

**RULES
OF
TENNESSEE DEPARTMENT OF SAFETY
DRIVER CONTROL DIVISION**

**CHAPTER 1340-1-8
RULES OF PROCEDURE FOR HEARING CONTESTED CASES**

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1340-1-8-.01 DEFINITIONS

- (1) "Hearing Examiner" means a hearing examiner provided by the Administrative Procedures Division Department of State, in accordance with T.C.A. Section 4-526(b)
- (2) "Administrative Judge" means a regular agency employee assigned to hear a contested agency cases in accordance with 4-526(a)
- (3) "Agency" means a legally constituted officer board or commission that determines contested cases under its respective statutory authority.
- (4) "Complainant" means the moving party in the Agency proceeding
- (5) "Respondent" means a party to an Agency proceeding who answers the complainant.
- (6) "Hearing Officer" means a "hearing examiner" or an "administrative Judge"
- (7) "State" means a member of the agency , and employee of the agency , or an assistant attorney general acting the representation of the agency as a party to the contested case.
- (8) "Intervenor" means any party to an agency proceeding other than the complainant or respondent properly seeking or entitled of right to be admitted as a party.

Authority: T.C.A. §4-509. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.02 ORDER OF PROCEEDINGS.

- (1) Order of Proceedings for the Hearing of Contested Cases When a Hearing Examiner is Hearing A Case With an Agency:
 - (a) Hearing is called to order by the hearing examiner.

(Rule 1340-1-8-.02, continued)

- (b) Hearing examiner introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the hearing examiner's role of making legal rulings.
- (c) Hearing examiner introduces the members of the Agency and states that the final decision in the proceeding will be made by the Agency and that they are the sole judges of the facts, the hearing examiner being excluded by law from deciding any question of fact when hearing the proceedings with the Agency,
- (d) Hearing examiner then calls on the respondent asking if he is represented by counsel and if so, counsel is asked to introduce himself. The hearing examiner then introduces the complainant's counsel and any other officials who may be present at the hearing.
- (e) The complainant reads the charges as set out in the notice with regard to the respondent with reference to appropriate statutes and rules.
- (f) The respondent is asked how he pleads to the charges; if he pleads guilty, no further hearing may be necessary; if he pleads not guilty the hearing proceeds.
- (g) The hearing examiner then presents a brief explanation primarily for the benefit of the respondent and his counsel, of how the hearing will proceed with respect to the presentation of proof including a statement that cross-examination and redirect will be completely open and a statement of the admissibility standards for evidence in the hearing.
- (h) The hearing examiner swears all the witnesses.
- (i) The respondent is asked if he 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 as well as the chairman of the Agency or any Agency member.
- (l) Moving party (usually the complainant) calls his 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. Agency questions.
 - 6. Cross-examination by respondent's attorney.
 - 7. Redirect by complainant.

Questioning proceeds as long as is necessary to provide all pertinent testimony.

(Rule 1340-1-8-.02, continued)

- (m) Other party (usually the respondent) calls his 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. Agency questions.
 - 6. Cross-examinations by complainant's attorney.
 - 7. Redirect by respondent.

Questioning continues as long as is necessary to provide all pertinent testimony.

- (n) Complainant and Respondent allowed to call appropriate rebuttal and rejoinder witnesses with examination proceedings as outlined above.
 - (o) Closing arguments are allowed to be presented by the complainant and by the respondent.
 - (p) Hearing examiner prepares to turn proceedings over to the Agency by representing the original charges as set out in the notice, admonishing them to disregard evidence excluded, and reminding that the hearing examiner can take no part in any finding of fact although he can advise as to the legal sufficiency.
 - (q) The hearing examiner then asks the Agency if it wishes to take the case under advisement or go into executive session and decide the case at the time.
 - (r) If the Agency wishes to go into executive session, the hearing examiner advises the chairman of the Agency that he will turn the proceedings over to the chairman until such time as the Agency reaches its decision.
 - (s) The Agency deliberates and reaches a decision which is relayed to the respondent.
 - (t) The hearing examiner again takes over and closes the hearing.
 - (u) The hearing examiner hears any offers of excluded proof for the record.
- (2) Order of Proceedings for the Hearing of Contested Cases When a Hearing Examiner of Administrative Judge is Hearing the Case Alone:
- (a) Meeting is called to order by the hearing officer.
 - (b) 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 and findings of fact which will be incorporated in a proposal for decision which will be served on all parties and that each party adversely affected by the proposed decision will be given an opportunity to file exceptions and present argument in writing to the Agency itself before the members personally decide the case on the record.

