

CHAPTER 493a. PLEADINGS

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Authority

The provisions of this Chapter 493a issued under 4 Pa.C.S. §§ 1202(b)(30) and 1205, unless otherwise noted.

Source

The provisions of this Chapter 493a adopted October 26, 2007, effective October 27, 2007, 37 Pa.B. 5774, unless otherwise noted.

§ 493a.1. Generally.

(a) Pleadings permitted are as follows:

- (1) Complaints.
- (2) Petitions.
- (3) Motions.
- (4) Answers to pleadings.
- (5) Exceptions.
- (6) Appeals of staff decisions under 1 Pa. Code § 35.20 (relating to appeals from actions of the staff). Appeals under § 491a.7(f) (relating to presiding officers) are not included.
- (7) Notices.

(b) Fees for copies and other administrative requests will be in accordance with a fee schedule published by the Board in the *Pennsylvania Bulletin*, available on the Board's web site and in the Office of the Clerk.

(c) Pleadings shall be filed with the Clerk and contain a docket number and Board issued credential number of the person subject to the pleading, if applicable. The Clerk will assign a docket number if one has not been assigned.

(d) This section supplements 1 Pa. Code §§ 35.1 and 35.2 and 35.9—35.11 (relating to applications; and formal complaints).

Authority

The provisions of this § 493a.1 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 493a.1 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (348465).

§ 493a.2. Complaints.

(a) A proceeding against a licensee, permittee, persons registered or certified by the Board or an employee of a licensee or persons registered or certified by the Board shall be initiated by written complaint filed by the complainant, which must include a statement, in ordinary and concise language, setting forth the matter complained of and the facts supporting the complaint.

(b) Complaints may be filed by the Office of Enforcement Counsel.

(c) Complaints will be served in accordance with § 491a.5 (relating to service).

(d) This section supplements 1 Pa. Code §§ 35.9—35.11 and 35.14 (relating to formal complaints; and orders to show cause).

Authority

The provisions of this § 493a.2 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 493a.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 page (348466).

Cross References

This section cited in 58 Pa. Code § 405a.6 (relating to enforcement action).

§ 493a.3. Satisfaction of complaints.

(a) If the respondent satisfies a complaint either before or after a hearing, a statement to that effect signed by the complainant shall be filed with the Clerk setting forth that the complaint has been satisfied and requesting dismissal or withdrawal of the complaint. Except when requested by the parties, the Board will not be required to render a final order upon the satisfaction of a complaint.

(b) This section supersedes 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

§ 493a.4. Petitions generally.

(a) Petitions may be filed by the Office of Enforcement Counsel, parties, applicants, licensees, permittees, persons registered or certified by the Board, and other persons authorized by the Board.

(b) Petitions must be in writing, state clearly and concisely the grounds for the petition, the interest of the petitioner in the subject matter, the facts relied upon and the relief sought.

(c) Petitions must conform to § 491a.4 (relating to filing generally) and Chapters 495a and 497a (relating to documentary filings; and time), and be served on all persons directly affected.

(d) This section supplements 1 Pa. Code §§ 35.17 and 35.18 (relating to petitions generally; and petitions for issuance, amendment, waiver or deletion of regulations).

Authority

The provisions of this § 493a.4 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 493a.4 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 (348466) and (362153).

