Chapter Ins 5

ADMINISTRATIVE ACTIONS; RULES OF PROCEDURE FOR CONTESTED CASES

Note: Chapter Ins 5 as it existed on March 31, 1996 was repealed and a new chapter Ins 5 was created effective April 1, 1996.

Subchapter I — Scope; Definitions

Ins 5.01 Purpose; applicability. (1) This chapter interprets subch. III of ch. 227, Stats., and ss. 102.31 (4), 153.78, 601.44 (6), and 601.62, Stats., and applies to administrative actions under the jurisdiction of the commissioner, the HIRSP board and the PCF board.

(2) This chapter does not apply to rule−making hearings under subch. II of ch. 227, Stats.

(3) This chapter does not require a contested case proceeding before the issuance of a declaratory order under s. 601.41 (4) (b), Stats.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661.

Ins 5.03 Definitions. In this chapter:

(1) "Commissioner" means the commissioner of insurance or the deputy commissioner of insurance acting under s. 601.11 (1) (b), Stats.

(2) "Contested case" has the meaning given in s. 227.01 (3), Stats.

(3) "Declaratory ruling" means an administrative decision by the commissioner or a board which, after a contested case proceeding, determines the applicability of a statute or rule enforced by the commissioner to any person, property or state of facts.

(4) "Hearing" means the trial of the issues in a contested case.

(5) "HIRSP board" means the board of governors of the health insurance risk−sharing plan established under s. 149.15, Stats.

Note: Section 149.15, Stats., was repealed by 2005 Wis. Act 74.

(6) "License" means any license, permit, approval, certificate of authority, certificate of registration or similar form of permission required by law and issued under chs. 601 to 655, Stats.

(7) "Office" means the office of the commissioner.

(8) "PCF board" means the board of governors of the Wisconsin health care liability insurance plan and patients compensation fund established under s. 619.04 (3), Stats.

(9) "Person" means a natural person, corporation, limited liability company, partnership, cooperative, association, trust, other business entity or government entity.

(10) "Subpoena" means a command to give testimony or provide evidence.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register June 2005 No. 594.

Subchapter II — Declaratory Ruling

Ins 5.05 Petition for declaratory ruling. An interested person may file with the commissioner or a board a petition for a declaratory ruling under s. 227.41, Stats. The petition shall comply with s. 227.41 (2), Stats., and shall state how the petitioner may be affected by the statute or rule referenced in the petition.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.06 Response to petition. Within a reasonable time after a petition is filed under s. Ins 5.05, the commissioner or board shall grant or deny the petition. If the petition is granted, the commissioner or board shall initiate a contested case under s. 227.41 (1), Stats., by issuing a notice of hearing in the form specified in s. Ins 5.12. If the petition is denied, the commissioner or board shall issue a denial notice in writing, specifying the reason for the denial. The commissioner or board may permit the petitioner to amend the petition if it does not fully comply with s. 227.41 (2), Stats., or s. Ins 5.05.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Subchapter III — Investigations; Orders Issued by Office; Form Filing Disapprovals

Ins 5.07 Complaint; investigation. (1) Any person may file with the office a complaint about any person subject to regulation under ch. 153, Stats., or chs. 600 to 655, Stats.

(2) Based on a complaint under sub. (1) or other information available, the office may investigate to determine whether there is probable cause to take action against a person subject to regulation under ch. 153, Stats., or chs. 600 to 655, Stats.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.08 Orders. (1) ISSUANCE. If the office determines, based on its examination or investigation of a person regulated under ch. 153, Stats., or chs. 600 to 655, Stats., that there is prob-

able cause to believe that a person has violated any provisions of those chapters, a rule promulgated under those chapters or an order under s. 601.41 (4) (a) and 601.63, 601.64 or 601.65, Stats., the office may issue an order under s. 153.78 or 601.41 (4) (a), Stats., or issue a notice of hearing under s. 601.62, Stats., and s. Ins 5.12, or both.

(2) CONTENTS OF ORDER. (a) An order under s. 153.78, Stats., or ss. 601.41 (4) (a) and 601.63, 601.64 or 601.65, Stats., shall be accompanied by notice of the right to a hearing under s. 601.62 (3) (a), Stats., shall be captioned as provided in s. Ins 5.17 (1) and shall include all of the following:

1. The identity and, if known, the address of each respondent to whom the order is directed.

2. A statement of the facts constituting the basis for the order.

3. A reference to each statute, rule or order which each respondent allegedly violated.

4. A description of what the order requires each respondent to do.

5. The signature and title of the designated employee of the office who issued the order.

(b) An order under s. 631.20 (4), Stats., disapproving a form filing shall be accompanied by notice of the right to a hearing under s. 601.62 (3) (a), Stats., and shall include all of the following:

1. An explanation of why the form was not approved.

2. A reference to each statute or administrative rule relied on for the disapproval.

3. The signature of the employee of the office issuing the disapproval.

(3) SUMMARY ORDERS. (a) The office may issue any of the following:

1. A summary order under ss. 227.51 (3) and 628.10 (2) (b), Stats., suspending an intermediary agent's license and ordering the agent to cease and desist from all activities of a licensed intermediary.

2. A summary order under s. 645.21 (2), Stats., or a seizure order under s. 645.23 (1), Stats., to an insurer.

3. A summary order under any other section of the statutes suspending a license issued by the office.

(b) A summary order shall take effect upon service under s. Ins 5.17 (3) or upon actual notice of the order to the respondent or the respondent's attorney, whichever is sooner, and shall continue in effect until the effective date of the final decision and order in any contested case proceeding arising out of the order.

(c) In addition to the requirements of sub. (2), a summary order shall include all of the following:

1. A finding either that the public health, safety or welfare requires emergency action or that irreparable harm to the property or business of the insurer or to the interests of its policyholders, creditors or the public may occur unless the summary order is issued.

2. A statement that the order is in effect and remains in effect until the effective date of the final decision and order in any contested case proceeding arising out of the order unless otherwise ordered by the commissioner.

(d) The office shall simultaneously serve a notice of hearing under s. Ins 5.12 with a summary order under this subsection.

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96; corrections in (1) and (2) (a) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661.

Subchapter IV — Adverse Decision of Office, Board, Plan, Fund or Council; Right to Hearing; Petition

Ins 5.09 Right to hearing before commissioner. Any of the following may initiate a contested case proceeding before the commissioner by filing with the commissioner a petition meeting the requirements of s. Ins 5.11 within the time limit specified in the applicable statute or administrative rule:

(1) A person named as respondent in an order issued under s. Ins 5.08.

