

CR 91-124

CERTIFICATE

STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 13th day of April, 1992.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 13th day of April, 1992.


Marlene A. Cummings
Secretary
Department of Regulation
and Licensing

RECEIVED

APR 14 1992
4:00 pm
Revisor of Statutes
Bureau

7-1-92

APR 14 19

Revisor of State
BureauSTATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND LICENSING
DEPARTMENT OF REGULATION	:	ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 91-124)

ORDER

An order of the Department of Regulation and Licensing to repeal RL 2.03 (1); to renumber RL 2.03 (2), (3) and (4); to renumber and amend RL 2.036; to amend RL 2.02, RL 2.03 (5), (7) and (8), RL 2.035 (intro.) and (3), RL 2.04, RL 2.06 (intro.), (3) and (4), RL 2.08 (2), RL 2.09 (1), (3) and (4), RL 2.10 (title), (1), (2) (title), (2) and (3), RL 2.11, RL 2.12, RL 2.14, RL 2.15 (1), (5) and (6) and RL 2.16; to repeal and recreate RL 2.07 and RL 2.17; and to create RL 2.03 (4) and (10), RL 2.036, RL 2.15 (8) and RL 2.18 of the administrative code relating to procedures for disciplinary proceedings.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2) (a), Stats.

Statutes interpreted: ss. 440.03 (1) and 440.22, Stats.

In this order the Department of Regulation and Licensing amends its rules on uniform procedures for receiving, filing and investigating complaints, for commencing disciplinary proceedings and conducting hearings.

Technical amendments are made to several rules in Chapter RL 2. The definition of "disciplinary authority" simplifies reference to the department and the various boards attached to it. The term "hearing examiner" is replaced by "administrative law judge." The definition of "disciplinary proceeding" is expanded to include forfeitures when authorized by statute.

A procedure is established for settlement conferences to dispose of informal complaints when appropriate without initiating formal disciplinary proceedings.

The provisions for prehearing conferences is broadened to explicitly permit telephone conferences. The site for hearings is specified as Madison unless the health or safety of a witness or the parties or an emergency requires that a hearing be held elsewhere.

The procedure for determining costs for transcripts is simplified.

Procedures are created for the assessment of costs.

The language of the notice of hearing is revised and a form for a notice is included in an appendix.

TEXT OF RULE

SECTION 1. RL 2.02 is amended to read:

RL 2.02 SCOPE; KINDS OF PROCEEDINGS. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all boards disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

SECTION 2. RL 2.03 (1) is repealed.

SECTION 3. RL 2.03 (2), (3) and (4) are renumbered (1), (2) and (3).

SECTION 4. RL 2.03 (4) is created to read:

RL 2.03 (4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

SECTION 5. RL 2.03 (5), (7) and (8) are amended to read:

RL 2.03 (5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a board disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, ~~or~~ to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(7) "Informal complaint" means any written information submitted to the division or any board disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline. ~~"Informal complaint" includes requests for disciplinary proceedings as specified in s. 440.20, Stats.~~

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration issued granted by a board disciplinary authority or having any right to renew a license, permit, certificate or registration issued granted by a board disciplinary authority.

SECTION 6. RL 2.03 (10) is created to read:

RL 2.03 (10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

SECTION 7. RL 2.035 (intro.) and (3) are amended to read:

RL 2.035 RECEIVING INFORMAL COMPLAINTS. (intro.) All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the board disciplinary authority, or, if the board disciplinary authority directs, by a board

disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(3) Whether the matter alleged, if ~~take~~ taken as a whole, is trivial; and

SECTION 8. RL 2.036 is renumbered 2.037 and amended to read:

RL 2.037 PARTIES TO A DISCIPLINARY PROCEEDING. Parties to a disciplinary proceeding are the respondent, the division and the ~~board~~ disciplinary authority before which the disciplinary proceeding is heard.

SECTION 9. RL 2.036 is created to read:

RL 2.036 PROCEDURES FOR SETTLEMENT CONFERENCES. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in advance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

SECTION 10. RL 2.04 is amended to read:

RL 2.04 COMMENCEMENT OF DISCIPLINARY PROCEEDINGS. Disciplinary proceedings are commenced when a notice of hearing is filed in the board disciplinary authority office or with a designated hearing-examiner administrative law judge.

