

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
CONSUMER PROTECTION UNIT

Statutory Authority: 29 Delaware Code, Section 2521 (29 Del.C. §2521)

FINAL

ORDER

103 Consumer Protection Unit Administrative Enforcement Proceedings

A public hearing was held to receive comments related to the proposed amendment of rules relating to the enforcement of consumer protection laws. Notice was provided as required under the Administrative Proceedings Act 29 Del.C. §10115 in the *Register of Regulations* at 15 DE Reg. 166 (8/1/11) as well as in the *News Journal* and *Delaware State News* on July 27 and 28, 2011.

The Director of Consumer Protection conducted the public hearing which was held at 10 a.m. on September 21, 2011 in the Attorney General's Conference Room at the Carvel State Office Building, 6th floor, 820 N. French St., Wilmington, DE 19801.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written or verbal comment was received.

FINDINGS OF FACT BASED ON THE EVIDENCE AND INFORMATION SUBMITTED

As no comments have been submitted, there is no need for findings with respect to any issue raised by a comment.

DECISION AND ORDER

After considering the relevant statutes and pursuant to the authority in 29 Del.C. §2520, I hereby adopt the proposed amended regulations as published in 15 DE Reg. 166 (8/1/11).

EFFECTIVE DATE

The effective date shall be ten days following publication in the *Register of Regulations*.

SO ORDERED THIS 22nd day of September, 2011.

DEPARTMENT OF JUSTICE

Kevin M. Carroll, Director of Consumer Protection

103 Consumer Protection Unit Administrative Enforcement Proceedings

1.0 Construction of rules of practice and procedure.

- 1.1 Unless otherwise provided, these Rules of Practice govern Consumer Protection Unit ("CPU") administrative proceedings brought under 29 Del.C. §2523.
- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

2.0 Appearance and practice in administrative proceedings.

- 2.1 *Representing oneself.* In any proceeding, an individual may appear on his or her own behalf.
- 2.2 *Attorneys.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the State of Delaware. Attorneys who are not so admitted must apply for admission *pro hac vice* through Rule 2.3 below.
- 2.3 *Appearance pro hac vice.* Pursuant to Rule 72(a) of the Delaware Supreme Court Rules, attorneys who are not members of the Delaware Bar may be admitted *pro hac vice* in a proceeding in the discretion of the administrative hearing officer upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Pursuant to Delaware Supreme Court Rule 72(c),

Delaware Counsel for any party shall appear in the matter for which admission *pro hac vice* is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the matter and shall attend all proceedings before the hearing officer, unless excused by the hearing officer.

2.4 **Designation of address for service; notice of appearance; withdrawal.**

2.4.1 **Representing oneself.** When an individual first makes any filing or otherwise appears on his or her own behalf before a hearing officer in a proceeding, he or she shall file with the hearing officer or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

2.4.2 **Attorneys.** When an attorney first makes any filing or otherwise appears in a representative capacity before a hearing officer in a proceeding, he or she shall file with the hearing officer, and keep current, a written notice of appearance stating the name of the proceeding; the attorney's name, bar identification number, business address, telephone number, and electronic mail address; and the name and address of the person or persons represented.

2.4.3 **Withdrawal.** Withdrawal by any attorney shall be permitted only by written order of the hearing officer. A motion seeking leave to withdraw shall state with specificity the reason for such withdrawal.

3.0 Appointment of a hearing officer.

3.1 The Attorney General shall designate a Deputy Attorney General or a Special Deputy Attorney General (as set forth in subsection 3.3 below) outside the Fraud and Consumer Protection Division to act as the hearing officer in a particular CPU administrative case or indefinitely until the authority is transferred. ~~If no hearing officer has been designated, a Deputy Attorney General in the CPU initiating a complaint shall proceed in accordance with Rule 12.1 below.~~

3.2 This authority of the Attorney General to name a hearing officer may be delegated to any Deputy Attorney General outside the Fraud and Consumer Protection Division.

3.3 The Attorney General may appoint any member of the Delaware Bar as a Special Deputy Attorney General to act as an administrative hearing officer in any case brought by the CPU.

