

**TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF
SECURITIES**

SUBCHAPTER 1. GENERAL PROVISIONS

660:2-1-1. Purpose [AMENDED]

(a) The provisions of this Chapter set forth the organization and procedural rules governing the Department of Securities and have been adopted for the purpose of complying with 75 O.S., Section 302.

(b) The provisions of this Chapter relating to investigations and hearings shall apply to all investigations and hearings conducted by the Department in the enforcement of the Business Opportunity Act, the Land Sales Act, and the Securities Act, ~~and the Take-over Act.~~

660:2-1-3. Definitions [AMENDED]

Unless the context clearly indicates otherwise, or unless defined in this Section, terms used in this Chapter, if defined in the Oklahoma Uniform Securities Act of 2004, the Oklahoma Land Sales Code, or the Oklahoma Business Opportunity Sales Act ~~or the Oklahoma Take-over Disclosure Act of 1985~~ shall have the meanings set forth in such acts. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Administrator**" means the Administrator of the Department of Securities.

"**Business Opportunity Act**" means the most recent codification of the Oklahoma Business Opportunity Sales Act in Title 71 of the Oklahoma Statutes.

"**Commission**" means the Oklahoma Securities Commission.

"**Department**" means the Oklahoma Department of Securities.

"**Hearing Officer**" means a person who has been duly ~~appointed~~ designated by the Administrator to hold hearings and, as required, render proposed orders.

"**Land Sales Act**" means the most recent codification of the Oklahoma Subdivided Land Sales Code in Title 71 of the Oklahoma Statutes.

"**Securities Act**" means the most recent codification of the Oklahoma Uniform Securities Act of 2004 in Title 71 of the Oklahoma Statutes.

~~"Take-over Act" means the most recent codification of the Oklahoma Take-over Disclosure Act of 1985 in Title 71 of the Oklahoma Statutes.~~

SUBCHAPTER 5. AUTHORITY AND ACTION OF ADMINISTRATOR

660:2-5-1. Official Actionactions [AMENDED]

(a) All ~~officials~~ official acts of the Administrator shall be evidenced by a written record, and all final orders, decisions, opinions, rules and other written statements of policy or interpretations formulated, adopted or used in the discharge of the function of the Administrator shall be available for public inspection.

(b) Official action of the Administrator shall not be bound or be prejudiced by any informal statement made or opinion given by the Administrator, Commission, or employees of the Department of Securities.

660:2-5-4. Summary orders [REVOKED]

~~The Administrator may issue summary orders pursuant to the provisions set forth in:~~

~~(1) Sections 1-306.D, 1-411.F or 1-604 of the Securities Act;~~

- (2) ~~Section 814(D) of the Business Opportunity Act;~~
- (3) ~~Sections 628(D), 634(C), or 660 of the Land Sales Act; or~~
- (4) ~~Subsection (D) of Section 453 of the Take-over Act.~~

SUBCHAPTER 7. INVESTIGATIONS

660:2-7-3. Investigative Processes [AMENDED]

- (a) **Authority.** Investigations under the statutes administered by the Administrator shall be conducted by representatives designated and duly authorized for this purpose. Such representatives are authorized to exercise and perform the duties of their office in accordance with the statutes of the state of Oklahoma and the regulations of the Administrator, including administration of oaths and affirmations, in any matter under investigation by the Administrator. Nothing in this section shall prohibit the Administrator or ~~his~~ the Administrator's designee from expanding or restricting the scope of any investigation at any time during an investigation.
- (b) **Investigative hearings.** Investigative hearings, as distinguished from hearings in individual proceedings, may be conducted in the course of any investigation undertaken by the Administrator, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Administrator. Investigative hearings may be held before the Administrator, or ~~his~~ the Administrator's designee, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be non-public.
- (c) **Subpoena to testify or produce records.** While the Administrator encourages voluntary cooperation in investigations, the Administrator, ~~or his~~ or the Administrator's designee, at any stage of any investigation, may issue a subpoena ordering the person named therein to appear before a designated representative at a designated time and place, including the offices of the Department, to ~~provide testimony by deposition, testify, to file a sworn statement or affidavit,~~ and/or to produce documentary evidence relating to any matter under investigation. ~~Such testimony shall only be reduced to writing or otherwise recorded in any manner by the person taking the testimony, or under his direction.~~
- (i) Testimony shall only be reduced to writing or recorded at the direction of the Department.
 - (ii) Documents required by a subpoena shall be produced in the manner, form, and time frame instructed therein.
- (d) **Subpoena to grant access.** The Administrator may issue a subpoena to grant access to, to examine, and to copy documents, books or other records of any person being investigated.
- (e) **Service.** Subpoenas shall be served in the manner provided by law.
- (f) **Written examination.** The Administrator, or ~~his~~ the Administrator's designee, may issue an order requiring persons to file a report or statement, or answers in writing and under oath to specific questions, relating to any matter under investigation.
- (g) **Rights of witness.** Any person under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation, subject to the confidentiality requirements provided by law. Any person required to testify shall be entitled to review a copy of the transcript of ~~his~~ the person's own testimony, if transcribed, at the offices of the Department of Securities. Any person required to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, provided that such counsel is duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may question such person briefly at the conclusion of the examination to clarify any of the answers such person has given.

