

FORM OF ORDER AND TRANSMITTAL BY BOARD, COMMISSION, OR COUNCIL

State of Washington

WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION

(name of governing body)

(agency name, if applicable)

Resolution No. _____

Administrative Order No. 2-A

(1) Be it resolved by the Washington State Criminal Justice Training Commission acting at Seattle, Washington

(place)

that it does adopt the annexed rules relating to:

139-08 PRACTICE AND PROCEDURE RULES

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. WSR 85-03-077 filed with the code reviser on 1/18/85. These rules shall take effect:

- thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
 at a later date, such date being _____

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

We, _____, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

- (a) This rule is promulgated pursuant to RCW _____ and is intended to administratively implement that statute.
 (b) This rule is promulgated pursuant to RCW _____ which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the Washington State Criminal Justice Training Commission

(agency)

as authorized in RCW 43.101.080(2)

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this governing body, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED March 7, 19 85

STATE OF WASHINGTON FILED

MAR 27 1985

By: James C. Scott Executive Director Title

CODE REVISER'S OFFICE WSR 85-08-011

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-005 "COMMISSION" DEFINED. As used in this chapter "commission" means the Washington state criminal justice training commission and, where applicable, the board on law enforcement training standards and education, the board on prosecutor training standards and education, (~~the board on judicial training standards and education,~~) and the board on correctional training standards and education.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-040 APPEARANCE AND PRACTICE BEFORE COMMISSION-- APPEARANCE BY FORMER EMPLOYEE OF BOARD OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF. No member of the attorney general's staff assigned to represent the commission or a hearing committee of said commission may at any time after severing (~~his~~) employment with the attorney general appear, except with the written permission of the commission, in a representative capacity on behalf of other parties in a formal proceeding wherein (~~he~~) the staff member previously took an active part in the investigation as a representative of the commission or a hearing committee of said commission.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-090 SERVICE OF PROCESS--SERVICE UPON PARTIES. The final order, and any other paper required to be served by the commission upon a party, shall be served upon such party or upon the agent designated by (~~him~~) the party or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-130 SUBPOENAS--WHERE PROVIDED BY LAW--FORM. Every subpoena shall state the name of the commission and the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under (~~his~~) such person's control at a specified time and place.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-150 SUBPOENAS--SERVICE. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering (~~him~~) on demand the fees for one day's attendance and the mileage allowed by law.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-240 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--AUTHORIZATION. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the commission and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify ((him)) the person or the particular class or group to which ((he)) the person belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-270 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--RECORDATION. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under ((his)) the officer's direction and in ((his)) the officer's presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-280 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--SIGNING ATTESTATION AND RETURN. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by ((him)) the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the commission, or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon

payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-290 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--USE AND EFFECT. Subject to ruling by the hearing officer upon objections, a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness ((his)) the party's witness by taking ((his)) the other party's deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by ((him)) the party or any other party.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-320 DEPOSITIONS UPON INTERROGATORIES--INTERROGATION. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 139-08-230 the officer taking the same, after duly swearing the deponent, shall read to ((him)) the deponent seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-330 DEPOSITIONS UPON INTERROGATORIES--ATTESTATION AND RETURN. The officer before whom interrogatories are verified or answered shall (1) certify under ((his)) official signature and seal that the deponent was duly sworn ((by-him)), that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither ((he)) the officer nor the stenographer ((~~is~~ to his knowledge)) is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with ((his)) attestation to the commission, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-350 OFFICIAL NOTICE--MATTERS OF LAW. The ((hearing officer)) commission, upon request made before or during a hearing, will officially notice:

(1) Federal law. The United States Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) State law. The constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) Governmental organization. Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations;

(4) Commission organization. The commission organization, administration, officers, personnel, official publications, and practitioners before its bar.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-360 OFFICIAL NOTICE--MATERIAL FACTS. (~~Fr--the absence of controverting evidence;~~) The commission (~~and its hearing officers,--upon request--made before or during a hearing;~~) may officially notice:

(1) Commission proceedings. The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the commission;

(2) Business customs. General customs and practices followed in the transaction of business;

(3) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) Technical knowledge. Matters within the technical knowledge of the commission as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) Request or suggestion. Any party may request, or the hearing officer or the commission may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) Statement. Where an initial or final decision of the commission rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer (~~of~~) or the commission may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) Controversion. Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert

such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) Evaluation of evidence. Nothing herein shall be construed to preclude the commission or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-370 PRESUMPTIONS. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the commission, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) Continuity. That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) Identity. That persons and objects of the same name and description are identical;

(3) Delivery. Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) Ordinary course. That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

(5) Acceptance of benefit. That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly ((in-his-own)) a matter of self-interest so to do;

(6) Interference with remedy. That evidence, with respect to a material fact which in bad faith is destroyed, elbigned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.