Cross References

This section cited in 58 Pa. Code § 423a.5 (relating to application withdrawal and surrender); 58 Pa. Code § 423a.7 (relating to restriction on application after withdrawal with prejudice, denial or revocation); 58 Pa. Code § 427a.6 (relating to change of control of a manufacturer licensee); 58 Pa. Code § 429a.8 (relating to change of control of a manufacturer designee licensee); 58 Pa. Code § 431a.6 (relating to change of control of a supplier licensee); 58 Pa. Code § 433a.5 (relating to institutional investors); 58 Pa. Code § 437a.8 (relating to authorized gaming service providers list; prohibited gaming service providers); 58 Pa. Code § 440a.6 (relating to change in ownership or control of a management company licensee); 58 Pa. Code § 441a.17 (relating to change in ownership or control of slot machine licensee and multiple slot machine license prohibition); 58 Pa. Code § 441a.20a (relating to changes to a slot machine licensee's initial or modified plan of development); 58 Pa. Code § 443a.9 (relating to review of actions of the trustees); 58 Pa. Code § 443a.10 (relating to disposition of net earnings during the period of trusteeship); 58 Pa. Code § 461a.24 (relating to waivers); 58 Pa. Code § 463a.1 (relating to possession of slot machines and fully automated electronic gaming tables generally); 58 Pa. Code § 465a.9 (relating to surveillance system; surveillance department control; surveillance department restrictions); 58 Pa. Code § 467a.1 (relating to gaming floor plan); 58 Pa. Code § 601a.4 (relating to waiver of existing table game regulations); and 58 Pa. Code § 603a.8 (relating to additional sets of gaming chips; removal from active use).

§ 493a.5. Answers to complaints, petitions, motions and other filings requiring a response.

(a) Answers to complaints, petitions, motions, appeals of staff decisions and other filings requiring a response shall be filed with the Clerk and served on all other parties within 30 days after the date of service of the complaint, petition, motion or other pleading, unless a different time is prescribed by the Board, presiding officer or elsewhere in the Board's regulations.

(b) Failure to file a timely answer to a complaint or petition will constitute an admission of all matters and facts contained in the filing and may result in the waiver of the right to a hearing.

(c) Answers may contain the following:

- (1) Admissions of the matter complained of and the alleged facts, in whole or in part.
- (2) New matter or explanation by way of defense.
- (3) Legal objections.
- (4) Affirmative defenses.
- (5) A request for a hearing.

(d) Answers shall be in writing and shall specifically and in detail admit or deny each allegation in the pleading.

(e) This section supersedes 1 Pa. Code §§ 35.35—35.40 (relating to answers).

Authority

The provisions of this § 493a.5 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 493a.5 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 page (362153).

Cross References

This section cited in 58 Pa. Code § 405a.6 (relating to enforcement action); and 58 Pa. Code § 511a.9 (relating to petition to remove name from the exclusion list).

§ 493a.6. Consolidation.

(a) The Board or presiding officer, with or without motion, may consolidate proceedings involving a common question of law or fact.

(b) The section supersedes 1 Pa. Code § 35.45 (relating to consolidation).

§ 493a.7. Amendments and withdrawal of pleadings.

(a) Amendments and withdrawal of pleadings shall be in accordance with 1 Pa. Code §§ 35.48—35.51 (relating to amendment and withdrawal of pleadings).

(b) Answers to amended pleadings, if required, shall be filed within 30 days after the date of service of the amended pleadings. This section supersedes 1 Pa. Code § 35.40 (relating to answers to amendments of pleadings).

Authority

The provisions of this § 493a.7 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 493a.7 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (362153).

§ 493a.8. Motions generally.

(a) A motion may be made at any time after the initiation of a proceeding for procedural relief including a request for an extension of time, a continuance of a hearing or other scheduled proceeding, or a request for a prehearing conference.

(b) Motions may be made in writing or orally on the record. A presiding officer may require that a motion made orally also be made in writing.

(c) Answers or objections to written motions shall be made within 30 days after the date of service of the motion unless otherwise directed by the Board or presiding officer.

(d) Written motions and answers or objections to written motions shall be served upon all parties in accordance with § 491a.5 (relating to service).

(e) Motions to the Board seeking interlocutory determinations on rulings of a presiding officer are not permitted.

(f) The presiding officer may rule upon any motion filed prior to the submission of a report or report and recommendation to the Board. When a ruling on a motion would constitute a final determination of the proceedings, the ruling on the motion shall be made part of the report or report and recommendation to the Board.

