

Information About Your Administrative Hearing Office of the Commissioner of Insurance

Class 1 – Denial of License/Request for Review

Class 2 – Disciplinary Proceeding

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Office of the Commissioner of Insurance
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Introduction

In general, there are two ways to become a party to an administrative hearing with the Office of the Commissioner of Insurance (OCI):

1. You request a hearing to review a decision of OCI (or another entity such as the Wisconsin Compensation Rating Bureau or the Wisconsin Insurance Plan). This is generally a class 1 proceeding and you are named the "Petitioner."
2. A disciplinary complaint is filed that names you as the "Respondent." This is a class 2 proceeding.

This brochure has been prepared by OCI to answer some common questions about the administrative hearing process. **This general information is not intended to substitute for the legal advice and assistance of an attorney licensed to practice law in Wisconsin.**

Chapter 227 of the Wisconsin Statutes is the general law which governs administrative hearings. (<http://legis.wisconsin.gov/statutes/Stat0227.pdf>)

The administrative rules set forth in Chapter Ins 5 of the Wisconsin Administrative Code specifically govern OCI administrative hearings. (<http://legis.wisconsin.gov/rsb/code/ins/ins005.pdf>)

The Notice of Hearing

1. Application denial/request for review

In a class 1 proceeding, the Notice of Hearing and the denial letter set out the

issues to be resolved in deciding your case. You are a party to this proceeding called the Petitioner. In license denial cases, an attorney from OCI represents OCI, which is the other party in the case.

2. Disciplinary proceeding

In a class 2 proceeding, the Notice of Hearing (and the order, if you requested a review of the order) charges you with violation(s) of a rule or statute governing professional conduct and lists the specific acts which you are alleged to have committed which justify disciplinary action. In legal terms, the Notice of Hearing (sometimes referred to as the "complaint") is the formal document that gives you notice of what you must be prepared to defend and answer. The mailing address for the OCI attorney is provided in the Notice of Hearing.

Person Conducting the Hearing

The person who conducts the hearing is called the administrative law judge or "ALJ." The ALJ is an attorney and usually an employee of the Division of Hearings & Appeals authorized to conduct administrative hearings. The ALJ is prohibited from speaking with the OCI attorney about your case in your absence. The ALJ must be impartial and may not be someone who has had prior personal involvement with your case.

Your Right to be Represented

You may be represented prior to and at the hearing by an attorney licensed to practice law in Wisconsin, but you are not required

to have one. You must make this decision, and if you decide to be represented in order to protect your legal rights, you must choose your own attorney. Neither the OCI attorney, the opposing party/attorney (if there is one), nor the ALJ is allowed to recommend an attorney. The State Bar of Wisconsin offers a lawyer referral service that you may call at 800-362-9082.

Do not wait until the last minute to decide if you want an attorney to represent you. If you decide to hire an attorney, begin looking for one immediately. Many attorneys will not take a legal matter at the last minute. Also, the ALJ is unlikely to postpone your hearing to give you additional time to search for an attorney.

The Answer

In a disciplinary case, you may be required by the Notice of Hearing to file a written Answer to the Notice of Hearing within the time period specified in the Notice of Hearing (usually about 20 days). Filing means that the ALJ assigned to your case receives the original and a copy is sent to the other parties whose names appear on the Notice of Hearing, in addition to the OCI attorney. If meeting the deadline for filing an Answer poses a problem for you, you should request an extension of time from the ALJ.

If you choose to prepare your own Answer, it is important that you respond in writing to every numbered paragraph of the Notice of Hearing and that you sign the Answer.

You may:

- “Admit” the allegation, which means you agree with the entire statement in the paragraph;

- “Deny” the allegation, which means you disagree with the entire statement in the paragraph (unless you specify a portion of the allegation with which you agree);
- If you agree with part of the allegation but disagree with another part of the allegation, you must “admit” the part you agree with and “deny” the part you disagree with; or
- State that you have no basis for admitting or denying the allegation or stated facts, essentially saying that you don’t know.

