

RULES FOR THE
ADMINISTRATION OF THE

RULES OF PRACTICE IN ADMINISTRATIVE HEARINGS
PART 1110

PART 1110
RULES OF PRACTICE IN ADMINISTRATIVE HEARINGS

Section 1110.5 Applicability

These Rules shall apply to all hearings conducted under the jurisdiction of the Department or the Director thereof. Nothing herein contained shall in any way negate, limit, modify or otherwise affect any of the powers, duties or authority of any hearing officer under the Illinois Collection Agency Act (Ill. Rev. Stat. 1983, ch. 111, par. 2001, et seq.) approved September 8, 1974, or any amendment thereto or under the Illinois Controlled Substances Act (Ill. Rev. Stat. 1983, ch. 56 1/2, par. 100, et seq.), approved August 16, 1971, or any amendments thereto.

Section 1110.10 Definitions

- a) "Civil Administrative Code of Illinois (Ill. Rev. Stat. 1983, ch. 127, par. 1, et seq.)" means the Civil Administrative Code, as amended, now in force in the State of Illinois, or as same may be further amended from time to time hereafter.
- b) "Committee" means any Committee, Board, group of individuals, created or existing under the Civil Administrative Code or any other applicable statute at any time in force in the State of Illinois, within the jurisdiction of the Department, or a majority of the duly appointed members thereof.
- c) "Department" means the Department of Professional Regulation.
- d) "Director" means the Director of the Department or duly appointed Acting Director, or, in his absence from the State or in any event of his incapacity to act, his next immediate subordinate statutory officer within the Department.
- e) "Hearing" means any hearing authorized to be held in the Department or before any of its several Committees or the Director by the Civil Administrative Code or any and all other applicable statutes at any time in force in the State of Illinois.
- f) "Petitioner" is a party who by written petition or application seeks relief or licensure under any provision of the statutes of the State of Illinois or any rule, regulation, order or determination of the Department.
- g) "Registrant" means any holder of a license or certificate of registration issued by the Department, or any applicant therefor.
- h) "Respondent" is a person, firm, association or corporation against whom a complaint or petition is filed or to whom an order or complaint is directed by the Department initiating a proceeding.

Section 1110.20 Institution of a Contested Case by the Department

- a) A contested case is instituted by the Department when a Complaint and Notice are mailed to the registrant's last known address, postage prepaid.
- b) A Complaint shall be in writing, signed by the Chief of Prosecutions, and shall include a clear statement of the acts or omissions alleged to violate a statute or rule, and citation of the statute or rule.
- c) A Notice shall be in writing, and shall contain the date, time, place and nature of the hearing to be held, shall refer to the Department's Rules of Practice, and shall comply with the Notice requirements of Section 1110.70 of this Part.

Section 1110.30 Institution of a Contested Case by Petitioner

- a) A contested case is instituted by a petitioner when a Petition for Hearing is mailed to the Department.

- b) In a case where a petitioner is seeking restoration of a certificate of registration which was revoked or suspended, the Petition for Hearing shall be in writing, signed by the petitioner, and shall set forth:
- 1) The number of the certificate which was suspended or revoked;
 - 2) The docket number of the case which resulted in discipline;
 - 3) The date on which the suspension or revocation was ordered;
 - 4) Whether the order which suspended or revoked the license was appealed, and if so, whether a stay of the imposition of discipline was granted by any reviewing court;
 - 5) All dates and types of employment held since the discipline was imposed;
 - 6) All continuing or remedial education completed since the discipline was ordered;
 - 7) If the petitioner has sought medical treatment, psychotherapy or counseling since the discipline was ordered, and if rehabilitation is relied upon as a basis for petitioning that the license be restored, the name and address of the treating professional, and whether petitioner consents to disclosure by the professional of matters which are relevant to whether petitioner is fit to resume practice;
 - 8) Any arrests or convictions since the discipline was ordered; and
 - 9) Date and disposition of any other petitions for restoration filed since the discipline was ordered.
- c) In a case where petitioner seeks to contest a decision by the Department to deny his application for licensure, the Petition for Hearing will be in writing, signed by the petitioner, and will state with specificity the particular reasons why the applicant believes that the action by the Department to deny licensure was incorrect.
- d) Upon receipt by the Chief of Prosecutions of a properly completed Petition for Hearing, a case will be docketed, and notice sent to the petitioner setting forth the date, time, and place of hearing.

