**Section 176.1070 Conduct of Formal Hearings**

a) All hearings conducted in any proceeding will be open to the public.

b) Every hearing will be presided over by a hearing officer duly appointed by the Secretary. The hearing officer will have the authority to conduct the hearing, rule on all motions, administer oaths, subpoena witnesses or documents at the request of any party, examine witnesses, and rule upon the admissibility of testimony and evidence. The Secretary may also appoint a representative to appear and participate in the hearing on the Secretary's behalf. Before evidence is taken, the petitioner or respondent may request disqualification of the hearing officer by making a motion for disqualification on the record that states the specific grounds upon which it is alleged that the hearing officer cannot provide a fair and impartial hearing. The hearing officer will rule upon the motion. If the motion is denied, the hearing will proceed, or the petitioner may withdraw from the hearing. If the motion is granted, the case will be transferred to another hearing officer for a hearing on the same day if possible. If it is not possible to schedule a hearing on the same day, the Secretary will assign another hearing officer, who will schedule a new hearing date.

c) Depositions and Interrogatories

1) Upon order of the hearing officer, for good cause shown, and upon reasonable notice to other parties, any party, including the Department, may take, at its own expense, the testimony of any party or person by deposition upon oral examination or written questions for the purpose of discovery or for use as evidence in the action in a contested case (for example, when the witness is not available because of distance, time, cost to the party using the testimony, sickness, infirmity, imprisonment, the witness being out of state, or similar factors). The notice, order, or stipulation to take a deposition must specify whether the deposition is to be a discovery deposition or an evidence deposition. In the absence of specification, a deposition is a discovery deposition only. If both discovery and evidence depositions are desired of the same witness, they must be taken separately, unless the parties stipulate otherwise or the hearing officer orders otherwise upon notice and motion. The deposition must be taken in the manner provided by law for discovery and evidence depositions in civil actions in the Circuit Courts of Illinois.

2) Any party may direct written interrogatories to any other party. Interrogatories must be restricted to the subject matter of the case to avoid undue detail and the imposition of any unnecessary burden or expense on the answering party. Sworn answers or objections to interrogatories directed to the Index Department or the Secretary of State may be made by a designated agent, including the Department's counsel, who shall furnish such information as is available. Written interrogatories must be served on the opposing party not later than 15 business days before the hearing. Objections to questions or refusals to answer will be heard as motions at the hearing before the hearing officer, who will rule on the objection or refusal. Answers shall be sworn. If an answer to an interrogatory can be obtained from documents in the possession or control of the party on whom the interrogatories are served, it is a sufficient answer to specify the documents and make them available to the inquiring party to inspect and copy at the asking party's expense. This subsection (c)(2) does not apply to objections or refusals to answer interrogatories.

d) Rules of Evidence. The technical rules of evidence shall not apply. Any relevant evidence may be admitted if it is the sort of evidence relied upon by reasonably prudent people in the conduct of their affairs. The existence of any common law or statutory exclusionary rule that might make improper the admission of the evidence over objections in civil or criminal actions shall not be a bar to the admissibility of otherwise relevant evidence. The rules of privilege shall be followed to the same extent that they are now or may be recognized in later civil actions. Irrelevant, immaterial, or unduly repetitious evidence may be excluded upon objection. Objections to evidentiary offers may be made and will be noted in the record and ruled upon by the hearing officer. Any party may make an offer of proof following an adverse evidentiary ruling. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Subject to the evidentiary requirements of this subsection, a party may conduct cross-examination required for a full and fair disclosure of the facts.

e) List of Witnesses and Bill of Particulars. Upon written request made at least 10 business days before the hearing, a party shall furnish to the other parties a list of the names and addresses of prospective witnesses or written answers to a written demand for a bill of particulars.

f) Inspection of Documents and Interview of Parties

1) Any party or its representatives shall have the right, upon the filing of a written motion with proper proof of service, to inspect any relevant document in the possession of or under the control of any other party before the formal hearing. The inspection of documents shall occur at the location the formal hearing is scheduled.

