

1 TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
2 CHAPTER V: ILLINOIS LAW ENFORCEMENT TRAINING AND STANDARDS BOARD

3
4 PART 1790
5 RULES OF PROCEDURE IN ADMINISTRATIVE HEARINGS
6

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44 1790.670 Judicial Review

45
46 AUTHORITY: Implementing and authorized by Section 6.3 of the Illinois Police Training Act
47 [50 ILCS 705/6.3].

48
49 SOURCE: Adopted at 49 Ill. Reg. _____, effective _____.

50
51 **Section 1790.100 Applicability**

52
53 This Part shall apply to all administrative hearings concerning discretionary decertification,
54 denials of reactivation, and emergency orders of suspension conducted under the jurisdiction of
55 the Illinois Law Enforcement Training and Standards Board pursuant to Sections 6.3(h), 8.1(b),
56 8.2(b), and 8.3(c) of the Illinois Police Training Act [50 ILCS 705/6.3(h), 8.1(b), 8.2(b), and
57 8.3(c)].

58
59 **Section 1790.120 Definitions**

60
61 "Administrative Law Judge" or "ALJ" means an attorney licensed to practice law
62 in the State of Illinois who has been retained by the Board for a term no greater
63 than 4 years to conduct any hearings governed by this Part who has received
64 Board training required by law relating to the subject matter of the hearings
65 conducted under this Part.

66
67 "Board" means the Illinois Law Enforcement Training Standards Board as
68 established pursuant to Section 3(a) of the Police Training Act. [50 ILCS 705/3].

69
70 "Charges of misconduct" means the violations alleged against an officer in a
71 complaint, refusal of reactivation, or emergency order of suspension, as
72 applicable.

73
74 "Complaint" means a formal complaint described in Section 6.3(g) of the Illinois
75 Police Training Act [50 ILCS 705/6.3(g)].

76
77 "Complainant" means (i) the Board or its employees for hearings on formal
78 complaints for decertification; (ii) the officer or law enforcement agency
79 contesting refusal of reactivation; or (iii) the law enforcement agency contesting
80 an emergency order of suspension.

81
82 "Day" means a calendar day.

83
84 "Director" means the Executive Director of the Illinois Law Enforcement
85 Training Standards Board.

86

87 "Document" means pleading, notice, motion, affidavit, memorandum, brief,
88 petition, or other paper or combination of papers required or permitted to be filed.

89
90 "Evidence" means documents, objects, testimony, and any other matter that is
91 considered evidence under the Illinois Rules of Evidence. [735 ILCS 5/Art. VIII].

92
93 "Hearing" means a formal proceeding in which the administrative law judge shall
94 report any findings of fact, conclusions of law, and recommended disposition. [50
95 ILCS 705/6.3].

96
97 "IAPA" means the Illinois Administrative Procedure Act. [5 ILCS 100].

98
99 "Panel" means the Illinois Law Enforcement Certification Review Panel as
100 created by the Illinois Police Training Act. [50 ILCS 705/3.1].

101
102 "Respondent" means: (i) the officer for hearings on formal complaints for
103 decertification; or (ii) the Board for hearings contesting refusal of reactivation and
104 emergency orders of suspension.

105
106 "Review Committee" means the Committee created under Section 3(a-5) of the
107 Illinois Police Training Act [50 ILCS 705/3(a-5)].

108
109 "Statement" means a written statement made by a witness and signed or otherwise
110 adopted or approved by the witness, or a stenographic, mechanical, electrical, or
111 other recording, or a transcription of the recording that is a substantially verbatim
112 recital of an oral statement made by the witness to an agent of the person obliged
113 to produce the statement and recorded contemporaneously with the making of this
114 oral statement. "Statement" does not include a statement of objection.

115
116 **Section 1790.130 Burden and Standard of Proof**

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118 The complainant shall have the burden of proof. The standard of proof for any hearing conducted
119 shall be by clear and convincing evidence.

120
121 **Section 1790.140 Filing and Service**

- 122
123 a) All pleadings, motions, briefs, and documents shall be electronically filed with the
124 Board in accordance with Supreme Court Rules 9 and 10, including complaints
125 filed by the Panel, requests for hearings on refused reactivation filed by an officer
126 or law enforcement agency, and requests for hearings on an emergency order of
127 suspension filed by an officer. Service of such pleadings, motions, briefs, and
128 documents shall be made in accordance with Supreme Court Rules 11 and 12 and
129 subsection c). For purposes of these rules, the word "filing" shall mean "electronic

130 filing", and the parties are not required to file copies of any pleading, motion,
131 brief or document that is electronically filed.

132
133 b) The Panel shall cause a notice of the due date for an answer, the prehearing
134 conference date, and the hearing date before the ALJ and, for a complaint, the
135 additional notice requirements under Section 6.3(h)(1) of the Illinois Police
136 Training Act to be served on the respondent in any manner authorized by the
137 Code of Civil Procedure or by subsection c).

138
139 c) Service:

140
141 1) The Panel may serve a complaint on the respondent by personal service,
142 email, or mail, postage fully prepaid:

143
144 A) For mail, to the last known address of the respondent; or

145
146 B) For email, to the last known email address of the respondent.