Section 1110.40 Joinder

In the interest of the efficient disposition of related cases the Department may join cases relating to multiple respondents or petitioners without regard to whether the cases relate to the same license or profession so long as the cases involve issues of law or fact which are common to the parties. The respondent may contest the decision to join cases by filing a motion pursuant to Section 1110.210(a)(14) of this Part.

Section 1110.50 Form of Papers

All papers filed or submitted to the Department or Committee in a contested case shall be typewritten, on 8 1/2 by 11 inch white paper. The first page of each document shall set forth the names of the parties and the docket number assigned to the case by the Department. Petitions for Hearing which are filed before a docket number is assigned shall contain a space for entry of the assigned number. (See Appendix A.)

Section 1110.60 Service

- a) Service of any document may be by mail or by personal delivery. Proof of service will be attached to the original of any document served. In the absence of evidence to the contrary, the date shown on the proof of service shall be deemed the date of service.
- b) Service on the Director, or on the Committee, or on the Department, or on a Department attorney or other Department employee is made by service on the Chief of Prosecutions, at the Chicago headquarters, or on the Director, at the Springfield headquarters.

a) NOTICE SHALL INCLUDE:

- 1) A STATEMENT OF THE TIME, PLACE AND NATURE OF THE HEARING.
 - 2) A STATEMENT OF THE LEGAL AUTHORITY, JURISDICTION UNDER WHICH THE HEARING IS HELD;
 - 3) EXCEPT WHERE A MORE DETAILED STATEMENT IS OTHERWISE PROVIDED FOR BY LAW, A SHORT AND PLAIN STATEMENT OF THE MATTERS ASSERTED. (Ill. Rev. Stat. 1991, Ch. 127, par. 1010-25)
- b) Except as otherwise provided by statute, the registrant will be given at least ten days notice prior to the first date set for the preliminary hearing or hearings, as the case may be. Once such notice is given it will thereafter be the responsibility of the registrant to become acquainted with subsequent hearing dates.
- c) Nothing in this Section will prevent the Department from scheduling a hearing within ten days of the date on which the Director summarily suspends a license pending proceedings.
- d) Any contention that improper notice was given will be deemed waived unless it is raised by the registrant prior to argument on any other motion, or, if no other motions are presented, prior to the commencement of opening statements.
- e) Proper notice is given by depositing a Notice with the U.S. Postal Service, either by certified or registered mail, or by the personal service, to the last known address of the registrant.

Section 1110.175 Disqualification of Hearing Officer

- a) A Hearing Officer may, on his/her own motion, recuse himself/herself from presiding over a matter due to conflict of interest or bias.
- b) At any time prior to the issuance of the hearing officer's final decision or recommendation, a party may file a motion to disqualify the hearing officer for bias or conflict of interest. An adverse ruling made by a hearing officer, in and of itself, shall not constitute bias or conflict of interest. The motion shall set forth the alleged grounds of bias or conflict of interest and shall include supporting affidavits. A different hearing officer shall have 7 days after the motion was filed to enter a written ruling, which shall be served on all parties. An adverse ruling or rulings rendered against the party or its representative in any previous matter shall not, in and of themselves, constitute sufficient grounds for disqualification under this Section.
- c) If the motion to disqualify is denied, the moving party may request the decision be reviewed by the Director.