4.0 Disqualification and recusal of administrative hearing officer.

4.1 **Notice of disqualification.** If at any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor.

4.2 **Motion for withdrawal.** Any party who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not biased or otherwise disqualified, he or she shall so rule and shall continue to preside over the proceeding.

5.0 Ex parte communications.

5.1 No party to a proceeding, or counsel to or representative of a party to a proceeding, shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of that proceeding to the administrative hearing officer.

5.2 No administrative hearing officer with respect to a proceeding shall make or knowingly cause to be made to a party to that proceeding, or counsel to a party to that proceeding, an *ex parte* communication relevant to the merits of that proceeding.

6.0 Motions.

6.1 **Generally.** Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. All written motions shall be served in accordance with Rule 7.0, be filed in accordance with Rule 8.0, meet the requirements of Rule 9.0, and be signed in accordance with Rule 10.0. The hearing officer may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the hearing officer otherwise directs.

6.2 **Opposing and reply briefs.** Briefs in opposition to a motion shall be served and filed within 10 days after service of the motion. Reply briefs shall be served and filed within three days after service of the opposition.

- 6.3 *Length limitation.* A brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. Requests for leave to file briefs in excess of 10 pages are disfavored.

7.0 Service of papers by parties.

- 7.1 *Service initiating a proceeding.* At the outset of an administrative proceeding, the complaint and ~~any accompanying papers~~ a notice of the filing of the action shall be served on each respondent by:

7.1.1 personal hand delivery;

7.1.2 certified mail, return receipt requested, and by United States first class mail at the respondent's last known address. ~~The return of a return receipt signed by the respondent is not required for service to be effective;~~or

7.1.3 any form of service of process effective under Delaware Superior Court Civil Rule 4(f); or (d) service under Rule 7.2 below.

- 7.2 "Long-arm" service of process to initiate a proceeding. Any service of process that would be effective to create personal jurisdiction in the Superior Court under 10 Del.C. §3104 shall be effective to create personal jurisdiction in the Department of Justice administrative forum under these Rules.

7.23 Service of all other filings.

7.23.1 *When required.* In every administrative proceeding, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section.

7.23.2 *Upon a person represented by counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to Rule 2.0, service shall be made pursuant to paragraph 7.23.3 of this section upon counsel, unless service upon the person represented is ordered by the hearing officer.

7.23.3 *How made.* Service shall be made by delivering a copy of the filing. "Delivering" means:

7.23.3.1 Personal service by handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed, or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

7.23.3.2 Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;

7.23.3.3 Sending the papers through a commercial courier service or express delivery service; or

7.23.3.4 Transmitting the papers by facsimile machine or electronic mail transmission where the following conditions are met:

7.23.3.4.1 The persons serving each other by facsimile transmission or electronic mail transmission have agreed to do so in a writing, and

7.23.3.4.2 Receipt of each document served is confirmed electronically or by a manually signed receipt.

7.23.4 *When service is complete.* Personal service, service by U.S. Postal Express Mail or service by commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile or electronic mail transmission is complete upon confirmation of transmission.

8.0 Filing of papers with the hearing officer: procedures.

8.1 *When to file.* All papers required to be served by a party upon any person shall be filed with the hearing officer at the time of service. Papers required to be filed with the hearing officer must be received within the time limit, if any, for such filings.

8.2 *Where to file.* Filing of papers shall be made by filing the original papers with the hearing officer.

8.3 *To whom to direct the filing.* All motions, objections, applications or other filings made during a proceeding shall be directed to and decided by the hearing officer.

8.4 *Certificate of service.* Papers filed with the hearing officer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number, or electronic mail address to which service was made, if not made in person.

