

ILLINOIS REGISTER

ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

NOTICE OF PROPOSED RULE

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER V: ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

PART 1790
RULES OF PROCEDURE IN ADMINISTRATIVE HEARINGS

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AUTHORITY: Implementing and authorized by [50 ILCS 705/6.3] and Section 6.3 of the Police Training Act (50 ILCS 705/) Illinois Police Training Act.

SOURCE: Adopted at 48 Ill. Reg. _____, effective _____.

Section 1790.100 Applicability

This Part shall apply to all administrative hearings concerning contested cases conducted under the jurisdiction of the Illinois Law Enforcement Training and Standards Board pursuant to the Illinois Police Training Act.

Section 1790.120 Definitions

"Administrative Law Judge" or "ALJ" means an attorney licensed to practice law in the State of Illinois who has been designated by the Director to conduct any hearings governed by this Part.

"Board" means the Illinois Law Enforcement Training Standards Board as established pursuant to Section 3(a) of the Police Training Act. [50 ILCS 705/3].

"Day" means a calendar day.

"Director" means the Executive Director of the Illinois Law Enforcement Training Standards Board.

"Document" means pleading, notice, motion, affidavit, memorandum, brief, petition, or other paper or combination of papers required or permitted to be filed.

"Complainant" is a party who, by written petition, seeks decertification, certification, or activation under any provision of the Police Training Act or any rule, order, or determination of the Board.

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"Evidence" means those matters considered evidence under the Illinois Rules of Evidence. [735 ILCS 5/Art. VIII].

"Hearing" means a formal proceeding in which the administrative law judge shall report any findings of fact, conclusions of law, and recommended disposition. [50 ILCS 705/6.3].

"IAPA" means the Illinois Administrative Procedure Act. [5 ILCS 100].

"Panel" means the Certification Review Panel as created by the Police Training Act. [50 ILCS 705/3.1].

"Respondent" is a person, officer, agency, or other legal entity against whom a complaint or notice initiating a proceeding is filed or to whom an order or complaint is directed by the Board.

"Statement" means a written statement made by a witness and signed or otherwise adopted or approved by the witness, or a stenographic, mechanical, electrical, or other recording, or a transcription of the recording that is a substantially verbatim recital of an oral statement made by the witness to an agent of the person obliged to produce the statement and recorded contemporaneously with the making of this oral statement.

Section 1790.130 Burden and Standard of Proof

The complainant shall have the burden of proof. The standard of proof for any hearing conducted shall be by clear and convincing evidence.

Section 1790.140 Filing and Service

- a) All pleadings, motions, briefs, and documents shall be electronically filed with the Board in accordance with Supreme Court Rules 9 and 10. Service of such pleadings, motions, briefs, and documents shall be made in accordance with Supreme Court Rules 11 and 12. For purposes of these Rules, the word "filing" shall mean "electronic filing," and the parties are not required to file copies of any pleading, motion, brief or document that is electronically filed.
- b) A Board Investigator shall cause a copy of the complaint and a notice of the hearing to be served on the respondent, in any manner authorized by the Code of Civil Procedure or by paragraph c).

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- c) By mail service: The Board Investigator may serve the respondent by certified mail, postage fully prepaid: (1) directed to the last known address of the respondent; or (2) to the last known email address respondent recorded with the Board. The Investigator's certificate of mailing, emailing or delivery is sufficient proof of service.

Section 1790.150 Form of Papers Filed

- a) Documents shall clearly state a title for the proceedings in connection with which they are filed. Documents shall be presented in letter-quality print on one side only of letter-sized paper, and one copy of each document filed shall be signed by the party or by the party's authorized representative.
- b) Exhibits, when possible, shall be reduced or enlarged to conform to the size requirements of subsection (b). A party is not prohibited from enlarging an exhibit at hearing for demonstrative purposes as long as the exhibit is reduced to the size requirement in this subsection (c) for the record; and
- c) One copy of each document filed shall be signed by the party or by its authorized representative or attorney. All documents shall bear the business address, e-mail address, fax number, if any, and telephone number of the attorney filing the document, or of the party who appears on his or her own behalf.