(Source: Added at 28 Ill. Reg. 7642, effective May 21, 2004)

Section 1110.80 Prehearing Negotiations

- a) The Department and the Respondent may stipulate to facts and may agree to discipline conditioned upon Committee acceptance. If the agreement is acceptable to the Committee, it shall signify its consent with the signature of a majority of its members on the written agreement. Such signed agreement shall be considered the Conclusions of Law, Findings of Fact, and Recommendation to the Director. If the Committee or the Director rejects the agreement, the Respondent shall then be entitled to a hearing on the merits. It shall not be a bar to participation in the hearing by a Committee member that he has previously considered a proposed agreement under this Section.
- b) A respondent may waive his right to have discipline imposed only upon the action and report in writing of the Committee

Section 1110.90 Representation

- a) A party may be represented by an attorney who is licensed in Illinois. Attorneys who appear in a representative capacity must file written notice of appearance setting forth:
 - 1) The name, address and telephone number of the attorney;
 - 2) The name and address of the party represented; and
 - 3) An affirmative statement indicating that the attorney is licensed in Illinois.
- b) An attorney may withdraw from employment as a representative only upon written notice to the Department which states his specific reasons therefor.
- c) Any individual may appear on his own behalf.
- d) A corporation may be represented by an officer, upon presentation to the Department of a duly executed resolution of the Board of Directors authorizing him to act in a representative capacity and setting forth the powers which he is authorized to exercise.
- e) A partnership may be represented by any partner, upon presentation to the Department of written authorization from all the partners authorizing him to act in a representative capacity.
- f) Attorneys appearing before the Department shall conform their conduct to the Illinois Code of Professional Responsibility, effective July 1, 1980, and as amended hereafter. Any failure to behave in a manner which permits the efficient functioning of the Department will authorize a Committee or hearing officer to take the following actions:
 - 1) Limitation of evidence;
 - 2) Substitution of written argument in place of oral argument;
 - 3) Exclusion of an attorney from the proceeding;
 - 4) Suspension or revocation of an attorney's right to appear before the Committee or hearing officer.
- g) If any of the above actions are taken by the Committee or hearing officer, it shall be done as a matter of record, and the Committee or hearing officer shall state for the record the specific reasons therefor.

Section 1110.100 Failure to Appear

Failure to appear at the time and place set for hearing shall be deemed a waiver of the right to present evidence. Failure to appear at the time and place set for hearing shall be deemed a waiver of the right to present evidence. After presentation by the Department of an offer of proof that the registrant was given proper notice, the Committee shall make its recommendation. Where a petitioner fails to appear, the Petition for Hearing shall be dismissed.

Section 1110.110 Amendment, Withdrawal of Complaints and Petitions for Hearing

- a) The complaint may be amended at any time. An amended Complaint may be filed in the same manner as a Complaint, or it may be presented to the Committee or hearing officer during the course of the hearing. A continuance shall be granted whenever the amendment materially alters the Complaint, and where the registrant demonstrates that he would otherwise be unable to properly prepare an Answer to the Amended Complaint or prepare his case.
- b) A Complaint or Petition for Hearing may be withdrawn at any time prior to the hearing by the party who initiated it. After a hearing has begun, a Complaint may be withdrawn only upon written notice to the Committee.

date on which the Complaint was filed. The Answer shall be in writing, signed by the registrant or his representative, and shall contain a specific response to each allegation in the Complaint. The response shall either admit or deny the allegation, or shall state that the registrant has insufficient information to admit or deny the allegation.

- b) Any Answer which states that the registrant has insufficient information to admit or deny the allegation shall be accompanied by an affidavit attesting to the truth of this assertion.
- c) On motion by the Department the Hearing Officer will cause to be issued a Notice to plead or be held in default. If, within 15 days after issuance of such Notice, the Respondent does not answer or otherwise file a responsive Pleading he will be held in default.