You may add any explanation which you think is appropriate in your Answer. You may also raise one or more reasons which constitute a legal defense to the charges.

If you do not file an Answer, you will likely be found “in default,” which means that the ALJ will issue a decision as if you had filed an Answer admitting all the paragraphs of the Notice of Hearing. If you only respond to selected allegations, the others will be treated as if you admitted them.

Prehearing Conference(s)

The ALJ will usually conduct at least one prehearing conference. The prehearing conference is generally held by telephone. The ALJ will call you at the telephone number provided in your hearing request or as listed in your contact information. You are required to appear by telephone at the prehearing conference and, if you know you cannot appear, you must contact the ALJ promptly to ask for a rescheduled date.

The purposes of the prehearing conference are to:

1. To identify the issues to be addressed and to clear away any misunderstandings;
2. To agree on as many of the undisputed facts as possible;
3. To set a timetable to prepare for the hearing, set deadlines for the parties to exchange exhibits and witness lists, and to schedule the hearing date(s).

At the prehearing, you may ask any questions you have about how the hearing will be conducted and the rules that the parties must follow at the hearing.

In addition, if you and the opposing party have not already discussed the possibility of settling the case without a hearing, you may be encouraged to do that.

Communicating with the ALJ

Even though you may contact the ALJ in certain circumstances, you should avoid what is called “ex parte” communication. As the person who must listen impartially to the evidence, the ALJ must only consider facts and arguments which are presented to him or her at a time when both sides are present. Therefore, you may contact the ALJ with a procedural question, but any discussion of the specific facts or law that applies to your case can only occur during a conference in which both parties participate. If you write to the ALJ you must also, at the same time, send a copy to the other party.

Discovery and Documentary Evidence

You may want to use documents or other physical evidence to support your position. Under the rules of procedure for cases like this, each party has the right to know (with certain exceptions) the other party’s evidence. The process to find out about the other party’s case is called “discovery” and may include the following:

Requests – To provide copies of documents.

Depositions – Before the hearing, a party or another person answers questions, under oath, from a party or his or her attorney.

Interrogatories – Written questions are asked of an opposing party about the facts in the case and the answers must be sworn to under oath.

Admissions – A party is asked to agree or disagree or say they don’t know about statements of fact prepared by an opposing party. The answers must be sworn to under oath.

If you need help understanding these procedures or if you encounter difficulty obtaining information to which you think you are entitled, you should contact an attorney or you may contact the ALJ (with a copy to the opposing party) or request the ALJ schedule a motion or prehearing to discuss the issue.

Witnesses and Subpoenas

You may want to call one or more witnesses to offer testimony to support your position or to identify and explain documents that are relevant to your case. If so, you are responsible for having your witness(es) appear. You may arrange for witnesses to appear voluntarily at the hearing or, if a person will not agree to appear voluntarily, you may order him or her to appear for you by a subpoena. An attorney who you have hired to represent you can prepare a subpoena on your behalf or you may contact the ALJ.

If the ALJ issues a subpoena on your behalf, you must then arrange to have the subpoena served on the witness. You can do this yourself as long as you prepare an affidavit of service, or you can have this done by the sheriff's office or a private process server. In addition to the subpoena, you must include payment to the witness of a daily fee (currently \$5/day) and a payment for mileage (currently \$.20/mile each way) for appearing at the hearing. [s. 814.67(1), Wis. Stat.] It is also a good idea to attach a map, or directions to the hearing location. A witness may be allowed to testify by phone if you and the other party and the ALJ all agree to this well before the hearing.

Because each party has a right to know what evidence will be presented by the other party, the ALJ usually orders each party to provide a list of witnesses and to send copies of any documents the party may use in a hearing to the other party.