(g) This section supersedes 1 Pa. Code §§ 35.177—35.180 (relating to motions).

Authority

The provisions of this § 493a.8 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 493a.8 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (362153).

Cross References

This section cited in 58 Pa. Code § 493a.11 (relating to discovery).

§ 493a.9. Preliminary motions.

(a) A preliminary motion may be filed by a party. The preliminary motion must state the specific grounds relied upon, and be limited to the following:

(1) A motion questioning the jurisdiction of the Board or the presiding officer.

(2) A motion to strike a pleading that is insufficient as to form.

(3) A motion for a more specific pleading.

(b) Except when a motion for a more specific pleading is filed, an answer to a preliminary motion may be filed within the time period prescribed for answers to complaints, petitions and motions. All preliminary motions filed by a party shall be raised at the same time.

(c) If a motion for more specific pleading is filed, an answer may not be filed until further directed by the Board or presiding officer.

(d) A preliminary motion will be decided by the Board or presiding officer within 30 days of the filing of the preliminary motion.

(e) If a preliminary motion to strike is granted, the party who submitted the stricken pleading may file an amended pleading within 10 days of service of the order granting the motion to strike.

(f) This section supersedes 1 Pa. Code §§ 35.177—35.180 (relating to motions).

Authority

The provisions of this § 493a.9 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 493a.9 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial page (362154).

§ 493a.10. Motions for summary judgment and judgment on the pleadings.

(a) *Motion for judgment on the pleadings.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings.

(b) *Motion for summary judgment.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for summary judgment based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits.

(c) *Answers to motions.* An answer to a motion for summary judgment or a motion for judgment on the pleadings, including an opposing affidavit to a motion for summary judgment, may be filed with the Clerk and served on all other parties within 30 days of the date of service of the motion. An answer to a motion for summary judgment may be supplemented by pleadings, depositions and answers to interrogatories.

(d) *Decisions on motions.* If a motion is granted in whole or in part by a presiding officer, it will be in the form of a report or report and recommendation. The Board will make a final ruling on a motion for judgment on the pleadings or a motion for summary judgment.

(e) *Supersession.* This section supersedes 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

Authority

The provisions of this § 493a.10 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 493a.10 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 (362154) and (344555).

Cross References

This section cited in 58 Pa. Code § 407a.1 (relating to case files).

§ 493a.10a. Motions to protect confidential information.

(a) A party or individual may designate information as confidential under § 407a.3 (relating to confidential information) in any papers filed with the Clerk by filing a Motion to Protect Confidential Information.

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(b) A Motion to Protect Confidential Information must:

(1) Set forth the specific legal grounds to justify why the information should be deemed confidential and therefore protected.

(2) Include a redacted version of the entire filing which will be available for immediate release to the public.

(c) Upon the filing of the Motion to Protect Confidential Information, the Director of Hearings and Appeals will review the motion and accompanying filings and, upon determining that a substantial basis exists, shall issue an interim order to protect the information, whether in the motion or the accompanying filings, from disclosure until the Board considers the matter in accordance with 65 Pa.C.S. §§ 701—716 (relating to open meetings). At all times during the pendency of the motion, the information in the motion and the accompanying filings shall be treated as confidential except the redacted version filed in accordance with subsection (b)(2).

Authority

The provisions of this § 493a.10a amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 493a.10a adopted 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 page (344555).

Cross References

This section cited in 58 Pa. Code § 407a.1 (relating to case files).

§ 493a.11. Discovery.

(a) The ability to obtain discovery in an administrative proceeding before the Board or presiding officer is committed to the discretion of the Board or presiding officer and will generally be limited to the information, documents and list of witnesses that any party will present during a hearing.

(b) The presiding officer may grant a request for discovery if the request will serve to facilitate an efficient and expeditious hearing process, will not unduly prejudice and burden the responding party and as may be required in the interests of justice.