(Rule 1340-1-8-.02, continued)

- (c) Hearing officer then calls on the respondent asking if he is represented by counsel and if so, counsel is asked to introduce himself. The hearing officer then introduces the complainant's counsel and any other officials which may be present at the hearing.
- (d) The complainant reads the charges as set out in the notice with regard to the respondent with reference to appropriate statutes and rules.
- (e) The respondent is asked how he pleads to the charges; if he pleads guilty, no further hearing may be necessary; if he pleads not guilty, the hearing proceeds.
- (f) The hearing officer then presents a brief explanation, primarily for the benefit of the respondent and his counsel, of how the hearing will proceed with respect to the presentation of proof including a statement that cross-examination and re-direct will be completely open and a statement of the admissibility standards for evidence in the hearing.
- (g) The hearing officer swears all the witnesses.
- (h) The respondent is asked if he 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.
- (i) Any preliminary motions, stipulations, or agreed orders are entertained.
- (j) Opening statements are allowed by both the complainant and the respondent.
- (k) Moving party (usually the state) calls his 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 cross-examines.Questioning proceeds as long as is necessary to provide all pertinent testimony.
- (l) Other party (usually the respondent) calls his 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,Questioning proceeds as long as is necessary to provide all pertinent testimony.
- (m) Complainant and Respondent allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
- (n) Closing arguments are allowed to be presented by the complainant and by the respondent.

(Rule 1340-1-8-.04, continued)

Authority: T.C.A. §4-513. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.04 EFFECT OF DECLARATORY RULINGS.

A declaratory ruling if issued after argument and stated to be binding between the agency 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. Section 4-513

Authority: T.C.A. §4-513. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977,

1340-1-8-.05 PRE-HEARING CONFERENCE

In any action set for hearing the agency shall if the parties agree, direct the parties and/or the attorneys for the parties to appear before a hearing examiner or an Administrative Judge 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. Section 4-514(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 all made part of the record.

Authority: T.C.A. §4-514(d). **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977

1340-1-8-.06 PLEADINGS.

(1) Complaint.

In all contested cases parties shall be afforded notice of an opportunity to be present at a hearing. If a hearing is requested or deemed the "respondent" or "complainant" a written complaint 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 under which the hearing is to be held and as short and plain statement of the matters asserted. The complaint will be accompanied by a copy of the agency rules, a provision informing the party affected of his right to discovery and a form for denial of the allegations against him contained in the complaint. The complaint must be delivered by return receipt mail or served personally by the agency members or a person designated by the agency on the party to be affected. The person making personal service on a party shall return all affidavits making oath as to the time and place of service.

(2) Answer.

(a) The party may respond to the charges set out in the complaint by filing a written Answer with the Agency within twenty (20) days after service of the complaint in which he may

1. Object to the complaint upon the ground that it does not state acts or omissions upon which the Agency may proceed.
2. Object to the form of the complaint on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense and may file for a more definite statement pursuant to T.C.A. 4-514(3).
3. Object to lack of jurisdiction over the subject matter.
4. Object to lack of jurisdiction over the person

(Rule 1340-1-8-.06, continued)

5. Object to insufficiency of process
6. Object to insufficiency of service of process
7. Object to failure to join an indispensable party
8. Generally deny all the in the complaint or state that he is without knowledge to each and every allegation both of which shall be deemed a general denial of all charges
9. Admit in part or deny in part allegations in the complaint and may elaborate on or explain relevant issues of in a manner that will simplify the ultimate issues
10. Present new matter by way of defense
11. Make any defense relevant to the issues in the case

The Answer shall be deemed it specific denial of all parts of the Complaint not expressly admitted

- (b) Parties may file it Pre-Hearing Motion to Dismiss before filing an Answer based on any defense in law. This motion will he addressed to the hearing examiner who kill hear the and the hearing examiner may convene a hearing on this motion giving all parties a reasonable opportunity to argue and present evidence relative such motion. The filing of a motion to Dismiss suspends the 20 day period to file an Answer, and after notice of disallowance of a motion to Dismiss, the party filing said motion shall have ten days to file an Answer
 - (c) The filing of pre hearing motions and pleadings in the nature of an Answer at are permissive and not required under these rules, hut if motions or pleadings are filed the procedural limitations set out in the above rule must be strictly complied with
- (3) Place for filing.