(2) An insurer whose form filing has been disapproved under s. 631.20, Stats.

(3) A person whose application for a license is denied.

(4) A person specified under s. 626.31 (4) (a), Stats., entitled to a review of an action or decision of the Wisconsin compensation rating bureau.

(5) An insurer entitled to a hearing under s. 102.31 (4), Stats., based on a recommendation of the department of workforce development.

(6) An applicant or policyholder who receives notice under s. Ins 4.10 (16) from the Wisconsin insurance plan of cancellation, nonrenewal, reduction in coverage or declination.

(7) An applicant, policyholder or insurer entitled under s. Ins 3.49 (3) (d) 1. to appeal a decision of the governing committee of the Wisconsin automobile insurance plan.

(8) A person who receives a forfeiture assessment from the office of health care information under s. 153.78, Stats.

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96; correction in (5) made under s. 13.93 (2m) (b) 6., Stats., Register, June, 1997, No. 498; correction in (8) made under s. 13.92 (4) (b) 7., Stats., Register January 2011 No. 661.

Ins 5.10 Right to hearing before PCF board. **(1)** Any of the following may initiate a contested case proceeding before the PCF board by filing with the board a petition meeting the requirements of s. Ins 5.11:

(a) A person adversely affected by a classification decision of the Wisconsin health care liability insurance plan or patients compensation fund under s. Ins 17.24 (3).

(b) A health care provider whose coverage under the Wisconsin health care liability insurance plan is cancelled or nonrenewed under s. Ins 17.25 (16).

(c) A health care provider entitled to a hearing under s. Ins 17.285 (9) (a) on a recommendation of the patients compensation fund peer review council.

(2) A health care provider is not entitled to a contested case proceeding to resolve an issue regarding coverage by the Wisconsin health care liability insurance plan, patients compensation fund or both. Any such issue shall be resolved by civil litigation.

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96.

Ins 5.11 Petition; response; effect. **(1)** CONTENTS. (a) A petition for a hearing need not be in any particular form, but shall be in writing and shall include all of the following:

1. The name and address of the petitioner.

2. The date of the petition.

3. Any of the following:

a. The case number of the order that adversely affects the petitioner and an explanation of why the petitioner believes the order should be withdrawn or modified.

b. A statement of how the petitioner is adversely affected by a decision of the office, board, plan, fund or council, a reference to any legal deficiency in the decision and the date on which the petitioner received notice of the decision.

c. If the petition relates to a denial by the office of the petitioner's application for a license, a statement of why the petitioner believes the denial should be modified or rescinded.

d. If the petition relates to a form filing disapproval, a statement of why the petitioner believes the form should be approved.

4. If an attorney will appear on behalf of the petitioner, the attorney's name and address.

(2) RESPONSE. After receipt of a petition, the office shall take one of the following actions:

(a) Schedule the matter for hearing by issuing a notice of hearing under s. Ins 5.12.

(b) If the petition is not timely filed, notify the petitioner that the order is final because the petition was not filed within the specified time period.

(c) If the petition does not satisfy the requirements of sub. (1) (a), notify the petitioner that the order is final because of the inadequacy of the petition or, in the case of an unrepresented individual, refer the matter to the administrative law judge who shall notify the petitioner in writing what additional information is needed to complete or clarify the petition before the matter can be scheduled for hearing.

(d) If neither the commissioner, a board or an official or employee of the office designated by the commissioner or a board will act as administrative law judge, refer the petition to the person who will act as administrative law judge for appropriate action under pars. (a) to (c).

(3) EFFECT. A petition for a hearing on an order under ss. 601.41 (4) (a) and 601.63, Stats., does not stay or modify the order, but the administrative law judge may, upon a motion by the respondent, suspend the order as provided under s. 601.63 (4), Stats.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Subchapter V — Notice of Hearing Pleadings; Form and Filing of Documents

Ins 5.12 Notice of hearing. (1) FORM. The office or administrative law judge shall serve on each named party in a contested case a notice of hearing which shall include all of the following:

(a) The title, in the form prescribed in s. Ins 5.17 (1) (d), and the case number of the contested case.

(b) The name and address of each party. In the case of a person licensed by the office, the latest address on file with the office shall be conclusively presumed to be the person's correct address.

(c) The date, time and place scheduled for a prehearing conference under s. 227.44 (4), Stats.

(d) The name of the administrative law judge.

(e) The class of the contested case under s. 227.01 (3), Stats.

(f) The statutory authority under which the contested case will be conducted.

(g) The purpose of the hearing.

(h) The matter to be decided.

(i) The date, time and place scheduled for the hearing.

(j) If the hearing is a class 2 proceeding, the allegations in the form specified in sub. (2), or in the alternative, the notice of hearing may incorporate by reference an order under s. Ins 5.08.

(k) The date by which the respondent must submit an answer if an answer is required.

(L) The date the notice of hearing is issued.

(m) The signature of the attorney assigned to the contested case by the office, or the signature of the administrative law judge if no attorney is assigned by the office.

(n) A statement of the possible consequences of failing to answer or appear, as provided in s. Ins 5.21.

(2) ALLEGATIONS. (a) Except as provided in sub. (1) (j), each notice of hearing in a class 2 proceeding shall include allegations of the facts constituting the basis for the proceeding. If continuing conduct is alleged, the allegations shall state its general nature and the approximate time covered. If one or more individual incidents are alleged, each one shall be alleged with sufficient particularity to enable the respondent to deny, admit or defend it.

(b) Each notice of hearing shall specify the statute or rule alleged to have been violated by the conduct alleged.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.13 Answer. (1) ANSWER REQUIRED. Each named respondent required to file an answer shall answer the notice of hearing by the specified time, unless additional time is allowed by stipulation of the parties or the administrative law judge, for good cause, allows a respondent additional time to answer or to amend the answer. The answer shall be signed by the respondent or by an attorney representing the respondent. If the respondent is a corporation, limited liability company, partnership, cooperative or other association, the answer may be signed by any of its officers or employees.

(2) CONTENTS. (a) An answer need not be in any particular form but shall include all of the following:

1. The case number designated in the notice of hearing.

2. The date of the answer.

3. A specific denial of each material allegation of fact or law which the respondent controverts. A denial shall meet the substance of the allegation denied. If the respondent intends in good faith to deny only a part or qualification of an allegation, the respondent shall admit as much of the allegation as is true and material and shall deny only the remainder.

4. If applicable, a statement that the respondent is without knowledge or information sufficient to form a belief as to the truth of a specified allegation. This statement has the effect of a denial.

