

CHAPTER 491a. GENERAL RULES OF PRACTICE

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Authority

The provisions of this Chapter 491a issued under 4 Pa.C.S. §§ 1202(b)(30) and 1205, unless otherwise noted.

Source

The provisions of this Chapter 491a adopted August 17, 2007, effective August 18, 2007, 37 Pa.B. 4520, unless otherwise noted.

§ 491a.1. Generally.

This subpart governs practice and procedure before the Board and the OHA, and is intended to supplement 2 Pa.C.S. (relating to administrative law and procedure) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Authority

The provisions of this § 491a.1 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 491a.1 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (349919).

§ 491a.2. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Adjudication—An order, decree, decision, determination or ruling by the Board affecting the personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Complainant—The Bureau or other persons authorized by the Board to file a complaint.

Consent agreement—A voluntary agreement or proposal to act based on specific terms which are entered into by all parties to a proceeding to resolve a disputed matter.

Documentary evidence—Any document or paper which is presented and accepted as evidence in a proceeding.

Documentary hearing—A proceeding limited to a review of documentary evidence submitted by the parties, including pleadings, documents, depositions, affidavits, interrogatories and transcripts.

Exception—A formal objection to a report or recommendation of a presiding officer.

Intervener—A person who petitioned to intervene in a proceeding and who was admitted by the Board as a participant to the proceeding.

OHA—Office of Hearings and Appeals—A division of the Board charged with administrating and conducting hearings or other matters as the Board may direct.

Oral hearing—A proceeding wherein the parties may present sworn testimony, documents or other evidence, and of which a verbatim record is made.

Participant—A person admitted by the Board to limited participation in a proceeding.

Party—A person who is named in or admitted to a proceeding before the Board and who has a direct interest in the subject matter of the proceeding.

Prehearing conference—A proceeding to establish a schedule, discuss offers of settlement and identify other issues the Board or presiding officer may direct.

Presiding officer—

(i) A member of the Board, or other person designated by the Board to conduct a proceeding.

(ii) This definition supersedes 1 Pa. Code § 31.3 (relating to the definitions).

Respondent—A person to whom an order or notice is issued by the Board or the Bureau instituting a proceeding or investigation.

Authority

The provisions of this § 491a.2 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 491a.2 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344543) to (344544).

§ 491a.3. Office of the Clerk.

(a) The Board's Office of the Clerk (Clerk) will have the following duties:

(1) Provide information as to practice and procedure before the Board, under this subpart.

- (2) Receive and docket pleadings and other documents required by the Board to be filed with the Clerk.
- (b) Filings and requests for practice and procedure information should be directed to the Clerk by any of the following means:
- (1) *United States Postal Service:*
Office of the Clerk
Pennsylvania Gaming Control Board
P. O. Box 69060
Harrisburg, Pennsylvania 17106-9060
- (2) *E-mail:* boardclerk@pa.gov
- (3) *In person:*
Hearings and Appeals Office
303 Walnut Street
2nd Floor, Strawberry Square
Harrisburg, Pennsylvania 17101
- (c) The Clerk will maintain a docket of proceedings. Each proceeding as initiated will be assigned a docket number. The docket will be available for inspection and copying by the public during the Board's office hours.

Authority

The provisions of this § 491a.3 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 491a.3 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344544) and (347509).

§ 491a.4. Filing generally.

- (a) Pleadings and other documents filed with the Clerk must clearly designate the docket number, if one has been assigned, and a short title identifying the pleading or other document. The identity of the individual making the submission, including name, mailing address, status (for example, party or attorney for a party) and Board issued credential number, if applicable, must appear on the document.
- (b) Pleadings, including documents filed under this chapter, must also comply with Chapter 495a (relating to documentary filings).
- (c) If a pleading tendered for filing does not comply with this subpart, does not sufficiently set forth required material or is otherwise insufficient, the Clerk may decline to accept it for filing and may return it without filing, or the Clerk may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.
- (d) The Clerk may require redundant, immaterial, obscene or otherwise inappropriate comments stricken from documents filed.