All pleadings and motions and notices for pre-hearing conferences and hearings must be filed with the Administrative Procedures Division, 976 Capitol Hill Building, Nashville, Tennessee 37219 where heard by a hearing examiner provided by the Secretary of State, Where the case is heard by an Administrative Judge all pleadings motions and notices for pre-hearings conferences must he filed with the Administrative -Judge hearing the case.

- (4) Amendment to Pleadings.

The State may amend the complaint prior to the filing of an answer by filing and serving an amended complaint in the manner prescribed for filing and serving an original complaint and may amend after the filing of an Answer only upon motion to and order of the Agency, Hearing Examiner, or Administrative Judge.

Authority: T.C.A. §4-514. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.07 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.

(Rule 1340-1-8-.07, continued)

- (a) The failure or refusal of a party to (1) timely appear at a hearing on the merits after due notice thereof, or (2) at the hearing comply with any lawful order of the Hearing Examiner, Administrative Judge, or Agency, is cause for holding such party to be in default and said order of default may thereupon be entered in the record.
 - (b) The Agency 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 Agency shall make such orders in regard to such motion as it in its absolute discretion may deem appropriate.
- (2) Effect of Entry of Default.
- (a) Upon entry into the record of the default of the Complainant, the complaint shall be denied.
 - (b) Upon entry into the record of the default of any 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 Agency may accept any other relevant evidence which it may deem desirable

Authority: T.C.A. §4-514. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.08 COMMENCEMENT OF ACTION.

The action is commenced for the purposes 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. §4-516. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.09 DISCOVERY.

- (1) The rights of discovery Include:
 - (a) Deposition.,
 - (b) Discovery and production of documents and physical evidence.
 - (c) Admission of facts and genuineness of documents.
- (2) All questions concerning discovery shall be heard by the Hearing Examiner or Administrative Judge assigned to hear the case.

Authority: T.C.A. §§4-516 and 4-517. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.10 DEPOSITIONS PENDING ACTION.

(Rule 1340-1-8-.10, continued)

(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 without leave of the Hearing Examiner or Administrative Judge except that leave, granted with or without notice, must be obtained if notice of the taking is served by the State within 20 days after commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule .18.

(2) Scope of Examination.

Unless otherwise ordered by the Hearing Examiner or Administrative Judge as provided in Rule .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 to be 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 deposition, so far as admissible under T.C.A. §4-515, 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.

(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. Substitution of parties does not affect the right to use depositions previously taken; and when any hearing proceeding had 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 proceeding may be used in the latter as if originally taken therefor.

(5) Objections to Admissibility.

Subject to the provisions of Rules .11 and .14, objections may be made at the hearing to receiving in evidence any depositions or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(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 the other party.

Authority: T.C.A. §4-516(d). **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

(Rule 1340-1-8-.10, continued)

1340-1-8-.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. §4-516(d). *Administrative History:* Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.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. §4-516(d). *Administrative History:* Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.13 DEPOSITIONS UPON ORAL EXAMINATION.

- (1) Notice of Examination: Time and place.

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 proceeding. The notice shall be served on the other parties at least five days beforehand when the deposition is to be taken in the county in which the agency hearing is pending. When the deposition is to be taken out of the county, at least seven days' notice 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 Administrative Judge may for cause shown enlarge or shorten the time.

- (2) 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 evidence presented, or to the conduct of any party, and any other objection to the proceeding shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to objections made.

- (3) 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 Administrative Judge 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 the 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.

- (4) 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

(Rule 1340-1-8-.13, continued)

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 .10 the Hearing Examiner or Administrative Judge holds that the reasons for the refusal to sign require rejection of the deposition in whole or in part.

- (5) 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 a hearing examiner or file it with the agency when the hearing proceeding will take place before them or an Administrative Judge.
 - (b) Upon payment of reasonable charges therefor, the hearing examiner or Administrative Judge 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. §4-516(d). **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.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.
 - (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 the 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.