5. A statement of any matter constituting a defense, affirmative defense or mitigation of the matter charged which the respondent wishes to have considered.

(b) Notwithstanding par. (a), the administrative law judge may accept a timely written communication from an unrepresented respondent as a sufficient answer, if the communication provides the administrative law judge with sufficient information to determine the matters specified under par. (a). If the answer is insufficient, the administrative law judge may order a respondent to file a sufficient answer within a specified time period.

(c) Each material allegation not controverted in an answer filed within the specified time shall be taken as true. Any new matter set forth under par. (a) 5. is deemed controverted without service of a reply.

(d) A respondent's failure to raise an issue in an answer constitutes waiver of the issue, unless the administrative law judge allows the respondent to amend the answer under s. Ins 5.15 (2).

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.15 Amendment of pleadings. (1) Section 802.09 (1) to (4), Stats., applies in contested cases under this chapter.

(2) The administrative law judge may permit a party to amend an answer or pleading at any time during a contested case. The administrative law judge may deny a motion to amend if the amendment would unduly delay or disrupt the proceeding or would constitute a significant injustice to any party.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.17 Papers; identification; form; filing; service. (1) PAPERS CAPTIONED. Except as otherwise permitted by the administrative law judge, each party shall, to the extent practicable, caption each pleading, notice, motion, brief, stipulation, decision, order and other paper filed in a contested case with all of the following:

(a) 1. If the contested case arises under ch. Ins 17, the heading,"Board of the Patients Compensation Fund."

2. If the case arises out of a petition for a declaratory ruling by the HIRSP board, the heading, "Board of the Health Insurance Risk−sharing Plan."

3. In any other case, the heading, "Commissioner of Insurance."

(b) The name of the paper.

(c) The legal file number assigned to the contested case.

(d) The title of the contested case in the form, "In the Matter of . . ." followed by one of the following:

1. The name and designation of the petitioner in a class 1 proceeding.

2. The name and designation of each respondent in a class 2 proceeding.

3. The name and designation of the petitioner and the name and designation of one of the following respondents in a class 3 proceeding:

a. The Wisconsin compensation rating bureau in a contested case arising under s. 626.31 (4), Stats., and s. Ins 5.09 (4) or s. 102.31 (4), Stats., and s. Ins 5.09 (5).

b. The Wisconsin insurance plan in a contested case arising under ss. Ins 4.10 (16) and 5.09 (6).

c. The Wisconsin automobile insurance plan in a contested case arising under ss. Ins 3.49 (3) (d) 1. and 5.09 (7).

d. The Wisconsin health care liability insurance plan, the patients compensation fund or both in a contested case arising under ss. Ins 5.10 (1) (a) or (c) and 17.24 (3).

e. The Wisconsin health care liability insurance plan in a contested case arising under ss. Ins 5.10 (1) (b) and 17.25 (16).

f. The patients compensation fund peer review council in a contested case arising under ss. Ins 5.10 (1) (c) and 17.285 (9).

(2) FORM. Except as otherwise permitted or ordered by the administrative law judge, each paper filed shall comply with all of the following:

(a) It shall be printed or typewritten on only one side of 8−1/2 by 11 inch paper.

(b) It shall be signed by the party, by the party's attorney or, if the party is a corporation, limited liability company, partnership, cooperative or other association, by any of its officers or employees. The name and mailing address shall be printed or typewritten immediately after the signature.

(3) FILING; SERVICE. (a) Filing of a paper is complete upon its receipt by the office or the administrative law judge before 4:30 p.m. on any business day.

(b) Whenever a party files a paper in a contested case, that party shall, on the same date, serve a copy on every other party.

(c) By filing a paper in a contested case, the filing party certifies that he or she has served a copy on every other party as required by par. (b). No other affidavit of mailing or service is required.

(d) If any party claims not to have received a copy of any filed paper, an affidavit of mailing constitutes presumptive proof of service.

(e) Mailing by the office to a person regulated by the office at the latest mailing address the person has on file with the office constitutes presumptive proof of service.

(f) Section 801.14 (2), Stats., shall govern the method and completion of service of papers. Documents exceeding 15 pages in length may not be filed with the office or administrative law judge by facsimile transmission.

(g) Section 801.15 (5), Stats., does not apply to proceedings under this chapter.

(4) COPIES TO ADMINISTRATIVE LAW JUDGE. If the office or a board, plan, fund or council is not a party to a contested case, each party shall furnish the administrative law judge with a copy of each paper served on the other parties except papers served in connection with discovery.

(5) ADDRESS. Unless otherwise ordered by the administrative law judge, the address for serving and filing documents with the office, the PCF Board, the HIRSP board or the administrative law judge is: Office of the Commissioner of Insurance Attn: Legal Unit, 125 South Webster Street Floor 2, P. O. Box 7873, Madison, WI 53707−7873. Facsimile transmission number: 608−264−6228.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96; correction in (5) made under s. 13.93 (2m) (b) 6., Stats., Register, February, 1999, No. 518; CR 04−131: am. (5) Register June 2005 No. 594, eff. 7−1−05; CR 09−022: am. (3) (e) Register August 2009 No. 644, eff. 9−1−09.

Subchapter VI — Administrative Law Judge Authority; Sanctions

Ins 5.19 Administrative law judges. (1) APPOINTMENT. The commissioner, an official or employee of the office designated by the commissioner, an employee borrowed from another agency as provided in s. 227.46 (1) (intro.), Stats., or a person employed as a special project or limited−term employee by the office or appointed according to the terms of a contract to which the office is a party, shall act as administrative law judge for each contested case.

(2) AUTHORITY AND DUTIES. The administrative law judge may do any of the following:

(a) Require the parties to submit supplementary pleadings in order to clarify positions or issues.

(b) Consolidate proceedings and order the joinder of parties.

(c) Admit intervenors as parties to a contested case.

(d) Provide interpreters under s. 885.37 (3) (b) and (3m), Stats.

(e) Make procedural rulings and issue scheduling and other orders.

(f) Adjourn or postpone proceedings.

(g) Grant extensions of time to file papers.

(h) Issue subpoenas to compel the attendance of witnesses and the production of evidence.

(i) Regulate discovery proceedings and issue orders to compel or limit discovery.

(j) Hold prehearing conferences.

(k) Preside over and regulate the course of hearings.

(L) Administer oaths and affirmations.

(m) Receive evidence and make evidentiary rulings.

(n) Impose or recommend sanctions for disobedient parties.

(o) Require or permit parties to file written briefs and arguments.

(p) Supervise the compilation of the record.

(q) Order preparation of a written transcript of oral proceedings and supervise preparation of the transcript.