(c) At the discretion of the presiding officer, discovery may be granted and limited to the following:

- (1) Written interrogatories.
- (2) Depositions.
- (3) Production of documents or things.

(d) Each party to a proceeding shall be entitled to the name and address of any witness who may be called to testify on behalf of the opposing party and all documents or other material in the possession or control of the opposing party

which the opposing party reasonably expects will be introduced into evidence. The opposing party shall be under a continuing duty to update its response to this request.

(e) The presiding officer may, upon request of a party, permit the testimony of a witness or the introduction of other evidence not disclosed pursuant to a request made under subsection (d), if following a proffer by the party seeking to present the evidence, the presiding officer determines that justice so requires.

(f) Confidential information furnished to or obtained by the Board or the Bureau from any source will not be discoverable under this subsection. If a request for discovery involves confidential information, a party may file a motion for a protective order and the presiding officer will make a determination as to what is deemed confidential.

(g) If a party fails to respond to a discovery request, which was granted by the presiding officer, the opposing party may file a motion to compel discovery with the Clerk. The presiding officer may grant or deny the motion in accordance with § 493a.8(e) (relating to motions generally).

(h) Depositions will be conducted in accordance with 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

Authority

The provisions of this § 493a.11 amended under 4 Pa.C.S. §§ 1202(b)(30) and 1207(2) and (9).

Source

The provisions of this § 493a.11 amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (344555) to (344556).

§ 493a.12. Intervention.

(a) The decision to grant a petition to intervene in a proceeding before the Board or a presiding officer is within the sole discretion of the Board.

(b) A person wishing to intervene in a proceeding may file a petition with the Clerk which shall be served on all named parties to the underlying proceeding. When a petition to intervene is filed with the Clerk, it will be referred to the Board which will issue a determination as soon as practicable.

(c) The Board may grant a petition to intervene if it determines:

- (1) The person has an interest in the proceeding which is substantial, direct and immediate.
- (2) The interest is not adequately represented by a party to the proceeding.
- (3) The person may be bound by the action of the Board in the proceeding.

(d) Petitions to intervene may be filed at any time following the filing of an application, petition, complaint or other document seeking Board action, but no later than 30 days prior to the date set for a hearing unless, in extraordinary circumstances for good cause shown, the Board authorizes a later filing.

(e) Petitions to intervene must be in writing and set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Board of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition or complaint initiating the proceeding, and citing by appropriate reference provisions or other authority relied on.

(f) A party may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. Answers shall be filed within 10 days after the date of filing of the petition, unless for cause the Board prescribes a different time.

(g) Except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a proceeding will be limited to the presentation of evidence through the submission of written statements attested to under oath. The written statements shall be part of the evidentiary record.

(h) Notwithstanding the provisions of this section, petitions to intervene in licensing hearings for slot machine licenses shall be governed by § 441a.7(z) (relating to licensing hearings for slot machine licenses).

(i) This section supersedes 1 Pa. Code §§ 35.27—35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

Authority

The provisions of this § 493a.12 amended under 4 Pa.C.S. §§ 1202(b)(30), 1205 and 1207(2) and (9).

Source

The provisions of this § 493a.12 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 (344556) and (344557).

§ 493a.13. Consent agreements.

(a) Parties may propose consent agreements at any time prior to the entry of a final order.

(b) Consent agreements must be in writing, signed by all parties and accurately reflect the terms of the consent agreement, including the facts agreed to by the parties constituting the grounds for the action proposed in the consent agreement.

(c) If the consent agreement is proposed in a matter that is the subject of a proceeding before a presiding officer, the proposal of the consent agreement will stay the proceeding until the consent agreement is acted upon by the Board.

(d) The consent agreement shall be presented to the Board for its approval or disapproval. If the Board approves the consent agreement, it will become the final order of the Board. If the Board disapproves the consent agreement, the parties will be notified and the consent agreement and any documents solely relating to the consent agreement will not constitute part of the record.

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