

92

Bkg

Chapter 11

PROCEDURE BEFORE THE COMMISSIONER OF BANKS

| | | | |
|-----------|------------------------------|-----------|--------------------------------------|
| Bkg 11.01 | Application of rules | Bkg 11.10 | Notice of hearing in contested cases |
| Bkg 11.02 | Place of hearings | Bkg 11.11 | Answer in contested cases |
| Bkg 11.03 | Conduct of hearings | Bkg 11.12 | Admission by not denying |
| Bkg 11.04 | Hearings public | Bkg 11.13 | Petition for rules |
| Bkg 11.05 | Subpoenas | Bkg 11.14 | Declaratory rulings |
| Bkg 11.06 | Record | Bkg 11.15 | Prehearing conference |
| Bkg 11.07 | Evidence | | |
| Bkg 11.08 | Form and style of papers | | |
| Bkg 11.09 | Service and filing of papers | | |

Bkg 11.01 Application of rules. These rules shall apply in all proceedings and hearings had before the commissioner of banks in matters within his jurisdiction and shall apply except in cases where inconsistent with the procedure provided by statute in particular instances. "Commissioner" as used herein, refers to the commissioner of banks of Wisconsin.

Bkg 11.02 Place of hearings. Unless otherwise specifically provided by law or ordered by the commissioner, all hearings shall be held at the office of the Commissioner of Banks of Wisconsin, State Office Building, Madison, Wisconsin.

Bkg 11.03 Conduct of hearings. All hearings shall be conducted and presided over by the commissioner of banks or such subordinate as may be designated to hear the matter.

Bkg 11.04 Hearings public. All hearings shall be open to the public except where otherwise specifically provided by statute or ordered by the commissioner or the subordinate having charge of the matter involved in said hearing.

Bkg 11.05 Subpoenas. The commissioner may issue subpoenas for the attendance of a party or any witness at a hearing, whether the commissioner is to conduct the hearing or not. Subpoenas may be in the form provided by section 325.02, Wis. Stats.

Bkg 11.06 Record. All the proceedings at a hearing in a contested case or in any other case where the commissioner shall so determine or any party so request, shall be taken down by a stenographic reporter and the transcript thereof together with all exhibits shall be a part of the official record of such proceedings. Any party desiring a copy of such transcript shall so indicate in advance and shall pay the proper cost thereof, except that in cases where the statutes so provide such transcript shall be provided to any party without charge.

Bkg 11.07 Evidence. The commissioner shall not be bound by common law or statutory rules of evidence. All testimony having reasonable probative value shall be admitted, but immaterial, irrelevant or

unduly repetitious testimony shall be excluded. The rules of privilege recognized by law shall be given effect. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact.

Bkg 11.08 Form and style of papers. All papers filed in connection with any hearing shall be either printed or typewritten and, as far as practicable, shall be on paper 8½ inches wide and 11 inches long. An original and 2 copies thereof shall be filed with the commissioner and copies thereof shall also be served or furnished, as the case may be, to any other party or person interested who enters an appearance in said proceeding. Pleadings shall bear the name and mailing address of the party or his representative presenting the same. All pleadings, notices and other papers shall be captioned "BEFORE THE COMMISSIONER OF BANKS OF WISCONSIN."

Bkg 11.09 Service and filing of papers. Unless otherwise provided by law, all orders, notices and other papers may be served by the commissioner by first class or registered mail addressed to any party at his last known post office address or to his attorney of record. Papers required to be filed with the commissioner may be mailed to the following address: 1 West Wilson Street, Madison 2, Wisconsin.

Bkg 11.10 Notice of hearing in contested cases. In all proceedings instituted by the commissioner on complaint or otherwise for the revocation or suspension of any license or permit or in any other contested matter the notice of hearing shall contain a statement of the issues involved and may be in substantially the following form:

BEFORE THE COMMISSIONER OF BANKS OF WISCONSIN

To ----- (Name)
----- (Street Address)
----- (City and State)
Respondent

Take Notice that a hearing will be held on the ----- day of ----- at the office of the Commissioner of Banks of Wisconsin at 1 West Wilson Street, Madison, Wisconsin, (or such other place as may be designated) at ----- o'clock --- M., in the matter of (here insert briefly the subject matter of the hearing). The issue involved and the matters there to be considered are: (here insert with reasonable particularity in numbered paragraphs the particular matters and things complained of or at issue with respect to the subject matter of the hearing), to which you are required to make answer in writing at least ----- days before the time set for hearing.

Dated at Madison, Wisconsin this ----- day of -----
COMMISSIONER OF BANKS OF WISCONSIN
By -----

Bkg 11.11 Answer in contested cases. The respondent shall be required to make answer to any such notice in a contested case within the time therein specified and failure to do so shall constitute a default, but such default may be excused upon proper showing upon such terms as may be deemed to be just. The answer of the respondent shall be verified unless an admission of the allegations might subject the respondent to prosecution for a felony. Such answer must

contain: (a) a specific denial of each of the material allegations of the charges which are controverted by the respondent; (b) a statement of any new matter constituting a defense or affecting the respondent's situation which respondent wishes to have considered.

Bkg 11.12 Admission by not denying. Every material allegation of the charges not controverted in the answer shall be taken as true, but new matter in the answer shall be deemed controverted without any reply being served or filed.

Bkg 11.13 Petition for rules. (1) Any interested person may petition the commissioner requesting the promulgation or amendment or repeal of any rule, the making of which is within the jurisdiction of the commissioner. Every such petition shall specify in detail the particulars in which any rule presently existing is desired to be amended, shall specify with particularity any rule which it is desired should be repealed, and in the event the petition is for the promulgation of any rule, such petition shall set out the proposed rule in full.

(2) Upon the receipt of any such petition the commissioner may make such investigation as he desires into the matter, hold any conferences or hearings deemed necessary and may give notice of such hearings to all parties which he deems may be interested in said matter. But the commissioner may dispose of any such petition in a summary manner if he so desires.

Bkg 11.14 Declaratory rulings. Any person in interest may petition the commissioner for a declaratory ruling with respect to the applicability to any persons, property or state of facts in which such person has an interest, of any rule or statute enforced by the commissioner. Any such petition shall be verified by the party presenting the same, and upon receipt of such petition the commissioner may make such investigation of the facts set forth in such petition as he deems desirable, and may hold such hearings upon notice to such petitioner or any other interested party as he may deem necessary or desirable. The commissioner, however, shall not be required to issue any such declaratory ruling and such action shall be discretionary except upon reference of a case in accordance with the provisions of section 227.05, Wis. Stats.

Bkg 11.15 Prehearing conference. In any matter pending before him the commissioner may direct any party or attorney for any party to appear before the commissioner or subordinate who has the matter in charge to consider:

- (1) Simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact or as to documents which will avoid unnecessary proof;
- (4) Such other matters as may aid in the disposition of the matter.

The commissioner or subordinate having the matter in charge may make an order reciting the action taken at the prehearing conference, the amendments made to pleadings and the agreements made as to any of the matters considered, and limiting the issues to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.