Section 1110.130 Discovery

- a) Discovery shall not be the subject of motions presented to the Committee or hearing officer, except when a motion is made alleging failure to comply with this provision, and requesting relief in the form of dismissal of the case, or recommendation to the Director based on the pleadings without a hearing.
- b) Upon written request served on the opposing party, any party shall be entitled to:
 - 1) The name and address of any witness who may be called to testify;
 - 2) Copies of any document which may be offered as evidence; and
 - 3) A description of any other evidence which may be offered.
- c) The above information will be provided within ten days of service of a request.
- d) Whether or not a request is made, during discovery a registrant shall be entitled to:
 - 1) Any exculpatory evidence in the Department's possession. Exculpatory evidence is any evidence which tends to support the registrant's position or to call into question the credibility of a Department witness; and
 - 2) Copies of any investigative report which purports to be a memorandum of interview of the registrant.
- e) The registrant shall be entitled to the above whether or not the investigator is called to testify and whether or not the investigator uses his reports to refresh his recollection prior to or during testimony.
- f) Upon a written request served on the registrant, at any time after a Complaint is filed, or at any stage of the hearing, the registrant will be required to produce documents, books, records or other evidence which relate directly to conduct of the trade, occupation or profession.
- g) The investigative file of a Department investigator is not subject to discovery except as stated in paragraph (d) above relating to exculpatory evidence and memoranda of interviews of a registrant. However, after the direct examination of a Department witness but prior to the cross-examination of that witness, the registrant shall be entitled to all investigative reports relating to that witness. Investigative reports relating to the witness shall be those which purport to be memoranda of interviews of the witness or which contain information about the witness.
- h) Nothing in this Section shall prevent the parties in a contested case from agreeing to a mutual exchange of information which is more extensive than what is provided for herein. Where the parties agree to the use of an evidence deposition, such agreement will be in writing, and will operate as a waiver of any objection not made during the deposition, except for an objection that the testimony of the witness is not relevant to the case.

Section 1110.140 Subpoenas

- a) The Director or his delegate, will issue subpoenas for the attendance of witnesses or production of books, records, documents or other evidence.
- b) Any registrant or petitioner seeking issuance of a subpoena will apply in writing to the Department, Attention: Chief of Prosecutions, setting forth facts which purport to demonstrate that the subpoena is required. Upon refusal by the Director to issue any subpoena, the registrant will be entitled to a hearing before the Director, to be conducted as a matter of record.
- c) Service of subpoenas and payment of witness fees and expenses shall be as provided in the Civil Administrative Code of Illinois. (Ill. Rev. Stat. 1983, ch. 127, par. 60-d)

Section 1110.150 Prehearing Conference

- a) After a case is instituted, upon the written motion of either party, or on its own motion, the Committee or the hearing officer may direct the parties to attend a prehearing conference.
- b) Unless waived by the parties, the conference will be conducted as a matter of record. Participation by any Committee member or a hearing officer will not affect his right to participate in a subsequent hearing on the matter.
- c) The purposes of the conference include:
 - 1) Simplification of issues;
 - 2) Limitation of issues;
 - 3) Negotiating admissions or stipulations;
 - 4) Limitation of witnesses or evidence;
 - 5) Exchange of exhibits; or
 - 6) Discussion of any other matter which may aid in efficient disposition of the case.

Section 1110.160 Hearings

The sequence to be followed for all contested cases is as follows.

- a) Preliminary Hearing. The purpose is to set a date on which all parties expect to be prepared, and to rule on any preliminary motions which are presented. This may be eliminated by agreement of the parties, by Committees who meet fewer than ten times per year, or by the hearing officer.
- b) Prehearing Conference - Optional. The purposes are set out in Section 1110.150.
- c) Hearings
 - 1) Preliminary matters - Motion, attempts to narrow issues or limit evidence.
 - 2) Opening Statements The party bearing the burden of proof proceeds first.
 - 3) Case in Chief Evidence and witnesses are presented by the party bearing the burden of proof. As witnesses' testimony is completed, they are subject to cross-examination.
 - 4) Defense - Evidence and witnesses may be presented by the opposing parties.

6) Committee Report Described in Section 1110.240

Section 1110.170 Hearing Officers

- a) In any contested case, the Director may employ any attorney, licensed to practice in Illinois, to serve as hearing officer. The hearing officer may be empowered to conduct the hearing, question witnesses, make rulings on motions and objections, or to submit suggested Findings of Fact and Conclusions of Law to the Committee at the conclusion of the case. The hearing officer may also afford the Committee such legal counsel as it may require during the course of the hearing and until a final order is signed.
- b) It shall not be a bar to employment as hearing officer that the attorney is also a Department employee.
- c) In any case in which the Director does not employ a hearing officer, the Committee may appoint as presiding officer its chairman, or other Committee member to conduct the hearing, make rulings on motions or objections, or to make suggested Findings of Fact and Conclusions of Law to the full Committee.

