WEST VIRGINIA CODE: §22-9-10

§22-9-10. Conferences, hearings and appeals.

(a) The director or any person having a direct interest in the subject matter of this article may at any time request that a conference be held for the purpose of discussing and endeavoring to resolve by mutual agreement any matter arising under the provisions of this article. Prompt notice of any such conference shall be given by the director to all such interested parties. At such conference a representative of the director shall be in attendance, and the director may make such recommendations as are deemed appropriate. Any agreement reached at such conference shall be consistent with the requirements of this article and, if approved by such representative of the director, it shall be reduced to writing and shall be effective unless reviewed and rejected by the director within ten days after the close of the conference. The record of any such agreement approved by the director shall be kept on file by the director with copies furnished to the parties. The conference shall be deemed terminated as of the date any party refuses to confer thereafter. Such a conference shall be held in all cases prior to conducting any hearing under this section.

(b) Within ten days after termination of the conference provided for in this section at which no approved agreement has been reached or within ten days after the rejection by the director of any agreement approved at any such conference, any person who has a direct interest in the subject matter of the conference may submit the matter or matters, or any part thereof, considered at the conference, to the director for determination at a public hearing. The hearing procedure shall be formally commenced by the filing of a petition with the director upon forms prescribed by the director or by specifying in writing the essential elements of the petition, including name and address of the petitioner and of all other persons affected thereby, a clear and concise statement of the facts involved, and a specific statement of the relief sought. The hearing shall thereafter be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and with such rules and such provisions as to reasonable notice as the director may prescribe. Consistent with the requirements for reasonable notice all hearings under this article shall be held by the director promptly. All testimony taken at such hearings shall be under oath and shall be reduced to writing by a reporter appointed by the director, and the parties shall be entitled to appear and be heard in person or by attorney. The director may present at such hearing any evidence which is material to the matter under consideration and which has come to the director's attention in any investigation or inspection made pursuant to provisions of this article.

(c) After the conclusion of hearings, the director shall make and file the director's findings and order with the director's opinion, if any. A copy of such order shall be served by registered mail upon the person against whom it runs, or such person's attorney of record, and notice thereof shall be given to the other parties to the proceedings, or their attorney of record.

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(d) The director may, at any time after notice and after opportunity to be heard as provided in this section, rescind or amend any approved agreement or order made by the director. Any order rescinding or amending a prior agreement or order shall, when served upon the person affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders; but no such order shall affect the legality or validity of any acts done by such person in accordance with the prior agreement or order before receipt by such person of the notice of such change.

(e) The director shall have power, either personally or by any of the director's authorized representatives, to subpoena witnesses and take testimony, and administer oaths to any witness in any hearing, proceeding or examination instituted before the director or conducted by the director with reference to any matter within the jurisdiction of the director. In all hearings or proceedings before the director the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the director or any party to the proceedings before the director may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of such books, records, maps, plats, papers, documents and other writings as the director may deem necessary or proper in and pertinent to any hearing, proceeding or investigation held or had by the director. Such court, in case of the refusal of any such person to obey the subpoena, shall issue an order requiring such person to appear before the director and produce the required documentary evidence, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to incriminate the person giving the same shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning which the witness compelled hereunder to testify.

(f) With the consent of the director, the testimony of any witness may be taken by deposition at the instance of a party to any hearing before the director at any time after hearing has been formally commenced. The director may, of the director's own motion, order testimony to be taken by deposition at any stage in any hearing, proceeding or investigation pending before the director. Such deposition shall be taken in the manner prescribed by the laws of West Virginia for taking depositions in civil cases in courts of record.

(g) Whether or not it be so expressly stated, an appeal from any final order, decision or action by the director in administering the provisions of this article may be taken by any aggrieved person within ten days of notice of such order, decision or action, to the circuit court of the county in which the subject matter of such order, decision or action is located, and in all cases of appeals to the circuit court, that court shall certify its decisions to the director. The circuit court to which the appeal is taken shall hear the appeal without a jury on the record certified by the director. In any such appeal the findings of the director shall, if supported by substantial evidence, be conclusive. If the order of the director is not affirmed, the court may set aside or modify it, in whole or in part, or may remand the proceedings to the director for further disposition in accordance with the order of the court. From all final decisions of the circuit court an appeal shall lie to the Supreme Court of

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Appeals as is now provided by law in cases in equity, by the director as well as by any other party of record before the circuit court.

Any party feeling aggrieved by the final order of the circuit court affecting him may present his petition in writing to the Supreme Court of Appeals, or to a judge thereof in vacation, within twenty days after the entry of such order, praying for the suspension or modification of such final order. The applicant shall deliver a copy of such petition to the director and to all other parties of record before presenting the same to the court or judge. The court or judge shall fix a time for the hearing on the application, but such hearing shall not be held sooner than seven days after its presentation unless by agreement of the parties, and notice of the time and place of such hearing shall be forthwith given to the director and to all other parties of record. If the court or judge, after such hearing, be of opinion that such final order should be suspended or modified, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner as are just and reasonable. For such hearing the entire record before the circuit court, or a certified copy thereof, shall be filed in the supreme court, and that court, upon such papers, shall promptly decide the matter in controversy as may seem to it to be just and right, and may award costs in each case as to it may seem just and equitable.

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