Section 1790.170 Prehearing Conference

- a) After a case is instituted a prehearing conference shall be scheduled within 30 days.
- b) Upon the request of any party, the prehearing conference will be conducted as a matter of record. Participation by any Board member or an ALJ will not affect his or her right to participate in a subsequent hearing on the matter. The requesting party shall be responsible for the court reporter's attendance and costs.
- c) The purposes of the prehearing conference include:
 - 1) Simplification of issues;
 - 2) Limitation of issues;

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- 3) Negotiating admissions or stipulations;
 - 4) Limitation of witnesses or evidence;
 - 5) Exchange of exhibits;
 - 6) Discussion of any other matter that may aid in efficient disposition of the case; or
 - 7) Agreed dispositions;
 - 8) Joinder.
- d) The parties shall be fully prepared to participate in a prehearing conference, which shall include:
- 1) presentation of any prehearing motions;
 - 2) witness and exhibit lists that list only those witnesses the party in good faith intends to call;
 - 3) disclosure of expert witnesses; and
 - 4) any other materials directed by an ALJ.

Section 1790.200 Notice of Prehearing Conference

- a) All Prehearing Conferences shall be initiated by the ALJ's issuance of a written Notice of Prehearing conference, which shall be served upon all known parties. Hearings under Emergency Order of Suspension (or Discretionary Decertification) [50 ILCS 705/8.3]) shall take priority over all other hearings.
- b) Service shall be complete when the Notice of Prehearing Conference is served:
 - 1) in accordance with how a summons is served on a person under Part 2 of the Civil Practice Law (735 ILCS 5/) Code of Civil Procedure.
 - 2) by certified U.S. Mail, postage prepaid, addressed to the last known address of the person involved not less than 30 days before the day designated for the hearing; or

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- 3) by U.S. mail, postage prepaid, to the address on file; or
 - 4) Electronic mail to the address of each party on file.
- c) A Notice of Prehearing Conference served under this Part shall include:
- 1) time, place and nature of the Prehearing Conference;
 - 2) The legal authority and jurisdiction under which the hearing is to be held;
 - 3) A reference to the particular Section of the statutes and rules involved;
 - 4) A short and plain statement of the matters asserted, except when a more detailed statement is otherwise provided for by law;

Section 1790.210 Appearance

- a) A party may be represented by an attorney who is licensed in Illinois or by an attorney otherwise permitted by law to practice in the State. Attorneys who appear in a representative capacity must file written notice of appearance setting forth:
 - 1) The name, address, email address, telephone number and Supreme Court registration number of the attorney;
 - 2) The name, address and email address of the party represented; and
 - 3) An affirmative statement indicating that the attorney is licensed in Illinois or is appearing pro hac vice.
- b) An attorney may withdraw upon written notice to the ALJ.
- c) A law student licensed under Supreme Court Rule 711 may appear on behalf of any party as permitted by Supreme Court Rule 711 and shall be subject to the same requirements as an attorney.
- d) Attorneys admitted to practice in states or jurisdictions other than the State of Illinois may appear and be heard in a specific hearing pro hac vice as authorized and in compliance with Supreme Court Rule 707. The attorney's appearance shall

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include documentation as to his or her eligibility or qualification under Supreme Court Rule 707.

- e) Any individual may appear on his or her own behalf.
- f) Once an appearance is filed, a copy of all future filings shall be served upon the counsel of record, unless that counsel has withdrawn. In addition to that service, a copy may be served on the licensee.
- g) The standard of conduct shall be the same as before the Courts of Illinois. Attorneys appearing before the ALJ shall conform their conduct to the Illinois Rules of Professional Conduct. Any failure to behave in a manner consistent with those standards of conduct or this Part will authorize an Administrative Law Judge to take the following actions:
 - 1) Limitation of evidence;
 - 2) Substitution of written argument in place of oral argument; or
 - 3) If warranted, report an attorney's misbehavior to the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court.
- h) If any of the actions authorized by subsection (h) are taken by the ALJ, it shall be done as a matter of record, and the ALJ shall state for the record the specific reasons for the action.
- i) A party sanctioned under this Section may request the decision be reviewed by the Director.

Section 1790.250 Failure to Appear

Failure to appear at the time and place set for hearing shall be deemed a waiver of the right to present evidence unless otherwise reflected by order of the Administrative Law Judge. After presentation by the Board of proof that the Respondent was given proper notice and the Board has been given an opportunity to present evidence, the ALJ shall make his or her recommendation.

