

**RULES
OF THE
DEPARTMENT OF FINANCIAL INSTITUTIONS**

**CHAPTER 0180-6
RULES OF PROCEDURE FOR CONTESTED CASES**

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0180-6-1. SCOPE; DEFINITIONS.

- (1) Scope. This chapter prescribes rules of procedure relating to hearings under the jurisdiction of the Commissioner of Financial Institutions held pursuant to the applicable provisions of Title 45 of T.C.A.
- (2) Definitions.
 - (a) *Hearing Examiner* means a hearing examiner provided by the Administrative Procedures Division, Department of State, in accordance with T.C.A. § 4-5-120 (b).
 - (b) *Commissioner* means the Commissioner of the Department of Financial Institutions of this state who is empowered to determine contested cases under T.C.A. § 45-1-107 and other applicable statutes.
 - (c) *Department* means the Department of Financial Institutions of this state.
 - (d) *Complainant* means the moving party in a hearing proceeding.
 - (e) *Respondent* means a party to a proceeding adverse to the complainant.
 - (f) *Hearing Officer* means a hearing examiner or the Commissioner when determining a contested case according to T.C.A. § 4-5-120.
 - (g) *Intervenor* means any party to a Departmental proceeding other than the Complainant or Respondent named or admitted as a party."

Authority: T.C.A. §§ 4-5-108, 4-5-113 (b); as amended (Public Chapter 216, May 3, 1983).
Administrative History: Original rule filed November 25, 1975; effective December 27, 1975.
Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-2. ORDER OF PROCEEDINGS.

- (1) Order of proceedings for the hearing of contested cases when a Hearing Officer is hearing a case with a Commissioner.
 - (a) Hearing Officer may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) Hearing is called to order by the Hearing Officer.
 - (c) Hearing Officer introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the Hearing Officer's role of making legal rulings.
 - (d) Hearing Officer introduces the members of the Department and states that the final decision in the proceeding will be made by the Department and that they are the sole judges of the facts, the Hearing Officer being excluded by law from deciding any question of fact when hearing cases with the Commissioner.
 - (e) Hearing Officer then calls the Respondent to ask if he or she is represented by counsel and if so, counsel is asked to introduce himself or herself. The Hearing Officer then introduces the Complainant's counsel and any other officials who may be present at the hearing.
 - (f) The Complainant reads the charges, as set out in the notice, with regard to the Respondent while giving references to the appropriate statutes and rules.
 - (g) The Respondent is asked how he or she pleads to the charges; if he or she admits the charges no further proof may be necessary, other than introduction of evidence pertaining to mitigation. If he or she denies the charges, the hearing proceeds.
 - (h) The Hearing Officer swears all the witnesses when they are called to testify.
 - (i) The Respondent is asked if he or she wishes to exclude the Complainant's witnesses from the hearing room so that no witness for the Complainant hears the other's testimony. The Complainant is given the same option with regard to the Respondent's witnesses.
 - (j) Any preliminary motions, stipulations, or agreed orders are entertained.
 - (k) Opening statements are allowed by both the Complainant and the Respondent.
 - (l) Moving party (usually the Complainant) calls his or her witnesses and questioning proceeds as follows:
 1. (Complainant) moving party questions.
 2. (Respondent) other party cross-examines.
 3. (Complainant) moving party redirects.
 4. (Respondent) other party re-cross-examines.
 5. Commissioner questions.

Rule 0180-6-.02, continued)

