

## **808 KAR 10:225. Administrative hearing procedures.**

RELATES TO: KRS Chapter 13B, 292.330, 292.460, 292.470, 292.500(1), (3), (9)

STATUTORY AUTHORITY: KRS 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.337(1), 292.390(3), and 292.410(2) authorize the commissioner to order the denial, suspension, or revocation of a registration or registration exemption of a broker-dealer, agent, investment adviser, investment adviser representative, or issuer agent for a violation of KRS Chapter 292. KRS 292.500(9) requires that an administrative hearing be conducted in accordance with KRS Chapters 13B and 292. KRS 292.500(3) authorizes the commissioner of the office to promulgate administrative regulations to implement the provisions of KRS Chapter 292. This administrative regulation establishes supplemental administrative hearing procedures for matters relating to a broker-dealer, agent, investment adviser, investment adviser representative, issuer agent, or security.

### Section 1. Definitions.

- (1) "Administrative hearing" is defined by KRS 13B.010(2).
- (2) "Commissioner" is defined by KRS 292.310(4).
- (3) "Department" means the Department of Financial Institutions.
- (4) "Hearing officer" is defined by KRS 13B.010(7).
- (5) "Party" is defined by KRS 13B.010(3).
- (6) "Person" is defined by KRS 292.310(10).

### Section 2. Complaint and Answer.

- (1) The office attorney may file a written complaint against a person if:
  - (a) The attorney believes that the person is violating or has violated a provision of KRS Chapter 292; and
  - (b) The commissioner has not entered an order against the person based on the same conduct or allegation.
- (2) The complaint shall:
  - (a) Describe the allegation made against the person;
  - (b) Request the commissioner to enter an appropriate order; and
  - (c) Comply with the requirements for notice of an administrative hearing established by KRS 13B.050(3)(c) through (h).
- (3) A person shall respond to the complaint by filing a written answer with the office. If an answer is not filed in accordance with subsection (4) of this section, the office attorney shall seek a final order from the commissioner granting the relief requested in the complaint.
- (4) An answer shall:
  - (a) Be filed within twenty (20) days of service of the complaint;
  - (b) Respond to each allegation in the complaint; and
  - (c) Include a request for an administrative hearing if the person:
    1. Does not agree that there has been a violation of KRS Chapter 292; or
    2. Believes that the requested action is not appropriate.
- (5) If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 13B and this administrative regulation. The notice of hearing required by KRS 13B.050 shall be sent to the parties after the request for an administrative hearing has been received.

### Section 3. Attorney Representation.

- (1) An attorney who represents a party shall send written notification to the office, the hearing officer, and each party stating:
  - (a) That the attorney is representing the party; and

- (b) The name, address, telephone number, and, if applicable, the facsimile number of the attorney and the client.
- (2) If there is a change in the information provided in the notice, the attorney shall send written notification of the change to the office, the hearing officer, and each party.
- (3) Withdrawal. An attorney who wishes to withdraw shall submit written notification stating that:
  - (a) The attorney is withdrawing;
  - (b) The client has been informed of the withdrawal; and
  - (c) The withdrawal is authorized by the rules of the Kentucky Supreme Court.

Section 4. Hearing Officers. If a hearing officer is disqualified, the commissioner shall assign another hearing officer within ten (10) days of the disqualification.

#### Section 5. Filings.

- (1) Each document filed with the office for an administrative hearing shall include a certificate of service. The certificate of service shall:
  - (a) Certify that the document was served as required by KRS 13B.080(2);
  - (b) Identify the method of service; and
  - (c) Be signed by the individual who served the document.
- (2) Pursuant to KRS 13B.080(2), a document sent by facsimile machine shall be considered served on a party on the date of the facsimile transmission if the:
  - (a) Document contains a statement that the:
    - 1. Document was served by facsimile machine; and
    - 2. Original of the document will be mailed to each party within five (5) business days of the date the facsimile was sent; and
  - (b) Party mails the original to the office within five (5) business days of the date the facsimile was sent.

#### Section 6. Motions.

- (1) A request for a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.
- (2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.
- (3) A party shall be given an opportunity to respond to a motion.

#### Section 7. Consolidation and Severance.

- (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:
    - (a) There are:
      - 1. Common questions of law or fact; or
      - 2. Identical issues or witnesses; and
    - (b) Consolidation is appropriate.
  - (2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.
- (23 Ky.R. 3459; Am. 24 Ky.R. 368; eff. 8-11-97; 2188; eff. 6-25-98; TAm 11-7-2012; Crt eff. 2-27-2020.)