9.0 Filing of papers: form.

9.1 *Specifications.* Papers filed in connection with any administrative proceeding shall:

- 9.1.1 Be on one grade of unglazed white paper measuring 8-1/2 x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;
 - 9.1.2 Be typewritten or printed in either ten or twelve-point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;
 - 9.1.3 Include at the head of the paper, or on a title page, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;
 - 9.1.4 Be paginated with all margins at least one inch wide;
 - 9.1.5 Be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and
 - 9.1.6 Be stapled, clipped or otherwise fastened in the upper left corner.
- 9.2 *Signature required.* All papers must be dated and signed as provided in Rule 10.0.
- 9.3 *Suitability for record keeping.* Documents which, in the opinion of the hearing officer, are not suitable for computer scanning or microfilming may be rejected.

10.0 Filing of papers: signature requirement and effect.

- 10.1 *General requirements.* Every filing of a party represented by counsel shall be signed by Delaware Counsel of record in his or her name and shall state that counsel's bar identification number, business address, electronic mail address, and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing.
- 10.2 *Effect of signature.*
- 10.2.1 The signature of counsel or a party shall constitute a certification that:
- 10.2.1.1 the person signing the filing has read the filing;
 - 10.2.1.2 to the best of his or her knowledge, information and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
 - 10.2.1.3 the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.
- 10.2.2 If a filing is not signed, the hearing officer shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

11.0 Computation of time.

- 11.1 *Computation.* In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the hearing officer, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. Unless otherwise specified, intermediate Saturdays, Sundays and State legal holidays shall be excluded from the computation when the period of time prescribed or allowed is 10 days or less, not including any additional time allowed for service by mail in paragraph 11.2 of this section. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, Sunday nor State legal holiday.
- 11.2 *Additional time for service by mail.* If service is made by mail, three days shall be added to the prescribed period for response.

12.0 Complaints: general and summary proceedings.

- 12.1 *General.* If the Director of Consumer Protection of the CPU or a Deputy Attorney General acting under his or her authority believes that any person is violating or has violated any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the CPU may issue a complaint as provided herein. The service and filing of the complaint constitutes the commencement of the administrative proceeding. ~~If no hearing officer has been generally designated, the Director of Consumer Protection or the Deputy Attorney General filing the complaint shall give notice to the Attorney General, Chief Deputy Attorney General, or the State Solicitor requesting the appointment of a hearing officer for the proceeding.~~
- 12.2 *Summary proceedings.* See Rule 25.1.3 for procedure in summary proceedings.

13.0 Complaints: form and content.

- 13.1 Each complaint shall be in writing and signed by a Deputy Attorney General. The complaint shall specify in reasonable detail the conduct alleged to constitute the violation and the statutory provision, rule or regulation the respondent is alleged to be violating or to have violated.
- 13.2 If the complaint consists of several claims, each claim shall be stated separately.

14.0 Complaints: amendment and withdrawal.

- 14.1 At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Deputy Attorney General who initiated the proceeding may amend the complaint. After the filing of a responsive pleading or the commencement of a hearing, upon motion by the Deputy Attorney General who initiated the proceeding, the hearing officer may permit amendment of a complaint.
- 14.2 At any time prior to the filing of a responsive pleading or the commencement of a hearing (whichever is earlier), the Deputy Attorney General who initiated the proceeding may withdraw the complaint. Such withdrawal shall be without prejudice to refiling, and the Deputy Attorney General who initiated the proceeding shall be permitted to file a complaint based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. The Deputy Attorney General who initiated the proceeding may withdraw the complaint after the filing of a responsive pleading or commencement of a hearing, and in the absence of a motion the withdrawal shall be without prejudice; however, upon motion of the respondent, the hearing officer, after considering the facts and circumstances of the withdrawal, shall determine whether the withdrawal shall be with prejudice.