2) Any party may file a written motion seeking to interview parties or persons having knowledge of relevant facts, subject to any statutory or constitutional privileges. Upon order of the hearing officer, for good cause shown, and upon reasonable notice to other parties, any party, including the Department of Administrative Hearings, may interview at its own expense, parties or persons having knowledge of relevant facts. Interviews of persons and inspection of documents shall be at times and places reasonable for the persons and the custodian of the document.

g) Admissions. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact in the request or for the admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.

h) Right to Call Witnesses, Cross-Examine, Subpoena Documents and Introduce Exhibits. Each party shall have the right to request the subpoena of witnesses, to call and examine witnesses, to introduce exhibits, and to cross-examine witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination. Applications to the hearing officer assigned to the case for subpoenas duces tecum must specify the books, papers and documents desired to be produced.

i) Pre-hearing Conference. At the request of any party or upon the hearing officer's own motion, the hearing officer may call a pre-hearing conference. At the conference, the parties or their representatives shall appear as the hearing officer directs. Matters that may be considered at a pre-hearing conference include, but are not limited to:

1) The simplification of the issues;

2) Amendments to the grounds for action;

3) The possibility of obtaining admissions, stipulations of fact, and documents that will avoid unnecessary proof;

4) The limitation of the number of expert witnesses; and

5) Any other matters that may aid in the disposition of the contested case.

j) Order from Pre-hearing Conference. After a pre-hearing conference, the hearing officer will enter an order reciting any action taken, any agreements made by the parties as to any of the matters considered, and the issues to be heard.

k) Oath. Testimony shall be taken only on oath or affirmation.

l) Stipulations. Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing.

m) Official Notice. The hearing officer may take official notice of past hearings and of any matter of which the Circuit Courts of Illinois may take judicial notice. In addition, official notice may be taken of generally recognized technical or scientific facts with the Department's specialized knowledge. Parties will be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including staff memoranda and data, and they will be given an opportunity to contest the material so noticed. The Department's and the hearing officer's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.

n) Rights of Parties. Each party shall have the right to rebut the evidence against that party, to appear in person, and to be represented by counsel. If a party does not testify on its own behalf, it may be called by the Secretary of State's representative and examined as if under cross-examination.

o) Opening and Closing Statements. Upon the opening of the hearing, the hearing officer will allow the parties to make opening statements. Opening statements may not be made at any other time, except at the discretion of the hearing officer. Upon the close of the hearing, each party may make a closing statement orally, by written brief, or both, at the discretion of the hearing officer, incorporating arguments of fact and law. A written brief may be required when the hearing officer determines that the facts and issues are complicated and the parties must plead their cases in writing for the record.

p) Exhibits. All exhibits must be clearly marked for identification and admitted into evidence by the hearing officer.

q) Cross-examination of Witnesses. In the hearing of any case, any party may call any other party or its agent as an adverse witness and examine that witness as if under cross-examination. The adverse party calling for the examination is not bound by the testimony of the adverse witness, but may rebut the testimony given and impeach the witness by proof of prior inconsistent statements. If the hearing officer determines that a witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination. The party calling an occurrence witness may, upon showing that the party called the witness in good faith but is surprised by the testimony, impeach the witness by proof of prior inconsistent statements.

r) Burden of Proof. The general burden of proof is upon the petitioner for any relief in a hearing. The standard of proof is the preponderance of the evidence.

s) Interpreters and the Deaf and Hard of Hearing. The Secretary will provide, upon prior written request, an interpreter for parties who are deaf or hard of hearing and wish to testify. Providing a language interpreter, however, is the responsibility of the petitioner or respondent.

t) Report of Proceedings and Obtaining a Copy of Record

1) The Department of Administrative Hearings will, at its expense, have present at each formal hearing an electronic or digital recording device or a qualified court reporter to make a permanent and complete report of the proceedings, including evidence admitted or tendered and not admitted, testimony, offers of proof, objections, remarks of the hearing officer and of the parties and their representatives, and all rulings of the hearing officer.