6. Further questions by Respondent and Complainant.
(Questioning proceeds as long as is necessary to provide all pertinent testimony.)
- (m) Other party (usually the Respondent) calls his or her witnesses and questioning proceeds as follows:
 1. (Respondent) other party questions.
 2. (Complainant) moving party cross-examines.
 3. (Respondent) other party redirects.
 4. (Complainant) moving party re-cross-examines.
 5. Commissioner questions.
 6. Further questions by Respondent and Complainant.
(Questioning proceeds as long as necessary to provide all pertinent testimony.)
- (n) Complainant and Respondent allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
- (o) Closing arguments are allowed to be presented by the Complainant and by the Respondent.
- (p) Hearing Officer prepares to turn proceedings over to the Commissioner by charging the Commissioner as to burden of proof, requisites of the final order, voting procedures, and other pertinent matters; and reminding them that the Hearing Officer can take no part in any finding of fact although he can advise as to the legal sufficiency of the Commissioner's decision and other questions of law.
- (q) The Hearing Officer then turns the proceedings over to the Commissioner for deliberation and decision.
- (r) The Commissioner deliberates in public and reaches a decision which is communicated to the Respondent or takes the case under advisement and schedules public deliberations for a later time.
- (s) The Hearing Officer hears any offers of excluded proof for the record.
- (2) The order of proceedings for the hearing of contested cases when a Hearing Officer or Administrative Law Judge is hearing the case alone is identical to the procedure outlined in paragraph (1) with the exception that the Commissioner is not present to participate. After the close of the hearing the parties are informed that a transcript or duplicate recording will be made of the testimony and that the Hearing Officer or Administrative Law Judge will write a proposed decision which will be served on the parties. The parties will be informed they will be allowed fourteen (14) days, or other period of time reached by agreement of the parties, to file exceptions to this decision. After the exception period expires the entire record will be submitted to the Agency for deliberations which will be in public and held pursuant to proper notice.
- (3) Subparagraphs (1) and (2) of this rule are intended to be merely a general outline as to the conduct of an administrative proceeding and it is not intended that a departure from the literal

Rule 0180-6-.02, continued)

form or substance of this outline, in order to expedite or insure the fairness of proceedings, would be in violation of this rule.

Authority: T.C.A. §§ 4-5-108, 4-3-113 (b); as amended (Public Chapter 216, May 3, 1983). Chapter 1360-1-7-.02, Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, ORDER OF PROCEEDINGS. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-3. DECLARATORY RULINGS.

- (1) On the petition of any interested person, the Commissioner may, after hearing held pursuant to T.C.A. Title 4, Chapter 5, issue a declaratory ruling with respect to the validity of a rule or with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by him or with respect to the meaning and scope of any order of the Commissioner.
- (2) The petition seeking a declaratory statement shall be filed in writing with the Department.
- (3) The form of such petitions shall be substantially as follows:

Petition for Declaratory Ruling Before the Commissioner of Banking.

1. Name of Petitioner _____
 2. Address of Petitioner _____
 3. Department rule, order or statutory provision on which declaratory statement is sought _____

 4. Statement of the facts of the controversy and description of how this rule, order or statute affects the petitioner _____

 5. Description of requested ruling _____
- _____
Signature of Petitioner
- _____
Address
- _____
Date

Authority: T.C.A. §§ 4-5-107, 45-1-107, 4-3-113 (b); as amended (Public Chapter 216, May 3, 1983). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-4. EFFECT OF DECLARATORY RULINGS.

A declaratory ruling if issued after argument and stated to be binding, is binding between the Commissioner and parties on the state of facts alleged in the petition unless altered or set aside by a court in a proper proceeding as specified in T.C.A. § 4-5-107.

Authority: T.C.A. § 4-5-107. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975.

0180-6-5. PRE-HEARING CONFERENCE.

In any action set for hearing the Commissioner may, if the parties agree, direct the parties and/or the attorneys for the parties to appear before him or before a hearing examiner for a conference to consider simplification of the issues, amendments to the pleadings, admissions of fact and such matters as may aid in the disposition of the action consistent with T.C.A. § 4-5-108 (d). All matters settled, stipulated, or ordered at any such conference shall be reduced to writing which shall be put in the form of an order and made part of the record.

Authority: T.C.A. § 4-5-108 (d). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975.

0180-6-6. PLEADINGS.

- (1) Notice. In all contested cases parties shall be afforded reasonable notice of an opportunity for hearing. If a hearing is requested or deemed advisable by the Commissioner the State shall serve upon the "Respondent" or "Complainant" a written notice or a copy thereof specifying the time, place, nature of the hearing and the right to be represented by counsel. In addition, the Complainant must detail the legal authority and jurisdiction under which the hearing is to be held and a short and plain statement of the matters asserted. The notice or copy of the notice must be delivered by return receipt mail or served personally by the Commissioner or a person designated by the Commissioner on the party to be affected; or if the Respondent evades or attempts to evade service, by leaving the notice or a copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion residing therein, whose name shall appear on the proof of service to return receipt card, or by delivering the notice or copy to an agent authorized by appointment or by law to receive service on behalf of the individual served. The person making personal service on a party shall return a statement indicating the time and place of service. No hearing shall be held, unless otherwise specified by statute, until the expiration of thirty (30) days from service of the notice upon the Respondent.
- (2) Answer. The party may respond to the charges set out in the notice by filing a written answer with the Commissioner in which he may:
 - (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Commissioner may proceed.
 - (b) Object to lack of jurisdiction over the subject matter.
 - (c) Object to lack of jurisdiction over the person.
 - (d) Object to insufficiency of the notice.
 - (e) Object to the insufficiency of service of the notice.
 - (f) Object to failure to join an indispensable party.
 - (g) Generally deny all the allegations contained in the notice or state that he is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges.
 - (h) Admit in part or deny in part allegations in the notice and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues.
 - (i) Present new matter by way of defense.