147
148 2) The complainant for a request for a hearing on a denial of reactivation or
149 emergency order of suspension may serve the Board by any of the means
150 allowed under paragraph (1).

151
152 3) The Panel's or non-Board complainant's certificate of mailing, emailing, or
153 delivery, or other service affirmatively acknowledged by the respondent or
154 counsel for the respondent, is sufficient proof of service.

155
156 **Section 1790.150 Form of Documents Filed**

157
158 a) Documents shall clearly state a title for the proceedings in connection with which
159 they are filed. Documents shall be filed electronically in letter-quality print on
160 letter-sized paper and shall be signed by the party or by the party's authorized
161 representative.

162
163 b) Exhibits, when possible, shall be reduced or enlarged to conform to the size
164 requirements of subsection a). A party is not prohibited from enlarging an exhibit
165 at hearing for demonstrative purposes as long as the exhibit is reduced to the size
166 requirement in this subsection b) for the record.

167
168 c) All pleadings shall bear the business address, e-mail address, fax number, if any,
169 and telephone number of the attorney filing the pleading or of the party who
170 appears on his or her own behalf.

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172 **Section 1790.170 Prehearing Conference**

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- a) After an ALJ is assigned to the matter under Section 1790.450, a prehearing conference shall be scheduled within 60 to 90 days of the assignment.
- b) Upon the request of any party, the prehearing conference shall be conducted as a matter of record.
- c) The purposes of the prehearing conference include:
 - 1) Simplification of issues;
 - 2) Limitation of issues;
 - 3) Negotiating admissions or stipulations;
 - 4) Limitation of witnesses or evidence;
 - 5) Exchange of exhibits;
 - 6) Discussion of any other matter that may aid in efficient disposition of the case;
 - 7) Agreed dispositions; or
 - 8) Joinder.
- d) The parties shall be fully prepared to participate in a prehearing conference, which shall include:
 - 1) Presentation of any prehearing motions;
 - 2) Witness and exhibit lists that list only those witnesses the party in good faith intends to call;
 - 3) Disclosure of expert witnesses; and
 - 4) Any other materials directed by an ALJ.
- e) Any expert witnesses and expert opinions not listed or disclosed in the prehearing conference must be disclosed in accordance with Section 1790.410(b) and disclosed no later than 21 days before the hearing.

Section 1790.200 Notice of Prehearing Conference

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- a) All Prehearing Conferences shall be initiated by the issuance of a written Notice of Prehearing Conference, which shall be served upon all known parties as provided in Section 1790.140. Hearings relating to discretionary decertification or an emergency order of suspension [50 ILCS 705/6.3 & 8.3] shall take priority over all other hearings.
 - b) Service shall be complete when the Notice of Prehearing Conference is served on parties as provided in Section 1790.140.
 - c) A Notice of Prehearing Conference served under this Section shall include:
 - 1) Time, place and nature of the Prehearing Conference;
 - 2) The legal authority and jurisdiction under which the hearing is to be held;
 - 3) A reference to the particular Section of the statutes and rules involved; and
 - 4) A short and plain statement of the matters asserted, except when a more detailed statement is otherwise provided for by law.

237 **Section 1790.210 Appearance**

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- a) A party may be represented by an attorney who is licensed in Illinois or by an attorney otherwise permitted by law to practice in the State. Attorneys who appear in a representative capacity must file a written notice of appearance setting forth:
 - 1) The name, address, email address, telephone number and Attorney Registration and Disciplinary Commission number of the attorney;
 - 2) The name, address and email address of the party represented; and
 - 3) An affirmative statement indicating that the attorney is licensed in Illinois or is appearing pro hac vice.
 - b) An attorney may withdraw upon written notice to the ALJ.
 - c) A law student licensed under Supreme Court Rule 711 may appear on behalf of any party as permitted by Supreme Court Rule 711 and shall be subject to the same requirements as an attorney.

- 258 d) Attorneys admitted to practice in states or jurisdictions other than the State of
259 Illinois may appear and be heard in a specific hearing pro hac vice as authorized
260 and in compliance with Supreme Court Rule 707. The attorney's appearance shall
261 include documentation as to his or her eligibility or qualification under Supreme
262 Court Rule 707.
- 263
- 264 e) Any party may appear on his or her own behalf.
- 265
- 266 f) Once an appearance is filed, a copy of all future filings shall be served upon the
267 counsel of record, unless that counsel has withdrawn.
- 268
- 269 g) The standard of conduct shall be the same as before the Courts of Illinois.
270 Attorneys appearing before the ALJ shall conform their conduct to the Illinois
271 Rules of Professional Conduct. Any failure to behave in a manner consistent with
272 those standards of conduct or this Part authorizes an ALJ to take the following
273 actions:
- 274
- 275 1) Limitation of evidence;
- 276
- 277 2) Substitution of written argument in place of oral argument; or
- 278
- 279 3) If warranted, reporting an attorney's misconduct to the Attorney
280 Registration and Disciplinary Commission of the Illinois Supreme Court.
- 281
- 282 h) If any of the actions authorized by subsection g) are taken by the ALJ, it shall be
283 done as a matter of record, and the ALJ shall state for the record the specific
284 reasons for the action.
- 285
- 286 i) A party sanctioned under this Section may request the decision be reviewed by
287 the Panel.
- 288

289 **Section 1790.250 Failure to Appear**

290

291 Absent a compelling reason, failure to appear at the time and place set for hearing shall be
292 deemed a waiver of the right to present evidence unless otherwise reflected by order of the ALJ.
293 After presentation by the nondefaulting party of proof that the defaulting party was given proper
294 notice and the nondefaulting party has been given an opportunity to present evidence that would
295 have been presented at the hearing in which the default occurred, the ALJ shall make his or her
296 decision as required under Section 1790.630.