(r) Issue proposed decisions.

(s) Advise the final decision maker on final decisions and orders.

(t) Issue final decisions and orders if appointed as final decision maker by the commissioner or a board.

(u) Certify the contested case record to a circuit court, if necessary for a judicial review proceeding.

(v) Take any other action authorized by law.

(3) LIMITS OF AUTHORITY. The administrative law judge may not exercise any authority that is reserved to the final decision maker under this chapter, unless the commissioner or a board orders that the administrative law judge's decision is the final decision.

(4) IMPARTIALITY. (a) An administrative law judge shall withdraw from a contested case if he or she has a personal bias

regarding the matter or another reason for disqualification that prevents him or her from acting in an impartial manner.

(b) A party filing a motion under s. 227.46 (6), Stats., to disqualify an administrative law judge in a class 2 or 3 proceeding shall include in an affidavit attached to the motion a description of each specific act or situation which the party believes demonstrates the administrative law judge's personal bias or other basis for disqualification. The party shall also file a brief citing any applicable case law on which the party relies.

(c) A motion under par. (b) is timely if it is filed before the prehearing conference or within 10 days after the party acquires knowledge or, with reasonable diligence, should have acquired knowledge of facts allegedly demonstrating personal bias or other reason for disqualification of the administrative law judge.

(d) Failure to file a timely and sufficient affidavit under par. (b) constitutes a waiver of the right to object to the qualification of the administrative law judge.

(e) An administrative law judge is not disqualified solely because he or she is an employee of the office, or solely because the administrative law judge has presided over a case involving the same or related parties, facts or issues in the past.

(5) EX PARTE COMMUNICATIONS. If an administrative law judge receives an ex parte communication which violates s. 227.50 (1), Stats., the administrative law judge shall deal with the ex parte communication as provided under s. 227.50 (2), Stats.

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96.

Ins 5.21 Failure to appear, answer or comply with administrative law judge's order. (1) FAILURE TO ANSWER OR APPEAR. (a) If a party other than due to excusable neglect, fails to file an answer by the date specified in the notice of hearing or fails to appear at the prehearing conference or fails to appear at the scheduled hearing, the administrative law judge shall promptly issue and serve a final decision finding the party in default, accepting the opposing party's allegations as true and deciding the case based on those allegations. If proof of any fact is necessary for the administrative law judge to issue the decision the administrative law judge shall receive the proof.

(b) The administrative law judge may relieve a party from a default decision only if:

1. The party files a motion for relief within a reasonable time but not more than one year after the decision is mailed; and

2. The party establishes that the failure to file an answer or to appear was due to excusable neglect. For the purpose of this paragraph failure to receive a notice, pleading, decision, or other document in a proceeding is not a basis to establish excusable neglect if the notice, pleading, decision, or other document was mailed to the address of a licensee of the office at the address shown in the office records, to an address provided by the party in the course of the proceeding or to the address of an attorney representing the party. If the office does not have such an address, failure to receive the document does not establish excusable neglect if the document is mailed to an address the party represents to the public or otherwise as a business address.

(2) SANCTIONS AGAINST DISOBEDIENT PARTY. If a party fails to disclose witnesses or evidence under s. Ins 5.35, fails to comply with a subpoena, fails to make a required appearance, fails to respond to discovery or fails to comply with an order issued by the administrative law judge, the administrative law judge, on his or her own motion or on a motion by an opposing party, may by order do any of the following which the administrative law judge considers just in relation to the disobedient party's failure:

(a) Disqualify the disobedient party from further participation in the proceedings.

(b) Stay further proceedings until the disobedient party cures the failure.

(c) Prohibit the disobedient party from arguing designated issues or introducing designated matters in evidence.

(d) Dismiss the proceeding, or any part of the proceeding, if the proceeding was initiated at the request of the disobedient party.

(e) Strike the pleadings of the disobedient party or render a decision accepting the opposing party's allegations as true and decide the case based on the allegations, or both.

(f) Award expenses as provided under s. 804.12 (1) (c), (2) (b) or (3), Stats., against a party subject to an action brought by the office. Under this section, expenses cannot be awarded against the state or its agencies.

(g) Impose a forfeiture under s. 601.64, Stats., against a respondent subject to an action brought by the office for any violation of an order of the administrative law judge compelling discovery. An order compelling discovery issued by the administrative law judge to a respondent is an order under s. 601.41 (4), Stats. Under this section, a forfeiture cannot be imposed against the state or its agencies.

(3) NOTICE; OPPORTUNITY TO OBJECT. (a) If an order under sub. (2) would constitute a final decision in the contested case, the administrative law judge shall issue the order as a proposed decision under s. Ins 5.43, giving the parties opportunity to object. An order dismissing any party, proceeding or cause of action is a final decision for purposes of s. 227.52, Stats.

(b) The final decision maker shall issue the final decision under s. Ins 5.45 after considering any objections to the proposed decision under s. Ins 5.43 (2).

(c) The final decision maker may order the hearing reopened if the party to whom the proposed decision is issued shows good cause for any failure described in sub. (2) (intro.).

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96; CR 04–131: am. (1), (2) (intro.), cr. (2) (e) to (g) Register June 2005 No. 594, eff. 7–1–05.

Subchapter VII — Motions; Subpoenas; Record; Miscellaneous Provisions

Ins 5.23 Appearances. (1) A party may appear in person or by an attorney licensed to practice law in this state.

(2) Each party or person appearing for a party shall furnish his or her name and mailing address to the administrative law judge and shall promptly notify the administrative law judge of any change of address. The mailing address last furnished to the administrative law judge shall be conclusively presumed to be the correct address.

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96.

Ins 5.25 Motions. (1) GENERAL. A person requesting an order from the administrative law judge shall make the request in the form of a motion which clearly describes the order sought and the grounds for granting it. A person may move the administrative law judge for any substantive or procedural order authorized by law, including any of the following:

(a) An order dismissing a party or case for lack of personal or subject matter jurisdiction. A motion to dismiss for lack of jurisdiction may be made at any point in the proceeding, but shall be made as soon as the basis for the motion becomes apparent to the moving party.

(b) An order dismissing a contested case before a hearing for failure to state a claim on which relief can be granted.

(c) An order granting summary judgment as to any issue or the entire matter under consideration. A motion for summary judgment shall be brought and decided in accordance with s. 802.08, Stats.

(2) FORM OF MOTION. Every motion, except the following, shall be submitted in writing with at least 7 calendar days' notice to all parties, unless each nonmoving party waives the notice requirement:

(a) An oral motion made at a prehearing conference or hearing, unless the administrative law judge requires that the motion be submitted in writing.

