

Title 13: Gaming

Part 4: EXCLUSION OF PERSONS

Part 4 Chapter 1: IN GENERAL

Rule 1.1 Duty To Exclude.

No excluded person shall be permitted entry into any portion of a licensed gaming establishment. When a person is placed on the exclusion list by the Executive Director, such person shall be prohibited from contact of any kind with any licensed establishment unless and until a determination is made by the Commission or a court to the contrary. It shall be the duty of the licensee and of his employees to exclude or eject from a licensed establishment any excluded person when such licensee or employee knows or reasonably should know of the presence of such excluded person. It shall further be the duty of the licensee to inform the Executive Director in writing of the names of persons such licensee reasonably believes meet the criteria for placement on an Exclusion List.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-33*

Rule 1.2 Distribution And Availability Of Exclusion Lists.

The Commission shall maintain a list of persons to be ejected or excluded from licensed establishments. The list shall be distributed to each licensed establishment which shall acknowledge receipt of the list in writing. The list shall also be distributed to law enforcement agencies. The following information, to the extent known, shall be provided for each excluded person:

- (a) The full name and date of birth and all aliases;
- (b) A physical description;
- (c) The effective date the person's name was placed on the list;
- (d) A photograph, if available;
- (e) The person's occupation and his current home and business address; and
- (f) Such other information as deemed necessary by the Executive Director.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-33*

Rule 1.3 Criteria For Exclusion Or Ejection And Placement On An Exclusion List.

The Executive Director may place a person on the exclusion list pending a hearing if such person has:

- (a) Been convicted of a felony in any jurisdiction, of any crime of moral turpitude or of a crime involving Gaming;
- (b) Violated or conspired to violate the provisions of the Act relating to involvement in gaming without required licenses, or willful evasion of fees or taxes;
- (c) A notorious or unsavory reputation which would adversely affect public confidence and trust in gaming; or

(d) His name on any valid and current exclusion list from another jurisdiction in the United States.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-33*

Rule 1.4 Procedure For Entry Of Names.

(a) Upon a determination that a person comes under any one of the criteria listed in Part 4 Chapter 1 Rule 1.3, such person shall be deemed a candidate for exclusion and a petition for exclusion may be filed by the Executive Director. Such petition shall include the identity of the candidate and the nature and scope of the circumstances or reasons that such person should be placed on the exclusion list. The petition shall also notify such person of the availability of a hearing by the Commission pursuant to Section 20 of the Act. Notice of the petition must be given pursuant to Section 19 of the Act.

(b) If the Commission or a subsequent judicial review finds in favor of the candidate or excluded person, then his name shall be removed from the exclusion list and his exclusion shall be terminated as of the date of the action by the Commission or the court. If the finding is against the candidate or excluded person, his name shall be placed on the exclusion list. If no hearing is requested, the person's name shall be placed on the exclusion list.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-33*

Rule 1.5 Petition For Removal From Exclusion List.

Any person who has been placed on any exclusion list may petition the Commission in writing and request that his name be removed from the list.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-33*

Part 4 Chapter 2: INVESTIGATIONS

Rule 2.1 Investigation Of Gaming Establishments, Generally.

A license, registration, finding of suitability, or other affirmative approval granted by the Commission to any person authorizing that person to have any involvement in the gaming industry is a revocable privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder. The Commission and the Executive Director shall observe the conduct of all such persons to the end that unqualified or unsuitable persons or persons whose operations are conducted in an unsuitable manner shall not be involved in the gaming industry in the State of Mississippi.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-33*

Rule 2.2 Access To Premises And Production Of Records.

(a) No applicant or any person licensed, registered, found suitable or approved by the Commission shall neglect or refuse to produce records or evidence or to give information upon proper and lawful demand by any Commission member, the Executive Director or any agent of the Commission or the Executive Director, or shall otherwise interfere or attempt to interfere with any proper and lawful efforts

by the Commission, the Executive Director or any agent to obtain such information.

(b) Each gaming licensee, licensed manufacturer, and licensed distributor or seller shall immediately make available for inspection by any Commission member, the Executive Director, or any agent, all papers, books and records produced by any gaming business and all portions of the premises upon which gaming is conducted or where gambling devices or equipment are manufactured, sold or distributed.

