

Chapter PB 3

HEARINGS

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| PB 3.01 | Hearing officer; disqualification;
unavailability | PB 3.03 | Conduct of hearing |
| PB 3.02 | Continuances | PB 3.04 | Requests for rehearings |

PB 3.01 Hearing officer; disqualification; unavailability. (1) Any matter to be heard by the board may be assigned to one or more members of the board, or to such other persons as may be permitted by statute, for hearing, and shall be reported to the full board for determination. Hearing officers shall have all powers necessary for the efficacious conduct of board proceedings. No hearing officer shall decide any motion which would require the final disposition of an appeal or any part of an appeal. Such motions shall be reserved for decision by the board.

(2) If a hearing officer deems him or herself disqualified to preside, he or she shall withdraw and notify the board and the parties.

(3) If a party deems the hearing officer to be disqualified it may move for substitution of a different hearing officer. The motion shall be accompanied by an affidavit setting forth the alleged ground for disqualification. If the hearing officer does not grant the motion it shall be referred to the board which shall determine the sufficiency of the grounds alleged.

(4) If a hearing officer shall become unavailable during the course of a hearing, the board shall designate a substitute hearing officer to finish the hearing.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76.

PB 3.02 Continuances. Requests for continuances of hearing dates are not favored and will only be granted on a showing of cause and for pressing reasons.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76.

PB 3.03 Conduct of hearings. (1) **GENERALLY.** The board is not bound by the rules of procedure and customary practices of courts of law or by common law or statutory rules of evidence.

(2) **OPEN TO THE PUBLIC; EXCEPTIONS.** Hearings shall be open to the public except that the board may hold a closed hearing at the request of the appellant, if the request therefor is received no later than the request for the hearing.

(3) **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.

(4) **ORDER OF PROCEEDING.** The appellant normally shall proceed first with his or her evidence unless the case falls into a category in which the board, the judiciary, or the legislature through statutory enactment has determined that the burden of proof shall be on the

respondent, in which case the respondent normally shall proceed first. The order of proceeding may be varied by the board or the hearing officer in the interest of obtaining the most cogent presentation of the case.

(5) **EVIDENCE.** In accordance with section 227.10(1), Wis. Stats., the board is not bound by common law or statutory rules of evidence. Irrelevant, immaterial, or unduly repetitious evidence will be excluded. In matters heard by less than a quorum of the board there shall be a presumption in favor of admitting evidence subject to objection inasmuch as normally the full board will scrutinize the entire record.

(6) **WITNESSES.** (a) A witness shall be examined first on direct examination by the party calling him or her unless the witness is an adverse witness in which case he or she shall be first cross-examined by the party calling him or her.

(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.

(7) **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.

(8) **TRANSCRIPTS.** (a) Hearings of appeals and such other hearings as the board may designate shall be transcribed. The typed transcript will be available in the board office for the use of the parties.

(b) Any party may serve and file with its first post-hearing brief, or, in the event that none is filed, within the period designated for filing of its first brief, a notice in writing of any claimed error in the transcript. Any other party may serve and file exceptions to the notice of claimed error with its brief in opposition or reply brief, or within the time allowed for such brief.

(9) **POST-HEARING BRIEFS.** If the parties elect to file post-hearing briefs it shall be pursuant to the following schedule unless the hearing officer, the board, or any member thereof, orders otherwise. The party or parties having the burden of proof shall serve and file its brief within 15 working days after the date of mailing of notice that the transcript of the hearing is available. Parties opposed shall serve and file their brief within 10 working days after the due date of the first

brief. Reply briefs shall be filed within 5 working days of the due date of the second briefs.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76.

PB 3.04 Requests for rehearings. Requests for rehearings must be made within 15 working days after the date of mailing of the board's original decision to the parties.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76.