297

298 **Section 1790.260 Amendment and Withdrawal of Complaints and Requests**

299

- 300 a) The complaint may be amended at any time, except in the course of the hearing
301 without leave or approval of the ALJ. If an amended complaint is filed during the
302 course of the hearing, it shall also be presented to the opposing party and ALJ. A
303 continuance shall be granted whenever the amendment materially alters the
304 complaint and when the respondent demonstrates that he or she would otherwise
305 be unable to properly prepare an answer to the amended complaint. Documents
306 received pursuant to 50 ILCS 705/ 9.2 shall be submitted under seal and not
307 subject to FOIA until the matter leads to decertification.
308
- 309 b) The Board may withdraw a complaint or a complainant may withdraw a request
310 for a hearing on an emergency order of suspension or denial of recertification at
311 any time prior to the hearing. After a hearing has begun, a complaint or a request
312 for a hearing may be withdrawn only with leave of the ALJ.
313

314 **Section 1790.300 Answer**
315

- 316 a) Any party receiving a complaint and Notice of Hearing shall file a written answer
317 to the complaint no later than 30 days after receiving the complaint and Notice of
318 Hearing. The respondent shall specifically admit, deny or explain each of the
319 facts alleged in the complaint. However, if the respondent is without knowledge,
320 the respondent shall so state and that statement operates as a denial. All
321 allegations in the complaint, if no answer is filed, or any allegation in the
322 complaint not specifically denied or explained in an answer filed, unless the
323 answer states that the respondent is without knowledge, shall be deemed to be
324 admitted to be true and shall be so found by the ALJ, unless good cause to the
325 contrary is shown.
326
- 327 b) The answer shall be filed with the ALJ and Panel. Immediately upon the filing of
328 the answer, the responding party shall serve a copy on the Director and the other
329 party. A party who is not represented by an attorney shall sign his or her answer
330 and state his or her address. Except when otherwise specifically provided by rule
331 or statute, an answer need not be verified or accompanied by affidavit. The
332 signature of the attorney or non-attorney party constitutes a certificate by him or
333 her that he or she has read the answer; that, to the best of his or her knowledge,
334 information and belief, there is good ground to support it; and that it is not
335 interposed for delay. If an answer is not signed or is signed with intent to defeat
336 the purpose of this Section, it may be stricken as a sham and false and the action
337 may proceed as though the answer had not been served.
338
- 339 c) The ALJ before whom the hearing is scheduled may by written order extend the
340 time within which the answer shall be filed.
341

342 **Section 1790.310 Motions**

- 343
344 a) All motions made before or during a hearing shall be made to the ALJ and, unless
345 made orally on the record during a hearing or unless the ALJ directs otherwise, a
346 motion shall be in writing and shall be accompanied by any affidavits or other
347 evidence relied upon and, when appropriate, by a proposed order.
348
- 349 b) Within 14 days after service of a written motion or other document, or other
350 period as the ALJ may allow, a party may electronically file a response in support
351 of or in opposition to the motion and, if necessary, accompanied by affidavits or
352 other evidence. A party filing a motion has the right to request from the ALJ
353 leave to file a reply to a response.
354
- 355 c) A written brief may be electronically filed with a motion or an answer to a motion
356 stating the arguments and authorities relied upon. The brief may not be longer
357 than 15 pages in length unless, prior to the filing date, leave is granted to file a
358 brief greater than 15 pages.
359
- 360 d) A written motion filed prior to a hearing shall be disposed of by written order and
361 on notice of all parties, except for motions made at or after the opening of a
362 hearing, in which case the ALJ shall announce his or her ruling orally on the
363 record at the hearing. All motions, rulings and orders shall become a part of the
364 record, except that ruling on motions to quash subpoenas shall become a part of
365 the record only upon the request of the party aggrieved. Rulings by the ALJ on
366 motions or objections, and orders in connection with those motions or objections,
367 shall not be appealed directly to the Panel but shall be considered by the Panel in
368 reviewing the record if exception to the ruling or order is included in a statement
369 of objection filed with the Panel no later than 15 days after the date of the ALJ
370 decision.
371
- 372 e) The ALJ shall rule upon all motions, except that the ALJ shall have no authority
373 to dismiss or decide a hearing on the merits without granting all parties to the
374 proceeding a right to be heard in accordance with the procedures for motions in
375 this Section, which shall constitute the record.
376
- 377 f) Unless otherwise ordered, the filing of an answer or motion shall not stay the
378 proceeding or extend the time for the performance of any act.
379
- 380 g) A party has a right to file an emergency motion setting forth why an emergency
381 exists and the ALJ can deny the emergency motion solely on the basis that the
382 motion did not demonstrate that an emergency exists.
383

384 **Section 1790.320 Joinder of Complaints**
385

386 If two or more instances of conduct that would be deemed a violation of the Illinois Police
387 Training Act for decertification are known to the Board at the time of the filing of a complaint
388 with the Panel, then all known instances of conduct that would be deemed a violation of the
389 Illinois Police Training Act shall be included in the formal complaint filed with the Panel and
390 heard in a single hearing.