(h) **Confidentiality.** Information or documents obtained by the Administrator and subpoenas issued in connection with an investigation shall be kept confidential and shall not be made available to the public, unless expressly ordered by the Administrator, or disclosed pursuant to the provisions of Subchapter 9 of this Chapter or as otherwise provided by law.

(i) **Duty to Supplement.** Any person who has responded to a subpoena must supplement its response in a timely manner if the person learns that in some material respect the disclosure or response is incomplete.

SUBCHAPTER 9. INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

660:2-9-1. Hearings in General [AMENDED]

(a) **Authority.** Prior to the issuance of a final order in an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be in writing and advise the parties of their right to a hearing and their obligation to file an answer, the time period within which a hearing must be requested, and the effect of a failure to file an answer and to request a hearing.

(b) **Public hearing.** All hearings shall be open to the public but may not be recorded by the public or any respondent by any electronic means.

(c) **Hearings on summary orders.** The provisions of this Subchapter shall not apply to proceedings for summary orders. ~~The procedures for hearings on summary orders shall be those set forth in:~~

- ~~(1) Sections 1-306.D, 1-411.F, or 1-604.B of the Securities Act;~~
- ~~(2) Section 814(D) of the Business Opportunity Act;~~
- ~~(3) Sections 628(D), 634(C), or 660 of the Land Sales Act; and~~
- ~~(4) Subsections (D) and (E) of Section 453 of the Take-over Act.~~

660:2-9-3. Prehearing Proceedings and Processes [AMENDED]

(a) **Scheduling.** ~~As soon as is practicable after the request for hearing is received, but in no event later than thirty (30) days after the request for hearing is received,~~ a hearing has been scheduled, the Administrator, or the Hearing Officer, shall enter a scheduling order that is intended to expedite the disposition of the action and ~~insure~~ ensure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone and attempt to prepare a single agreed scheduling order to submit to the Administrator or the Hearing Officer. The agreed, proposed scheduling order shall be submitted to the Administrator or the Hearing Officer no later than fifteen (15) days after the hearing has been scheduled. If the proposed scheduling order is acceptable to the Administrator, or the Hearing Officer, no scheduling conference need be held. ~~If the parties are unable to agree to a single scheduling order, the parties shall each submit, no later than twenty (20) days after the hearing has been scheduled, a proposed scheduling order to the Administrator, or the Hearing Officer, who shall issue an appropriate scheduling order or, prior to issuing such order, hold a scheduling conference in person or by telephone. The scheduling order shall establish at least the following:~~

- (1) a schedule of discovery;
- (2) any limitations to be placed on discovery;
- (3) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing;
- (4) identification of any expert witness intended to be called;
- (5) the date for exchanging the documents and exhibits intended to be utilized at the hearing and the final list identifying all witnesses intended to be called at the hearing; and
- (6) such other matters as may aid in the disposition of the matter.

