

## Chapter ERC 93

### PREHEARING PRACTICE AND DISCOVERY

ERC 93.01 Prehearing conferences.

ERC 93.02 Exchange of documents and witness lists prior to hearing.

ERC 93.03 Discovery.

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ERC 93.05 Attendance of witnesses.

**Note:** Chapter PC 4 was renumbered Chapter ERC 93 under s. 13.92 (4) (b) 1., Stats., Register December 2014 No. 708.

**ERC 93.01 Prehearing conferences. (1) PURPOSE.** Prehearing conferences are intended to provide an opportunity to formulate a statement of the issue or issues presented by a case, to identify potential witnesses, to attempt to reconcile differences among the parties and promote the settlement of cases and to perform any other functions in aid of the disposition of the case.

**(2) HOW CONDUCTED.** Prehearing conferences may be conducted by telephone conference call or in person. A commissioner or member of the commission's staff shall preside.

**(3) REPORTS.** The person presiding at the conference shall prepare a memorandum or report that summarizes the results of the conference. Copies of the report shall be served on all parties.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; renum. from PC 1.05 and am. (1) and (2), cr. (3), Register, August, 1987, No. 380, eff. 9-1-87.

**ERC 93.02 Exchange of documents and witness lists prior to hearing.** With the exception of rebuttal matter, names of witnesses and copies of exhibits shall be filed and served at least 3 working days before the commencement of the hearing. For the purpose of this section only, service is complete on receipt rather than on mailing. If no good cause is shown for the failure to comply with this section, the hearing examiner or commission may exclude the evidence after consideration of the following factors:

**(1)** The prejudice or surprise experienced by the party against whom the evidence is being offered;

**(2)** The ability of that party to cure any prejudice;

**(3)** The extent to which waiver of the requirement would disrupt the orderly and efficient hearing of the case;

**(4)** Bad faith or willfulness in failing to comply with the requirements; and

**(5)** Other factors relevant to the determination.

**Note:** For example, compliance with the "3 working days" requirement in s. ERC 93.02 (intro.) means that the commission and the opposing party must each receive a party's witness list and copies of exhibits no later than 4:30 p.m. on the Wednesday preceding a Monday hearing, where neither that Wednesday, nor the intervening Thursday or Friday is a legal holiday listed in s. 230.35 (4) (a), Stats.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; renum. from PC 2.01 and am., Register, August, 1987, No. 380, eff. 9-1-87.

**ERC 93.03 Discovery.** All parties to a case before the commission may obtain discovery and preserve testimony as provided by ch. 804, Stats. For good cause, the commission or the hearing examiner may allow a shorter or longer time for discov-

ery or for preserving testimony than is allowed by ch. 804, Stats. For good cause, the commission or the hearing examiner may issue orders to protect persons or parties from annoyance, embarrassment, oppression or undue burden or expense, or to compel discovery.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87.

**ERC 93.04 Ex parte communications.** As provided in s. 227.50, Stats., ex parte communications to the commission or to the hearing examiner are prohibited.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87.

**ERC 93.05 Attendance of witnesses. (1) REQUESTS TO APPEAR.** At the request of any party or on its own motion, a commissioner or the hearing examiner may issue letters to state employees requiring them to appear and to testify at a hearing unless it is determined that their testimony will be irrelevant, immaterial or unduly repetitious. The commission shall mail the letters to the prospective witness unless the party requesting the letter asks to be responsible for personally serving the letters.

**(2) SUBPOENAS. (a) Issuance.** Subpoenas, including subpoenas to compel the attendance of witnesses and subpoenas requiring the production of material, may be issued by a commissioner or the hearing examiner at the request of a party or on the commission's own motion, or may be issued by an attorney of record in a commission proceeding in the same manner as provided in s. 805.07, Stats. The commissioner or hearing examiner may review the reasonableness of any request before issuing a subpoena.

**(b) Service.** The party issuing or requesting a subpoena is responsible for service of the subpoena and for any costs related to service.

**(3) WITNESS FEES. (a) State civil service employees.** State civil service employees who attend hearings as witnesses are entitled to that compensation specified in s. ERC 91.13 (2).

**(b) Persons subpoenaed.** Any person not under the state civil service who appears before the commission by order are entitled to receive fees and mileage as provided in s. 230.44 (4) (b), Stats.

**Note:** The computation of witness fees under par. (b) is governed by s. 814.67 (1) (b) and (c), Stats.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80; r. and recr. Register, August, 1987, No. 380, eff. 9-1-87; am. (3), Register, May, 1996, No. 485, eff. 6-1-96; correction in (3) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2014 No. 708.