Section 1110.180 Examination by the Committee

- a) Any member of any Committee, or any hearing officer, may examine any witness.
- b) Either party may object to specific questions asked by the Committee or hearing officer, but it shall not be objectionable that a question violates a technical rule of evidence. For purposes of these rules, the rule against hearsay is a substantive, rather than technical rule of evidence.

Section 1110.190 Burden of Proof

- a) The burden of proof rests with the Department in all cases instituted by the Department by the filing of a Complaint. A recommendation for discipline may be made by the Committee or hearing officer only where the Department establishes by clear and convincing evidence that the allegations of the Complaint are true.
- b) The burden of proof in all cases instituted by the filing of a Petition for Hearing rests with the petitioner. The petitioner must prove by a preponderance of the evidence that the license should be granted or restored, as the case may be.

Section 1110.200 Documents

- a) Business records shall be admissible. A business record is:
 - 1) Relevant;
 - 2) A memorandum, report, record or data compilation;
 - 3) Made by a person with first-hand knowledge of the facts;
 - 4) Made at or near the time of the facts;
 - 5) Made as part of the regular practice of the activity; and
 - 6) Kept in the course of regularly conducted activity.
- b) Any party may prove elements (a)(3) through (a)(6), above, by presentation of a sworn statement by an individual responsible for making or keeping such records. Business records include medical reports and police reports.

- c) Any party seeking introduction of a document will be allowed to offer a mechanical reproduction or carbon copy of the original without any showing that the original is unavailable, upon representation of the party or attorney that the copy is a fair and accurate copy of the original.

Section 1110.210 Motions

- a) Motions will be made in writing, unless otherwise allowed by the Committee, hearing officer or Director during the course of a hearing. Written motions are limited to the following:
- 1) To request dismissal of a Complaint, for failure to state facts which, if true, would form a sufficient basis for discipline
 - 2) To request sanctions in accordance with the Section of these rules dealing with Representation.
 - 3) To request sanctions in accordance with the Section of these rules dealing with Discovery.
 - 4) To request dismissal of a Petition for Hearing, for failure to comply with the Section of these rules dealing with Institution of a Contested Case by a Petitioner.
 - 5) To request dismissal of a Complaint where the Department's case has been concluded without sufficient evidence having been presented to form a basis for discipline.
 - 6) To request a continuance, or extension of time to comply with any provision of these rules.
 - 7) To request an order granting a rehearing, or additional hearings.
 - 8) To request an order that a Committee or hearing officer reconsider its Findings of Fact, Conclusion of Law or Recommendation to the Director or to request a new hearing or additional hearings.
 - 9) To request that a Committee or hearing officer deem a failure to file an Answer to be an admission of the truth of the allegations contained in the Complaint.
 - 10) To request employment of a hearing officer.
 - 11) To request that a member of the Committee be excluded from the hearing or deliberations, for prejudice.
 - 12) To request that an Order be vacated or modified.
 - 13) To request a prehearing conference.
 - 14) To request separation of cases joined by the Department.
 - 15) To request disqualification of a hearing officer in accordance with Section 110.175.
- b) When any motion is filed, the Committee, hearing officer or Director may allow oral argument if this is deemed necessary to a fuller understanding of the issues presented. Where facts are alleged as a basis for the request, which are not a part of the record in the case, an affidavit will be attached to the motion setting forth such facts.

(Source: Amended at 28 Ill. Reg. 7642, effective May 21, 2004)

Section 1110.220 Evidence

- a) Except as otherwise provided herein the rules of evidence applicable to all contested cases will be the rules of evidence which are applicable in civil cases in the State of Illinois.
- b) Hearsay is not admissible. In addition to any other exceptions to the hearsay rule which exists in Illinois, a

c) Statements which are not hearsay;

- 1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:
 - A) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; or
 - B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive; or
 - C) one of identification of a person made after perceiving him; or
- 2) Admission by party-opponent. The statement is offered against a party and is
 - A) his own statement in either his individual or a representative capacity; or
 - B) a statement of which he has manifested his adoption or belief in its truth; or
 - C) a statement by a person authorized by him to make a statement concerning the subject; or
 - D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship; or
 - E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Section 1110.230 Adverse Witness

- a) Any party or witness may be called as an adverse witness. In such a case, examination of the witness will be allowed as if under cross-examination.
- b) Upon a showing that a witness was called in good faith, and that the party calling him is surprised by his testimony, examination of the witness may proceed as if under cross-examination, and the testimony of the witness may be impeached by prior statements, or otherwise.

