

TITLE 1: GOVERNMENT
DIVISION 9: MISCELLANEOUS PROVISIONS

§ 9109. Administrative Procedure: Conduct of Hearings.

(a) Persons entitled to notice of an agency hearing shall be timely informed of:

- (1) The time, place, and nature of the hearing;
- (2) The legal authority and jurisdiction under which the hearing is to be held;
- (3) The particular sections of the statutes and regulations involved;
- (4) The matters asserted.

If the agency or other party 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.

(b) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent, order, or default.

(c) A party or any other person entitled to be present and represented by counsel of his own choosing in an agency hearing.

(d) Upon request of any party and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the subject sought, an agency authorized by law to issue subpoenas shall issue subpoenas to compel the attendance of persons at a hearing or in taking depositions. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of failure to comply.

(e) There shall preside at the taking of evidence:

- (1) The agency; or
- (2) A hearing officer appointed by the agency.

The function of persons presiding at hearings and of persons participating in orders or decisions in accordance with this chapter shall be conducted in an impartial manner. A presiding or participating person may at any time disqualify himself or herself. On the filing in good faith of a timely and sufficient affidavit of personal bias and prejudice or other disqualification of a presiding or participating person, the agency shall determine the matter as a part of the record and order or decision in the case.

(f) Subject to published rules of the agency and within its powers, persons presiding at hearings may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas authorized by law;
- (3) Rule on offers of proof and receive relevant evidence;
- (4) Take depositions or have depositions taken when the ends of justice would be served;
- (5) Regulate the course of the hearing;
- (6) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) Dispose of procedural requests or similar matters;

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(8) Make or recommend orders or decisions in accordance with this chapter; and

(9) Take such other action authorized by agency rule consistent with this chapter.

(g) Except to the extent required for the disposition of ex parte matters as authorized by law, persons presiding at hearings or persons participating in orders or decisions may not:

(1) Consult a person or party or representative of a person or party on a fact in issue or on applicable law, unless on notice and opportunity for all parties to participate; or

(2) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecutory functions for an agency.

(h) Persons presiding at hearings or participating in orders or decisions may:

(1) Communicate with other members of the agency, except as limited by subsection (g) of this section; and,

(2) Have the aid and advice of one or more personal assistants, and of the Attorney General and his or her staff if such assistance would not be in violation of subsection (g) of this section.

(i) Except as otherwise provided by statute, the proponent of an order or decision has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Except as otherwise provided by law, privileges relating to evidence in the Commonwealth Superior Court shall apply in the conduct of hearings. A sanction may not be imposed on an order or decision issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(j) The record in a hearing under this chapter shall include:

(1) The notice and any pleadings, motions, and intermediate rulings;

(2) Evidence received or considered;

(3) A statement of matters officially noticed;

(4) Questions and offers of proof, objections, and rulings on them;

(5) Any order or decision, recommended order or decision, opinion, or report by the person presiding at the hearing;

(6) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case;

(7) Transcript or summary of testimony and exhibits; and

(8) All papers and requests filed in the proceeding which are not specifically mentioned above.

(k) On payment of lawfully prescribed costs, the record shall be made available to the parties within a reasonable time.

(l) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

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Source: 17 TTC § 9, modified.

Commission Comment: For other provisions concerning public access to meetings of the governing bodies of public agencies, see 1 CMC § 9901 et seq.

Executive Order 97-03, which was signed on November 13, 1997, transferred the subject duty of the Attorney General set forth in 1 CMC § 2153(b) and related duties and responsibilities of the Registrar of Corporations (set forth in 4 CMC §§ 4201-4204) to the Department of Commerce. As of March 31, 2003, no transfers had taken place. EO 97-03 also called for the substitution of “Registrar of Corporations” or “Registrar” with “Attorney General” in 1 CMC §§ 9101-9115.