

## Chapter PC 3

## HEARINGS

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**PC 3.01 Hearing examiners.** (1) **DESIGNATION.** Any matter to be heard by the commission may be designated for hearing by one or more members of the commission, or by such other persons as may be permitted by statute. Hearing examiners shall have all powers necessary for the conduct of commission proceedings.

(2) **LIMITATION AGAINST FINAL DISPOSITION.** No hearing examiner shall decide any motion which would require final disposition of an appeal or any part of an appeal. Such motions shall be reserved for decision by the commission.

(3) **DISQUALIFICATION.** If a hearing examiner is disqualified to preside for reasons of conflict of interest or personal bias, the hearing examiner shall withdraw and notify the commission and the parties.

(4) **MOTION FOR SUBSTITUTION.** If a party deems the hearing examiner to be disqualified, the party may move in a timely manner for substitution of a different hearing examiner. The motion shall be accompanied by a written statement setting forth the alleged ground for disqualification. If the hearing examiner does not grant the motion, it shall be referred to the commission, which shall determine the sufficiency of the ground alleged.

(5) **UNAVAILABILITY.** If a hearing examiner shall become unavailable during the course of a hearing, the commission shall designate a substitute hearing examiner to finish the hearing.

*History:* Cr. Register, March, 1980, No. 291, eff. 4-1-80.

**PC 3.02 Continuances.** Requests for continuances of hearing dates will be granted only on a showing of cause and for substantial reasons.

*History:* Cr. Register, March, 1980, No. 291, eff. 4-1-80.

**PC 3.03 Conduct of hearings.** (1) **GENERALLY.** The commission is not bound by strict rules of procedure and customary practices of courts of law. The pleadings, prehearing practice provisions, and discovery provisions in chapters PC 1 and PC 3, Wis. Adm. Code, shall be applicable to proceedings under this chapter.

(2) **OPEN TO THE PUBLIC; EXCEPTIONS.** Hearings shall be open to the public except that the commission may hold a closed hearing at the request of the appellant (see s. 230.44 (4) (a), Stats.) and may close a hearing in part to protect the confidentiality of the material exempt from disclosure under s. PC 6.04 (5), Wis. Adm. Code.

(3) **SEQUESTRATION OF WITNESSES.** At the request of either party, the hearing examiner may order the exclusion of witnesses in accordance with the provisions of s. 906.15 Stats.

*Register,* March, 1980, No. 291

(4) **OPENING STATEMENTS.** Opening statements are optional and in any event shall be confined to a brief summary of the nature of the case, the evidence intended to be offered, and the controlling legal authorities.

(5) **ORDER OF PROCEEDING.** The appellant or complaining party normally shall present evidence first unless the case falls into a category in which the commission, the judiciary, or the legislature through statutory enactment has determined that the burden of proof shall be on the respondent. In such cases, the respondent normally would proceed first. The order of proceeding may be varied by the commissioner or the hearing examiner in the interest of obtaining the most cogent presentation of the case.

*Note:* For example, the burden of proof in an appeal of a discharged permanent employe is on the respondent.

(6) **EVIDENCE.** In accordance with s. 227.08 Stats., the commission is not bound by common law or statutory rules of evidence.

(7) **WITNESSES.** (a) Normally, a witness shall be examined first on direct examination by the party calling the witness, unless the witness is called adversely, in which case the witness shall be first examined adversely by the party calling the witness.

(b) Witnesses may testify either by answers to questions or in narrative form.

(c) Cross-examination shall not be limited to matters to which the witness testified on direct.

(d) A person examining or cross-examining a witness shall not approach the witness stand except to show the witness an exhibit.

(e) Examination and cross-examination should be confined to questioning the witness and should not be interspersed with argument or commentary on the testimony. A party not represented by counsel should not make evidentiary statements while examining or cross-examining a witness. Such evidentiary statements should be restricted to the part of the case where the party is testifying on his or her own behalf.

(8) **STIPULATIONS.** Parties may stipulate to some or all of the facts, and the commission may thereupon base its order.

(9) **EXHIBITS.** All exhibits shall be marked and made available for inspection by the opposing party before being shown to the witness, unless the exhibit shall have been marked and a copy made available to the opposing party prior to the hearing.

(10) **TRANSCRIPTS.** A stenographic, electronic or other record of hearings of appeals and such other proceedings as the commission may designate shall be recorded. The typed transcript or other record will be available in the commission office for the use of the parties. Copies of the tape recordings, transcripts or other records shall be furnished upon request, subject to the charges set forth in section PC 6.06, except that copies may be provided free of charge to parties who can demonstrate that they are indigent and who request a transcript for the purpose of preparing objections to proposed findings of fact or for pursuing judicial review pursuant to s. 277.07 (8), Stats.

(11) **POST-HEARING BRIEFS.** Post-hearing briefs and arguments may be required or permitted by the commission or hearing examiner. The 90 day period for the issuance of decisions set forth in s. 230.44 (4) (f), Stats., shall commence on the date that the last brief is filed or argument is made.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80.

**PC 3.04 Effect of failure to appear.** By failing to appear and participate after due notice, a party shall waive the rights set forth in section PC 3.02 and admit the accuracy of the uncontradicted evidence adduced by the parties present, and, unless good cause can be shown, is precluded thereafter from introducing any evidence controverting any contentions or allegations. The commission or individual determining the matter may rely on the record as made. If the absent party has the burden of proof, the commission will consider a motion to dismiss by the party (ies) present without requiring presentation of the case.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80.

**PC 3.05 Requests for rehearings.** Requests for rehearings shall be made under s. 227.12, Stats.

**History:** Cr. Register, March, 1980, No. 291, eff. 4-1-80.