall be submitted by stipulation or request. Corrections pursuant to a request, shall not be ordered except upon notice and opportunity for submission of statements in opposition. When corrections are so ordered the necessary physical corrections shall be made in the official transcript.

(13) BRIEFS. The board or individual conducting the hearing may require briefs and shall indicate the date on or before which they shall be submitted.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84; corrections in (4) and (6) made under s. 13.93 (2m) (b) 4. and 7., Stats., Register, November, 1988, No. 395; am. (6), Register, July, 1991, No. 427, eff. 8-1-91.

**WFSB 2.12 Hearing subpoenas.** The examiner may issue subpoenas requiring attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents in their possession or under their control. Application for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party, at whose request it was issued, and the proceeding involved.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

**WFSB 2.13 Duties of examiners.** The examiner shall inquire fully into all matters in issue, to obtain a full and complete record upon which the duties of the board under s. 289.33, Stats., may be properly discharged.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

**WFSB 2.14 Powers of examiners.** The examiners may take the following action, subject to these rules within the board's power.

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the board;
- (3) To rule upon offers of proof, receive relevant evidence, and exclude irrelevant, immaterial, or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To take or cause depositions to be taken and to determine their scope;
- (6) To regulate the time, place and course of the hearing;
- (7) To dispose of procedural requests or other similar matters;
- (8) During the course of the hearing to hold conferences for the settlement, simplification or adjustment of the issues by consent of the parties; and,
- (9) To take any other action necessary under the foregoing or authorized under these rules.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

**WFSB 2.15 Procedures, application.** Procedures under this chapter shall only apply to public hearings and not public informational meetings.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

**WFSB 2.16 Close of hearing.** A hearing shall be deemed closed when the evidence is closed and when any period fixed for filing of briefs, presentation of oral argument, if any, or both has expired. The hearing may be re-opened by the examiner on good cause shown by either party.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

**WFSB 2.17 Waiver of procedure.** The parties to any proceeding may agree to waive any one or more of the procedural requirements or decisions which would otherwise precede the issuance of a final order or other final deposition issued by the examiner.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.