391

392 **Section 1790.330 Postponement or Continuance of Hearing**

393

394 A hearing may be postponed or continued for due cause by the ALJ upon his or her own motion
395 or upon the motion of a party to the hearing. A motion by a party shall set forth facts
396 demonstrating that the request for continuance is not for the purposes of delay. Examples of due
397 cause include the unavailability of the ALJ, a witness, or a party due to an accident, illness, or
398 other circumstances beyond the person's control. Notice of any postponement or continuance
399 shall be given in writing to all parties to the hearing within a reasonable time in advance of the
400 previously scheduled hearing date. All parties involved in a hearing shall attempt to avoid undue
401 delay caused by repetitive postponements or continuances so that the subject matter of the
402 hearing may be resolved expeditiously.

403

404 **Section 1790.400 Remote Proceedings**

405

406 a) By order of the ALJ, any status hearing or prehearing may be conducted remotely,
407 either by teleconference or videoconference. The parties shall be provided
408 instructions for accessing the teleconference or videoconference system for the
409 date and time of the scheduled status hearing or prehearing.

410

411 b) The parties may agree that a hearing will be conducted in its entirety by
412 teleconference or videoconference or that a part or parts of the hearing will be
413 conducted by teleconference or videoconference, including the testimony of a
414 particular witness or witnesses. These agreements are subject to the approval of
415 the ALJ by entry of an order. Absent such agreement, the hearings shall be
416 conducted in person at the Board's office.

417

418 **Section 1790.410 Discovery**

419

420 a) The parties may exchange known documents, including any written statements or
421 expert opinions, before the prehearing conference; however general discovery
422 (e.g., depositions, interrogatories, or requests to produce or admit) is not
423 permitted.

424

425 b) Disclosure of the following shall be required in accordance with the time periods
426 set forth in this subsection (b) unless otherwise modified by the ALJ in the order
427 issued pursuant to the prehearing conference:

428

- 429 1) Unless otherwise ordered by the ALJ at least 21 days prior to the
430 commencement of the hearing, each party shall provide the other party
431 with a copy of any document and disclose other evidence that the party
432 may offer into evidence, including any statements as defined by Section
433 1790.120. This subsection (b)(1) does not require any party to provide
434 copies of documents already provided or disclose evidence already
435 disclosed. Each party shall provide newly discovered documents or
436 disclose other evidence to the opposing party as they become known to the
437 party intending to introduce the document or introduce the other evidence.
438
- 439 2) Unless otherwise ordered by the ALJ at least 21 days prior to the
440 commencement of the hearing, each party shall provide the other party
441 with a list containing the name and address of any witness who may be
442 called to testify. Each party shall provide newly discovered witnesses as
443 they become known to the party intending to call the witness.
444

445 **Section 1790.420 Subpoenas**

- 446
- 447 a) The Director shall, on the written application of any party, issue subpoenas to a
448 party allowing that party to require the attendance and testimony of witnesses and
449 the production of any evidence, including books, records, correspondence or
450 documents. Applications for subpoenas shall be filed with the Director and the
451 opposing party. The subpoena shall show on its face the name and address of the
452 party at whose request the subpoena was issued.
453
- 454 b) Subpoenas may be served by personal delivery, by certified mail with return
455 receipt signed by private delivery service, or by U.S. regular mail, postage
456 prepaid. Any person served with a subpoena, whether ad testificandum (for
457 witness testimony) or duces tecum (for document production), who does not
458 intend to comply with the subpoena, shall, within 5 days after the date of service
459 of the subpoena, motion in writing to quash the subpoena. The date of service for
460 purposes of computing the time for filing a petition to quash shall be the date the
461 subpoena is received. All motions to quash subpoenas shall be served on the party
462 at whose request the subpoena was issued. The motion to quash, if made prior to
463 or during the hearing, shall be filed with the ALJ.
464
- 465 c) The ALJ, upon motion made promptly and, in any event, at or before the time
466 specified in the subpoena for compliance, may quash or modify the subpoena if it
467 is unreasonable, is oppressive, or requests material that is irrelevant. The ALJ
468 shall rule upon motions to quash or modify material requested in the subpoena.
469 The ALJ may deny, limit, or condition the production of information when
470 necessary to prevent undue delay, undue expense, harassment, or oppression. The
471 ALJ can take these actions if the subpoena does not describe with sufficient