Section 1790.260 Amendment and Withdrawal of Complaints

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- a) The Complaint may be amended at any time, except in the course of the hearing without leave or approval of the Administrative Law Judge. If an amended Complaint is filed during the course of the hearing, it shall also be presented to the Administrative Law Judge. A continuance shall be granted whenever the amendment materially alters the Complaint and when the Respondent demonstrates that he or she would otherwise be unable to properly prepare an Answer to the Amended Complaint. Documents received pursuant to 50 ILCS 705/ 9.2 shall be submitted under seal and not subject to FOIA until the matter leads to decertification.
- b) A Complaint for Hearing may be withdrawn at any time prior to the hearing. After a hearing has begun, a Complaint may be withdrawn only with leave of the ALJ.

Section 1790.300 Answer

- a) Any party receiving a complaint and Notice of Hearing shall file a written answer to the complaint no later than 30 days after receiving the complaint and Notice of Hearing. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint. However, if the respondent is without knowledge, the respondent shall so state and that statement operates as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the answer states that the respondent is without knowledge, shall be deemed to be admitted to be true and shall be so found by the ALJ, unless good cause to the contrary is shown.
- b) An original and one copy of the answer shall be filed with the ALJ and Panel. Immediately upon the filing of the answer, the responding party shall serve a copy on the Director and other parties. A party who is not represented by an attorney shall sign his or her answer and state his or her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of the attorney or non-attorney party constitutes a certificate by him or her that he or she has read the answer; that, to the best of his or her knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this Section, it may be stricken as a sham and false and the action may proceed as though the answer had not been served. Documents received pursuant to 50 ILCS 705/ 9.2 shall be submitted under seal and not subject to FOIA until the matter leads to decertification

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- c) The ALJ before whom the hearing is scheduled may by written order extend the time within which the answer shall be filed.

Section 1790.310 Motions

- a) All motions made before or during a hearing shall be made to the ALJ and, unless made orally on the record during a hearing or unless the ALJ directs otherwise, a motion shall be in writing and shall be accompanied by any affidavits or other evidence relied upon and, when appropriate, by a proposed order. Two copies of all motions shall be filed with the ALJ, and at least one copy shall be served on each additional party, if any, to the hearing.
- b) Within 7 days after service of a written motion or other document, or other period as the ALJ may allow, a party may file a response in support of or in opposition to the motion and, if necessary, accompanied by affidavits or other evidence. A party filing a motion has the right to request from the ALJ leave to file a reply to a response.
- c) A written brief may be filed with a motion or an answer to a motion stating the arguments and authorities relied upon. The brief will be no longer than 15 pages in length unless, prior to the filing date, leave is granted to file a brief greater than 15 pages.
- d) A written motion filed prior to a hearing will be disposed of by written order and on notice of all parties, except for motions made at or after the opening of a hearing, in which case the ALJ shall announce his or her ruling orally on the record at the hearing. All motions, rulings and orders shall become a part of the record, except that ruling on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved. Rulings by the ALJ on motions and/or objections, and orders in connection with those motions and/or objections, shall not be appealed directly to the Panel but shall be considered by the Panel in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Panel pursuant to Sections 120.645 and 120.650.
- e) The ALJ shall rule upon all motions, except that the ALJ shall have no authority to dismiss or decide a hearing on the merits without granting all parties to the proceeding a right to be heard in accordance with the procedures for motions in this Section, which shall constitute the record.

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- f) Unless otherwise ordered, the filing of an answer or motion shall not stay the proceeding or extend the time for the performance of any act.
- g) A party has a right to file an emergency motion setting forth why an emergency exists and the ALJ can deny the emergency motion solely on the basis that the motion did not demonstrate that an emergency exists.

Section 1790.320 Joinder

- a) When the same conduct of an officer may establish the commission of more than one decertifiable offense, the officer may be prosecuted for each such offense.
- b) If the several offenses are known to the proper prosecuting attorney at the time of commencing the case, they shall be prosecuted in a single prosecution.

Section 1790.330 Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the Administrative Law Judge upon his or her own motion or upon the motion of a party to the hearing. A motion by a party shall set forth facts demonstrating that the request for continuance is not for the purposes of delay. Examples of due cause include the unavailability of the Administrative Law Judge, a witness or a party due to an accident, illness or other circumstances beyond the person's control. Notice of any postponement or continuance shall be given in writing to all parties to the hearing within a reasonable time in advance of the previously scheduled hearing date. All parties involved in a hearing shall attempt to avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.