You should know that a party, by listing a potential witness, is not required to call that person at the hearing. Therefore, if a

party lists a witness whom you definitely wish to have testify, you should contact that other party to make sure the witness will be there. If there is any doubt, you must take the responsibility to have the person appear as your witness.

Special Accommodations

If you need special accommodations at the hearing due to a disability, please contact the ALJ with specific information on your request within 10 days of the date of the prehearing conference and he or she will attempt to arrange the hearing so that you can participate fully.

Settlement

Some cases are settled by agreement without a hearing. You are free to respond to or to contact the OCI attorney listed in the Notice of Hearing to discuss the possibility of compromise or settlement. The rules encourage settlement discussions by prohibiting their disclosure to the ALJ if the case goes to hearing. If you settle the matter, you will sign an agreement called a "stipulation" setting forth the terms of settlement. A copy of this stipulation will be sent to the ALJ, who will then formally dismiss the scheduled hearing.

The Hearing

Appearing at the Hearing

If your case is not settled or rescheduled, you must appear in person for the hearing on the date specified in the Notice of Hearing. If you do not appear, one of two things will occur. If you appealed the agency's action, the ALJ will interpret your absence

to mean that you no longer wish to pursue the matter. In this case, the hearing will be dismissed and the original denial or order will become final and not appealable. If the other party requested the hearing, you will be in “default” and the rules of procedure allow the ALJ to interpret your absence as your admission that all of the allegations contained in the Notice of Hearing are true. In that event, the ALJ will enter an order in favor of the other party, usually granting the relief requested by the other party in the Notice of Hearing.

How a Hearing is Conducted

The hearing will be conducted much like a trial without a jury. The ALJ will preside as judge (ruling on procedure, evidence and objections) and as fact-finder.

Each party may make an opening statement (a short statement explaining the party’s general position) and then present evidence. Usually the OCI attorney first presents his or her witnesses and other evidence, and then you may do the same. Each witness can be questioned by both parties: first the party who called the witness (direct examination), then the other party (cross examination), and next each party gets an opportunity to ask follow-up questions (re-direct and re-cross examination). Finally, the ALJ may ask questions of the witness.

Evidence

The evidence may be in documents or oral testimony from witnesses. Witnesses will be sworn to tell the truth. You may testify yourself, and you may be called as a witness by the OCI attorney (or other party to the case).

Some rules of evidence limit what can be introduced at the hearing, but no attempt will be made to explain all the rules here. However, you should present evidence which relates to facts which will assist the ALJ/Insurance Commissioner in deciding the issues involved in your case. If you anticipate any problem, such as whether a certain document will be admitted or certain testimony allowed, you or your attorney may wish to raise the issue at a prehearing conference or bring a motion to have the issue decided by the ALJ prior to the hearing.

Closing Statement/Written Briefs

After all the evidence has been presented, each side may make a closing argument, which is an opportunity to comment on the evidence that has been presented, such as explaining how much credit or weight should be given to certain testimony or explaining otherwise confusing evidence. Each side may also argue what the decision should be.

In a disciplinary case, the OCI has the burden of proving that the allegations in the Notice of Hearing are true and what the discipline or penalty should be for any violation(s) proven. In a licensing denial case the burden of proof is on you to establish that you qualify for an intermediary license or to prove that a mistake of fact or law was made in denying your application.

In some cases, you may be allowed to make and submit a written closing argument, called a “brief,” which sets forth the facts and laws you believe support your position. You may also argue for a particular outcome and against the other party’s position. The ALJ will discuss with

the parties whether they wish to provide written briefs and the timetable for their submission.

Each hearing is recorded, either digitally or by a court reporter (if one or the other party hires and pays for a court reporter). You may purchase a copy of the digital record (CD) from OCI if you wish. If a court reporter is hired, you may purchase a copy of the typed transcript from the court reporting service.

Rescheduling, Continuing, Adjourning

If a good reason is shown by either party, the ALJ may reschedule the hearing and a telephone conference may be held to set a new date.

Once a hearing has started, the ALJ may continue it on another day if more time is necessary.

