WEST VIRGINIA CODE: §29A-5-1

§29A-5-1. Notice required; hearing; subpoenas; witness fees, etc.; depositions; records.

(a) In any contested case all parties shall be afforded an opportunity for hearing after at least ten days' written notice. The notice shall contain the date, time and place of the hearing and a short and plain statement of the matters asserted. If the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. An opportunity shall be afforded all parties to present evidence and argument with respect to the matters and issues involved. The required notice must be given as specified in section two, article seven of this chapter. All of the testimony and evidence at any such hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. The agency shall prepare an official record, which shall include reported testimony and exhibits in each contested case, and all agency staff memoranda and data used in consideration of the case, but it shall not be necessary to transcribe the reported testimony unless required for purposes of rehearing or judicial review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default. Each agency shall adopt appropriate rules of procedure for hearing in contested cases.

(b) For the purpose of conducting a hearing in any contested case, any agency which now has or may be hereafter expressly granted by statute the power to issue subpoenas or subpoenas duces tecum or any member of the body which comprises such agency may exercise such power in the name of the agency. Any such agency or any member of the body which comprises any such agency may exercise such power in the name of the agency for any party upon request. Under no circumstances shall this chapter be construed as granting the power to issue subpoenas or subpoenas duces tecum to any agency or to any member of the body of any agency which does not now by statute expressly have such power. When such power exists, the provisions of this section shall apply. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by any person over eighteen years of age or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. All subpoenas and subpoenas duces tecum shall be issued in the name of the agency, as aforesaid, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued at the instance of the agency shall be the responsibility of the agency. Any person who serves any such subpoena or subpoena duces tecum shall be 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. All such fees shall be paid by the agency if the subpoena or subpoena duces tecum were issued,

www.legiscan.com

without the request of an interested party, at the instance of the agency. All such fees related to any subpoena or subpoena duces tecum issued at the instance of an interested party shall be paid by the party who asks that such subpoena or subpoena duces tecum be issued. All requests by interested parties for subpoenas and subpoenas duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees. Any such agency may compel the attendance of witnesses and the production of books, records or papers in response to such subpoenas and subpoenas duces tecum. Upon motion made promptly and in any event before the time specified in a subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is to be held, or the circuit court in which the subpoena duces tecum was served, or the judge of either such court in vacation, may grant any relief with respect to such subpoena duces tecum which either such court, under the West Virginia Rules of Civil Procedure for Trial Courts of Record, could grant, and for any of the same reasons, with respect to a subpoena duces tecum issued from either such court. 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 may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by such agency or any member of the body which comprises such agency, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses at such hearings shall testify under oath or affirmation.

(c) Evidentiary depositions may be taken and read as in civil actions in the circuit courts of this state.

(d) All hearings shall be conducted in an impartial manner. The agency, any member of the body which comprises the agency, or any hearing examiner or other person permitted by statute to hold any such hearing for such agency, and duly authorized by such agency so to do, shall have the power to: (1) Administer oaths and affirmations, (2) rule upon offers of proof and receive relevant evidence, (3) regulate the course of the hearing, (4) hold conferences for the settlement or simplification of the issues by consent of the parties, (5) dispose of procedural requests or similar matters, and (6) take any other action authorized by a rule adopted by the agency in accordance with the provisions of article three of this chapter.

(e) Except where otherwise provided by statute, the hearing in any contested case shall be held in the county selected by the agency.

(f) Notwithstanding the provisions of subparagraph (a) of this section, upon request to the agency from any party to the hearing all reported testimony and evidence at such hearing shall be transcribed, and a copy thereof furnished to such party at his expense. The agency shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence, and such transcription shall be accomplished with all dispatch.

WVLegislature