Rule 0180-6-.06, continued)

- (j) Make any defense relevant to the issues in the case.

(The answer shall be deemed a specific denial of all parts of the answer not expressly admitted.)
- (3) Parties may file a Pre-Hearing Motion to Dismiss or other motion of law prior to or at the hearing based on any defense in law. This motion will be addressed to the Commissioner, Hearing Officer, or Administrative Law Judge who will hear the case, and the Commissioner, Hearing Officer or Administrative Law Judge may convene a hearing on this motion giving all parties a reasonable opportunity to argue and present evidence relative to such motion.
- (4) The Commissioner, Hearing Office, or Administrative Law Judge may in his discretion set reasonable times for the filing of pre-hearing motions of law.
- (5) Place for Filing. All pleadings, motions and notices for pre-hearing conferences and hearings must be filed with the Administrative Procedures Division, William Snodgrass Tennessee Tower, 312 Eighth Avenue North, 8th Floor, Nashville, TN 37243, when heard by a Hearing Officer provided by the Secretary of State. Where the case is heard by the Commissioner, all pleadings, motions, and notices for pre-hearing conferences must be filed with the Commissioner of Financial Institutions, 414 Union Street, Suite 1000, Nashville, TN 37219.
- (6) Motion for a More Definite Statement. Within two (2) weeks after service of a notice a party may file with the Commissioner, Hearing Officer or Administrative Law Judge a motion for a more definite statement, pursuant to T.C.A. § 4-5-108 (3), on the grounds that the notice is so indefinite or uncertain that he cannot identify the transaction or prepare his defense. The Commissioner, Hearing Officer, or Administrative Law Judge assigned to hear the case may continue the hearing until such time as a more definite statement is provided.
- (7) Amendment to Notice.
 - (a) Time. The Commissioner or Complainant may amend the notice within two (2) weeks from service of the notice before an answer is filed, unless the Respondent shows to the Commissioner, Hearing Officer, or Administrative Law Judge that undue prejudice will result from this amendment. Otherwise the Commissioner or Complainant may only amend the notice by written consent of the Respondent or by leave of the Commissioner, Hearing Officer, or Administrative Law Judge and leave shall be freely given when justice so requires. No amendment may introduce a new statutory violation without original service and running of times applicable to service of the original notice. The Commissioner, Hearing Officer, or Administrative Law Judge may grant a continuance in consequence of an amendment to enforce this section.
 - (b) Amendments to Conform to the Evidence. When issues not raised by the notice are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the notice as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues in the notice, the Commissioner, Hearing Officer, or Administrative Law Judge may allow the notice to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The Commissioner, Hearing Officer, or Administrative Law Judge may grant a continuance to enable the objecting party to have reasonable notice to the amendments.

Rule 0180-6-.06, continued)

Authority: T.C.A. § 4-5-113 (d); as amended (Public Chapter 216, May 3, 1983). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-7. DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.
 - (a) The failure or refusal of a party (1) to timely appear at a hearing on the merits after due notice thereof, or (2) at the hearing to comply with any lawful order of the Commissioner, Hearing Officer, or Administrative Law Judge, necessary to maintain the orderly conduct of the hearing, is cause for holding such party to be in default and said order of default may thereupon be entered in the record.
 - (b) The Commissioner shall serve upon all parties written notice of entry of default for failure to appear and the defaulting party, no later than five days after such service of notice, may file a motion requesting that his default be set aside for good cause shown and stating the grounds relied upon. The Commissioner shall make such orders in regard to such motion as he in his absolute discretion may deem appropriate.
- (2) Effect of Entry of Default.
 - (a) Upon entry into the record of the default of the Complainant, the notice shall be denied.
 - (b) Upon entry into the record of the default of the Respondent, the matter shall be tried as uncontested as to such Respondent.
- (3) Uncontested Proceeding. When the matter is tried as uncontested, the Complainant has the burden of proof of affirmative allegations sufficient to state a prima facie case. The Commissioner may accept any other relevant evidence which he may deem desirable.

