WEST VIRGINIA CODE: §29-22B-1503

§29-22B-1503. Hearing procedures.

(a) Hearings held under this article shall be subject to the provisions of article 29A-5-1, et seq., of this code except to the extent otherwise provided in this article. In case of any conflict, the provisions of this article shall control.

(b) In all hearings held under this article, oral and documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. The subpoenas or subpoenas duces tecum may be issued by either the commission or its duly appointed hearing examiner, and the following provisions shall govern and control:

(1) Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by any person eighteen years of age or older, or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail;

(2) All subpoenas and subpoenas duces tecum shall be issued in the name of the commission. Service of subpoenas and subpoenas duces tecum issued at the insistence of the commission is the responsibility of the commission, but any party requesting issuance is responsible for service. Any person who serves any subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state, and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state;

(3) All fees shall be paid by the commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the commission;

(4) All fees related to any subpoenas or subpoena duces tecum issued at the insistence of an interested party shall be paid by the interested party;

(5) All requests by an interested party for a subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay the fees; and

(6) Any person receiving a subpoena or subpoena duces tecum issued under this section shall honor the subpoena or subpoena duces tecum as though it were issued by a circuit court of this state, and shall appear as a witness or produce such books, records or papers in response to the subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, shall,

WV Legislature

upon application by the commission, compel obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify in the circuit court.

(c) Hearings may not be delayed by a motion for continuance made less than seven days before the date set for the hearing.

(d) The commission may designate a hearing examiner to conduct the hearing.

(e) The petitioner may appear individually, or by legal counsel.

(f) The petitioner, or his or her duly authorized representative, may, with the approval of the commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. The waivers and agreements shall be in writing or upon the record.

(g) The petitioner shall be given an opportunity for argument within the time limits fixed by the commission following submission of evidence. The commission, upon request of the petitioner, shall accept briefs in addition to or in lieu of argument. Briefs shall be filed within ten days after the hearing date.

(h) The commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The commission may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect.

(i) A record shall be made of all hearings held pursuant to this article. Testimony may be recorded electronically or by a court reporter.

(j) After the conclusion of the hearing and within ten days of receipt of the transcript of the hearing, and receipt of any briefs, the person designated by the commission as hearing examiner shall prepare a recommended decision, supported by findings of fact and conclusions of law, affirming, modifying or vacating the earlier order of the commission. Thereafter, the commission, within ten days of receipt of the recommended decision, shall either accept or reject the recommended decision, and if it accepts the decision, it shall cause the director to sign and acknowledge the decision as its own, after having reviewed the transcript and all exhibits attached and affixed to the decision; if the commission rejects the decision, it shall within ten days of receipt of the recommended decision prepare a decision setting forth its own findings of fact and conclusions of law. In either event, the decision is final unless vacated or modified upon judicial review of the decision. A copy of the decision shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

WV Legislature