(Rule 1340-1-8-.15, continued)

Errors and irregularities in the 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 .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. §4-516(d). **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.15 DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION COPYING OR PHOTOGRAPHING.

Upon motion of any party and upon notice to all other parties and subject to the provisions of Rule .13, the hearing examiner, Administrative Judge or Agency 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 .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 .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. §§4-516 and 4-517. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.16 ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS.

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 agency 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 (2) written objections on the ground that some or all of the requested admissions are privileged or are irrelevant or that the request is otherwise improper in whole or in part, together with a notice of hearing the objections at the earliest possible 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.

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 may not be used against him in any other proceeding.

Authority: T.C.A. §4-517(a). **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.17 REFUSAL TO MAKE DISCOVERY: CONSEQUENCES.

- (1) Refusal to Answer.

(Rule 1340-1-8-.17, continued)

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 agency hearing the case which may apply to the circuit or chancery court of the county of such person's residence in conformity with T.C.A. §4-516(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 agency subpoena or discovery order or refuses to testify in any manner regarding a lawful agency interrogation, the agency may apply to the circuit or chancery court of the county of such person's residence as specified in T.C.A. §4-516(b) for an order to compel compliance. If the disobedience is found to be unlawful, the court shall 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. §4-516(b). **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-.18 SUBPOENA.

(1) For Attendance of Witnesses Form; Issuance.

Every subpoena shall be issued by the Hearing Examiner, Administrative Judge or Agency assigned to hear the case, shall state the name of the agency 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. The Hearing Examiner, Administrative Judge or Agency shall issue a subpoena or a subpoena for the production of documentary evidence signed but otherwise in blank, to a party requesting it who shall fill it in before service.

(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 purposes of the proceeding; but the Hearing Examiner, Administrative Judge or Agency, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) 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 served by return receipt mail or the witness may acknowledge personal service in writing on the subpoena after delivering or offering to deliver a copy thereof to the person to whom it is directed. Subpoenas may be served anywhere within the State of Tennessee.

(4) Subpoena for Taking Depositions; Place of Deposition.

A subpoena for taking depositions may be issued by the hearing examiner, Administrative Judge, or Agency assigned to hear the case as provided in T.C.A. §4-516(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 .10(2), the subpoena will be subject to the provisions of Rules .13(2) and .18(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 Hearing Examiner, Administrative Judge or Agency assigned to hear the case, and such subpoena maybe served at any place within the state.

(6) Contempt.

Disobedience to a lawful agency subpoena 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. §4-516(b).

Authority: T.C.A. §4-516. **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-19 EVIDENCE IN HEARINGS.

In all agency hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the agency witnesses may be excluded prior to their testimony.

Authority: T.C.A. §4-532. *Administrative History:* Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-20 EXAMINATION AND CROSS-EXAMINATION.

Cross-examination of any witness shall not be limited to the subject matter of his examination in chief. A party may call an adverse party and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also and may be cross-examined by the adverse party but only upon the subject matter of his examination in chief.

Authority: T.C.A. §4-515. *Administrative History:* Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-21 RECORD OF EXCLUDED EVIDENCE.

- (1) In a hearing before a hearing examiner with the Agency present, if an objection to preferred evidence is sustained by the hearing examiner, the examining attorney may make a specific offer of what he expects to prove by that evidence. The offer of proof will be accepted by the hearing examiner after the hearing is completed and the Agency has reached a final decision.
- (2) In a hearing held before a hearing examiner sitting alone the offer of proof will be taken during the hearing but not submitted to the Agency as part of the record.

The hearing examiner or Administrative Judge 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.

- (3) The hearing examiner or Administrative Judge shall be the sole judge of legal issues in the hearing but under no circumstances will he take part in any determination of fact.

Authority: T.C.A. §§4-515 and 4-526. *Administrative History:* Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-22 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. §4-532. *Administrative History:* Original rule filed February 14, 1977; effective March 16, 1977.

1340-1-8-23 RECORD.

- (1) The record taken of the proceeding shall be preserved for four (4) calendar months for purposes 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;

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- (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 agency or the officer presiding at the hearing;
- (g) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

Authority: T.C.A. §4-514(f). **Administrative History:** Original rule filed February 14, 1977; effective March 16, 1977.