Authority: T.C.A. § 4-3-113 (d); as amended (Public Chapter 216, May 3, 1983). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-8. COMMENCEMENT OF ACTION. The action is commenced for the purpose of discovery under these rules, with respect to a party, upon such party being properly served with a copy of the complaint.

Authority: T.C.A. § 4-5-110. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975.

0180-6-9. DISCOVERY.

The rights of discovery include:

- (1) Depositions
- (2) Discovery and production of documents and physical evidence.
- (3) Admission of facts and genuineness of documents.

All questions concerning discovery shall be heard by the Commissioner or the Hearing Examiner assigned to hear the case.

Rule 0180-6-.09, continued)

Authority: T.C.A. §§ 4-5-110 and 4-5-111. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975.

0180-6-10. DEPOSITIONS PENDING ACTION.

- (1) When Depositions May Be Taken. Any party may take the testimony of any person, including a party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the hearing or for both purposes. After commencement of the action, the deposition may be taken by the Respondent without leave of the Commissioner, Hearing Officer, or Administrative Law Judge. Depositions may be taken by the Complainant, after commencement of the action, without leave of the Commissioner, Hearing Officer, or Administrative Law Judge, except that leave, with or without notice, must be obtained if notice of the taking is served by the Complainant within five days after commencement of the action. The Commissioner, Hearing Officer, or Administrative Law Judge may continue the hearing, upon motion of any party, to provide additional time for the taking of depositions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 0180-6-.18.
- (2) Scope of Examination. Unless otherwise ordered by the Hearing Examiner or Commissioner as provided in Rule 0180-6-.13, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending hearing, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.
- (3) Examination and Cross-examination. Examination and cross-examination of deponents may proceed as provided for in T.C.A. § 4-515 and as specified in these rules.
- (4) Use of Depositions:
 - (a) At the hearing, any part or all of the depositions, so far as admissible under T.C.A. § 4-5-109, may be used against any party for any purpose who was present or represented at the taking of the deposition or who had due notice thereof in accordance with Rule 26.04 of the Tennessee Rules of Civil Procedure.
 - (b) If only part of the deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.
 - (c) Substitution of parties does not affect the right to use depositions previously taken; and when any hearing proceedings has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceedings may be used in the latter as if originally taken thereof.
- (5) Objections to Admissibility. Subject to the provisions of Rules 0180-6-.11 and 0180-6-.14, objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

Rule 0180-6-.10, continued)

- (6) Effect of Taking or Using Depositions. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

Authority: T.C.A. § 4-5-110 (d). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-11. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN. Depositions shall be taken before any Notary or other officer qualified by law to administer oaths.

Authority: T.C.A. § 4-5-110 (d). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975.

0180-6-12. STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS. 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.

Authority: T.C.A. § 4-5-110 (d). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975.

0180-6-13. DEPOSITIONS UPON ORAL EXAMINATION.

- (1) Notice of Examination: Time and Places. The party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the hearing proceedings. The notice shall be served on the other parties at least five (5) days beforehand when the deposition is to be taken in the county in which the hearing is pending. When the deposition is to be taken out of the county, notice at least seven (7) days before the date of the deposition shall be given. The notice shall state the time and place for taking the deposition and 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 or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the Hearing Examiner or Commissioner may for cause shown enlarge or shorten the time.
- (2) Orders for the Protection of Parties and Deponents. After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice of good cause shown, which includes but is not limited to, grounds of irrelevancy, immateriality, undue delay or undue burden upon a party or deponent, privilege or confidentiality respecting the information sought, the Commissioner, Hearing Officer, or Administrative Law Judge may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the hearing and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the Commissioner, Hearing Officer, or Administrative Law Judge, or that secret processes, developments or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commissioner, Hearing Officer, or Administrative Law Judge may make any order which justice requires to protect the party or witness from annoyance, embarrassment or oppression.
- (3) Record of Examination; Oath; Objections. 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 direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded (mechanically or electrically) and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the

Rule 0180-6-.13, continued)

- evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to objections made.
- (4) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Hearing Examiner or Commissioner may order the termination of the taking of the deposition, or may limit the scope and manner of taking the deposition as provided in paragraph (2) of this rule. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.
- (5) Submission to Witness; Change; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, 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 be used as fully as though signed, unless on a motion to suppress under Rule 0180-6-.10, the Hearing Examiner or Commissioner holds that the reasons for the refusal to sign require rejection of the deposition in whole or in part.
- (6) Certification and Filing by Officer; Copies; Notice of Filing.
- (a) The officer before whom the deposition is taken 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 endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the Administrative Procedures Division of the Department of State when it is to be heard by the Hearing Examiner or file it with the Commissioner when the hearing proceeding will take place before him.
- (b) Upon payment of reasonable charges therefor, the Hearing Examiner or Commissioner shall furnish a copy of the deposition to any party or the deponent.
- (c) When the deposition is filed, notice shall promptly be given to all parties.

Authority: T.C.A. §§ 4-5-110 (d) and 4-3-113 (b). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-14. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

- (1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.
- (2) As to Disqualification of the Hearing Officer Taking the Deposition. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
- (3) As to Taking of Deposition.

Rule 0180-6-.14, continued)

- (a) Objections to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.
 - (b) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.
- (4) As to Completion and Return of Deposition. Errors and irregularities in manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rule 0180-6-.13 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Authority: T.C.A. § 4-5-110 (d). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975.

0180-6-15. INTERROGATORIES TO PARTIES.

- (1) Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation, a partnership or association or governmental entity, by an officer, agency or employee, who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action by the Respondent without leave of the Commissioner, Hearing Officer, or Administrative Law Judge. Interrogatories may be taken by the Complainant, after commencement of the action, without leave of the Commissioner, Hearing Officer, or Administrative Law Judge, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the Complainant within five (5) days after commencement of the action. The Commissioner, Hearing Officer, or Administrative Law Judge may continue the hearing, upon notice of any party, to provide additional time for the taking of interrogatories. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall service a copy of the answers on the party submitting the interrogatories within fifteen (15) days after the service of the interrogatories, unless the Commissioner, Hearing Officer, or Administrative Law Judge, on motion and notice and for good cause shown, enlarges or shortens the time. Within ten (10) days after service of the interrogatories a party may service written objections hereto, together with a notice of hearing, the objection at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.
- (2) Interrogatories may relate to any matters which can be inquired into under Rule 0180-6-.10 and the answers may be used to the same extent as provided in Rule 0180-6-.10 for the use of a deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the Commissioner, Hearing Officer, or Administrative Law Judge on motion of the Deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, embarrassment, or oppression. The provisions of Rule 0180-6-.13 are applicable for the protection of the party from whom answers to interrogatories are sought under the rule.

Rule 0180-6-.15, continued)

Authority: T.C.A. § 4-5-110; Rule 33 Tennessee Rules of Civil Procedure; Chapter 938, § 1, Public Acts of 1978. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-16. DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION COPYING OR PHOTOGRAPHING.

- (1) Upon motion of any party and upon notice to all other parties and subject to the provisions of Rule 0180-6-.13, the Commissioner or Hearing Examiner hearing the case may:
 - (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 0180-6-.09 and which are in his possession, custody, or control; or
 - (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property or any designated object or operation thereon within the scope of the examination permitted by Rule 0180-6-.10. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

Authority: T.C.A. §§ 4-5-110 and 4-5-111. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-17. DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES.

- (1) Serving Interrogatories; Notice. A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter, a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five (5) days thereafter the latter may serve redirect interrogatories upon a party who has served cross-interrogatories. Within three (3) days after being served with redirect interrogatories, a party may serve re-cross interrogatories upon the party proposing to take the deposition.
- (2) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided in Rule 0180-6-.10 to take the testimony of the witnesses in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.
- (3) Notice of Filing. When the deposition is filed, the Commissioner, Hearing Officer, or Administrative Law Judge shall promptly give notice of its filing to all parties.
- (4) Order for the Protection of Parties and Deponents. After the service of interrogatories and prior to the taking of the testimony of the Deponent, the Commissioner, Hearing Officer, or Administrative Law Judge, on motion promptly made by a party or Deponent, upon notice and good cause shown, may make any order specified in Rule 0180-6-.10 which is appropriate and just, or an order that the deposition shall not be taken before the officer designated in the notice, or that it shall not be taken except upon oral examination. At any time during the taking of a deposition, the Deponent may apply to the Commissioner, Hearing Officer, or

Rule 0180-6-.17, continued)

Administrative Law Judge for any of the protective orders available under Rule 0180-6-.10 to a Deponent upon oral examination and the Commissioner, Hearing Officer, or Administrative Law Judge shall make any appropriate order upon Deponents showing cause as required for an order under Rule 0180-6-.10

- (5) Interrogatories not to be Shown to Deponent in Advance. Interrogatories provided by this rule shall not be shown to any Deponent in advance of the taking of his deposition, except upon consent of the parties.