(c) The Executive Director or Commission may require any person licensed, found suitable, registered, or approved by the Commission to appear and testify before them or their agents with regard to any matter within their jurisdiction. Such testimony shall be under oath and may embrace any matters which the Executive Director, the Commission or their agents deem relevant to the discharge of their official duties. Any person required to appear and testify shall have the right to be represented by counsel. Any testimony so taken may be used by the Executive Director as evidence in any proceeding or matter then before him or the Commission or which may later come before him or the Commission. Failure to appear and testify fully at the time and place designated, unless excused, shall constitute grounds for revocation or suspension of any license, finding of suitability, registration or approval held by the person summoned, his principal, or employer.

(Adopted: 9/25/1991.)

Source: *Miss. Code Ann. § 75-76-33*

Rule 2.3 Orders To Show Cause.

The Executive Director may issue an Order to Show Cause why a license, finding of suitability, registration or approval granted by the Commission should not be limited, conditioned, suspended or revoked or why the person licensed, found suitable, registered, or approved should not be fined by the Commission. The Order to Show Cause must set forth the basic facts alleged to constitute a violation of the Gaming Control Act or these regulations and notify the person licensed, found suitable, registered or approved of his right to respond to the allegations in writing within twenty (20) days of the receipt of the Order to Show Cause. The time for response may be extended by the Executive Director upon written request. The response shall be confidential but may be provided to the Commission or any hearing examiner appointed by the Commission in subsequent disciplinary proceedings.

(Adopted: 09/25/1991; Amended: 06/28/1993; Amended: 10/22/1998.)

Source: *Miss. Code Ann. § 75-76-33*

Part 4 Chapter 3: DISCIPLINARY PROCEEDINGS

Rule 3.1 Complaint.

If the Executive Director believes that any person licensed, found suitable, registered or approved by the Commission should have his license, finding of suitability, registration or

approval limited, conditioned, suspended or revoked, or should be fined by the Commission, he shall file a complaint with the Commission setting forth the facts constituting reasonable cause for the disciplinary action sought.
(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-103*

Rule 3.2 Service Of Complaint. The Executive Director shall cause the complaint to be served upon the respondent by registered or certified mail, or personally. Proof of service may be provided by a certificate or affidavit of service, which shall be signed by the person effecting service and which shall specify the date and manner of service. (Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-107*

Rule 3.3 Appointment And Authority Of Hearing Examiner.

(a) Upon receipt of the complaint, the Commission shall appoint a hearing examiner pursuant to Miss. Code Ann. §75-76-103(3).

(b) The hearing examiner shall review the complaint and all matters submitted in support thereof and the respondent's answer, if any, and shall schedule a hearing as soon after receipt of the respondent's answer as practicable.

(c) The hearing examiner may issue rulings on discovery issues, scheduling matters, protective orders, admissibility of evidence, and other procedural or pre-hearing matters. The hearing examiner's rulings are appealable to the Commission only in accordance with the principles of finality applicable in the courts of the State of Mississippi.

(d) The hearing examiner may alter any of the time periods provided by these regulations, upon his own initiative or upon a motion by a party or other person affected for good cause shown.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. §§ 75-76-103, 75-76-27*

Rule 3.4 Ex Parte Communications.

(a) Unless required for the disposition of ex parte matters authorized by law:

1. A party or his representative shall not communicate directly or indirectly in connection with any issue of fact or law related to a proceeding under this regulation, with the hearing examiner or any member of the Commission, except upon notice and opportunity to all parties to participate; and

2. The hearing examiner or a member of the Commission shall not communicate, directly or indirectly, in connection with any issue of fact or law related to a proceeding under this regulation, with any party or his representative, except upon notice and opportunity to all parties to participate;

(b) This section shall not preclude:

1. The hearing examiner or any member of the Commission from consulting with Commission counsel or supervisory counsel concerning any matter before the Commission; or

2. A party or his representative from conferring with the hearing examiner, the Chairman, or Commission counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. §§ 75-76-27, 75-76-107*

Rule 3.5 Appearance Through Counsel.

(a) Parties to proceedings governed by this regulation may appear personally or through an attorney, except that a party must personally attend any hearing on the merits unless his attendance has been waived, in writing, by the hearing examiner or the Chairman.

(b) When a party has appeared through an attorney, service of all notices, motions, orders, decisions and other papers shall thereafter be made upon the attorney, unless the party requests otherwise in writing.