2) Upon written request and at the party's own expense, any party may obtain a copy of the report of proceedings from the court reporter or the electronic device from the Department of Administrative Hearings. The party must pay $25 to the Secretary of State, in advance, to cover the cost of making an electronic or digital copy and mailing.

u) Motions to Continue and Withdraw and Leave to Submit Original Documents

1) Motions to Continue by a Petitioner or Respondent and Grounds. Hearings before the Department of Administrative Hearings will be continued only pursuant to a motion that complies with Section 176.1050 and is filed on or before the date of the hearing, made over the telephone before or on the date of the hearing, or made in person on the day of the hearing. The movant shall set forth the grounds for the motion, which are limited to unforeseen, unavoidable, or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the movant, a member of the movant's immediate family, or the movant's legal counsel, or if the movant can demonstrate some other real and compelling need for additional time. A Motion to Continue may be supported by evidence that tends to prove the grounds alleged, including sworn testimony taken at a motion hearing on the day of the hearing. The inability to obtain transportation to the hearing site or a party's failure or inability to obtain the documentation required to fulfill the minimum requirements to be issued relief are not circumstances that justify continuing a hearing.

2) Continued to a Date Certain. A formal hearing will not be continued "generally". A continuance, if granted, will state a date certain on which the hearing shall reconvene. If the petitioner is not prepared to go forward after the first continuance, a request to withdraw must be submitted or an Order of Default shall be entered.

A) Written Motions to Continue filed at least 15 days before the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date will be given priority in rescheduling over motions filed or made less than 15 days before the date of the hearing or made on the date of the hearing. The Department will rule upon Motions to Continue filed at least 15 days before the date of the hearing and, when possible, notify the movant of its ruling before the date of the hearing. If the motion is denied, the movant must appear at and proceed with the hearing or withdraw from the hearing or an Order of Default shall be entered.

B) Motions to Continue made by telephone less than 15 days before the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date must also be filed in writing and received or postmarked no more than 5 days after the date of the hearing to be considered. A Motion to Continue made in writing less than 15 days before the date of the hearing specified in the Notice of Hearing or notice of a continued hearing date must be received and postmarked no more than 5 days after the date of the hearing. The Department of Administrative Hearings cannot assure the movant that it will rule upon these motions before the date of the hearing.

C) It is the responsibility of the movant to inform the Department of Administrative Hearings, in the Motion to Continue or during a telephone conversation, what course of action the movant wishes to take if the motion is denied (either to appear and proceed with the hearing, withdraw, or default). In all cases, it is also the responsibility of a movant who has not been notified of the Department's ruling to contact the Department of Administrative Hearings on or before the day of the hearing to determine whether the hearing officer has ruled on the motion. A movant's failure to appear after a Motion to Continue is denied will result in the entry of an Order of Default.

3) Motions Made by the Secretary or the Index Department. The Department may also make or file a Motion to Continue for unforeseen, unavoidable, or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the hearing officer, the attorney representing the Secretary of State, a witness, or a member of the immediate family of one of these entities, or if the Department can demonstrate some other real and compelling need for additional time.

4) Motions to Withdraw. Except as provided in this subsection (u)(4), a petitioner may withdraw from a hearing for any reason. A Motion to Withdraw made in person or by telephone on or before the day of the hearing must be followed up with a written motion that is received no more than 10 days after the date of the hearing. A Motion to Withdraw made in writing must be received or postmarked not more than 10 days after the date of the hearing. Failure to do so will result in an Order of Default. Once a petitioner is placed under oath, a request to withdraw from a hearing that, in the hearing officer's judgment, is based upon surprise evidence presented or adverse evidence shall not be granted. Upon withdrawal, the requested relief will not be considered and the petition is dismissed. Should the petitioner request another hearing, it must be done in writing and it will be treated as any other request for a hearing.

5) Motions for Leave to Submit Original Document. As provided in this subsection (u), the petitioner may request leave to submit original documents if the petitioner proceeds with the hearing, offering copies of documents when originals are required. The hearing shall be completed and the petitioner shall be granted leave to submit the original documents.

6) Attorney's Appearance on File. A Motion to Continue or Withdraw made by any attorney on behalf of a petitioner or respondent will not be considered unless the attorney has filed a written notice of appearance as provided in Section 176.1010.

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