(b) An oral motion for an extension of time to file a paper. An administrative law judge may rule on a motion under this paragraph on an ex parte basis. The administrative law judge shall notify every other party if the motion is granted.

(3) WRITTEN MOTIONS. A person filing a written motion shall comply with s. Ins 5.17 (1) to (5). A moving party offering any affidavit, brief or other document in support of a motion shall include a copy of each document with the motion unless the administrative law judge permits or orders otherwise.

(4) MOTION HEARING; NOTICE. (a) Except as provided in sub. (2) (b), the administrative law judge shall give all parties an opportunity to argue a motion, orally or in writing, before ruling on it. The administrative law judge shall notify all parties of any scheduled motion hearing.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96; CR 04−131: cr. (1) (c) Register June 2005 No. 594, eff. 7−1−05.

Ins 5.27 Subpoenas. (1) GENERAL. The administrative law judge or a party's attorney of record may issue a subpoena in a contested case to compel the attendance of any witness or the production of relevant evidence. The person issuing the subpoena shall serve a copy on all other parties. Sections 814.67 and 885.06, Stats., govern the payment of witness fees and expenses.

(2) REQUEST FOR SUBPOENA. A party may request the administrative law judge to issue a subpoena on behalf of that party by submitting the proposed subpoena for the administrative law judge's signature. The administrative law judge may not sign a blank subpoena form. The requesting party is responsible for serving the subpoena and for paying any service, witness and travel fees.

(3) DENIAL; LIMITATIONS. The administrative law judge may limit the scope of a subpoena or deny a request for a subpoena if it appears to be unreasonable, oppressive, excessive in scope or unduly burdensome.

(4) COMPLIANCE. In addition to the sanctions provided under s. Ins 5.21, a person who fails to comply with a subpoena issued under this section may be compelled as provided under s. 885.12, Stats., and may be subject to administrative sanctions including, but not limited to, sanctions for a violation of an order issued under ss. 601.41 (4) and 601.42 (4), Stats.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96; CR 04−131: am. (4) Register June 2005 No. 594, eff. 7−1−05.

Ins 5.29 Record of oral proceedings; transcripts. (1) METHOD OF RECORDING. (a) The administrative law judge shall provide for a stenographic or electronic recording of oral proceedings in a contested case. Proceedings shall be electronically recorded unless a board is the final decision maker or the administrative law judge determines that a stenographic record is necessary, in which case, the office or administrative law judge shall provide for the stenographic record.

(b) Instead of an electronic recording of oral proceedings, any party may provide for a stenographic record at the party's own expense. A party other than the office that provides for a stenographic record shall furnish the administrative law judge with the original and the attorney for the office, if any, with a copy of the transcript at no cost.

(c) Any party may make his or her own electronic audio recording of a proceeding.

(2) ELECTRONIC RECORDING; COPIES. If the administrative law judge makes an electronic recording of oral proceedings in a contested case, the administrative law judge shall furnish a copy of the recording to any party who requests a copy. The fee for an audio cassette recording is $10.00 per cassette or any part of a cassette, except as provided in sub. (4).

(3) TRANSCRIPT. (a) 1. The administrative law judge may order the preparation of a transcript from an electronic recording at the request of the parties or at the administrative law judge's discretion.

2. If some or all parties agree that a transcript is needed, the administrative law judge shall furnish each party requesting a transcript with a copy of the prepared transcript. The parties requesting a transcript shall share the cost of preparation equally, except as provided in sub. (4).

(b) Any party, within 14 calendar days after the date the transcript is delivered or mailed, may file with the administrative law judge a written notice of any claimed error, and shall serve a copy of the notice on every other party. Any other party may contest the claimed error within 20 calendar days after the date the notice was mailed or delivered by notifying the administrative law judge and the other parties. The administrative law judge shall make a determination on the claim of error and shall notify all parties of any corrections.

(c) If the office prepares a written transcript for its own purposes, or at the request of any party for purposes of judicial review under s. 227.53, Stats., the office shall assume the cost of transcription. Any person may obtain a copy of the transcript by paying the office's standard copying fee for public records.

(4) COPIES FOR INDIGENT PARTIES. The office or administrative law judge shall furnish a free copy of the transcript, if one has been prepared, or of the electronic recording of proceedings to any party who submits a written motion and demonstrates to the administrative law judge's satisfaction that the party has a legal need for it and cannot afford to purchase a copy. The request shall include the purpose for which the copy is needed.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.31 Proceedings open to public; exceptions. (1) PROCEEDINGS OPEN. The public may attend the proceedings in every contested case except as provided in s. 601.44 (6) or 645.24 (1), Stats., or as otherwise ordered by the administrative law judge.

(2) EXCEPTIONS. Upon motion by any party, the administrative law judge may do any of the following by order:

(a) Prohibit the disclosure of information or restrict attendance at any portion of a proceeding if the administrative law judge determines that the order is necessary to prevent disclosure of a trade secret, as defined in s. 227.46 (7) (b), Stats., or other information which is protected by law from public disclosure.

(b) Exclude prospective witnesses from attending portions of a proceeding if the administrative law judge determines that the order will promote the interests of justice. Exclusionary orders shall conform to s. 906.15, Stats.

(c) Prohibit any person from further attendance at a proceeding if that person engages in disruptive behavior which inhibits the orderly conduct of the proceeding.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Subchapter VIII — Prehearings; Hearing Procedure

Ins 5.33 Prehearing conference. (1) PURPOSES. One or more prehearing conferences may be held to consider or determine any of the following:

(a) Possibilities for settling the case.

(b) The clarification of issues.

(c) The necessity or desirability of amending the pleadings.

(d) The possibility of obtaining stipulations of fact, law or evidence that will avoid unnecessary arguments or offers of proof.

(e) The party having the burden of proof in the proceeding.

(f) The identification of witnesses and evidence for hearing.

(g) Limitations on the number of witnesses.

(h) The deadline for prefiling exhibits and prepared testimony under s. Ins 5.39 (5) (e).

(i) Prehearing motions and discovery requests.

(j) The need for an interpreter under s. 885.37 (3) (b), Stats.

(k) The scheduling of proceedings in the contested case, including the date, time and location of additional prehearing conferences, motion hearings and the hearing.

(L) The scheduling of any telephonic testimony that will be offered.

(m) Other matters which may aid the orderly consideration and disposition of the contested case.