Authority: T.C.A. § 4-5-110; Rule 31, Tennessee Rules of Civil Procedure; Chapter 938, § 1, Public Acts of 1978. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-18. ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS.

- (1) After commencement of a contested case a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. Copies of the document shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than fifteen (15) days after service thereof or within such shorter or longer time as the Commissioner may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reason why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.
- (2) Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

Authority: T.C.A. § 4-5-111 (a). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-19. REFUSAL TO MAKE DISCOVERY; CONSEQUENCES.

- (1) Refusal to Answer. If a party or other Deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the Commissioner who may apply to the circuit or chancery court of the county of such person's residence in conformity with T.C.A. § 4-5-110 (b) for an order to compel the giving of the testimony.
- (2) Failure to Comply with Order. If a party or other witness refuses to be sworn, disobeys a lawful Departmental subpoena or discovery order or refuses to testify in any manner regarding a lawful Departmental interrogation, the Commissioner may apply to the circuit or chancery court of the county of such person's residence as specified in T.C.A. § 4-5-110 (b) for an order to compel compliance. If the disobedience is found to be unlawful, the court shall

Rule 0180-6-.19, continued)

enter an order requiring compliance. Disobedience with such an order may be punished as contempt of court as is provided in judicial proceedings.

Authority: T.C.A. § 4-5-110 (b). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-20. SUBPOENA.

- (1) For Attendance of Witnesses Form; Issuance. Every subpoena shall be issued by the Commissioner, Hearing Officer, or Administrative Law Judge, shall state the name of the Department and the title of the action, and shall command each person to whom it is directed to attend and give testimony at the time and place and for the party therein specified.
- (2) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein or other objects as may be necessary and proper for the purpose of the proceeding; but the Commissioner, Hearing Officer, or Administrative Law Judge upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may
 - (a) quash or modify the subpoena if it is unreasonable and oppressive or
 - (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.
- (3) Service. A subpoena may be personally served in accordance with the Tennessee Rules of Civil Procedure, for service of subpoenas in civil actions, or by certified mail through the United States Postal Service.
- (4) Subpoena for Taking Depositions; Place of Deposition. A subpoena for taking depositions may be issued by the Commissioner, or the Hearing Examiner assigned to hear the case as provided in T.C.A. § 4-5-110 (b). If the subpoena commands the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 0180-6-.10 (2), the subpoena will be subject to the provisions of Rule 0180-6-.13 (2) and 0180-6-.20 (2).
- (5) Subpoena for a Hearing; Personal Attendance. At the request of any party subpoenas for attendance at a hearing shall be issued by the Commissioner or the Hearing Examiner assigned to hear the case, and such subpoena may be served at any place within the state.
- (6) Contempt. Disobedience to a lawful subpoena issued by the Commissioner or refusal to be sworn or to answer as a witness in any manner may be subject to contempt of court as provided in T.C.A. § 4-5-110 (b).

Authority: T.C.A. § 4-5-110. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-21. EVIDENCE IN HEARINGS; EXAMINATION AND CROSS EXAMINATION.

- (1) In all hearings of the Department, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the Commissioner or Hearing Examiner, witnesses may be excluded prior to the testimony.

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- (2) Subject to the provisions of T.C.A. § 4-5-109, each party shall have the right to present his case by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross examination into all relevant and material matters, whether or not such matters were covered in the examination in chief, as may be required for a full and true disclosure of the facts.

Authority: T.C.A. §§ 4-5-108 and 4-5-109. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-22. RECORD OF EXCLUDED EVIDENCE.

- (1) If an objection to proffered evidence is sustained by the Hearing Officer, the party seeking to introduce the evidence may make a specific offer of proof:
 - (a) In a proceeding before a Hearing Examiner with the Commissioner present, the Hearing Examiner shall accept the offer of proof at the completion of the hearing after the Commissioner has reached a final decision.
 - (b) If a Hearing Examiner presides alone at a hearing, he shall accept the offer of proof during the hearing but shall not submit it in his proposed order to the Commissioner and other parties as part of the record.
 - (c) If the Commissioner determines the case alone, he shall accept the offer of proof during the hearing but shall not consider it as part of the record in his proposed order.
- (2) The Hearing Officer, in accepting the offer of proof, may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon.