472 particularity the evidence whose production is required or if, for any other reason
473 sufficient in law, the subpoena is otherwise invalid. The ALJ can also take these
474 actions to protect materials from disclosure consistent with a protective order
475 issued by the ALJ pursuant to Section 1790.560(b). If the Request for Subpoena is
476 denied or modified, the ALJ shall proceed to conduct the hearing, and the specific
477 reasons for denying or modifying the request shall be made part of the record.
478

- 479 d) If a party or organization within control of a party fails to obey a subpoena, and
480 the ALJ finds the subpoena to have been validly served and the material requested
481 to be relevant and material, the ALJ may impose such sanctions as are
482 appropriate, including, but not limited to: prohibiting testimony by the party who
483 has refused to comply with the subpoena; drawing an adverse inference against
484 the party required to comply; or recognizing the evidence required by the
485 subpoena but not produced as establishing the truth of the position of the party
486 who subpoenaed the document. If a nonparty fails to obey a subpoena, the party
487 seeking enforcement shall be responsible for preparing an application for
488 enforcement and shall file it in circuit court.
489

- 490 e) Witnesses summoned before the ALJ, other than employees of the Board shall be
491 paid the same fees and mileage that are paid witnesses in the court of the county
492 where the hearing is being held. Witness fees and mileage shall be paid by the
493 party at whose instance the witnesses appear.
494

495 **Section 1790.450 Administrative Law Judge**

- 496
- 497 a) The Board shall retain at least two attorneys, licensed to practice in Illinois, to
498 serve as ALJs on behalf of the Board. The ALJ shall conduct the hearing,
499 question witnesses, make rulings on motions and objections, and submit Findings
500 of Fact, Conclusions of Law, and his or her recommendation to the Panel.
501
- 502 b) The ALJ is bound by the Administrative Law Judge Code of Professional
503 Conduct.
504

505 **Section 1790.500 Authority of Administrative Law Judge**

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507 An ALJ presiding over a hearing has all powers necessary and appropriate to conduct a full, fair,
508 and impartial hearing, including the following:

- 509
- 510 a) To administer oaths and affirmations;
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- 512 b) To rule upon offers of proof and receive relevant evidence;
- 513
- 514 c) To issue subpoenas as provided in Section 1790.420;

- 515
- 516 d) To rule on issues relating to document exchanges;
- 517
- 518 e) To regulate the course of the hearing and the conduct of the parties and their
- 519 counsel;
- 520
- 521 f) To consider and rule upon procedural requests;
- 522
- 523 g) To hold conferences for the settlement or simplification of the issues;
- 524
- 525 h) To examine witnesses and direct witnesses to testify, limit the number of times
- 526 any witness may testify, limit repetition or cumulative testimony, and set
- 527 reasonable limits on the amount of time each witness may testify; and
- 528
- 529 i) To make decisions in accordance with the appropriate laws and rules, including
- 530 this Part and the Illinois Administrative Procedure Act.
- 531

532 **Section 1790.510 Ex Parte Communications**

- 533
- 534 a) No party may engage in any ex parte communication with an ALJ or with any
- 535 member of the Board regarding matters pending before an ALJ. However, a party
- 536 not represented by an attorney or attorney for a party may engage in
- 537 communications with the other party (if not represented by an attorney) or the
- 538 attorney for a party outside the presence of the ALJ.
- 539
- 540 b) The ALJ shall not initiate ex parte communications, directly or indirectly, in any
- 541 matter in connection with any substantive issue, with any interested person or
- 542 party. If the ALJ receives any such ex parte communication, including any
- 543 documents, he or she shall inform the other party of the substance of any such oral
- 544 communication or documents. The other party shall be given an opportunity to
- 545 review any such ex parte communication.
- 546
- 547 c) Nothing shall prevent the ALJ from communicating ex parte about routine
- 548 matters, such as requests for continuances, as long as all parties are informed of
- 549 the substance of the ex parte communication. The date and type of
- 550 communication, the persons involved, and the results of such routine
- 551 communications shall be part of the record. The ALJ and Board staff may
- 552 communicate in order for Board staff to provide administrative support to the
- 553 ALJ, such as making copies, technical matters, and other such administrative
- 554 matters.
- 555

556 **Section 1790.520 Disqualification of Administrative Law Judge**

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- 558 a) At any time prior to the issuance of the ALJ's decision or recommendations, a
559 party may move to disqualify the ALJ on the grounds of bias or conflict of
560 interest. The motion shall be made in writing , shall be accompanied by an
561 affidavit signed and dated by the party or party's attorney, shall be filed according
562 to Section 1790.190, and shall set out the specific instances of bias or conflict of
563 interest. The Panel shall assign the matter for a determination to an ALJ not
564 challenged in the motion. The case shall be suspended until a neutral ALJ rules
565 on the motion.
566
- 567 b) Prior adverse rulings against a party or its attorney in other matters shall not, in
568 and of themselves, constitute grounds for disqualification. The ALJ's retention as
569 an ALJ by the Board is not, in and of itself, a conflict of interest. On satisfactory
570 evidence submitted by the party in support of the motion to disqualify, the
571 reviewing ALJ shall remove the original ALJ and provide for the reassignment of
572 the case to another ALJ to continue the hearing, including himself or herself. An
573 ALJ may voluntarily disqualify himself or herself upon determining that bias or
574 conflict of interest exists. Grounds for disqualification of an ALJ shall include,
575 but not be limited to:
576
- 577 1) Financial interest or pecuniary benefit derived from any result of a
578 hearing;
 - 579 2) Personal friendship with any of the parties, witnesses, or attorneys
580 involved;
 - 581 3) Past representation of any of the parties or witnesses involved; or
582
 - 583 4) Demonstrable predisposition on the issues.
584
- 585 c) If the motion to disqualify an ALJ is denied, the other ALJ shall set forth in
586 writing the reasons for the denial and the original ALJ shall proceed with the
587 hearing. The motion to disqualify the ALJ and the reasons for the denial of the
588 motion are part of the administrative record in the appeal of a final administrative
589 decision upon conclusion of the hearing.
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592