(c) When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests, and other papers on behalf of the party, including a request for subpoenas.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-111*

Rule 3.6 Pre-hearing Conferences; Scheduling.

(a) After the respondent files an answer to the complaint, the hearing examiner may direct the parties to participate in a conference or conferences before the hearing on the merits, for such purposes as expediting the disposition of the action, resolving discovery issues, and facilitating the settlement of the case.

(b) The participants at any pre-hearing conference under this section shall be prepared to consider and take action with respect to any or all of the following, as determined by the hearing examiner:

1. The formulation and simplification of the issues;
2. The necessity or desirability of amendments to the complaint or answer;
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the hearing examiner on the admissibility of evidence;
4. The avoidance of unnecessary proof and of cumulative evidence;
5. The identification of witnesses and documents, the need and schedule for filing and exchanging pre-hearing briefs, and the date or dates for further conferences and for the hearing on the merits;
6. The possibility of settlement;
7. The disposition of pending motions;
8. The possibility that all evidence can be submitted by affidavits, transcripts, and other documents; and
9. Such other matters as may aid in the disposition of the action.

(c) After any conference held pursuant to this regulation, the parties shall set forth in a written stipulation, to be filed with the hearing examiner, any matters no longer in dispute. As to those matters for which no agreement has been reached, but which require a ruling from the hearing examiner, the hearing examiner shall enter an order reciting the ruling.

(d) At any time considered appropriate by the hearing examiner, or at the request of a party, the hearing examiner may enter a scheduling order that sets the date for the hearing on the merits and other hearings deemed necessary or appropriate by the hearing examiner and that limits the time within which the parties may:

1. Amend the complaint or answer without leave of the hearing examiner;
2. File pre-hearing motions;
3. Complete discovery;
4. File pre-hearing briefs.

(e) This section shall not be interpreted to give any party or other person a right to a pre-hearing conference with the hearing examiner. The hearing examiner may direct the parties to participate in a pre-hearing conference without the hearing examiner's presence. The hearing examiner may at any time enter an order on any matter delegated to him, without consulting the parties and without granting oral argument.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-125*

Rule 3.7 Discovery.

(a) Within 20 calendar days after the service of the answer by the first answering respondent, and thereafter as each respondent answers the complaint, the parties shall confer for the purpose of complying with Subsection (b) of this Section.

(b) At each conference the parties shall:

1. Exchange copies of all documents then reasonably available to a party which are then intended to be offered as evidence in support of the party's case in chief;
2. Identify, describe, or produce all tangible things, other than documents, then reasonably available to a party which are then intended to be offered as evidence in support of the party's case in chief, and upon request, arrange for the opposing parties to inspect, copy, test, or sample the same under the supervision of the parties; and
3. Exchange written lists of persons each party then intends to call as a material witness in support of that party's case in chief. Each witness shall be identified by name, if known, position, business address, and a brief description of the purpose for which the witness will be called. If no business address is available, the party shall provide a home address for the witness, or shall make the witness available for service of process. For the purpose of this paragraph, a "material witness" is a person whose testimony relates to a genuine issue in dispute which might affect the outcome of the proceeding.

(c) In addition to the documents required to be produced by the Executive Director pursuant to subsection (b) of this Section, the Executive Director shall provide to a respondent who requests the same, a copy of any formal statement given to the Executive Director or his agents by that respondent during the Executive Director's investigation of the matters contained in the complaint, in accordance with this subsection.

1. Where the respondent is a corporation, partnership, or other association, the Executive Director shall provide to the requesting respondent, a copy of any formal statement made by officers or directors of the corporation, general partners of the partnership, or managing agents of the association, unless any such statement was given in confidence.
2. If any statement governed by this subsection is embodied or included in a report, summary, or other document which is not otherwise required to be produced by this

Regulation, the Executive Director may produce only an excerpt of such report, summary, or document which contains the statement.

3. For the purpose of this subsection, a "formal statement" is a statement given to the Executive Director or his agent by a person knowing he is speaking to a government official or agent, and which is either signed by the person giving the statement, or given under oath or affirmation such as in an investigative hearing. The term does not include discussion, conversations, or other statements obtained surreptitiously; or memoranda, notes, or other internal documents made by the Executive Director, an attorney for the Executive Director, or an agent of the Executive Director.