(2) MEMORANDUM. At the conclusion of a prehearing conference, the administrative law judge shall prepare a memorandum for the record under s. 227.44 (4) (b), Stats., which summarizes the action taken and the agreements reached at the conference. Agreements reached are binding on the parties throughout the proceeding, except as otherwise ordered by the administrative law judge. The administrative law judge may, in conjunction with the memorandum, issue any procedural orders necessary to implement the actions taken at the prehearing conference. Copies of the memorandum shall be served on all parties.

(3) SUBMISSION ON BRIEFS. If the parties agree, during or after a prehearing conference, that there is no dispute of material fact, the matter may be submitted to the administrative law judge on written stipulated facts and briefs, as provided in s. Ins 5.41.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96; correction in (1) (j) made under s. 13.93 (2m) (b) 7., Stats., Register June 2005 No. 594.

Ins 5.35 Discovery. (1) CLASS 2 CONTESTED CASES. In a class 2 contested case, every party is entitled to discovery as provided in s. 227.45 (7), Stats., and ch. 804, Stats.

(2) OTHER CONTESTED CASES. In a class 1 or class 3 contested case, the administrative law judge may by order authorize discovery by any party under s. 227.45 (7), Stats., and ch. 804, Stats. Except as provided in s. 227.45 (7) (a) to (d), Stats., the decision to grant or deny a discovery request in a class 1 or class 3 contested case is subject to the administrative law judge's discretion. The administrative law judge may issue a discovery order in response to a motion by any party.

(3) EXCHANGE OF EVIDENCE AND WITNESS LISTS. (a) Except as provided under par. (b), or unless the administrative law judge orders otherwise, each party in a contested case shall serve every other party with all of the following by the date ordered by the administrative law judge:

1. The name and address of every person whom the party intends to call as a witness at the hearing. Expert witnesses shall be identified as such.

2. A copy of every document which the party intends to offer as evidence at the hearing.

3. A description of each item of physical evidence which the party intends to offer as evidence at the hearing. Upon request by any other party, the party offering the physical evidence shall permit the requesting party to make reasonable inspection of the physical evidence before the hearing.

(b) Paragraph (a) does not apply to witnesses or evidence used solely to impeach witness testimony.

(c) After considering all of the following and any other relevant factors, the administrative law judge may exclude evidence offered by a party who, without showing good cause, fails to comply with par. (a):

1. The prejudice or surprise to the party against whom the evidence is offered and the ability of the party to cure any prejudice.

2. The extent to which waiver of the requirements of par. (a) would disrupt the orderly and efficient hearing of the contested case.

3. Bad faith or willfulness in failing to comply with par. (a).

(4) PROTECTIVE ORDERS. Upon motion by any party, and for good cause shown, the administrative law judge may issue a protective order under s. 804.01 (3), Stats., limiting discovery in any contested case, including a class 2 contested case.

(5) ORDER COMPELLING DISCOVERY. If a person fails to respond to a discovery request under this section, the party seeking discovery may move the administrative law judge for an order compelling discovery. Upon motion by any party, the administrative law judge may issue an order compelling discovery under s. 804.12, Stats.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.37 Stipulations; settlement. (1) STIPULATIONS. The parties may stipulate to any matter at issue in a contested case. The parties may submit a written stipulation signed by the parties to the administrative law judge who shall enter it in the record. During a proceeding, the administrative law judge, or any of the parties at the direction of the administrative law judge, shall dictate the contents of any oral stipulation for inclusion in the record.

(2) SETTLEMENT. At any time during a contested case proceeding, the parties may agree to settle the case. The parties shall notify the administrative law judge of the agreement to settle.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.39 Hearing. (1) DATE, TIME AND LOCATION. (a) A hearing shall be held at the date, time and location specified in the notice of hearing under s. Ins 5.12, or at another date, time and location ordered by the administrative law judge. In rescheduling the date, time and location, the administrative law judge shall consider all of the following:

1. The location and convenience of office staff involved in the proceeding.

2. The location and convenience of witnesses.

3. The location and convenience of the parties.

(b) A hearing, or any portion of a hearing, may be held by telephone or video−conference if the administrative law judge determines that this method is justified for the convenience of any party or witness, and that no party is unfairly prejudiced by this method. The party calling a witness to testify by telephone or video−conference shall notify the administrative law judge before the hearing to allow for making the necessary arrangements and is responsible for providing the witness with a complete set of numbered copies of all exhibits.

(c) The administrative law judge may adjourn, recess or postpone a hearing as he or she considers appropriate.

(2) OPENING HEARING. (a) The administrative law judge shall open the hearing with a concise statement of its scope and purpose and shall enter the appearances in the record. If the administrative law judge permits opening statements, they shall be limited to the following:

1. A brief summary or outline in clear and concise form of the evidence intended to be offered.

2. A statement of the ultimate legal points relied upon.

(b) Opening statements are optional with each party, and do not constitute evidence. The administrative law judge may limit the length of opening statements.

(3) ORDER OF HEARING; BURDEN OF PROOF. (a) In a class 1 proceeding where the office has denied a license application, the office shall proceed first with the presentation of evidence. The petitioner has the burden of proving, by a preponderance of the evidence, that the denial should be modified or rescinded.

(b) In a class 2 proceeding, the office shall proceed first with the presentation of evidence and has the burden of proving its case by a preponderance of the evidence.

(c) In any case not governed by par. (a) or (b), the petitioner shall proceed first with the presentation of evidence unless the administrative law judge specifies a different order of proof to promote an orderly consideration of the contested case. The petitioner has the burden of proof unless the administrative law judge orders otherwise. The standard of proof shall be a preponderance of the evidence. The rules of civil procedure for actions in circuit court shall guide the administrative law judge in deciding the order of proof and the party having the burden of proof, if disputed.

(4) WITNESSES. (a) *Oath or affirmation.* The administrative law judge or court reporter, if one is present, shall administer an oath or affirmation to each witness, including a witness appearing by telephone or video−conference, before he or she testifies, as provided in s. 906.03, Stats.

(b) *Examination of witnesses.* 1. If the office is a party to the proceeding, an employee of the office designated by the commissioner to act as counsel for the office shall examine and cross−examine witnesses on behalf of the office.

2. A party or the party's attorney on behalf of the party, may examine and cross−examine witnesses. Only one individual may examine or cross−examine a witness on behalf of a party except with permission from the administrative law judge.

3. The administrative law judge may examine any witness.

(c) *Adverse witnesses.* Any party may call as an adverse witness any other party, any officer, agent or employee of a party or any witness on behalf of a party, if permitted by the administrative law judge.

(d) *Cross−examination.* Cross−examination is not limited to matters covered on direct examination. The administrative law judge may limit cross−examination as necessary to avoid needless waste of time or undue harassment of witnesses.