If your case settles, the ALJ will usually adjourn the hearing, not cancelling it entirely, but taking it off the calendar until the settlement agreement is signed by all parties and approved by the appropriate OCI representative.

The Decision

The final decision-maker in your case will generally be the Insurance Commissioner unless he or she designated the ALJ as the final decision-maker in your case. Once the hearing is completed, the ALJ is responsible for preparing a proposed decision that sets out the facts of the case, recites

the laws (statutes and administrative rules) that govern the case, and applies those laws to the facts. In a disciplinary action, the ultimate questions to be answered are whether the charges in the Notice of Hearing (or license denial letter in a license denial case) were proven, whether those charges constitute violations of the statute or rule in question, and, if so, what discipline or penalty would be appropriate. The discipline available includes suspension of your license for a period of time, limitations on your practice, revocation of your license, monetary forfeitures and/or restitution.

Any proposed or final decision must be in writing. If a written transcript is prepared and/or briefs are filed, the ALJ will usually write and issue his or her decision 30 to 90 days after the close of the hearing (or the filing of the transcript or the filing of the last brief if a transcript or briefs are filed).

Once the proposed decision is filed, it will be sent to you and the OCI attorney (or other party) and you will be notified of a time in which you may file written objections to be considered by the Insurance Commissioner before he or she makes the final decision. The final decision may be changed from the proposed decision, based on the Commissioner's independent review of the evidence and the parties' objections.

The final decision will be sent to all parties. You will have the right to appeal any final decision that is not in your favor to the circuit court.

Directions to OCI

GEF 3
125 South Webster Street
Madison, WI 53703-3474

From Chicago:

From I-90, exit onto State Highway 12/18 West. Proceed approximately five miles to the John Nolen Drive exit. John Nolen Drive will take you directly to the Monona Terrace Convention Center parking ramp. Watch for the signs. You may also continue on John Nolen Drive to Blair Street. Turn left at the lights onto Wilson Street.

Stay in the right-hand lane. Go to the lights at the corner of Wilson, Butler, and King streets. Turn right on to Butler Street. The OCI is located on the left in GEF 3. A handicap access ramp is available on Butler Street. See map on next page.

From the East (Milwaukee) or from the North (Minnesota):

Take I-90 or I-94 to Highway 30. From Highway 30 take Highway 151 (also named East Washington Ave., approximately three miles to State Capitol). Turn left on Butler (two blocks before the Capitol).

Cross Main Street at the stop sign. The OCI is located in the GEF3 complex on Butler Street. Handicap access is available on Butler Street. See below for more details on available public parking areas. See map on next page.

From the West and South (Middleton, Verona, or Oregon):

Take Highway 12 (the Madison Beltline) East to the John Nolen Drive exit. John Nolen Drive will take you directly to the Monona Terrace Convention Center parking ramp. Watch for the signs. You may

also continue on John Nolen Drive to Blair Street. Turn left at the lights on to Wilson Street.

Stay in the right-hand lane. Go to the lights at the corner of Wilson, Butler, and King streets. Turn right on to Butler Street. The OCI is located on the left in GEF3. A handicap access ramp is available on Butler Street. See map on next page.

Parking:

- Limited street parking is sometimes available but meters require coins.
- Public parking is available within 100 yards of the OCI at the Government East lot. See <http://www.cityofmadison.com/parking/parking.html> for the best details.
- Pre-arranged visitor parking for special needs may be available through staff with whom you are meeting. Please be sure to arrange this prior to your arrival. The visitor parking is accessed from Butler Street. You will be provided with details by your agency contact.
- Handicap parking is limited to city of Madison street parking. Please see <http://www.cityofmadison.com/parking/parking.html>.

Building access:

Enter the plaza level of the building at the Webster or Butler streets entrances (Butler for handicap access). Use the central elevators to access the second floor where the OCI reception desk is located. Receptionists will assist you from that point.