Section 1790.400 Remote Proceedings

- a) Prehearing conferences may be conducted remotely, either by teleconference or videoconference, provided that the Notice of Prehearing conference will be conducted remotely and includes instructions for accessing the teleconference or videoconference system at the date and time set forth in the Notice of Prehearing Conference.
- b) By order of the Administrative Law Judge, any status hearing or prehearing may be conducted remotely, either by teleconference or videoconference. The parties shall be provided instructions for accessing the teleconference or videoconference system for the date and time of the scheduled status hearing or prehearing.

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- c) The parties may agree that the formal hearing will be conducted in its entirety by teleconference or videoconference or that a part or parts of the formal hearing will be conducted by teleconference or videoconference, including the testimony of a particular witness or witnesses. These agreements are subject to the approval of the ALJ by entry of an order. Absent such agreement the formal hearings shall be conducted in person at the Board's office.

Section 1790.410 Discovery

- a) General discovery (e.g., deposition, interrogatories or request to produce or admit) shall not be permitted.
- b) Disclosure of the following shall be required in accordance with the time periods set forth in this subsection (b) unless otherwise modified by the ALJ in the order issued pursuant to the pre-hearing conference:
 - 1) Unless otherwise ordered by the ALJ at least 21 days prior to the commencement of the hearing, each party shall provide all parties with a copy of any document that it may offer into evidence. This subsection (b)(1) shall not require any party to provide copies of documents already provided. Each party shall provide newly discovered documents, except for witness statements, as they become known to the party intending to introduce the document.
 - 2) Unless otherwise ordered by the ALJ at least 21 days prior to the commencement of the hearing, each party shall provide all parties with a list containing the name and address of any witness who may be called to testify. Each party shall provide newly discovered witnesses as they become known to the party intending to call the witness.

Section 1790.420 Subpoenas

- a) The ALJ shall, on the written application of any party, issue subpoenas to a party allowing that party to require the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents. The Director shall have the authority to sign and issue subpoenas on behalf of the Board. Applications for subpoenas made before or during the hearing shall be filed with the ALJ. Applications for subpoenas may be made ex

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parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

- b) Subpoenas may be served by personal delivery, by certified mail with return receipt signed by private delivery service, or by U.S. regular mail, postage prepaid. Any person served with a subpoena, whether ad testificandum (for witness testimony) or duces tecum (for document production), who does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. All petitions to revoke subpoenas shall be served on the party at whose request the subpoena was issued. The petition to revoke, if made prior to or during the hearing shall be filed with the ALJ.
- c) The ALJ, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable, is oppressive or requests material that is irrelevant. The ALJ will rule upon motions to quash or modify material requested in the subpoena. The ALJ may deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, harassment or oppression. The ALJ can take these actions if the subpoena does not describe with sufficient particularity the evidence whose production is required, or if, for any other reason sufficient in law, the subpoena is otherwise invalid. The ALJ can also take these actions to protect materials from disclosure consistent with a protective order issued by the ALJ. If the Request for Subpoena is denied or modified, the ALJ shall proceed to conduct the hearing, and the specific reasons for denying or modifying the request shall be made part of the record.
- d) If a party or organization within control of a party fails to obey a subpoena, and the ALJ finds the subpoena to have been validly served and the material requested to be relevant and material, the ALJ may impose such sanctions as are appropriate, including but not limited to: prohibiting testimony by the party who has refused to comply with the subpoena; drawing an adverse inference against the party required to comply; or recognizing the evidence required by the subpoena but not produced as establishing the truth of the position of the party who subpoenaed the document. If a nonparty fails to obey a subpoena, the party seeking enforcement shall be responsible for preparing an application for enforcement and shall file it in a court of appropriate jurisdiction.

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- e) Witnesses summoned before the ALJ, other than those summoned by the Board shall be paid the same fees and mileage that are paid witnesses in the court of the county where the hearing is being held. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.
- f) Law enforcement agencies in the State shall share information and investigative means such as subpoenas, witnesses and reports with the Board.