(d) In addition to the other materials required to be produced by the Executive Director, the Executive Director shall make arrangements with a respondent who requests the same for the respondent to inspect, copy, test, or sample any other documents or tangible things the Executive Director seized from or which belong to that respondent. Such inspection, copying, testing, or sampling shall be conducted under the supervision of a representative of the Executive Director.

(e) The inspection, copying, sampling, or testing of any evidence or other matter pursuant to subsections (b) and (d) of this Section, shall be accomplished without the alteration or destruction of the evidence or evidentiary value of the matter, either in whole or in part, except as otherwise ordered by the hearing examiner upon a finding that extraordinary circumstances exist. Such destruction or alteration shall not be permitted if it would prejudice any party to the action or any other law enforcement or administrative agency.

(f) It shall be a continuing obligation of the parties to produce documents, witness lists, and other matters governed by this Section as such become identified by and available to the parties. A party may amend its responses to the requirements of this section by informing the adverse party that documents previously produced or witnesses previously listed, will not be introduced in that party's case in chief.

(g) The hearing examiner may order the parties to submit periodic reports regarding the parties' compliance with this Section.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-125*

Rule 3.8 Confidential And Privileged Materials.

(a) The Executive Director shall not produce documents in his possession if prohibited by state or federal law. If the Executive Director intends to introduce any such document in his case in chief, the Executive Director shall inform the hearing examiner and the hearing examiner shall make appropriate orders regarding dissemination of such documents. The hearing examiner may prohibit the admission of the evidence, or make such orders as he deems necessary to limit dissemination of the document.

(b) A respondent shall not further disseminate confidential or privileged materials except to counsel of record in the action and necessary staff employed by counsel. Upon the conclusion of the action, the respondent shall return all such materials and copies to the Executive Director.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-133*

Rule 3.9 Depositions.

- (a) A party wishing to take the deposition of a material witness residing within or without the State of Mississippi who will be unavailable to testify at the hearing pursuant to Miss. Code Ann. §75-76-109 (2), shall file a motion with the hearing examiner setting forth the witness' name, position, business or home address, a sufficient description of the purpose for which the witness will be called to enable the hearing examiner to determine the materiality of the witness, and the reason the witness will be unavailable to testify at the hearing.
- (b) Any other party may file a written opposition to the motion within five (5) days after receipt of the motion.
- (c) If the hearing examiner finds that the witness is a material witness and that he will be unavailable to testify at the time of the hearing, the hearing examiner shall order the deposition to be taken upon such terms and conditions as he deems appropriate.
- (d) A deposition of a non-party witness may be compelled by subpoena.
- (e) Depositions shall be taken before an officer authorized to administer oaths. A deposition shall not be taken before a person who is a relative, employee, attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is interested in the proceeding.
- (f) Testimony shall be taken upon oath or solemn affirmation. Unless the hearing examiner orders otherwise, the testimony shall be reported by stenographic means. The cost of transcription shall be borne by the party requesting the deposition. Such party shall provide a copy of the transcript to all parties interested in the proceeding.
- (g) Unless the parties and the witness agree otherwise, a deposition shall not take place on less than fifteen (15) calendar days' notice.
- (h) A deposition may be used in a proceeding governed by this regulation for the same or similar purposes as depositions may be used in a court of law, or for any other purpose allowed by the hearing examiner.
- (i) Objection may be made at the hearing on the merits to receiving into evidence any deposition or a part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. If a deposition is received in evidence, any party may rebut any relevant evidence contained in the deposition.
- (Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-109*

Rule 3.10 Subpoenas.

- (a) The hearing examiner shall issue subpoenas, including subpoenas duces tecum, upon the request of a party, in accordance with this Section.
- (b) Subpoenas may be issued only for the following purposes:
1. To compel a non-party witness to appear and give oral testimony at a deposition as provided by Section 9 of this regulation; or
 2. To compel any person to appear at the hearing on the merits of the case, to give testimony, or to produce documents or other tangible things.
- (c) Subpoenas shall be submitted to the hearing examiner for issuance on a form approved by the Commission. Concurrently with the submission of the subpoena to the hearing examiner, the requesting party shall serve a copy on all of the parties to the proceeding and shall file proof of such service with the hearing examiner.
- (d) Subpoenas will not be issued in blank. A subpoena submitted for issuance must contain the title and number of the case, the name of the person to whom it will be directed, the date, time

and place of hearing or deposition, and the name and signature of the requesting party or his attorney. A subpoena duces tecum must, in addition, contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.

