

Section 5. Investigations and Adjudications

Rule 5000. [Reserved]

Part 1—[Reserved]

Part 2—Disciplinary Proceedings

Rule 5200T. Commencement of Disciplinary Proceedings

(a) [Reserved]

(b) Appointment of a Hearing Officer

As soon as practicable after the Board has issued an order instituting proceedings, or after a registration applicant has requested a hearing pursuant to Rule 5500(b), the Secretary shall assign a hearing officer to preside over the proceeding and shall serve the parties with notice of the hearing officer's assignment. Subject to Rules 5402 and 5403, the hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. The powers of the hearing officer include, but are not limited to, the following—

(1) Obtaining a court reporter to administer oaths and affirmations;

(2) Issuing accounting board demands pursuant to Rule 5424;

(3) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(4) Regulating the course of a proceeding and the conduct of the parties and their counsel;

(5) Holding prehearing and other conferences and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(6) Recusing himself or herself upon motion made by a party or upon his or her own motion;

(7) Ordering, in his or her discretion, in a proceeding involving more than one respondent, that the interested division indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

(8) Subject to any limitations set forth elsewhere in these Rules, considering and ruling upon all procedural and other motions;

(9) Preparing an initial decision as provided in Rule 5204;

(10) Upon notice to all parties, reopening any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Board;

(11) Informing the parties as to the availability of one or more alternative means of dispute resolution, and

encouraging the use of such methods; and

(12) Scheduling hearing dates, except that a hearing officer may not, absent the approval of the Board, change a hearing date set by Board order.

(c) Separation of Functions

The staff of the Division of Enforcement and Investigations may not participate or advise in the decision, or in Board review of the decision, in any proceeding in which the Division of Enforcement and Investigations is the interested division, except as a witness or counsel in the proceeding. Any other employee or agent of the Board engaged in the performance of investigative or prosecutorial functions for the Board in a proceeding may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Board review of the decision, except as a witness or counsel in the proceeding. A hearing officer may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Board.

(d) Consolidation of Proceedings

By order of the Board or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Board or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this Rule, no distinction is made between joinder and consolidation of proceedings.

Rule 5201T. Notification of Commencement of Disciplinary Proceedings

(a) [Reserved]

(b) [Reserved]

(c) Notice of a Hearing on a Registration Application

In the case of a proceeding pursuant to Rule 5500, the notice of a hearing shall state proposed grounds for disapproving the registration application.

(d) [Reserved]

Rule 5202T. Record of Disciplinary Proceedings

(a) Contents of the Record

(1) Record of a Disciplinary Proceeding

A hearing record shall consist of—

(i) The order instituting proceedings, each notice of hearing and any amendments;

(ii) Each application, supplemental application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(iii) Each stipulation, transcript of testimony and document or other information admitted into evidence;

(iv) Each written communication accepted by the hearing officer pursuant to Rule 5420;

(v) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal pursuant to Rule 5402, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(vi) All motions, briefs and other papers filed on interlocutory appeal;

(vii) Any proposed findings and conclusions;

(viii) Each written order or notice issued by the hearing officer or the Board; and

(ix) Any other document or item accepted into the record by the Board or the hearing officer.

(2) Record on Disapproval of Application for Registration

The record on a disapproval of an application with respect to which the applicant has elected to waive its opportunity for a hearing pursuant to Rule 5500 shall consist of—

(i) The application for registration, and any supplemented application;

(ii) Any additional information provided by the applicant;

(iii) Any other information obtained by the Board in connection with the application;

(iv) The notice of a hearing and any written order issued by the Board; and

(v) Any other document or item accepted into the record by the Board.

(b) Documents Not Admitted

Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any documents offered in evidence but excluded until all opportunities for Commission and judicial review have been exhausted or waived.