**Section 1120.40 Hearings**

a) Upon the issuance of a complaint, the Executive Director shall set the matter for hearing before an Administrative Law Judge. All parties shall be given at least five days' notice of the hearing. The notice shall comply with Section 10-25(a) of the Illinois Administrative Procedure Act [5 ILCS 100].

b) Interested persons who wish to intervene in the hearing shall direct such requests to the Administrative Law Judge. The request shall be in writing and shall state the grounds for intervention. The Administrative Law Judge shall have discretion to grant or deny the request for intervention. In determining whether to grant the request, the Administrative Law Judge shall base his decision on the timeliness of the request, the degree to which the person requesting intervention has a real interest at stake, and the ability of the parties to represent the interests of the person requesting intervention.

c) The Board will encourage Administrative Law Judges to schedule voluntary prehearing conferences with the parties when it appears that those conferences will aid in narrowing or resolving issues.

d) On motion of a party made prior to the close of the hearing and with the approval of the General Counsel, the Administrative Law Judge may certify an issue to the Board for a ruling prior to the issuance of the Administrative Law Judge's recommended decision and order. An issue may be certified to the Board only if the Administrative Law Judge finds that the case involves an issue of law as to which there is substantial ground for difference of opinion and that an immediate appeal on the issue may materially advance the termination of the case. The Administrative Law Judge shall rule on the motion within seven days after a response to the motion is received or is due pursuant to 80 Ill. Adm. Code 1105.100(e)(2). The parties may file briefs concerning the certified issue no later than 21 days after the Administrative Law Judge's certification. Within 60 days after the last day that briefs must be filed, the Board shall rule on the certified issue or shall remand the issue to the Administrative Law Judge upon a finding that certification of the issue is inappropriate. Intermediate rulings of the Administrative Law Judge shall not otherwise be subject to interlocutory appeal. Parties may raise objections to intermediate rulings in their exceptions to the Administrative Law Judge's recommended decision or, if there is no recommended decision, in their briefs to the Board.

e) The Complainant shall present the case in support of the complaint. *The respondent may present evidence in defense against the charges* (Section 15 of the Act).

f) The Administrative Law Judge shall obtain a full and complete record by inquiring into all matters in dispute. The record shall be obtained either by evidentiary hearing or stipulation. Immediately prior to the close of the record, one or more parties may file motions to remove the case to the Board for decision. Responses to these motions may be filed as directed by the Administrative Law Judge. Within 14 days after the close of the record, the Administrative Law Judge shall rule on the motions. The Administrative Law Judge may also order the case removed to the Board on his or her own motion within 14 days after the close of the record. If the Administrative Law Judge orders a case removed, he or she shall certify that there are no determinative issues of fact that require an Administrative Law Judge's recommended decision.

g) Within seven days after removal, a party may move the Board to remand the case to the Administrative Law Judge, identifying in detail the material factual issues in dispute. If the Board fails to rule on the motion within 60 days, the motion to remand will be deemed denied. In cases removed to the Board, the Board shall remand the case if at any time it determines that the case presents issues of material fact requiring an Administrative Law Judge's recommended decision. A fact is material to the claim or defense in issue when the success of the claim or defense is dependent upon the existence of that fact.

h) In cases not removed to the Board and in cases remanded to the Administrative Law Judge, the Administrative Law Judge shall file and serve on the parties a recommended decision giving the reasons for the decision as promptly as possible based on the length of the record and the complexity of the issues involved.

(Source: Amended at 41 Ill. Reg. 10614, effective August 1, 2017)