15.0 Answers to complaints.

- 15.1 *Form, service, notice.* Pursuant to Rule 7.2, each respondent named in a complaint shall serve an answer to the complaint on the Deputy Attorney General who initiated the proceeding, all other parties, and the hearing officer within 20 days after service of the complaint on such respondent. The hearing officer may extend such period for good cause.
- 15.2 *Content, affirmative defenses.* Unless otherwise ordered by the hearing officer, an answer shall specifically admit, deny, or state that the respondent does not have and is unable to obtain sufficient information to admit or deny each allegation in the complaint. When a respondent intends to deny only part of an allegation, the respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied shall be deemed admitted. Any affirmative defense shall be asserted in the answer.
- 15.3 *Amendments to answer.* Upon a motion by a respondent, the hearing officer may permit an answer to be amended.
- 15.4 *Extension of time to answer amended complaint.* If a complaint is amended pursuant to Rule 14.0, the time for filing an answer or amended answer shall be extended to 20 days after service of the amended complaint.
- 15.5 *Failure to answer; default.* ~~If the a respondent does not file an answer to the complaint within the time required, the hearing officer shall send a second notice and copy of the complaint shall be sent to such respondent at his or her last known address requiring an answer within 10 days after service of the second notice, or within such longer period as the hearing officer in his or her discretion may order. The failure of the respondent to answer shall not prevent the hearing officer, in the exercise of his or her discretion, from scheduling a hearing.~~
- 15.6 Default orders. If the respondent fails to answer the second notice and complaint, after failing to answer the first, the Deputy Attorney General prosecuting the matter may move that the hearing officer issue an order finding the respondent in default and granting any lawful relief requested in the complaint or the motion. This subsection does not apply to summary orders.

16.0 Scheduling a hearing.

- 16.1 *Hearing officer order requiring hearing.* Upon the filing of a complaint, the hearing officer should promptly schedule a hearing to be held between 40 and 60 days after the date the complaint was filed. See Rule 25.1.3 for hearing procedures in summary proceedings.
- 16.2 *Notice of hearing.* Upon scheduling a hearing, the hearing officer shall issue a notice stating the date, time and place of the hearing, and shall serve such notice on the parties.

17.0 Pre-hearing conferences.

- 17.1 ~~*Purpose of conferences.* The purpose of pre-hearing conferences includes, but is not limited to:~~
- ~~17.1.1 Expediting the disposition of the proceeding;~~
 - ~~17.1.2 Establishing early and continuing control of the proceeding by the hearing officer; and~~

17.1.3 Improving the quality of the hearing through more thorough preparation.

17.2 *Procedure.* On his or her own motion or at the request of a party, the hearing officer may, in his or her discretion, direct counsel or any party to meet for an initial, final or other prehearing conference. ~~Such conferences may be held with or without the hearing officer present as the hearing officer deems appropriate. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached.~~ Such conferences also may be held with one or more persons participating by telephone or other remote means.

17.3 ~~*Subjects to be discussed.* At a pre-hearing conference consideration may be given and action taken with respect to any or all of the following:~~

17.3.1 Simplification and clarification of the issues;

17.3.2 Exchange of witness and exhibit lists and copies of exhibits;

17.3.3 Stipulations, admissions of fact, and stipulations concerning the contents, authenticity or admissibility into evidence of documents;

17.3.4 Matters of which official notice may be taken;

17.3.5 The schedule for exchanging prehearing motions or briefs, if any;

17.3.6 The method of service for papers;

17.3.7 Summary disposition of any or all issues;

17.3.8 Settlement of any or all claims;

17.3.9 Determination of hearing dates;

17.3.10 Amendments to the complaint or answers thereto; and

17.3.11 Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

17.4 ~~*Pre-hearing orders.* At or following the conclusion of any conference held pursuant to this section, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.~~

18.0 Pre-hearing submissions.

18.1 *Submissions generally.* In connection with the pre-hearing conference, the hearing officer, on his or her own motion or at the request of a party, may order any party to furnish such information as deemed appropriate., including any or all of the following:

18.1.1 An outline or narrative summary of the party's case or defense;

18.1.2 The legal theories upon which the party will rely;

18.1.3 Copies and a list of documents that the party intends to introduce at the hearing; and

18.1.4 A list of witnesses who will testify on the party's behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

18.2 ~~*Expert witnesses.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph 18.1.4 of this section, a *curriculum vitae* or statement of the expert's qualifications and a written summary of the expert's opinions on the topic of the intended testimony. The hearing officer may in his or her discretion order an expert witness to produce a listing of other proceedings in which the expert has given expert testimony and a list of publications authored or co-authored by the expert.~~

18.32 *Timing of production.* The hearing officer may modify the time limits for production of evidence set by these rules.