SECTION 11. RL 2.06 (intro.), (3) and (4) are amended to read:

RL 2.06 COMPLAINT. (intro.) A complaint may be made on information and belief and must shall contain:

(3) A request in essentially the following form: "Wherefore, the complainant demands that the board disciplinary authority hear evidence relevant to matters ~~recited herein, determine,~~ alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant ~~which shall be made upon oath and may be made on information and belief. A complaint filed by a board on its own motion and signed by a board member need not be verified.~~

SECTION 12. RL 2.07 is repealed and recreated to read:

RL 2.07 NOTICE OF HEARING. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

SECTION 13. RL 2.08 (2) is amended to read:

RL 2.08 (2) Any paper required to be filed with a board disciplinary authority may be mailed to the board disciplinary authority office or, if a ~~hearing-examiner~~ an administrative law judge has been designated to preside in the matter, to the ~~hearing-examiner~~ administrative law judge and shall be deemed filed on receipt at the board disciplinary authority office or by the ~~hearing-examiner~~ administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

SECTION 14. RL 2.09 (1), (3) and (4) are amended to read:

RL 2.09 ANSWER. (1) An answer to a complaint shall ~~be verified by the respondent and~~ state in short and plain terms the defenses to each cause asserted and shall admit or deny the ~~averments~~ allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the ~~averment~~ allegation, the respondent shall so state and this has the effect of a denial. Denials shall

fairly meet the substance of the ~~averments~~ allegations denied. The respondent shall make denials as specific denials of designated ~~averments~~ allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an ~~averment~~ allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(3) ~~Averments~~ Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint ~~must~~ shall be filed within 20 days ~~after the complaint has been served on the respondent~~ from the date of service of the complaint.

SECTION 15. RL 2.10 (title), (1), (2) (title), (2) and (3) are amended to read:

RL 2.10 (title) ADMINISTRATIVE LAW JUDGE. (1) DESIGNATION. ~~In any disciplinary proceeding a board may, and in proceedings commenced as the result of a decision made by one or more officials of a board, a board shall designate that the proceedings be presided over by a hearing examiner. Unless a board designates otherwise, disciplinary~~ Disciplinary hearings shall be presided over by ~~a hearing examiner~~ an administrative law judge employed by the department ~~and assigned as hearing examiner to that board unless the disciplinary authority designates otherwise. If the regularly assigned examiner is unavailable, the examiner~~ The administrative law judge shall be an attorney in the department designated by the department ~~secretary~~ general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the ~~examiner~~ administrative law judge may not be an employe in the division.

(2) (title) AUTHORITY. ~~A hearing examiner~~ An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a ~~board~~ disciplinary authority pursuant to s. 227.46 (3), Stats., ~~a hearing examiner~~ an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) (title) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a ~~board~~ disciplinary authority, the proposed decision shall be served by the ~~examiner~~ administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the ~~board~~ disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

SECTION 16. RL 2.11 and 2.12 are amended to read:

RL 2.11 PREHEARING CONFERENCE. In any matter pending before the ~~board~~ disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the ~~board~~ disciplinary authority or ~~hearing examiner~~ administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity

or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

RL 2.12 SETTLEMENTS. ~~Any No~~ stipulation or settlement agreement ~~between the person prosecuting the complaint and the respondent~~ disposing of a complaint or informal complaint shall ~~not~~ be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the board disciplinary authority.

SECTION 17. RL 2.14 is amended to read:

RL 2.14 DEFAULT. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the board disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The board disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the board disciplinary authority enters an order or within a reasonable time thereafter.

SECTION 18. RL 2.15 (1), (5) and (6) are amended to read:

RL 2.15 CONDUCT OF HEARING. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the board disciplinary authority or ~~a hearing examiner~~ an administrative law judge designated pursuant to s. RL 2.10.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the ~~person prosecuting the complaint or the respondent~~ opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time ~~for reasons and according to conditions deemed as appropriate by the presiding officer.~~

SECTION 19. RL 2.15 (8) is created to read:

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the Department of Regulation and Licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

SECTION 20. RL 2.16 is amended to read:

RL 2.16 WITNESS FEES AND COSTS. Witnesses subpoenaed at the request of the division or the board disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

SECTION 21. RL 2.17 is repealed and recreated to read:

RL 2.17 TRANSCRIPTION FEES. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a copying fee of \$.25 per page, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

SECTION 22. RL 2.18 is created to read:

RL 2.18 ASSESSMENT OF COSTS. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

Appendix I

NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days of receiving this Notice, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. RL 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P.O. Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date: (#6)
Time: (#7)
Location: Room (#8)
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., s. (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____ day of _____, 19__.

Signature of Licensing Authority Member or Attorney
(12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated April 13, 1992

Agency Marlene A. Cummings
Marlene A. Cummings, Secretary
Department of Regulation
and Licensing

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Revisor of Statutes
Bureau

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: April 14, 1992

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

RECEIVED

APR 14 1992

Revisor of Statutes
Bureau

Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 91-124

Attached is a copy and a certified copy of a final order adopting rules.

Would you please publish these rules in the code.

Thank you.