

Chapter DFI-Sec 8

ADMINISTRATIVE PROCEDURE

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Note: Chapter SEC 8 as it existed on December 31, 1977 was repealed and a new chapter SEC 8 was created effective January 1, 1978. Chapter SEC 8 was renumbered chapter DFI-Sec 8 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

DFI-Sec 8.01 Petitions for hearing. Every request for a hearing shall be in the form of a petition filed with the division. A petition for a hearing to review an order shall:

(1) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and

(2) State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1986, No. 372, eff. 1-1-87.

DFI-Sec 8.02 Notices of hearing and answers. A notice of hearing shall state the names of the parties to the hearing and the name of the hearing examiner. Unless otherwise provided in the notice of hearing, the decision of the hearing examiner shall be the final decision of the division. Every party so directed in the notice of hearing shall file an answer plainly admitting or denying each specific allegation and setting forth affirmative defenses. Unless a different time is provided in the notice of hearing, or by the designated hearing examiner for cause shown, every answer shall be filed not later than 10 business days before the date of the hearing, or if a prehearing conference has been scheduled, not later than 5 business days before the date of the prehearing conference. Affirmative defenses not raised by answer as herein provided may be deemed waived.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

DFI-Sec 8.03 Appearances and defaults. Each party shall appear at the hearing and any prehearing conference either in person or by a duly authorized representative. If any party, without good cause, fails to file an answer as provided in s. DFI-Sec 8.02, or fails to appear at a hearing or prehearing conference of which the party has notice, such failure may be deemed a default and the hearing examiner may thereupon make a decision, enter an order, or otherwise dispose of the case.

Note: See the Dane County, Wisconsin, Circuit Court decision *Lee R. Krahenbuhl, DDS v. Wisconsin Department of Regulation and Licensing* (Memorandum Decision, February 26, 2003, Case No. 02-CV. 1148, Dane County) which held that only an attorney authorized to practice law in Wisconsin may participate in a contested case administrative hearing, action or proceeding. A copy of the decision may be obtained from the division of securities, department of financial institutions.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; CR 03-069; am. Register November 2003 No. 575, eff. 12-1-2003.

DFI-Sec 8.04 Form of pleadings. All pleadings, briefs, decisions and orders filed or issued in connection with any administrative proceeding under this chapter shall be captioned "Before the division of Securities, State of Wisconsin" and shall be entitled "In the Matter of (name of party or parties), Petitioner (or Respondent)."

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

DFI-Sec 8.05 Record of hearings, transcripts, costs. (1) A stenographic, electronic or other record of oral proceedings shall be made in any case required by law.

(2) A written transcript of proceedings shall be prepared upon the request in writing:

(a) Of any party for the purpose of seeking a rehearing or judicial review; or

(b) Of any person upon tender of the estimated costs of transcription, adjusted to reflect the actual costs when determined.

(3) A copy of the written transcript of proceedings shall be provided upon the request in writing of any party setting forth by affidavit filed with the division the party's impecuniousness, or of any person upon tender of the estimated costs of preparing the copy, adjusted to reflect the actual costs when determined.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3), Register, December, 1980, No. 300, eff. 1-1-81.

DFI-Sec 8.06 Service of orders. A copy of every order issued without a hearing shall be sent promptly by certified mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or the party's attorney of record.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; CR 03-069; am. Register November 2003 No. 575, eff. 12-1-2003.

DFI-Sec 8.07 Effectiveness of orders or other documents, notice. Every order or other document is effective when signed. Mailing of any order or other document under this chapter to the last known address of any person, or personal service, constitutes notice thereof to the person, provided that if the person is a corporation, service by certified mail to the corporation's registered agent at the registered agent's last known address also constitutes notice to the corporation.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1981, No. 312, eff. 1-1-82; CR 03-069; am. Register November 2003 No. 575, eff. 12-1-2003.

DFI-Sec 8.08 Taking and preserving of evidence. In any class 3 proceeding as defined in ch. 227, Stats., a party may be granted the right by the hearing officer to take and preserve evidence as provided in ch. 804, Stats.

History: Cr. Register, December, 1979, No. 288, eff. 1-1-80.

DFI-Sec 8.09 Procedure for determination of parties. Under the requirement of s. 227.10, Stats., the following procedure shall be followed by each hearing examiner appointed under the authority of s. 227.46 (1), Stats., to hear a matter under ch. 551, 552 or 553, Stats., on behalf of the office of the division of securities:

(1) The hearing examiner, prior to receiving testimony by any individual, shall state on the record whether the individual is testifying as a party to the proceeding as defined in s. 227.01 (8), Stats., as a witness, or is testifying for informational purposes only or for the limited purpose of making a statement for the record.

(2) Only persons admitted to the proceeding as parties by the hearing examiner under the procedure in sub. (1) are entitled to receive service of a decision under s. 227.48, Stats., and to be con-

sidered a party for purposes of judicial review under s. 227.53, Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1986, No. 372.

DFI-Sec 8.10 Burden of proof. In each class 1, 2 or 3 proceeding as defined in ch. 227, Stats., involving a contested case under ch. 551, 552 or 553, Stats., the burden of proof required on any issue in the proceeding shall be a preponderance of the evidence on the basis of the record in the proceeding.

History: Cr. Register, December, 1986, No. 372, eff. 1-1-87.