19.0 Administrative hearings.

19.1 *Hearings.* Hearings for the purpose of taking evidence shall be held upon order of the hearing officer. Except for summary proceedings, hearings should generally be scheduled not less than 40 days nor more than 60 days after the issuance of a complaint.

19.1.1 All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

19.1.2 All hearings, except *ex parte* applications for a summary order, shall open to the public.

19.2 *Continuance.* Any motion for a continuance of the hearing date shall be filed as far in advance of the hearing date as practicable. Motions must be for good cause and state with specificity the reason for the continuance request. Any motion for a continuance filed within 10 days of a scheduled hearing is disfavored and will be denied in the absence of extraordinary circumstances.

19.3 *Exchange of evidence and witness list.* Unless otherwise ordered by the hearing officer, no later than 20 calendar days prior to the date of the hearing the CPU shall submit to each respondent and to the hearing officer copies of all documentary evidence and the names of the witnesses the CPU intends to present in its

case-in-chief at the hearing. Unless otherwise ordered, no later than 10 calendar days prior to the date of the hearing each respondent shall submit to the CPU and to the hearing officer all documentary evidence and the names of the witnesses the respondent intends to present at the hearing. If a party intends to use the testimony of an expert witness, that party shall include as part of its documentary production a *curriculum vitae* or statement of the expert's qualifications and a written summary of the expert's opinions on the topic of the intended testimony.

19.4 *Hearing procedure.* In the hearing, each party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the hearing officer, may be required for a full and true disclosure of the facts.

19.5 *Testimony.* Witnesses shall testify under oath or affirmation. The oath or affirmation may be administered by a Deputy Attorney General, court reporter, notary public or any other officer authorized to administer oaths and affirmations under Delaware law.

20.0 Evidence.

20.1 *Admissibility.* The hearing officer shall receive relevant evidence and may exclude all evidence that is irrelevant, immaterial or unduly repetitious.

20.1.1 The hearing officer may make reference to and be guided by the Delaware Uniform Rules of Evidence. Notwithstanding those rules, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs, and give probative effect to that evidence.

20.1.2 Evidence may not be excluded solely on the ground that it is hearsay.

20.2 *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling.

20.3 *Offers of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record.

21.0 Proposed findings of fact, conclusions of law, and post-hearing briefs.

21.1 At the discretion of the hearing officer, the parties may be ordered to file proposed findings of fact and conclusions of law, or post-hearing briefs, or both. The hearing officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

21.2 Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

21.3 In any case in which the hearing officer has ordered the filing of proposed findings of fact and conclusions of law, or post-hearing briefs, the hearing officer shall, after consultation with the parties, prescribe the period within which proposed findings of fact and conclusions of law and/or post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 30 days after the conclusion of the hearing unless the hearing officer permits a different period and sets forth in an order the reasons why a longer period is necessary.

21.4 Unless the hearing officer orders otherwise, no post-hearing submission shall exceed 25 pages, exclusive of cover sheets, tables of contents and tables of authorities.

22.0 Final decision after a hearing.

22.1 In any administrative proceeding in which a hearing is held, the hearing officer shall issue a final written decision. Such decisions should generally be issued within 60 days after the last day of the hearing or the filing of any post-hearing submission, whichever is later. The decision shall include:

22.1.1 A brief summary of the evidence;

22.1.2 Findings of fact based on the evidence;

22.1.3 Conclusions of law; and

22.1.4 A statement of any sanctions, where applicable.

22.2 The hearing officer may order any remedy authorized by 29 Del.C. §2524.

23.0 Failure to appear at hearing.

23.1 A party's failure to appear at a hearing that has been duly noticed shall not be cause to continue the hearing. If the hearing officer so orders, the hearing shall proceed in the party's absence, which shall be noted in the record.

23.2 The hearing officer, in his or her discretion, may choose to treat a respondent's failure to appear at the hearing as a default and issue an order pursuant to Rule 15.6.