(e) Unless the witness agrees otherwise, a subpoena issued for the purposes provided by subsection (b)(2) must be served by the requesting party at least ten (10) calendar days prior to the hearing. A subpoena will be issued during the hearing or on less than ten (10) days notice only upon order of the hearing examiner for reasonable cause shown by the requesting party.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-109*

Rule 3.11 Protective Orders.

Upon motion by a party or by a person to whom a subpoena is directed, or from whom discovery or testimony is sought, the hearing examiner may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) That a subpoena be quashed or modified;

(b) That the discovery not be had, or that it be had only on specified terms and conditions, including a designation of the time or place;

(c) That certain matters not be inquired into or produced, or that testimony or production be limited to certain matters;

(d) That a deposition be conducted with no one present except persons designated by the hearing examiner, or that a deposition transcript be sealed; or

(e) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-109*

Rule 3.12 Discovery Disputes.

The parties shall make every effort to resolve disputes regarding discovery. Disputes that are unresolved may be brought to the hearing examiner for resolution by way of a motion to compel discovery, motion for protective order, or other appropriate motion. The disputed discovery is not stayed during the pendency of such motion, unless the hearing examiner so orders. The filing of such motion shall not extend the time to complete discovery, nor provide cause for a continuance of the hearing on the merits, unless the hearing examiner otherwise orders.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-109*

Rule 3.13 Sanctions.

If any party or his attorney fails reasonably to comply with any provision of this regulation, the Gaming Control Act, or any order entered, regarding any matter, including discovery, the hearing examiner upon motion or upon its own initiative, may impose upon such party or attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

- (a) An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to this regulation or order of the hearing examiner;
 - (b) An order that designated facts shall be taken to be established;
 - (c) An order that the disobedient party may not support or oppose designated claims or defenses;
 - (d) An order striking out pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party;
 - (e) The initiation of contempt proceedings as provided by Miss. Code Ann. §75-76-117.
- (Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-117*

Rule 3.14 Conduct Of Hearings.

In addition to the procedures prescribed by statute, the following procedures will apply when appropriate:

- (a) The respondent will be allowed to present and argue any legal objections to the complaint set forth in the answer; the Executive Director may thereupon present its answering argument; and thereafter the respondent may present rebuttal argument. The matter will then be submitted to the hearing examiner for decision. The hearing examiner may rule upon such objections immediately or take the matter under advisement and proceed with the hearing.
 - (b) The Executive Director will present his opening statement on the merits. The respondent will then be permitted to make an opening statement of the defense, or he may reserve the same until commencement of the presentation of the defense.
 - (c) The Executive Director will then present its case in chief in support of the complaint.
 - (d) Upon conclusion of the Executive Director's case in chief, the respondent may move for dismissal of the complaint. The hearing examiner may hear arguments on the motion, or may grant, deny, or reserve decision thereon, with or without argument.
 - (e) If no motion to dismiss is made, or if such motion is denied or decision reserved thereon, the respondent shall thereupon present the case for the defense.
 - (f) Upon conclusion of the respondent's case, the Executive Director may present its case in rebuttal.
 - (g) Upon conclusion of the Executive Director's case in rebuttal, the Executive Director shall present its closing argument, the respondent may present answering argument, and thereafter the Executive Director may present rebuttal argument. Thereupon the matter will stand submitted for decision.
 - (h) The hearing examiner may ask questions of witnesses, and may request or allow additional evidence at any time, including additional rebuttal evidence.
 - (i) The burden of proof is at all times on the licensee, applicant or aggrieved party to show compliance with the Gaming Control Act and Mississippi Gaming Commission Regulations.
 - (j) Hearing Examiners shall be chosen as follows; either from the Attorney General's Office, a contracted private party or an individual whose expertise is relevant to properly interpret and enforce the Gaming Control Act and Mississippi Gaming Commission Regulations. Hearings may be conducted by telephone if the parties agree.
- (Adopted: 09/25/1991; Amended: 03/29/1993.)

