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CLEARINGHOUSE RULE 97-031

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section PD 1.06 (6) provides that the State Public Defender Board may deliberate decertification appeals in executive session pursuant to s. 19.85 (1) (a), Stats. Under s. 19.85 (1) (intro.), decisions to convene a meeting in closed session are to be made on a case-by-case basis.

2. Form, Style and Placement in Administrative Code

- a. The sequence of the SECTIONS of the rule is incorrect. [See s. 1.04 (1), Manual.]
- b. In s. PD 1.06 (1), “thereof” should be deleted.
- c. In s. PD 1.06 (2), “Any” should be deleted and replaced by “An.”
- d. In s. PD 1.06 (3), it appears that the word “may” should be replaced by the word “shall,” given the requirement in the last sentence that a 10-day notice to the attorney is required.
- e. In s. PD 1.06 (7), “constitutes” should replace “shall constitute.” However, the inclusion of this subsection in the rule can be questioned. Section 227.47 (1) generally requires that every decision of an agency following a hearing and every final decision of an agency must be in writing accompanied by findings of fact and conclusions of law. The simple statement in sub. (7) that the board’s written decision constitutes findings of fact and conclusions of law within the meaning of s. 227.47, Stats., does not make it so. That is, simply because the board

has issued a written decision does not necessarily mean that the appropriate findings of fact and conclusions of law have been included in the decision in accordance with s. 227.47 (1), Stats.

f. Section PD 1.06 (8) should be more directly linked with subs. (5) and (6). The same comment applies to s. PD 1.05 (8) and the relationship of that subsection to subs. (5) and (6) of s. PD 1.05. Also, in ss. PD 1.05 (8) and 1.06 (8), the phrase “, in its discretion,” is unnecessary and should be deleted.

g. It is suggested that “Attorneys” in s. PD 1.035 (1), be replaced by “An attorney.” Consequently, “their” should be replaced by “his or her.” See, also, sub. (2) with respect to replacing the plural form with the singular form.

h. In s. PD 1.035 (3), the phrase “even if the attorney does not meet the residency requirements” is unnecessary because of the first clause in the subsection. The phrase should be deleted.

3. Conflict With or Duplication of Existing Rules

The rule fails to repeal s. PD 2.06, which is replaced by s. PD 1.035.