Authority

The provisions of this § 491a.4 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 491a.4 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (347509).

Cross References

This section cited in 58 Pa. Code § 493a.4 (relating to petitions generally).

§ 491a.5. Service.

(a) *Applicability.* This section applies to service of an order, notice or other document from the OHA or the Office of Enforcement Counsel.

(b) *Service of a document initiating a proceeding.*

(1) *Registered or certified mail.* Service may be made by both first class and registered or certified mail, return receipt requested.

(2) *Personal.* Service may be made personally by delivering a copy:

(i) Directly to the person named in the notice, pleading or order.

(ii) At the residence of the person named in the notice, pleading or order, to an adult member of the family with whom the person named resides. If no adult member of the family is found, then to an adult person in charge of the residence.

(iii) At the residence of the person named in the notice, pleading or order, to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which the person named resides.

(iv) At any office or usual place of business of the person named in the notice, pleading or order, to his agent or to the person who for the time being is in charge thereof. For purposes of this subsection, the phrase “any office or usual place of business of the person named in the notice, pleading or order” will include the following locations:

(A) The licensed facility at which the person named is employed, licensed in connection therewith, or routinely performs his duties of employment.

(B) The office of the agent identified by the person named to receive service of process.

(c) *Proof of service.* Proof of service shall be evidenced by a return of service filed with the Clerk.

(d) *Subsequent service.* Service of any document made subsequent to the initial filing in a proceeding may be made by first class mail at the last known address of record of the person named in the notice, pleading or order.

(e) *Change of address.* It is the duty of a party to apprise the Clerk of changes to the party’s current address.

(f) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

Authority

The provisions of this § 491a.5 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 491a.5 corrected January 8, 2010, effective September 5, 2009, 40 Pa.B. 254; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (347509) to (347510).

Cross References

This section cited in 58 Pa. Code § 403a.7 (relating to temporary emergency orders); 58 Pa. Code § 405a.6 (relating to enforcement action); 58 Pa. Code § 493a.2 (relating to complaints); and 58 Pa. Code § 493a.8 (relating to motions generally); 58 Pa. Code § 494a.4 (relating to report or report and recommendation of the presiding officer).

§ 491a.6. [Reserved].**Source**

The provisions of this § 491a.6 reserved July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446. Immediately preceding text appears at serial page (331236).

§ 491a.7. Presiding officers.

(a) When evidence is to be taken in a hearing, the Board or a presiding officer may conduct the hearing.

(b) The Board and presiding officers shall have the power and authority to:

(1) Regulate the course of hearings, including the scheduling thereof, and the recessing, reconvening and the adjournment thereof, unless otherwise provided by the Board, as provided in § 494a.1(a) (relating to generally).

(2) Administer oaths and affirmations.

(3) Issue subpoenas.

(4) Rule upon offers of proof and receive evidence.

(5) Preside over or cause depositions to be taken.

(6) Hold conferences before or during hearings.

(7) Dispose of procedural matters, but not before a proposed report, if any, to dispose of motions made during hearings to dismiss proceedings or other motions which involve final determination of proceedings has been submitted to the Board.

(8) Certify any question to the Board for consideration and disposition, within the presiding officer's discretion, or upon direction of the Board.

(9) Submit proposed reports or reports and recommendations in accordance with this subpart.

(10) Take other action appropriate to the discharge of their duties as may be designated by the Board and authorized by the act.

(c) Except as authorized by law and by this subpart, a presiding officer may not, in a proceeding, consult with a party on a fact in issue or issue of law unless notice and opportunity for parties to participate has been given.

(d) Presiding officers will conduct fair and impartial hearings and maintain order. Disregard by parties or counsel of rulings of the presiding officer on matters of order and procedure will be noted on the record, and if the presiding officer deems necessary, it will be made the subject of a special written report to the Board.

(e) If parties or counsel engage in disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer may immediately submit to the Board a report thereon, together with recommendations, and, in the presiding officer's discretion, suspend the hearing.

(f) Rulings of presiding officers may not be appealed to the Board while the matter is pending before the presiding officer.

(g) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers).