Authority: T.C.A. §§ 4-5-108 and 4-5-120. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-23. AFFIRMATION IN LIEU OF OATH. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

Authority: T.C.A. § 4-5-120. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-24. BURDEN OF PROOF. The burden of proof, where not specified by statute, is on the party asserting the affirmative of an issue.

Cross Reference: Estrin v. Moss, 430 S.W. 2d 345, (Tennessee Supreme Ct., 1968).

Authority: Chapter 938, § 1, Public Acts of 1978. **Administrative History:** Original rule filed February 17, 1984; effective May 15, 1984.

0180-6-25. TIME FOR FILING EXCEPTIONS. Exceptions and written argument to the Commissioner's, Hearing Officer's, or Administrative Law Judge's proposed decision must be filed within fourteen (14) days of service of the proposed decision. Extensions of time may be granted for good cause shown at the Commissioner's, Hearing Officer's, or Administrative Law Judge's discretion on petition of any party.

Authority: T.C.A. § 4-5-120; Chapter 938, § 1, Public Acts of 1978. **Administrative History:** Original rule filed February 17, 1984; effective May 15, 1984.

0180-6-26. INTERVENTION.

- (1) All petitions for leave to intervene in a pending contested case should be filed with the Commissioner, Hearing Officer, or Administrative Law Judge assigned to hear the case. Said petitions should detail sufficient "injury in fact" as would entitle one prospectively to judicial review under T.C.A. § 4-5-117.
- (2) This consideration together with whether prospective intervenor interests are adequately represented and whether admittance of a new party will render the hearing unmanageable are factors to be weighed by the Commissioner, Hearing Officer, or Administrative Law Judge in determining whether a person should be admitted as a party.

Authority: T.C.A. §§ 4-5-102 and 4-5-117; Chapter 938, § 1, Public Acts of 1978. **Administrative History:** Original rule filed February 17, 1984; effective May 15, 1984.

0180-6-27. CONTINUANCES. Continuances may be granted at the discretion of the Department empowered to make the final decision except that the Commissioner, Hearing Officer, or Administrative Law Judge may grant a continuance as provided by these rules or when based on any procedural matter of law. The Department may delegate authority to grant or deny continuances to one or more members of that Department who will hear the case in which a continuance has been requested. Arguments concerning a continuance may be submitted to the Commissioner, Hearing Officer, or Administrative Law Judge for transmittal to the Department. All requests for continuances should be made in writing at least five (5) days prior to the hearing. The Department may waive this requirement for good cause shown as justice requires.

Authority: T.C.A. § 45-5-103; Chapter 938, § 1, Public Acts of 1978. **Administrative History:** Original rule filed February 17, 1984; effective May 15, 1984.

0180-6-28. RECORD.

- (1) The record taken of the proceeding shall be preserved for four (4) calendar months for purpose of transcription for appeal.
- (2) The record in a contested case shall include:
 - (a) All applications, pleadings, motions, intermediate rulings and exhibits and appendices thereto;
 - (b) Evidence received or considered, stipulations and admissions;
 - (c) A statement of matters officially noticed;
 - (d) Questions and offers of proof, objections, and rulings thereon;
 - (e) Any proposed findings or decisions and exceptions.
 - (f) Any decision, opinion, or report by the Commissioner or the officer presiding at the hearing.
 - (g) All staff memoranda or data submitted to the Hearing Officer in connection with his consideration of the case.

Authority: T.C.A. § 4-5-108 (f). **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984.

0180-6-29. REVIEW OF INITIAL ORDER.

- (1) After an administrative judge or a hearing officer issues an initial order in a contested case heard in accordance with the Uniform Administrative Procedures Act, T.C.A. § 4-5-301 et seq., the Commissioner may:
 - (a) Determine not to exercise any review of the issues raised by any party on appeal; or
 - (b) Determine to review some but not all of the issues raised by any party on appeal; or
 - (c) Delegate authority to review the initial order to one or more persons; or
 - (d) Authorize one (1) or more persons to review the initial order, subject to further review by the agency.

Authority: T.C.A. §§ 4-5-315; 45-1-108(a). **Administrative History:** original rule filed February 28, 1997; effective June 28, 1997.