593 **Section 1790.530 Willfully Disobedient Conduct**
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- 595 a) Willfully Disobedient conduct at any hearing before the ALJ shall be grounds for
596 exclusion from the hearing.
597
- 598 b) If a witness or a party refuses to answer a question after being directed to do so or
599 refuses to obey an order to provide documents, the ALJ may make orders with
600 regard to the refusal as are just and appropriate, including, but not limited to,

601 excluding the testimony of witnesses, entering an order of default, entering an
602 order that certain facts are deemed admitted for purpose of the proceeding, or
603 entering an order denying the application or complaint of a party.
604

605 **Section 1790.540 Victim Notice and Impact Statement**
606

607 The Director shall cause written notification of the date, time, and place of the hearing to any
608 individuals or entities that were affected by the respondent's alleged misconduct, including to
609 any person who submitted a Notice of Violation. An affected individual or entity shall be
610 informed that they may attend the complaint hearing and shall be offered an opportunity to either
611 provide oral testimony or a written statement about the impact of the misconduct that will
612 become part of the official record of the proceedings.
613

614 **Section 1790.545 Settlement Agreements**
615

616 The ALJ may not change, amend, or modify a settlement agreement of the parties to the
617 proceeding.
618

619 **Section 1790.550 Conduct of Hearings**
620

- 621 a) All hearings shall be open to the public unless required by statute to be otherwise.
622
- 623 b) The sequence to be followed for all cases is as follows:
624
- 625 1) Prehearing Conference. The purpose is to set a date on which all parties
626 expect to be prepared to proceed with their cases, and to rule on any
627 preliminary motions that are presented.
628
 - 629 2) Hearings.
630
- 631 A) Preliminary Matters – Motions, attempts to narrow issues or limit
632 evidence.
633
 - 634 B) Opening Statements – The party bearing the burden of proof
635 proceeds first.
636
 - 637 C) Case in Chief – Evidence is presented by the party bearing the
638 burden of proof. Once a witness' direct testimony is completed,
639 that witness is subject to cross-examination and redirect.
640
 - 641 D) Defense – Evidence may be presented by the opposing party in the
642 same manner as the case in chief.
643

- 644 E) Closing Statements – The party bearing the burden of proof
- 645 proceeds first, then the opposing party, then a final word by the
- 646 party bearing the burden of proof.
- 647
- 648 c) After the hearing is concluded, the ALJ shall prepare a written decision, including
- 649 findings of fact, conclusions of law, and recommended disposition to the Panel as
- 650 provided in Section 1790.630.
- 651
- 652 d) Documents received pursuant to 50 ILCS 705/9.2 shall be submitted under seal
- 653 and not subject to disclosure under the Freedom of Information Act until the
- 654 matter leads to decertification.
- 655
- 656 e) An attorney, licensed in Illinois, shall represent the Board in all hearings and be
- 657 employed or retained by the Board.
- 658

659 **Section 1790.560 Rules of Evidence**

- 660
- 661 a) The Illinois Rules of Evidence shall apply to the extent practicable unless, by such
- 662 application, the ALJ determines that application of the rule would be an injustice
- 663 or preclude the introduction of evidence of the type commonly relied upon by a
- 664 reasonably prudent person in the conduct of his or her affairs. The ALJ must state
- 665 on the record his or her reasons for that determination. Any objection with
- 666 respect to the conduct of the hearing, including any objection to the introduction
- 667 of evidence, may be stated orally, accompanied by a short statement of the
- 668 grounds for the objection, and included in the record. No objection shall be
- 669 deemed waived by further participation in the hearing.
- 670
- 671 b) The ALJ may at any time on his or her own initiative, or on motion of any party
- 672 or witness, enter a protective order, as justice requires, denying, limiting,
- 673 conditioning, or regulating discovery to prevent unreasonable annoyance,
- 674 expense, embarrassment, disadvantage, or oppression or to prevent exposure in
- 675 the public domain of records or other information that is of a sensitive or
- 676 confidential nature. As used in this subsection, "information that is of a sensitive
- 677 or confidential nature" means information or facts expected and intended to be
- 678 kept private or protected by an existing privilege in the Code of Civil Procedure.
- 679
- 680 c) Evidence of any misconduct is admissible for its bearing on any matter to which it
- 681 is relevant, including the officer's history of conduct as described in 50 ILCS
- 682 705/6.3(b).
- 683
- 684 d) Evidence from investigations shared by a law enforcement agency with the Board
- 685 after the Board has notified the law enforcement agency that it is investigating an
- 686 officer pursuant to Section 6.3(f)(4) of Illinois Police Training Act is admissible

687 for its bearing on any matter to which it is relevant. Such information that the law
688 enforcement agency must share with the Board that may be admissible includes,
689 but is not limited to, information obtained by subpoena, witness interviews, and
690 reports concerning the officer and investigation.