Source: Miss. Code Ann. §§ 75-76-117, 75-76-119, 75-76-123, 75-76-125

Rule 3.15 Evidence: Admissibility.

(a) For the purpose of this Section, evidence is reliable if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) In hearings governed by this regulation, the technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.

(c) By way of illustration only, those matters that would be admissible in a court of law are hereby deemed to be reliable, in addition to those matters that satisfy the standards set forth in subsections (a) and (b) of this Section.

(d) Irrelevant or unduly repetitious evidence shall be excluded upon request of a party or the hearing examiner's own initiative.

(Adopted: 09/25/1991.)

Source: Miss. Code Ann. § 75-76-111

Rule 3.16 Evidence: Authentication And Identification.

(a) Documentary and other physical evidence may be authenticated or identified by any reasonable means, by evidence or other showing that the matter in question is what its proponent claims it to be.

(b) By way of illustration only, those matters that would be accepted as authentic in a court of law, are hereby deemed to be authentic, in addition to matters that satisfy the standard set forth in subsection (a) of this section.

(Adopted: 09/25/1991.)

Source: Miss. Code Ann. § 75-76-111

Rule 3.17 Failure Or Refusal To Testify.

(a) If a respondent fails to testify in his own behalf or asserts a claim of privilege with respect to any question propounded to him, the hearing examiner may infer therefrom that such testimony or answer would have been adverse to his case.

(b) If any person controlling, controlled by, or under common control with, or employed by, or an agent of, a respondent fails to respond to a subpoena, or asserts a claim of privilege with respect to any question propounded to him, the hearing examiner may, taking into account all of the circumstances, infer that such testimony would have been adverse to the respondent.

(c) If, on a ground other than the properly invoked privilege against self-incrimination, a respondent fails to respond to a subpoena, or fails or refuses to answer a material question propounded to him, the hearing examiner may deem such failure or refusal to be independent grounds for granting the relief requested by the Executive Director in the complaint with respect to that respondent.

(Adopted: 09/25/1991.)

Source: Miss. Code Ann. §§ 75-76-109, 75-76-111

Rule 3.18 Amended Or Supplemental Pleadings.

(a) Upon motion of a party made before submission of the case for decision, the hearing examiner may permit the filing of an amended or supplemental complaint or answer, including amended or supplemental pleadings that conform to the evidence presented at the hearing.

(b) If such motion is granted, all parties shall be permitted to introduce additional evidence with respect to any new matter contained in such amended or supplemental pleadings.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-115*

Rule 3.19 Motions.

(a) All motions shall be in writing, unless made during a hearing.

(b) A motion shall state with particularity the grounds therefore, shall be supported by a memorandum of points and authorities, and shall set forth the relief or order sought.

(c) Every written motion other than one which may be considered ex parte shall be filed with the hearing examiner and served by the moving party upon the adverse party or as the hearing examiner directs.

(d) An opposing party shall have ten (10) calendar days after service of the motion within which to file and serve a memorandum of points and authorities in opposition to the motion.

(e) The moving party shall have five (5) calendar days after service of the opposing memorandum to serve and file a reply memorandum of points and authorities if he so desires.

(f) If a motion or opposition is served by mail, three (3) calendar days shall be added to the time periods specified herein for response.

(g) The failure of a moving party to file a memorandum of points and authorities in support of a motion shall constitute consent to the denial of the motion. The failure of an opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-119*

Rule 3.20 Continuances.

Continuances will not be granted except for good cause shown. A motion to continue a hearing must be made at least ten (10) calendar days prior to the hearing date.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-119*

Rule 3.21 Defaults.

Failure of a respondent to file an answer to the complaint or to request a hearing, or to appear personally at a hearing on the merits without having obtained a waiver of appearance, shall constitute an admission of all matters and facts contained in the complaint filed with respect to such respondent, and shall be deemed a waiver of the right to an evidentiary hearing. In such cases the hearing examiner may take action based upon such admission or upon any other evidence, including affidavits, and without any further notices whatever to the respondent.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-107*

Rule 3.22 Recommendation Of The Hearing Examiner And Decision Of The Commission.

All findings of fact made by the hearing examiner or the Commission in disciplinary actions shall be based upon the preponderance of the evidence.

(Adopted: 09/25/1991.)

Source: *Miss. Code Ann. § 75-76-119*