Authority

The provisions of this § 491a.7 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 491a.7 amended October 26, 2007, effective October 27, 2007, 37 Pa.B. 5774; amended July 11, 2009, effective July 12, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (347510) and (344547).

Cross References

This section cited in 58 Pa. Code § 493a.1 (relating to generally).

§ 491a.8. Hearings generally.

(a) Unless the Board hears the matter directly, all matters, except for hearings under § 441a.7 (relating to licensing hearings for slot machine licenses), will be assigned to the OHA. The Board may designate a member of the Board or other qualified person to serve as presiding officer in a particular matter.

(b) Hearings will be public unless a party invokes protection afforded to the party under section 1206 of the act (relating to Board minutes and records) or § 407a.3(a) (relating to confidential information).

(c) Hearings may provide for:

- (1) Receipt of sworn testimony.
- (2) Receipt of all relevant oral or documentary evidence.
- (3) Opportunity for parties to be heard.
- (4) A complete evidentiary record.
- (5) Submission by the presiding officer of a report or report and recommendation to the Board.

(d) Unless required by this part or authorized by law, a party may not engage in an ex parte communication with the Board or presiding officer.

(e) Unless otherwise specified in the written notice, hearings will be conducted in Harrisburg, Pennsylvania, and may be conducted by video conference or by telephone as directed by the Board, Executive Director or presiding officer.

(f) Written notice of hearings will be provided to all parties, and served by the Clerk by first class mail.

(g) Motions shall be filed with the Clerk, served upon the parties and will be docketed and referred to the Board, Executive Director or presiding officer for disposition.

(h) Hearings will be scheduled by the OHA, except for hearings under § 441a.7 which will be scheduled as directed by the Board.

(i) A party may waive the right to a hearing before the Board, Executive Director or presiding officer by filing with the Clerk a Notice of Waiver of Hearing. The matter will then be forwarded to the appropriate bureau for action or to the Board for disposition. This section supersedes 1 Pa. Code § 35.101 (relating to waiver of hearing).

(j) Hearing transcripts will be available for public inspection. If the Board receives a request for a transcript of a hearing for which a transcript has not been prepared, the Board will prepare a transcript and make it available for inspection within 30 days.

(k) This section supplements 1 Pa. Code Chapter 35, Subchapter B (relating to hearings and conferences).

Authority

The provisions of this § 491a.8 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 491a.8 amended July 10, 1009, effective July 11, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344547) and (344548).

Cross References

This section cited in 58 Pa. Code § 403a.7 (relating to temporary emergency orders); and 58 Pa. Code § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list).

§ 491a.9. Prehearing and other conferences.

(a) A prehearing conference may be scheduled by the Board or presiding officer at his discretion. The Board or a presiding officer may also schedule a prehearing conference at the request of one party or by agreement of the parties.

(b) When the Board or presiding officer directs that a prehearing conference be held, all parties shall appear at the time and place designated. Notice of the time and place of the conference will be given to all parties. At the discretion of the Board or presiding officer, the conferences may be conducted telephonically or by video conference.

(c) The following matters will be considered at a prehearing conference:

(1) The possibilities for settlement of the proceeding, subject to the approval of the Board.

(2) The amount of hearing time which will be required to dispose of the proceeding and the establishment of a schedule of hearing dates.

- (3) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of the public interest, including, but not limited to:
- (i) The simplification of the issues.
 - (ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
 - (iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents.
 - (iv) The number of witnesses and any limitation imposed thereon.
 - (v) The discovery or production of data.
 - (vi) Other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.
- (d) This section supplements 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

Source

The provisions of this § 491a.9 amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446. Immediately preceding text appears at serial page (331581).

Cross References

This section cited in 58 Pa. Code § 441a.7 (relating to licensing hearings for slot machine licenses).

§ 491a.10. Presentation and effect of stipulations.

- (a) Independently of the orders or rulings issued by the Board or presiding officer relating to prehearing and other conferences, the parties may stipulate as to relevant matters of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when received shall be binding on the parties with respect to the matters stipulated.
- (b) This section supersedes 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

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