Section 1790.450 Administrative Law Judge

- a) In any contested case, the Director shall appoint and employ an attorney, licensed to practice in Illinois, to serve as Administrative Law Judge on behalf of the Board. The Director may also appoint and employ an attorney, licensed to practice in Illinois, to serve as ALJ to conduct any hearing in his or her stead. The ALJ shall be empowered to conduct the hearing, question witnesses, make rulings on motions and objections, and submit Findings of Fact, Conclusions of Law, and his or her recommendation to the Review Panel at the conclusion of the case.
- b) It shall not be a bar to employment as an Administrative Law Judge that the attorney is also a Board employee.

Section 1790.500 Authority of Administrative Law Judge

An ALJ presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair and impartial hearing, including the following:

- a) To administer oaths and affirmations;
- b) To rule upon offers of proof and receive relevant evidence;
- c) To issue subpoenas as provided in Section 1790.420;
- d) To rule on issues relating to document exchange;
- e) To regulate the course of the hearing and the conduct of the parties and their counsel;
- f) To consider and rule upon procedural requests;

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- g) To hold conferences for the settlement or simplification of the issues;
- h) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetition or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
- i) To make decisions in accordance with the appropriate Act and rules, this Part and the Illinois Administrative Procedure Act.

Section 1790.510 Ex Parte Communications

- a) No party may engage in any ex parte communication with an Administrative Law Judge or with any member of the Board regarding matters pending before an Administrative Law Judge. However, when the Board is a party to the proceeding, Board representatives (excluding the Administrative Law Judge) may engage in communications with the other party outside the presence of the Administrative Law Judge.
- b) The Administrative Law Judge shall not initiate ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. If the Administrative Law Judge receives any such ex parte communication, including any documents, he or she shall inform the other parties of the substance of any such oral communication or documents. The other parties shall be given an opportunity to review any such ex parte communication.
- c) Nothing shall prevent the Administrative Law Judge from communicating ex parte about routine matters such as requests for continuances or opportunities to inspect the file, as long as all parties are informed of the substance of the ex parte communication. The date and type of communication, the persons involved and the results of such routine communications shall be part of the record. A member of the Board may communicate with other members of the Board and a Board member or Administrative Law Judge may have the aid and advice of one or more personal assistants.

Section 1790.520 Disqualification of Administrative Law Judge

At any time prior to the issuance of the Administrative Law Judge's decision or recommendations, a party may move to disqualify the Administrative Law Judge on the grounds of bias or conflict of interest. The motion shall be made in writing to the Panel, with a copy to the Director and the Administrative Law Judge, setting out the specific instances of bias or

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conflict of interest. The Panel will assign the matter for a determination to an Administrative Law Judge not challenged in the motion. An adverse decision or ruling, in and of itself, is not grounds for disqualification. The Administrative Law Judge's employment or contract as an Administrative Law Judge by the Board is not, in and of itself, a conflict of interest. The case shall be suspended until a neutral Administrative Law Judge rules on the motion. The neutral Administrative Law Judge may decline to disqualify the presiding Administrative Law Judge or appoint another Administrative Law Judge to hear the case.

Section 1790.530 Contumacious Conduct

- a) Contumacious conduct at any hearing before the ALJ shall be grounds for exclusion from the hearing.
- b) If a witness or a party refuses to answer a question after being directed to do so or refuses to obey an order to provide documents, the ALJ may make those orders with regard to the refusal as are just and appropriate, including, but not limited to, excluding the testimony of witnesses, entering an order of default, entering an order that certain facts are deemed admitted for purpose of the proceeding, or entering an order denying the application or complaint of a party.

Section 1790.540 Consent Decree

If the parties to the proceeding resolve, settle or compromise their dispute and as part of the settlement agreement and the parties desire the Administrative Law Judge to enter a consent decree in order to resolve the matter, the Administrative Law Judge shall enter the Consent Decree as long as the proposed Consent Decree does not violate the Act under which the contested case was brought, and rules adopted under that Act.

Section 1790.545 Settlement Agreements

The Administrative Law Judge has no authority to change, amend or modify the Settlement Agreement of the parties to the proceeding.