(e) *Limitation.* The administrative law judge may limit the scope of redirect and recross−examination.

(f) *Leading questions.* Leading questions may not ordinarily be used in the direct examination of a witness, but may be used in cross−examination. A party may use leading questions in the direct examination of either of the following:

1. An opposing party, or an officer, agent or employee of an opposing party.

2. A witness who is hostile, unwilling, adverse or evasive, if the administrative law judge permits the use of leading questions in the examination of that witness.

(5) EVIDENCE. (a) *Admissibility.* 1. The receipt of testimony and other evidence in contested cases is governed by s. 227.45, Stats. The administrative law judge shall admit evidence that has reasonable probative value, but shall exclude evidence that is immaterial, irrelevant or unduly repetitious, or that lacks reasonable probative value. The administrative law judge may admit hearsay evidence and shall accord it as much weight as the administrative law judge considers warranted by the circumstances.

2. Evidence submitted at the hearing need not be limited to matters set forth in the pleadings. If variances occur, the pleadings shall be considered conformed to the evidence. The administrative law judge may grant a postponement if necessary to give a party adequate time to rebut the evidence involved in a variance.

(b) *Objections; offers of proof.* 1. If the administrative law judge sustains an objection to the admission of evidence, the party seeking to have the evidence admitted may make an offer of proof. The administrative law judge shall direct the form of the offer of proof.

2. Failure of a party to object on the record to the admission of any evidence is a waiver of the right to object.

3. Failure of a party to make an offer of proof is a waiver of the right to object to the administrative law judge's ruling on the objection.

4. The administrative law judge may order the parties to brief any objection. If the party making the objection fails to brief it, the objection is waived.

(c) *Documents.* Documentary exhibits shall, as far as practicable, be on 8−1/2 by 11 inch paper, unless the administrative law judge permits otherwise or unless the document is a form printed on 8−1/2 by 14 inch paper. The administrative law judge may order charts used as exhibits to be reduced to 8−1/2 by 11 inch copies.

(d) *Copies.* The administrative law judge may permit the filing or use of a copy in place of any original document, subject to authentication by the proponent if its authenticity is challenged in a prehearing motion.

(e) *Prefiled exhibits and prepared testimony.* The administrative law judge may permit or order the parties to submit evidence in the form of documentary exhibits or prepared testimony or both before the hearing. The administrative law judge shall specify the date by which the evidence shall be submitted, in order to allow the parties reasonable time for review. Exhibits and testimony submitted under this paragraph shall be admitted in evidence as though given orally if the author is present and available for cross−examination.

(f) *Technical data.* If evidence consists of technical data that would make oral presentation difficult to follow, or if information can be more effectively presented visually, it may be presented in exhibit form and supplemented and explained by oral testimony.

(g) *Use of depositions.* 1. Section 804.07, Stats., governs the use of depositions.

2. The parties may stipulate to the admission of a deposition in addition to those required to be admitted under s. 227.45 (7), Stats.

(h) *Additional evidence.* At the hearing, the administrative law judge may order or the parties may stipulate to the admission of additional documentary evidence after the close of testimony. The administrative law judge shall keep the record open until the additional evidence is filed or the specified time for filing it has expired without its being filed. The administrative law judge may, at the request of the stipulating parties, extend the time for filing the additional evidence.

(6) OFF−THE−RECORD DISCUSSIONS. During a hearing, the administrative law judge may permit discussions off the record. If the administrative law judge decides that a discussion off the record is relevant, he or she may summarize it on the record or require the parties to discuss the matter on the record.

(7) POSTPONEMENT; ADJOURNMENT. The administrative law judge may, for good cause and after consideration of the potential hardship to other parties, grant a postponement or adjourn a hearing.

(8) REOPENING. After the record is closed, no further evidence shall be added to the record except by order of the administrative law judge. The administrative law judge may reopen the record to take further evidence if a party moves for reopening and shows to the administrative law judge's satisfaction that there is evidence that could not reasonably have been discovered before the record was closed and that it should be admitted in the interest of justice, or that documentary evidence used at the hearing was inadvertently omitted. The administrative law judge may, on his or her own motion, reopen a hearing to take additional testimony or admit additional documentary evidence.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.40 Costs to prevailing party. (1) MOTION. (a) An individual or small business or small nonprofit corporation,

as defined in s. 227.485 (2) (c) and (d), Stats., that believes it may be entitled to costs under s. 227.485 (3), Stats., may make a motion for costs as provided in par. (b), (c) or (d). The motion shall include proof that the party is eligible for an award of costs under s. 227.485 (7), Stats.

(b) If a hearing is held, a party believing that it may prevail shall make a motion for costs, if any, before the close of the hearing. The moving party and the attorney representing the office in a class 2 proceeding or the office, board, plan, fund or council in a class 1 or class 3 proceeding shall include arguments on the motion in the briefs ordered by the administrative law judge.

(c) If the matter is submitted to the administrative law judge on briefs without a hearing, a party believing that it may prevail shall file a motion for costs, if any, at the time the parties agree to submit the matter on briefs or within a reasonable time thereafter as permitted by the administrative law judge, but not later than the due date of the party's brief. The moving party and the attorney representing the office in a class 2 proceeding or the office, board, plan, fund or council in a class 1 or class 3 proceeding shall include arguments on the motion in the briefs ordered by the administrative law judge.

(d) 1. If the matter is finally disposed of other than by a decision under s. Ins 5.45, the prevailing party shall file a motion for costs, if any, and a brief in support of the motion within 30 calendar days after receiving notice of the final disposition, except that if the parties settle the matter by stipulation, a prevailing party may not file a motion for costs unless the stipulation expressly authorizes the party to do so.

2. The attorney representing the office in a class 2 proceeding or the office, board, plan, fund or council in a class 1 or class 3 proceeding shall file a brief in opposition to the motion within 30 calendar days after the deadline for filing under subd. 1.

(2) PROPOSED DECISION ON MOTION. (a) If the motion for costs is filed under sub. (1) (b) or (c), the administrative law judge shall decide the motion as part of the proposed decision under s. Ins 5.43. Even if the administrative law judge is the final decision maker in the matter, the decision on the motion for costs shall be issued as a proposed decision.

(b) If the motion for costs is filed under sub. (1) (d), the administrative law judge shall issue a proposed decision on the motion under s. Ins 5.43.

(c) The parties may file written objections to the proposed decision under s. Ins 5.43 (2).