Section 1110.240 Committee Reports

- a) In every contested case, the Committee will file a written report which contains its Findings of Fact and Conclusions of Law with respect to the allegations contained in the Complaint or Petition for Hearing, and its Recommendation to the Director.
- b) In a case instituted by the Department, the recommendation to the Director may be:
 - 1) That a license not be issued;
 - 2) That a license not be renewed;
 - 3) That a license be issued;
 - 4) That a license be renewed;
 - 5) That a license be issued or renewed subject to discipline;
 - 6) That a license be disciplined; or

- c) Where the recommendation is for discipline, the Committee will include its specific recommendation as to type and duration.
- d) In any case in which a special committee is designated, the report prepared by the special committee will have the same force and effect as a report prepared by a Committee.
- e) In any case in which a Committee is unable to agree on a Recommendation to the Director, the Director may instruct the individual members to make recommendations, and thirty days thereafter may take such action as is otherwise authorized by statute upon the action and report in writing of the Committee.
- f) The Committee may request that any hearing officer, any Department attorney, or any attorney representing the Petitioner or Respondent assist in preparing a draft Committee Report for its consideration.
- g) When a Committee forwards its report to the Director, all parties will receive Notice. Within twenty days after such report is forwarded, either party may request that a rehearing, or additional hearings, be ordered by the Director. A rehearing shall be ordered by the Director when the Director determines that substantial justice has not been done.
- h) When a Committee is unable to agree on a recommendation, all parties will receive Notice of the date on which individual members are requested to file recommendations. When any member forwards such a recommendation, all parties will receive Notice, and may request a rehearing or additional hearings within twenty days of the date on which the first such recommendation is forwarded; if no recommendation is made, the request will be made within thirty days of the date instructions are given to file individual recommendations.
- i) Any member of any Committee may join the Committee in its Recommendation to the Director, or may file a separate dissenting or concurring report at any time, whether or not such individual report is requested by the Director.
- j) Where a rehearing, or additional hearings are requested, the request shall be in the form of a motion, and shall state with specificity the reasons for the request. If it is alleged that new evidence is available which was not available at the time of the hearing, the affidavit shall describe the new evidence, and reasons why it was not available for use at the hearing.
- k) Where a Committee or hearing officer grants any motion which would dispose of the case, it shall first afford the parties an opportunity to cure the defects in pleading or proof, and the ruling will be construed as a recommendation, rather than as a final agency decision; in such a case a Committee Report setting forth the ruling, the reasons therefore, and the effect of the ruling will be forwarded to the Director.

Section 1110.250 Severability

If any Section, subdivision, sentence or clause of this Part shall be held by a court of competent jurisdiction to be invalid, such holding shall not affect the remaining parts thereof.

Section 1110.270 Variances

The Director may grant a variance from these rules in a particular case where he finds that:

- 1) The provision from which the variance is granted is not statutorily mandated;
 - 2) No party will be injured by the granting of the variance;
 - 3) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.
- b) The Director shall notify the appropriate Committee of the granting of such variance, and the reasons

Caption for a Case Filed with the Department

STATE OF ILLINOIS

DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION)	
of the State of Illinois, Complainant)	
v.)	No.
(Name of Respondent))	
(License Number) Respondent)	

C O M P L A I N T

STATE OF ILLINOIS
DEPARTMENT OF PROFESSIONAL REGULATION

In RE the Petition for Restoration of)
) No
(Name of Petitioner))
(License Number) Petitioner)

P E T I T I O N F O R H E A R I N G