691

692 **Section 1790.570 Official Notice**

693

694 Official notice may be taken of any material fact not appearing in evidence in the record if the
695 Circuit Courts of this State could take judicial notice of the fact. In addition, notice may be taken
696 of generally recognized technical or scientific facts within the Board's specialized knowledge.
697 Parties shall be notified of the taking of official notice either before or during the hearing or by
698 reference in preliminary reports or otherwise of the material noticed, including any staff
699 memoranda or data, and they shall be afforded an opportunity to contest the facts noticed. The
700 Board's expertise, technical competence, and specialized knowledge may be utilized in the
701 evaluation of the evidence.

702

703 **Section 1790.580 Hostile or Adverse Witnesses**

704

705 a) If the ALJ determines that a witness is hostile, unwilling, or adverse, he or she
706 may be examined by the party calling him or her as if under cross-examination.

707

708 b) The party calling an occurrence witness, upon the showing that he or she called
709 the witness in good faith and is surprised by his or her testimony, may impeach
710 the witness by proof of prior inconsistent statements.

711

712 **Section 1790.590 Documents**

713

714 a) Business records are admissible in a hearing. A business record must be:

715

716 1) Relevant;

717

718 2) A memorandum, report, record, or data compilation;

719

720 3) Made by a person with first-hand knowledge of the facts or from
721 information transmitted by a person with knowledge of those matters;

722

723 4) Made at or near the time of the facts;

724

725 5) Made as part of the regular practice of the activity; and

726

727 6) Kept in the course of regularly conducted activity.

728

- 729 b) Any party may prove elements (a)(3) through (a)(6) by presentation of a sworn
730 statement by an individual responsible for making or keeping those records.
731
732 c) Any party seeking introduction of a document shall be allowed to offer a
733 mechanical reproduction or photocopy of the original without any showing that
734 the original is unavailable, upon representation of the party or attorney that the
735 copy is a fair and accurate copy of the original.
736

737 **Section 1790.600 Default**

738
739 Failure of a party to appear at the hearing or failure to proceed as ordered by the ALJ shall
740 constitute a default. The ALJ shall enter the appropriate default order and make his or her
741 decision as provided in Section 1790.630; if the default occurred at a hearing, the ALJ shall
742 make his or her decision after review of any evidence presented as provided in Section 1790.250.
743

744 **Section 1790.610 Record in Cases**

- 745
746 a) A full and complete record shall be kept of all proceedings. The record shall
747 consist of the following:
748
749 1) All pleadings, including all notices and responses to those pleadings;
750
751 2) An electronic recording of the hearing, a transcript of the hearing, if any,
752 and all evidence received, except that the ALJ may issue a protective order
753 preventing public release of any recording, transcript, or evidence as
754 provided in Section 1790.560(b);
755
756 3) A statement of matters officially noticed;
757
758 4) Any offers of proof, objections to that proof, and rulings on that proof;
759
760 5) Any proposed findings and conclusions;
761
762 6) Any decision, opinion, or recommendations by the ALJ; and
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764 7) Any ex parte communication prohibited by Section 10-60 of the IAPA, but
765 those communications shall not form the basis for any finding of fact.
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767 b) The record shall also contain the following:
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769 1) Subpoenas;
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771 2) Requests for Subpoenas;

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- 3) Cover letters;
- 4) Notices of Filing;
- 5) Certificates of mailing for regular mail and return receipts for certified mail; and
- 6) Statements of objection filed pursuant to Section 1790.310(d).

c) The Board shall be the official custodian of the records of administrative hearings held by the Board.

Section 1790.620 Briefs

The ALJ may require or allow parties to submit written briefs to the ALJ within 15 days after the close of the hearing or other reasonable time as the ALJ shall determine. Briefs shall be limited to 15 pages, unless permission is granted by the ALJ.

Section 1790.630 Administrative Law Judge's Decision

- a) No later than 60 days following the hearing, the ALJ shall issue a decision in writing and include findings of fact, conclusions of law, and recommended disposition to the Panel. The findings of fact shall be based exclusively on the evidence presented at hearing or known to all parties, including matters officially noticed. A copy of the recommendation shall be delivered or mailed to the Panel, each party of record, and to each attorney of record.
- b) If the ALJ finds that no allegations supporting one or more charges of misconduct are proven by clear and convincing evidence, then the ALJ shall recommend to the Panel that the complaint be dismissed, recommend to the Panel reactivation of the officer, or recommend to the Panel that an emergency order of suspension be reversed or reduced. If the ALJ finds that the allegations supporting one or more charges of misconduct are proven by clear and convincing evidence, then the ALJ shall recommend decertification, recommend no reactivation, or sustain the emergency order of suspension.

