WEST VIRGINIA CODE CHAPTER 15A ARTICLE 9

WV Legislature

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within the department.

(b) The secretary shall appoint a director of the office who serves as the administrative head of the office and as Chief Hearing Examiner.

(c) The Chief Hearing Examiner shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state.

(d) The salary of the Chief Hearing Examiner shall be set by the secretary of the department.

(e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code, the Chief Hearing Examiner during his or her term shall:

(1) Not engage directly or indirectly in any activity, occupation, or business interfering or inconsistent with his or her duties as Chief Hearing Examiner;

(2) Not hold any other appointed public office or any elected public office or any other position of public trust; and

(3) Not be a candidate for any elected public office, or serve on or under any committee of, any political party.

(f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.

WV Legislature

§15A-9-2. Organization of office.

(a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative Hearings and he or she may employ hearing examiners and other clerical personnel necessary for the proper administration of this article.

(1) The Chief Hearing Examiner may delegate administrative duties to other employees, but the Chief Hearing Examiner is responsible for all official delegated acts.

(2) All employees of the Office of Administrative Hearings are classified exempt.

(b) The Chief Hearing Examiner shall:

(1) Direct and supervise the work of the office staff;

(2) Hold hearings;

(3) Make hearing assignments;

(4) Maintain the records of the office;

(5) Review and approve decisions of hearing examiners as to legal accuracy, clarity, and other requirements; and

(6) Perform the other duties necessary and proper to carry out the purposes of this article.

(c) The administrative expenses of the office shall be included within the annual budget of the Division of Administrative Services.

WV Legislature

§15A-9-3. Jurisdiction of Office of Administrative Hearings.

Notwithstanding any provision of this code to the contrary, the Office of Administrative Hearings has jurisdiction to hear and determine all:

(1) Level one grievance proceedings for all divisions of the department, except for the State Police;

(2) Appeals from decisions or orders of the State Fire Commission, except as otherwise provided in §15A-10-9(b) of this code;

(3) Appeals from decisions or orders of any of the subcommittees of the Governor's Committee on Crime, Delinquency and Correction;

(4) Other matters for which a hearing examiner is necessary within the department or any division of the department; and

(5) Other matters which may be conferred upon the office by statute or legislatively approved rules.

WV Legislature

§15A-9-4. Hearing procedures.

(a) All level one grievance hearings before the office shall be heard in accordance with practices and procedures as set forth in §6C-2-1 *et seq.* of this code.

(b) All hearings on appeals before the office shall be heard *de novo* and conducted pursuant to the provisions of the contested case procedure set forth in §29A-5-1 *et seq.* of this code.

(1) Notwithstanding any provision of this code to the contrary, the division head, or the Fire Commission, may be represented at hearings conducted by the office and evidence submitted by the division head may be considered in such hearings with or without such representation.

(2) The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before a hearing examiner. All testimony shall be given under oath.

(3) The hearing examiner may request proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of the decision in the matter.

(c) Hearings and all records of hearings are exempt from the requirements of §29B-1-1 *et seq.* of this code, until the results of the hearing have been rendered: *Provided*, That once the decision is rendered, the records may be exempt from disclosure, pursuant to §29B-1-4 or other applicable section of this code.

WV Legislature

§15A-9-5. Rule-making authority.

The Office of Administrative Hearings may propose legislative and procedural rules in accordance with the provisions of chapter 29A of this code in order to implement the provisions of this article and to carry out the duties prescribed therein.

WV Legislature

§15A-9-6. Duty to provide notice of change of address.

Any person who has any pending contested matter before the Office of Administrative Hearings is required to provide notice of a change in address in writing at least 10 days prior to any scheduled hearing in which they are a party. If the person's final hearing is held prior to the person's change in address, then the person is required to provide the written notice prior to the issuance of the final order in their case. Written notice must be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the Office of Administrative Hearings.

WV Legislature

§15A-9-7. Transition from divisions of the department to the Office of Administrative Hearings.

(a) In order to implement an orderly and efficient transition of the administrative hearing process from the many divisions of the department, the secretary may establish interim policies and procedures for the transfer of administrative hearings, appeals from decisions or orders of, as contemplated by this article, currently administered by the separate divisions and the Fire Commission, no later than October 1, 2020.

(b) On the effective date of this article, all equipment and records necessary to effectuate the purposes of this article shall be transferred from the many divisions of the department to the Office of Administrative Hearings: *Provided,* That in order to provide for a smooth transition, the secretary may establish interim policies and procedures, determine how the equipment and records are to be transferred and provide that the transfers provided for in this subsection take effect no later than October 1, 2020.

WV Legislature