

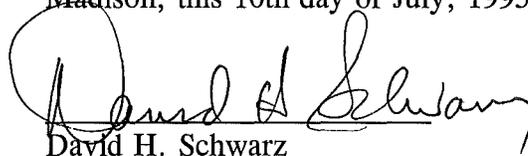
CR 95-058

STATE OF WISCONSIN)
)
Division of Hearings and Appeals)

I, David H. Schwarz, Administrator of the Division of Hearings and Appeals of the Department of Administration and custodian of the official records, certify that the annexed rules, relating to hearing procedures before the Division of Hearings and Appeals, were duly approved and adopted by this division on July 10, 1995.

I further certify that this copy has been compared by me with the original on file in this division and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Division of Hearings and Appeals at 5005 University Avenue, Suite 201 in the city of Madison, this 10th day of July, 1995.


David H. Schwarz



9-1-95

ORDER OF
THE DIVISION OF HEARINGS AND APPEALS
AMENDING AND CREATING RULES



The Division of Hearings and Appeals proposes an order to amend HA 1.05; 1.08(3)(a) and (b), 2.05(8)(a) and 2.07; and to create HA 1.18(5), relating to hearing procedures and stenographic records.

ANALYSIS PREPARED BY THE DIVISION OF HEARINGS AND APPEALS

The amendments to ch. HA 1 incorporate procedures and terminology for hearings held by the Division of Hearings and Appeals pursuant to ss. 227.43(1)(bg) and 227.43(1)(br), Wis. Stats. Jurisdiction for these hearings was transferred to the Division of Hearings and Appeals from the Office of the Commissioner of Transportation by 1993 Act 16 sections 3003g and 3004. Section HA 1.05 is amended to include a reference to complaints. Administrative proceedings filed pursuant to s. 227.43(1)(bg), Wis. Stats., may be commenced by the filing of a complaint. This amendment clarifies that this rule applies to such proceedings. Sections HA 1.08(3)(a) and (b) are amended to include references to petitions and complaints and petitioners and complainants. Administrative proceedings filed pursuant to s. 227.43(1)(bg), Wis. Stats., may be commenced by filing a petition for hearing or complaint. This amendment clarifies that this rule applies to such proceedings.

In s. HA 1.08(3)(b) the phrase "in an enforcement proceeding" is deleted to clarify that this rule applies to proceedings other than enforcement actions and the phrase "or take the allegations in an application, petition, or complaint as true" is added to give the administrative law judge the authority to make findings without taking testimony, if appropriate. Section HA 1.18(5) is created to establish a procedure for filing comments on proposed decisions. In administrative proceedings conducted pursuant to ss. 227.43(1)(bg) and 227.43(1)(br), Wis. Stats., the administrative law judge is required to issue a proposed decision. The parties have an opportunity to file comments on the proposed decision before the administrator of the Division of Hearings and Appeals issues the final decision. The authority of the division to amend and repeal these rules is found in s. 227.43(1)(d), Wis. Stats.

The amendments to ch. HA 2 eliminate the option of a stenographic record for corrections hearings. This change recognizes the current practice of the Division. Preparation of a synopsis by the administrative law judge was necessary when a stenographic record was prepared. With the exclusive use of electronic records the synopsis has become unnecessary. The authority of the division to amend this rule is found in s. 301.035(5), Wis. Stats.

Text of Rule

SECTION 1. HA 1.05 is amended to read as follows:

HA 1.05 Forms of other petitions for review and complaints. Petitions and

complaints shall conform with the applicable statute as to form, content, number of signatories and verifications. All petitions and complaints shall be filed within the time specified by statute or administrative code, or, where no time is specified, within 30 days of the date of the order or decision to be reviewed. Petitions and complaints shall be filed and served in accordance with s. HA 1.03. The division may request additional information concerning any petition, complaint or request filed under this section. The division may deny any such petition, complaint or request where the information required or requested under this section is not provided.

SECTION 2. HA 1.08(3)(a) and (b) are amended to read:

(3) FAILURE TO APPEAR. (a) If an applicant ~~for a permit or license, petitioner, or complainant~~ fails to appear at a hearing following due notice the administrative law judge may dismiss the application, petition or complaint unless the applicant, petitioner, or complainant shows good cause for the failure to appear. If an applicant fails to submit proof of publication and notice as required by statute, the administrative law judge may dismiss the application and cancel the hearing.

(b) If a respondent ~~in an enforcement proceeding~~ fails to appear, the administrative law judge may take testimony and issue, modify or rescind the order or take the allegations in an application, petition, or complaint as true as may be appropriate, unless good cause is shown for the failure to appear.

SECTION 3. HA 2.05(8) is amended to read:

(8)(a) The client, the client's attorney, if any, or the department representative may appeal the administrative law judge's decision by filing a written appeal with arguments and supporting materials, if any, with the administrator within 10 days of the date of the administrative law judge's written decision. ~~If an appeal is filed, the administrative law judge shall prepare a synopsis of the testimony and forward it to the administrator for review. The synopsis may be either written or electronically recorded.~~

SECTION 4. HA 1.18(lm) is created to read:

HA 1.18(lm) COMMENTS ON PROPOSED DECISIONS. Where a proposed decision is prepared and circulated, comments shall be filed within 15 days of service of the decision unless a different period is specified by the administrative law judge or the administrator.

SECTION 5. HA 2.07 is amended to read:

HA 2.07 TRANSCRIPTS. Hearings shall be recorded ~~either stenographically or electronically~~. The division shall prepare a transcript of the testimony only at the request of a judge who has granted a petition for certiorari review of a revocation decision or upon prepayment of the cost of transcription of the record billed at \$2.50 for each page of transcribed material. Any party may also record the hearing at his or her own expense.

Effective Date:

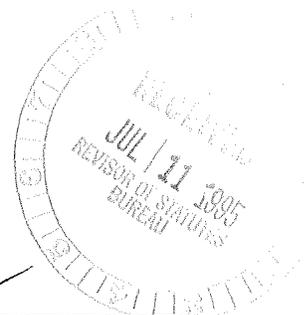
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2), Wis. Stats.

Final Regulatory Flexibility Analysis:

There is no fiscal effect on "small business" as defined in s. 227.114(1)(a), Wis. Stats., anticipated from the adoption of these rules.

Dated at Madison, Wisconsin on July 10, 1995.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 267-2744



By David H. Schwarz
David H. Schwarz
Administrator



State of Wisconsin \ DIVISION OF HEARINGS AND APPEALS

July 10, 1995

David H. Schwarz
Administrator
5005 University Avenue
Suite 201
Madison, WI 53705-5400
(608) 266-7709
Fax (608) 267-2744

Douglas La Follette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, Wisconsin 53703

Bruce Munson
Revisor of Statutes
131 West Wilson Street, Suite 800
Madison, Wisconsin 53703-3233

Re: Transmittal of Administrative Rules
Clearinghouse Rule Number: 95-058

Dear Sirs:

Enclosed for filing is a certified copy of administrative rules enacted by the Division of Hearings and Appeals on July 10, 1995. Pursuant to §227.20, Stats., I request that these rules be filed as duly promulgated rules of the Division of Hearings and Appeals and that they be published in the Administrative Code and Register as required under §35.93, Stats.

Sincerely,

David H. Schwarz
Administrator

DHS:jlr

Enclosure

cc: David Whitcomb, Department of Corrections