Section 1790.645 Illinois Law Enforcement Certification Review Panel

- a) Upon receipt of the ALJ's finding of fact, conclusions of law, and recommended disposition, and any submitted objections from the officer or Board, the Panel shall call for a certification review meeting or, after receiving the ALJ's decision

814 on an emergency order of suspension, a meeting relating to the emergency order
815 of suspension.

816
817 b) The Panel shall consider the hearing officer's findings of fact, conclusions of law,
818 recommended disposition, and any submitted objections and may deliberate on all
819 evidence and testimony received, and may consider the weight and credibility to
820 be given to the evidence received. No new or additional evidence may be
821 presented to the Panel.

822
823 c) If a simple majority of the Panel finds that no allegations supporting one or more
824 charges of misconduct are proven by clear and convincing evidence, then the
825 Panel shall recommend to the Board that the complaint be dismissed, recommend
826 to the Board reactivation of the officer, or reverse or reduce the emergency order
827 of suspension. If a simple majority of the Panel finds that the allegations
828 supporting one or more charges of misconduct are proven by clear and convincing
829 evidence, then the Panel shall recommend decertification, recommend no
830 reactivation, or sustain the emergency order of suspension.

831
832 d) The Panel shall prepare a summary report as soon as practicable after the
833 completion of the meeting including the following: the hearing officer's findings
834 of fact, conclusions of law, recommended disposition, and the Panel's order.

835

836 **Section 1790.650 Final Action by the Board**

837

838 Upon receipt of the Panel's order and recommendation relating to a complaint or a reactivation
839 refusal and upon the Board, by majority vote, finding that no allegations supporting one or more
840 charges of misconduct are proven by clear and convincing evidence, the Board shall order the
841 complaint be dismissed or reactivation of the officer. If the Board, by majority vote, finds that
842 the allegations supporting one or more charges of misconduct are proven by clear and convincing
843 evidence, then the Board shall confirm the decertification or denial of reactivation. If the Board
844 makes a final decision contrary to the recommendations of the Panel, the Board shall set forth a
845 final written decision with specific reasons for not following the Panel's recommendations. A
846 copy of the Board's final decision also shall be delivered to the last employing law enforcement
847 agency, the complainant (if not the Board), and the Panel.

848

849 **Section 1790.660 Reconsideration of Board's Decision**

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851 a) Within 30 days after service of the Board's final decision under Section 1790.650,
852 the Panel or the law enforcement officer may file a written motion for
853 reconsideration and supporting brief with the Review Committee. The motion for
854 reconsideration shall specify the particular grounds for reconsideration.

855

- 856 b) The non-moving party may respond to the motion for reconsideration within 21
857 days. The Review Committee shall only address the issues raised by the parties.
858
- 859 c) Briefs. Each brief shall:
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- 861 1) Set forth specifically the questions of procedure, fact, law or policy to
862 which objection is made;
 - 863
 - 864 2) Identify that part of the ALJ's decision to which objection is made;
 - 865
 - 866 3) Designate by precise citation of page the portions of the record relied on;
867
 - 868 4) Concisely state the grounds for the objection;
 - 869
 - 870 5) Be limited to 15 pages;
 - 871
 - 872 6) Include a specification of the questions involved and to be argued,
873 together with a reference to the specific objections to which they relate;
874 and
875
 - 876 7) Include an argument, presenting clearly the points of fact and law relied
877 on in support of the position taken on each question, with specific page
878 reference to the record and the legal or other material relied on.
879
- 880 d) Any objection to a ruling, finding, conclusion, or recommendation that is not
881 specifically stated shall be deemed to have been waived. Any brief in support of
882 an objection that fails to comply with subsection (c) may be disregarded. Any
883 brief in support of objections shall not refer to any matter not included within the
884 scope of the objections and shall contain, in the recommendation indicated, a clear
885 and concise statement of the case, containing all that is material to the
886 consideration of the questions presented.
887
- 888 e) The answering brief to the objections shall be limited to the questions raised in the
889 objections and in the brief in support of the objections. It shall present clearly the
890 points of fact and law relied on in support of the position taken on each question.
891 When objection has been taken to a factual finding of the ALJ and the objection is
892 proposed to support that finding, the answering brief should specify those pages
893 of the record that, in the view of the party filing the brief, support the ALJ's
894 finding.
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- 896 f) Requests for extension of time to file an answering brief to the motion for
897 reconsideration shall be in writing and copies shall be served promptly on the
898 other party.

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- g) Any matter not included in the motion for reconsideration may not thereafter be raised to the Review Committee or in any further proceeding and is deemed waived in all related proceedings before the Board.
- h) The Review Committee may deny the motion for reconsideration, or it may grant the motion in whole or in part and issue a new final decision in the matter. The Review Committee must notify the law enforcement officer and their last employing law enforcement agency within 14 days of a denial and state the reasons for denial.

Section 1790.670 Judicial Review

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Actions for judicial review under this Part shall be filed where the hearing proceedings took place, which is in the circuit court of either Cook County or Sangamon County.