Section 1790.550 Conduct of Formal Complaint Hearings

- a) All hearings shall be public unless required by statute to be otherwise.
- b) The sequence to be followed for all contested cases is as follows:

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- 1) Prehearing Conference. The purpose is to set a date on which all parties expect to be prepared to proceed with their cases, and to rule on any preliminary motions that are presented.
- 2) Formal Hearings.
 - A) Preliminary Matters – Motions, attempts to narrow issues or limit evidence.
 - B) Opening Statements – The party bearing the burden of proof proceeds first.
 - C) Case in Chief – Evidence is presented by the party bearing the burden of proof. Once a witness' direct testimony is completed, that witness is subject to cross-examination.
 - D) Defense – Evidence may be presented by the opposing party.
 - E) Closing Statements – The party bearing the burden of proof proceeds first, then the opposing party, then a final word by the party bearing the burden of proof.
 - F) Filing of ALJ's decision, including findings of fact, conclusions of law, and recommended disposition to the Panel

Section 1790.560 Rules of Evidence

- a) The Illinois Rules of Evidence shall apply to the extent practicable unless, by such application, the ALJ determines that application of the rule would be an injustice or preclude the introduction of evidence of the type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs. The ALJ must state on the record his or her reasons for that determination. Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally, accompanied by a short statement of the grounds for the objection, and included in the record. No objection shall be deemed waived by further participation in the hearing.
- b) The ALJ may, on his or her own initiative or at the request of any party or witness, enter a protective order to prevent exposure in the public domain of records or other information that is of a sensitive or confidential nature.

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- c) Evidence of any misconduct is admissible for its bearing on any matter to which it is relevant, including the officer's history of conduct as defined in 50 ILCS 705/6.3.

Section 1790.570 Official Notice

Official notice may be taken of any material fact not appearing in evidence in the record if the Circuit Courts of this State could take judicial notice of the fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the facts noticed. The Board's expertise, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

Section 1790.580 Hostile or Adverse Witnesses

- a) If the Administrative Law Judge determines that a witness is hostile or unwilling or adverse, he or she may be examined by the party calling him or her as if under cross-examination.
- b) The party calling an occurrence witness, upon the showing that he or she called the witness in good faith and is surprised by his or her testimony, may impeach the witness by proof of prior inconsistent statements.

Section 1790.590 Documents

- a) Business records shall be admissible. A business record is:
 - 1) Relevant;
 - 2) A memorandum, report, record or data compilation;
 - 3) Made by a person with first-hand knowledge of the facts or from information transmitted by a person with knowledge of those matters;
 - 4) Made at or near the time of the facts;
 - 5) Made as part of the regular practice of the activity; and

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- 6) Kept in the course of regularly conducted activity.
- b) Any party may prove elements (a)(3) through (a)(6) by presentation of a sworn statement by an individual responsible for making or keeping those records. Business records include but are not limited to police reports.
- c) Any party seeking introduction of a document will be allowed to offer a mechanical reproduction or photo copy of the original without any showing that the original is unavailable, upon representation of the party or attorney that the copy is a fair and accurate copy of the original.

Section 1790.600 Default

Failure of a party to appear at the hearing or failure to proceed as ordered by the Administrative Law Judge shall constitute a default. The Administrative Law Judge shall enter the appropriate default order.

Section 1790.610 Record in Contested Cases

- a) A full and complete record shall be kept of all proceedings. The record shall consist of the following:
 - 1) All pleadings, including all notices and responses to those pleadings;
 - 2) A transcript of the hearing, if any, and all evidence received;
 - 3) A statement of matters officially noticed;
 - 4) Any offers of proof, objections to that proof, and rulings on that proof;
 - 5) Any proposed findings and acceptance;
 - 6) Any decision, opinion or recommendations by the ALJ;
 - 7) Any ex parte communication prohibited by Section 10-60 of the IAPA, but those communications shall not form the basis for any finding of fact.
- b) The record shall also contain the following:
 - 1) Subpoenas;

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- 2) Requests for Subpoenas;
 - 3) Cover letters;
 - 4) Notices of Filing; and
 - 5) Certificates of mailing for regular mail and return receipts for certified mail.
- c) The Board shall be the official custodian of the records of administrative hearings held by the Board.

Section 1790.620 Briefs

The ALJ may require or allow parties to submit written briefs to the ALJ within 15 days after the close of the hearing or other reasonable time as the ALJ shall determine, consistent with the Director's responsibility for an expeditious decision. Briefs shall be limited to 15 pages, unless permission is granted by the ALJ.

