

CR 92-88

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 2nd day of June, 1993.

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 2nd day of June, 1993.



Marlene A. Cummings
Secretary
Department of Regulation
and Licensing

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Bureau

8-1-93

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 92-88)

ORDER

An order of the Department of Regulation and Licensing to create ch. RL 3 of the administrative code relating to procedures for handling complaints involving unlicensed practice.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

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

Statutes interpreted: ss. 440.03 (1) and 440.21, Stats.

In this order the Department of Regulation and Licensing creates rules establishing procedures for handling complaints involving unlicensed practice. The procedures are established under the rule chapter heading "Administrative Injunctions."

The chapter establishes the legal procedures used by the Department of Regulation and Licensing to determine whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. If a violation is found, the rules permit the issuance of an administrative injunction.

The rules define terms used in the chapter, set requirements for pleadings, including the required contents of a petition, notice of hearing and answer. Procedures are defined for service and filing documents, prehearing conferences and for hearing on the petition.

The rules also establish procedures governing settlements, discovery, and default. Witness fees and transcription fees are described.

A form for the Notice of Hearing is included as Appendix I to the chapter.

TEXT OF RULE

SECTION 1. Chapter RL 3 is created to read:

CHAPTER RL 3 (title)

ADMINISTRATIVE INJUNCTIONS

RL 3.01 Authority	RL 3.08 Answer
RL 3.02 Scope; kinds of proceedings	RL 3.09 Administrative Law Judge
RL 3.03 Definitions	RL 3.10 Prehearing conference
RL 3.04 Pleadings to be captioned	RL 3.11 Settlements
RL 3.05 Petition for	RL 3.12 Discovery
Administrative Injunction	RL 3.13 Default

RL 3.06 Notice of hearing
RL 3.07 Service and filing of petition, notice of hearing and other papers

RL 3.14 Conduct of Hearing
RL 3.15 Witness Fees and Costs
RL 3.16 Transcription Fees

RL 3.01 AUTHORITY. The rules in ch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

RL 3.02 SCOPE; KINDS OF PROCEEDINGS. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

RL 3.03 DEFINITIONS. In this chapter:

- (1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.
- (2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.
- (3) "Department" means the department of regulation and licensing.
- (4) "Division" means the division of enforcement in the department.
- (5) "Petition" means a document which meets the requirements of s. RL 3.05.
- (6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

RL 3.04 PLEADINGS TO BE CAPTIONED. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

RL 3.05 PETITION FOR ADMINISTRATIVE INJUNCTION. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

RL 3.06 NOTICE OF HEARING. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which 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 essentially in the form shown in Appendix I and signed by an attorney in the division.

RL 3.07 SERVICE AND FILING OF PETITION, NOTICE OF HEARING AND OTHER PAPERS. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

RL 3.08 ANSWER. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

RL 3.09 ADMINISTRATIVE LAW JUDGE. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department 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. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the 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 department 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.

RL 3.10 PREHEARING CONFERENCE. In any matter pending before the department, the division and the respondent may be directed by the 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 pleading, 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 3.11 SETTLEMENTS. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

RL 3.12 DISCOVERY. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

RL 3.13 DEFAULT. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

RL 3.14 CONDUCT OF HEARING. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) How made. An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) Filing. A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) Supporting papers. Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

RL 3.15 WITNESS FEES AND COSTS. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

RL 3.16 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.

NOTE: The State Operational Purchasing Bulletin may be obtained from the Department of Administration, State Bureau of Procurement, 101 E. Wilson Street, 6th Floor, P.O. Box 7867, Madison, Wisconsin 53707-7867.

(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 transcript, 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 an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under chapter 977, Stats.

Appendix I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF A PETITION :
 FOR AN ADMINISTRATIVE :
 INJUNCTION INVOLVING : NOTICE OF HEARING
 :
 (#1), :
 Respondent. :

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5), 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 (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

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

Please file a copy of your answer with the division's attorney, who is:

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

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than \$10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

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

(...#10...), Attorney

INSERTIONS

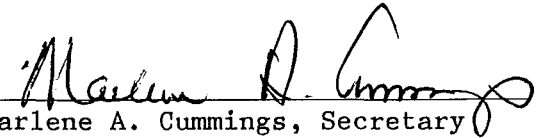
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

(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 6/2/93

Agency


Marlene A. Cummings, Secretary
Department of Regulation
and Licensing

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CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: June 2, 1993

TO: Gary Poulson
Assistant Revisor of Statutes

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

Revisor of Statutes
Bureau

SUBJECT: Final Rulemaking Order

Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 92-88

Attached is a copy and a certified copy of a final order adopting rules.
Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.