24.0 Disruptive conduct.

If a party, counsel to a party or witness engages in conduct in violation of an order of the hearing officer, or other disruptive conduct during an administrative proceeding, the hearing officer may impose non-monetary sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the proceeding; (ii) striking pleadings or evidence from the record; (iii) providing that certain facts shall be taken to be established for purposes of the proceeding; or (iv) providing for such other relief as is just and equitable under the circumstances.

25.0 Cease and desist orders; summary proceedings.

25.1 Cease and desist orders may be issued by agreement, administrative order, or summary administrative order.

25.1.1 *By agreement.* Where it appears to the Director that a person has engaged in, is engaging in, or is about to engage in a practice declared unlawful by any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the Director may enter into a written agreement with that person and issue a cease and desist order ordering the immediate discontinuance of that practice. Consistent with the agreement, the order may also order any relief or remedy authorized under any statute enforced by the CPU. A cease and desist order by agreement may be issued in the absence of a complaint initiating an administrative or civil action, or it may be issued in connection with the settlement of an administrative or civil action.

25.1.2 *By administrative order.* Upon the finding of a violation of any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the administrative hearing officer may issue a cease and desist order. The prohibited conduct in the order should be reasonably related to the conduct constituting the violation.

25.1.3 *By summary administrative order.* Where the Director, in his or her discretion, perceives an immediate threat to the public interest as a result of a violation of any provision of the statutes the CPU is charged to enforce, or any rule or regulation thereunder, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order.

25.1.3.1 Before issuing the summary order, the Director or his or her designee shall attempt to obtain voluntary compliance from the alleged violator by telephone call or letter. A failure to comply with any aspect of the request for voluntary compliance shall be deemed non-compliance with the request. Any person who is the subject of a summary order shall promptly be given notice of that order and of the reasons therefor.

25.1.3.2 A complaint detailing the specific allegations against the alleged violator shall accompany any summary cease and desist order served upon the alleged violator. The complaint and summary cease and desist order shall be served upon the alleged violator by first class and certified mail to the alleged violator's last known address. Service shall be deemed effective upon mailing.

25.1.3.3 A hearing shall be scheduled by the Director or his or her designee at the time of the issuance of the complaint and summary cease and desist order. The CPU shall provide a hearing on the charges in the complaint within 10 days after the issuance of the complaint and the cease and desist order.

25.1.3.4 A written opinion and order, containing findings of fact and conclusions of law, shall issue within 10 days after the close of the hearing.

25.1.3.5 If no hearing has been provided within 10 days after the issuance of the summary cease and desist order, the order shall expire at the end of the tenth day after it was issued unless the alleged violator waives his or her right to a prompt hearing. If there is a hearing but no decision is issued within 10 days after the close of the hearing, the summary cease and desist order shall expire at the end of the tenth day after the close of the hearing. An order that has expired in accordance with the restrictions of this subparagraph may not be reissued as a summary order.

25.1.3.6 The order issued after the hearing may provide for any administrative remedy contained in 29 **Del.C.** §2524.

25.1.3.7 Any person who willfully violates a cease and desist order may be sanctioned as provided in 29 **Del.C.** §2524(b) or §2526.

26.0 Appeals.

- 26.1 In any administrative proceeding, any person aggrieved by a final order of the hearing officer may file an appeal to the Superior Court no later than 30 days after the date of the order, as provided in 29 **Del.C.** §2523(d). A copy of the notice of appeal shall be promptly filed with the hearing officer in the administrative proceeding.
- 26.2 Upon the filing of an appeal to the Superior Court, the administrative record shall be filed with the Court in accordance with Superior Court Civil Rule 72.
- 26.3 Any party that files an appeal to the Superior Court shall be responsible for filing with the Court in a timely manner the transcript of that portion of the administrative proceedings in which error allegedly occurred. Each party on appeal shall bear his, her or its own costs of transcription.

14 DE Reg. 577 (12/01/10)

15 DE Reg. 531 (10/11/11) (Final)