Section 1790.630 Administrative Law Judge's Decision

- a) The ALJ's decision shall be in writing and include findings of fact and conclusions of law, and recommended disposition to the Panel. The findings of fact shall be based exclusively on the evidence presented at hearing or known to all parties, including matters officially noticed. A copy of the recommendation shall be delivered or mailed to the Panel, each party of record and to each attorney of record.
- b) The ALJ shall forward a copy of his or her decision, including findings of fact, opinions, recommendations to each party of record and the Panel.

Section 1790.645 Certification Review Panel

- a) Upon receipt of the ALJ's finding of fact, conclusions of law, and recommended disposition, and any submitted objections from the officer, or Board, the Panel shall call for a certification review meeting.
- b) The Panel shall consider the hearing officer's findings of fact, conclusions of law, and recommended disposition and may deliberate on all evidence and testimony

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received and may consider the weight and credibility to be given to the evidence received. No new or additional evidence may be presented to the Panel.

- c) If a simple majority of the Panel finds that no allegations in the complaint supporting one or more charges of misconduct are proven by clear and convincing evidence, then the Panel shall recommend to the Board that the complaint be dismissed. If a simple majority of the Panel finds that the allegations in the complaint supporting one or more charges of misconduct are proven by clear and convincing evidence, then the Panel shall recommend decertification.
- d) The Panel shall prepare a summary report as soon as practicable after the completion of the meeting including the following: the hearing officer's findings of fact, conclusions of law, recommended disposition, and the Panel's order.

Section 1790.650 Final Action by the Board

Upon receipt of the Review Panel's order and recommendation, the Board, by majority vote, shall issue a final decision to decertify, reactivate or take no action. If the Board makes a final decision contrary to the recommendations of the Panel, the Board shall set forth a final written decision with specific reasons for not following the Panel's recommendations. A copy of the Board's final decision also shall be delivered to the last employing law enforcement agency, the complainant, and the Panel.

Section 1790.660 Reconsideration of Board's Decision

- a) Within 30 days after service of the Board's final decision, the Panel or the law enforcement officer may file a written motion for reconsideration and supporting brief with the Review Committee. The motion for reconsideration shall specify the particular grounds for reconsideration.
- b) The non-moving party may respond to the motion for reconsideration within 21 days. The Review Committee shall only address the issues raised by the parties.
- c) Briefs
 - 1) Each brief shall:
 - A) set forth specifically the questions of procedure, fact, law or policy to which objection is made;

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- B) identify that part of the ALJ's decision to which objection is made;
 - C) designate by precise citation of page the portions of the record relied on; and
 - D) concisely state the grounds for the objection;
 - E) be limited to 15 pages;
- 2) A specification of the questions involved and to be argued, together with a reference to the specific objections to which they relate.
 - 3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on.
- d) Any objection to a ruling, finding, conclusion or recommendation that is not specifically stated shall be deemed to have been waived. Any objection that fails to comply with subsection (c) may be disregarded. Any brief in support of objections shall not refer to any matter not included within the scope of the objections and shall contain, in the recommendation indicated, a clear and concise statement of the case, containing all that is material to the consideration of the questions presented.
 - e) The answering brief to the objections shall be limited to the questions raised in the objections and in the brief in support of the objections. It shall present clearly the points of fact and law relied on in support of the position taken on each question. When objection has been taken to a factual finding of the ALJ and the objection is proposed to support that finding, the answering brief should specify those pages of the record that, in the view of the party filing the brief, support the ALJ's finding. The answering brief shall be limited to 15 pages.
 - f) Requests for extension of time to file an answering brief to the objection shall be in writing and copies shall be served promptly on the other parties.
 - g) Any matter not included in the objections may not thereafter be raised to the Review Committee or in any further proceeding and is deemed waived for all purposes.

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- h) The Review Committee may deny the motion for reconsideration, or it may grant the motion in whole or in part and issue a new final decision in the matter. The Review Committee must notify the law enforcement officer and their last employing law enforcement agency within 14 days of a denial and state the reasons for denial.

Section 1790.670 Judicial Review

- a) If a party seeks judicial review of an Administrative Law Judge's Decision and Order, or an Order of the Panel, or Decision of the Board that party will pay actual cost to the Board of preparing the administrative record and filing it in court. Payment shall be by certified check made payable to State of Illinois.
- b) Actions for judicial review under this Section shall be filed where the hearing proceedings took place, which is in the circuit court of either Cook County or Sangamon County.