

WSR 24-07-042
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed March 13, 2024, 12:28 p.m., effective April 13, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To update the burden of proof and make clear the requirements and responsibilities of the hearing process in regard to the office of administrative hearings, the Washington state criminal justice training commission, and the respondent.

Citation of Rules Affected by this Order: Amending 2 [WAC 139-03-070 and 139-06-070].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 24-04-056 on January 31, 2024.

Changes Other than Editing from Proposed to Adopted Version: Amended WAC 139-03-070 and 139-06-070. Rules on this subject are required to notify and make clear the due process rights of respondents whose certification is being brought before a hearing panel.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 13, 2024.

Lacey Ledford
Rules Coordinator

OTS-5036.2

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-03-070 Burden and standard of proof. Unless otherwise provided by law(~~(, the appealing party has the burden of proof, and the standard of proof on all factual issues is preponderance of the evidence)~~) or rule:

(1) The standard of proof on all factual issues is preponderance of the evidence.

(2) The burden of proof for the final administrative decision of the commission rests with the commission.

(3) In any action to appeal the commission's final administrative decision, the appealing party shall bear the burden of proof.

(4) The burden of proof in certification matters is governed by WAC 136-06-070(13).

OTS-5037.3

AMENDATORY SECTION (Amending WSR 23-19-038, filed 9/13/23, effective 10/14/23)

WAC 139-06-070 Conference and hearings procedures. (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent ~~((the))~~ commission staff in all adjudicative proceedings before ~~((the commission))~~ a hearing panel.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) ~~((Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference.))~~ The ALJ shall serve timely notice of the initial prehearing conference on all parties. The notice will contain the date and time ~~((for))~~ of the first prehearing conference ~~((as well as sign-on information and the names of the hearing panel members for the hearing)),~~ the sign-on information, and the names of the hearing panel members.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the ~~((administrative law judge (ALJ))~~ ALJ may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the ~~((agreements made by the parties))~~ parties' agreements.

(5) The purpose of the second prehearing conference ~~((will be to address any objections to the parties' witnesses and exhibits))~~ is to address the parties' evidentiary objections and ascertain the parties' readiness to proceed to hearing. ~~((During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to witnesses or exhibits, and any remaining motions))~~ Parties shall be prepared to discuss all evidentiary objections, all motions, and any remaining matters.

(a) The ALJ will make any necessary rulings on motions and evidentiary objections ~~((to witnesses and exhibits))~~.

(b) ~~((An order shall be issued by))~~ The ALJ shall issue an order within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing conference, the panel members will be provided with copies of all materials admitted into evidence, ~~((to include))~~ the witness ~~((list and copies of))~~ lists, the statement of charges, ~~((as well as all))~~ and the briefings submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in-person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. Both parties shall use the admitted exhibits binder (~~((shall be used by both parties))~~) to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any portion or version of exhibits (~~((or any versions of exhibits))~~) not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person. (~~((Respondents who fail))~~) A respondent's failure to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(a) In-person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. (~~((Respondents who fail))~~) A respondent's failure to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(12) The standard of proof (~~((in actions before the commission))~~) for certification proceedings is a preponderance of the evidence. RCW 43.101.380(1).

(13) The commission staff bears the burden of proof in actions before the hearings panel to deny, suspend, or revoke an officer's certification, or require remedial training for an officer.

(14) In an appeal of the commission's final administrative decision issued by the hearing panel, the appellant bears the burden of proof, unless otherwise provided by law.