(3) PROCEDURE FOR DETERMINING COSTS. (a) *Documentation.* If the administrative law judge recommends that the prevailing party be awarded costs, the prevailing party shall, within 30 calendar days after service of the proposed decision under sub. (2), submit documentation of all of the following to the administrative law judge and to the office, board, plan, fund or council:

1. The number of hours for which compensation is sought, itemized according to the work performed, the dates it was performed and the identity of the individual performing the work.

2. The hourly rate customarily charged by each individual for whom compensation is sought and, if compensation in excess of $75 an hour for attorney fees is sought, justification for a higher rate as required under s. 814.245 (5) (a) 2., Stats.

3. Costs for which reimbursement is sought.

(b) *Reply.* Within 15 calendar days after the submission of documentation under par. (a), the attorney representing the office, board, plan, fund or council which is a party to the contested case may file a written response contesting any of the costs.

(c) *Determination of costs.* The administrative law judge shall determine the eligible costs as provided under s. 227.485 (5), Stats., and if the final decision maker awards costs, the amount awarded shall be included in the final decision.

(4) FINAL DECISION. If the final decision maker awards costs despite the administrative law judge's recommendation to the contrary, the parties and the administrative law judge shall, after the final decision is issued, follow the procedure in sub. (3) within the specified time periods.

(5) JUDICIAL REVIEW. A final decision awarding costs is subject to judicial review under s. 227.52, Stats. A party may seek judicial review of a final decision granting or denying an award of costs, regardless of whether the party petitions for judicial review of the final decision on the merits of the contested case.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Ins 5.41 Arguments; briefing. (1) FILING. (a) Unless the administrative law judge permits oral argument instead of briefing or determines that briefing is not necessary, each party shall file a written brief conforming to sub. (2) on the issues involved in the hearing. If a brief contains a summary of evidence or facts relied on, it shall, if possible, include references to specific exhibits or pages of the record containing the evidence. No new evidence may be attached to or referred to in a brief, other than evidence admitted under s. Ins 5.39 (8).

(b) The party having the burden of proof shall file the first brief, unless the parties stipulate to the simultaneous filing of briefs. The administrative law judge may permit or order the filing of reply briefs. Each party shall file its brief by the date specified by the administrative law judge, unless he or she grants an extension of the time for good cause shown. The administrative law judge may refuse to consider any brief that is not filed on a timely basis. The filing of a party's brief before the specified date does not affect the deadlines for subsequent briefs.

(2) FORMAT; LENGTH. (a) The following standards apply to all briefs which shall:

1. Be printed or handwritten on only one side of 8−1/2 by 11 inch paper.

2. Be double spaced.

3. Have margins of not less than one inch on all sides.

4. If typewritten or typeset, have a typeface containing not less than 12 characters to the inch.

(b) 1. A party's initial typewritten or typeset brief may not exceed 40 pages in length.

2. A party's initial handwritten brief may not exceed 20,000 words or 50 pages in length.

(c) 1. A party's subsequent typewritten or typeset brief may not exceed 10 pages in length.

2. A party's subsequent handwritten brief may not exceed 4,000 words or 12 pages in length.

History: Cr. Register, March, 1996, No. 483, eff. 4−1−96.

Subchapter IX — Decisions

Ins 5.43 Proposed decision. (1) ISSUED BY ADMINISTRATIVE LAW JUDGE. If the administrative law judge is not the final decision maker in a contested case, the administrative law judge shall prepare a proposed decision for consideration by the final decision maker. The proposed decision shall include proposed findings of fact, proposed conclusions of law, a recommended final order and the administrative law judge's signed opinion explaining the proposed decision. The administrative law judge shall serve a copy of the proposed decision on each party.

(2) OBJECTIONS BY PARTIES. (a) Any party may file written objections to the administrative law judge's proposed decision under sub. (1). Unless the final decision maker specifies a different time period, an objecting party shall file objections within 20 calendar days after service of the proposed decision and shall serve copies on the other parties. The objecting party shall identify the legal or factual grounds for each objection, and may file a written brief in support of the objections.

(b) Any other party may file a written response to the objections under par. (a) within 10 calendar days after the objections are filed.

(c) A final decision maker may, upon written motion by a party, do either of the following:

1. Extend or limit the time for filing objections or responses to objections.

2. Permit the parties to make further oral or written arguments to the final decision maker.

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96.

Ins 5.45 Final decision. (1) FINAL DECISION MAKER. (a) If the proceeding arises under ch. Ins 17 or a petition for a declaratory ruling under s. 619.04, Stats., or ch. 655, Stats., the PCF board shall be the final decision maker unless the PCF board directs that the administrative law judge's decision shall be final.

(c) In any other case, the commissioner shall be the final decision maker unless the commissioner directs that the administrative law judge's decision shall be final.

(2) CONTENTS; NOTICE OF RIGHTS. The final decision maker, after considering any proposed decision and objections under s. Ins 5.43, shall issue the final decision in a contested case. The final decision shall include findings of fact, conclusions of law, an order, the notice required under s. 227.48, Stats., and a copy of the relevant statutory provisions. If the final decision varies from the administrative law judge's proposed decision, the final decision shall explain the reasons for the variation.

(3) ADMINISTRATIVE LAW JUDGE AS FINAL DECISION MAKER. If the administrative law judge is designated as the final decision maker, the administrative law judge may issue a final decision under sub. (1) without first issuing a proposed decision under s. Ins 5.43, except as provided in s. Ins 5.21 (2).

(4) PARTIES FOR REVIEW. (a) Each of the following, unless dismissed as a party by the administrative law judge, is a party under s. 227.47, Stats., for purposes of review under s. 227.53, Stats.:

1. The office, if it participated in the proceeding as a party.

2. The petitioner, if any.

3. Each respondent.

4. Any person permitted to intervene by the administrative law judge.

(b) The administrative law judge shall prepare a list of persons who are parties for purposes of review under s. 227.47, Stats., and shall include in the proposed decision the name and address of each person on the list. In determining the parties in addition to those specified in par. (a), the administrative law judge shall consider all of the following criteria:

1. The nature of the proceeding.

2. The persons affected by the decision and the extent of that effect.

3. The nature of the participation by those involved in the proceeding, including attendance at hearings, cross–examination of witnesses and submission of briefs.

(c) Each person listed as a party under par. (b) shall be served with the final decision and any posthearing motion or petition for rehearing, reopening or judicial review, submitted by any party after service of the final decision, and with any correspondence or other document directly related to the hearing or decision.

History: Cr. Register, March, 1996, No. 483, eff. 4–1–96; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register June 2005 No. 594; **CR 17–015: r. (1) (b) Register December 2017 No. 744, eff. 1–1–18.**