

The rule is adapted from Rule 360 of the Commission's Rules of Practice.

The note to Rule 5204T(b) sets out the Board's general expectations about the time frame within which a hearing officer should complete an initial decision in various types of cases. These time frames are nothing more than the Board's general expectations and do not create any right in any person to have an initial decision prepared within any particular period of time.

Rule 5204T(c) governs the hearing officer's filing of the initial decision with the Secretary and the Secretary's service of the initial decision on the parties.

Rule 5204T(d) provides the circumstances in which an initial decision of a hearing officer becomes the final decision of the Board as to a party. The rule is adapted from Rule 360(d) of the Commission's Rules of Practice. Rule 5204T(d)(1) provides that the initial decision becomes the Board's final decision as to a party upon issuance by the Secretary of a notice of finality. Rule 5204T(d)(2) provides that the Secretary shall issue the notice of finality no later than twenty days after the lapsing of the time period for filing a petition for Board review (as described in Rule 5460T), unless one of the two conditions described in Rule 5204T(d)(3) has occurred. Rule 5204T(d)(3) provides that the Secretary shall not issue a notice of finality as to any party who has filed a timely petition for Board review or with respect to whom the Board, on its own motion, has ordered review of the initial decision pursuant to Rule 5460T(b).

Rule 5205T—Settlement of Disciplinary Proceedings Without a Determination After Hearing

Rule 5205T governs certain matters related to possible settlement of disciplinary proceedings. The rule is adapted from Rule 240 of the Commission's Rules of Practice.

Rule 5205T provides that any person who is or is to be a party to a disciplinary proceeding may at any time propose in writing an offer of settlement. The rule imposes requirements for the content of the offer, and requires that it be signed by the person making the offer, not by counsel.

Rule 5205T(c)(1) requires that the Division Director the offer to the Board along with a recommendation concerning the offer, except that, if the recommendation is unfavorable, the Director shall not present the offer to the Board unless the person making the offer so requests.

Rules 5205T(c)(2)–(3) set out various matters that the person making the offer

must waive before the Board will consider the offer, including waiver of rights to hearings, rights to proposed findings of fact and conclusions of law, rights to proceedings before and an initial decision by a hearing officer, rights to post-hearing procedures, rights to judicial review, rights to have Board and Board staff observe separation of functions principles, and rights to claim bias or prejudice by the Board based on consideration of or discussions concerning the settlement offer.

Rule 5205T(c)(4) provides that if the Board rejects the offer, the offer will be deemed withdrawn and will not constitute a part of the record. Rule 5205T(c)(4) further provides that rejection of the offer will not affect the continued validity of waivers of rights to claim bias or prejudice on the basis of discussions concerning the settlement offer.

Rule 5205T(c)(5) provides that Board acceptance of an offer will occur only upon the issuance of findings and an order by the Board.

A note to Rule 5205T points out that in hearings on disapproval of registration, settlement offers will be handled by the Director of Registration and Inspections.

Rule 5400T—Hearings

Rule 5400T provides for hearings to be held only upon order of the Board and to be conducted in a fair, impartial, expeditious and orderly manner. The rule is adapted from Rule 200 of the Commission's Rules of Practice.

Rule 5401T—Appearance and Practice Before the Board

Rule 5401T provides that a person may appear on his own behalf before the Board or may be represented by counsel. Rule 5401T further provides that a member of a partnership may represent the partnership and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. Rule 5401T(c) imposes certain procedural requirements related to representation and withdrawal.

Rule 5402T—Hearing Officer Disqualification and Withdrawal

Rule 5402T allows a party to make a motion for withdrawal of a hearing officer and governs the circumstances under which such a motion may be made and the time within which it must be made. Rule 5402T also provides for appointment of a replacement hearing officer in the event of withdrawal or disqualification. The rule is based on Rule 112 of the Commission's Rules of Practice and NASD Rule 9233.

Rule 5403T—*Ex Parte* Communications

Rule 5403T prohibits a hearing officer from having *ex parte* communications with a person or party, except to the extent permitted by law or by the Board's rules for the disposition of *ex parte* matters. The rule also prohibits a party from having *ex parte* communication with the Board or any Board member on a fact in issue, except as permitted by law or by the Board's rules. Rule 5403T(b) extends that restriction on *ex parte* communications not only to a party (including the interested division) but also to any Board staff that substantially assists the interested division on the particular matter, whether before or during the hearing.

Rule 5404T—Service of Papers by Parties

Rule 5404T requires service of papers on each party in a manner calculated to bring the paper to the attention of the party served.

Rule 5405T—Filing of Papers With the Board: Procedure

Rule 5405T governs procedures for filing papers with the Board.

Rule 5406T—Filing of Papers: Form

Rule 5406T governs the form of papers to be filed with the Board.

Rule 5407T—Filing of Papers: Signature Requirement and Effect

Rule 5407T requires every paper filed to be signed either by the party, if the party represents himself or herself, or by counsel if the party is represented by counsel. Because the Board expects most papers to be filed electronically, a note to the rule states that the signature should be scanned into an electronic document where practicable, but that otherwise certain indicia of electronic signature will suffice.

Rule 5408T—Motions

Rule 5408T describes procedures and length limitations related to motions and supporting briefs.

Rule 5409T—Default and Motions To Set Aside Default

Rule 5409T describes the circumstances that shall constitute a default and the procedure for seeking to set aside a default. The rule is adapted from Rule 155 of the Commission's Rules of Practice.

Rule 5410T—Extra Time for Service by Mail

Rule 5410T allows an additional three days, with respect to any computation of time, for service made by mail.