AMENDATORY SECTION (Amending Order 2, filed 1/22/75)

WAC 139-08-570 FORMS. Any interested person petitioning the commission for a declaratory ruling pursuant to RCW 34.04.080 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the Washington state criminal justice training commission." On the left side of page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second

paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by commission rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by ~~((his))~~ the petitioner's attorney. The original and two legible copies of the petition shall be filed with the commission. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

NEW SECTION

WAC 139-08-600 APPEAL. (1) Any action which directly and adversely affects an individual's interest under this title or chapter 43.101 RCW may be reviewed at the request of such individual, or the head of such individual's employing agency, and shall be considered in accordance with the process hereinafter provided. If such action was taken by a commission employee or representative, the review shall be considered by the board on training standards and education having primary responsibility in the matter as determined by the executive director of the commission. If such responsibility cannot be determined, or if the action for which review is requested was initiated by, or originated with, any board, the review shall be made by the commission only.

(2) An individual requesting review shall submit a request in writing to the executive director and shall therein specify and include, where applicable:

(a) The action for which review is requested, identified by date and description of action;

(b) The direct and adverse effects of such action;

(c) The corrective or remedial action or other relief sought;

(d) Whether review is to be effected in executive or public session, provided that, approval and/or conduct of any executive session shall be subject to applicable provisions of this state's open public meetings act (chapter 42.30 RCW);

(e) The name and mailing address of the requesting party, any witness to be called by the requesting party, and any person who will personally appear in support of the requesting party, including legal counsel;

(f) A statement that the person signing the request for review has read it and that to the best of his or her knowledge or information and belief the contents thereof are true;

(g) The signature by the requesting party and/or the party's authorized representative; and

(h) A copy of any document or other written material which will be offered by the requesting party.

(3) Upon receipt of a request for review which satisfies the requirements of subsection (2) of this section, the executive director shall schedule the review for full consideration at the next meeting of the responsible board or the commission, as provided in subsection (1) of this section. If the executive director determines that exigent and attendant circumstances exist, such director may, in his/her discretion, schedule a special meeting of a board or, where applicable, of the commission, for the sole purpose of effecting review.

(4) Whenever sitting as a reviewing body, a board or the commission may consider any information or testimony determined by its chairperson to be relevant to full consideration of the matter for

which review is requested. At least five days prior to the review proceeding, commission staff shall provide to the individual requesting review, a complete listing of those individuals who are expected to provide testimony, and a copy of any document or other written material which will be offered; provided that additional witnesses and written materials may be offered at the time of the proceeding by staff or the requesting party if there is a showing of good cause for the failure to provide prior notice of such additional evidence and witnesses. Each review proceeding, whether conducted in executive or public session, shall be recorded electronically. Thereafter such recording shall be transcribed in writing if requested by a party or if directed by the commission, board or staff.

(5) After full consideration of the matter, the reviewing body shall affirm, rescind, or modify the action for which review is requested. In any instance wherein a board sits as the reviewing body, appeal of such determination may be taken to the training commission at its next meeting following receipt by the executive director of a written appeal from the involved individual or the head of such individual's employing agency. In considering such appeal, the commission shall not be bound by any previous action or determination and may take any action it deems necessary and appropriate to the matter. The commission may consider only the record of the matter consisting of the transcript of the review proceeding and any written materials considered by the reviewing board, as well as any information requested or deemed relevant by the commission chairperson. A complete copy of such record shall be provided to the appellant at least five days prior to its consideration by the commission. Additional written materials may be submitted at the time of the appeal proceeding by staff or the requesting party if there is a showing of good cause for the failure to provide prior notice of such additional written evidence. Oral arguments by the appellant or the appellant's representative shall be allowed, subject to time limitations set by the chairperson of the commission.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-08-010 APPEARANCE AND PRACTICE BEFORE COMMISSION--WHO MAY APPEAR.

WAC 139-08-020 APPEARANCE AND PRACTICE BEFORE COMMISSION--SOLICITATION OF BUSINESS UNETHICAL.

WAC 139-08-030 APPEARANCE AND PRACTICE BEFORE COMMISSION--STANDARDS OF ETHICAL CONDUCT.

WAC 139-08-060 NOTICE AND OPPORTUNITY FOR HEARING IN CONTESTED CASES.

WAC 139-08-390 FORM AND CONTENT OF DECISIONS IN CONTESTED CASES.

WAC 139-08-400 DEFINITION OF ISSUES BEFORE HEARING.

WAC 139-08-410 PREHEARING CONFERENCE RULE--AUTHORIZED.

WAC 139-08-420 PREHEARING CONFERENCE RULE--RECORD OF CONFERENCE ACTION.

WAC 139-08-430 SUBMISSION OF DOCUMENTARY EVIDENCE IN ADVANCE.

WAC 139-08-440 EXCERPTS FROM DOCUMENTARY EVIDENCE.

WAC 139-08-450 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA--NUMBER AND QUALIFICATIONS OF WITNESSES.

WAC 139-08-460 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA--WRITTEN SWORN STATEMENTS.

WAC 139-08-470 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA--SUPPORTING DATA.

WAC 139-08-480 EXPERT OR OPINION TESTIMONY AND TESTIMONY BASED ON ECONOMIC AND STATISTICAL DATA--EFFECT OF NONCOMPLIANCE WITH WAC 139-08-450 OR 139-08-460.

WAC 139-08-490 CONTINUANCES.

WAC 139-08-510 RULES OF EVIDENCE--TENTATIVE ADMISSION--EXCLUSION--DISCONTINUANCE--OBJECTIONS.