(b) **Discovery.**

(1) Discovery may be obtained by one or more of the following methods:

(A) A party may serve a written request on any other party requiring the party to produce, within fifteen (15) days, for inspection and copying, any documents or tangible items that are in the possession, custody or control of the party and relevant to the subject matter of the individual proceeding and are not privileged. The number of requests to produce or permit inspection shall not exceed thirty (30) in number except by agreement of the party being required to produce or by order of the Administrator, or Hearing Officer. All documents will be produced at the offices of the Department or at such other place as the parties may agree in writing.

(B) A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters relating to facts, the application of law to fact, or opinions about either; and the genuineness of any documents described in the request. Copies of documents shall be served with the request to admit unless they have been or are otherwise furnished or made available for inspection and copying. The number of requests to admit for each party shall not exceed thirty (30) in number except by agreement of the party being required to respond or by order of the Administrator, or the Hearing Officer. Each matter upon which an admission is requested shall be separately stated. The matter is admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the Administrator, or the Hearing Officer, may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter and signed by the party. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify ~~his~~the answer or deny only a part of the matter of which an admission is requested, ~~he~~the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless ~~he~~the party states that ~~he~~the party has made reasonable inquiry and that the information known or readily obtainable by ~~him~~the party is insufficient to enable ~~him~~the party to admit or deny. The grounds for an objection must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(C) A party may take the testimony of a witness by oral deposition at the expense of that party. A party desiring a transcript must make appropriate arrangements with the reporter or transcriber to order and pay for it. A party desiring to take the deposition of another party, or an employee thereof, shall serve written notice to the witness, or his counsel. The notice shall state the time and place for taking the deposition and shall be served at least three (3) days before the person is required to appear. A party desiring to take the deposition of a non-party witness shall serve the witness with a subpoena in accordance with 660:2-9-4. A copy of the notice or subpoena shall be served on all other parties to the proceeding by means specified in paragraph (h) below. Unless otherwise agreed by the parties or ordered by the Administrator or Hearing Officer, a deposition under this provision shall not last more than six (6) hours, exclusive of breaks, and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a day other than a legal holiday.

(2) A party who has responded to a request for production or request to admit must supplement or correct its response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the Administrator, or the Hearing Officer.

(3) In addition to limitations on discovery set forth in a scheduling order or any law, regulation, or rule, discovery does not include:

(a) Non-public information or documents from the personnel file of any Department employee;

(b) Non-public information or documents relating to any investigation conducted by the Department against unrelated parties;

(c) Non-public information or documents relating to any action brought by the Department against unrelated parties;

(d) Information or documents relating to any examination conducted by the Department of unrelated parties;

(e) Information or documents relating to any license applications or determinations made by the Department of unrelated parties; or

(f) Depositions of Department personnel.

(c) Motions in general.

(1) Unless otherwise permitted by these rules or by the Administrator, or the Hearing Officer, motions and responses thereto shall be served on all parties and shall:

(A) be made in writing and shall not exceed twenty (20) pages;

(B) state concisely the question(s) to be determined; ~~and be accompanied by any necessary supporting documentation; and~~

~~(C) be served on all parties.~~

(C) state with particularity the grounds therefore and the relief or order sought; and

(D) be accompanied by a concise brief or a list of authorities upon which movant relies.

(2) A response to a written motion shall be filed within fifteen (15) days after receipt of the motion but no later than one day prior to the date and time of the hearing. A response to a written motion shall not exceed twenty (20) pages. A reply to a response to a written motion may be filed within five (5) days after receipt of the response but no later than the date and time of the hearing. A reply to a response to a written motion shall not exceed five (5) pages.

(3) The Administrator, or the Hearing Officer, may allow oral argument if it appears necessary to the Administrator, or the Hearing Officer, for a fuller understanding of the issues presented.

(4) The filing or pendency of a motion does not alter or extend any time period prescribed by this Subchapter or by an order of the Administrator, or the Hearing Officer.

(d) Motions for summary decision. A party may move for summary decision as to any substantive issue in the case. The Administrator, or the Hearing Officer, may issue a summary decision if he finds that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law.

(e) Prehearing conference.

(1) Upon the request of a party or when the Administrator, or the Hearing Officer, believes it necessary or appropriate, a prehearing conference shall be held, as close to the time of hearing as is reasonable under the circumstances, to address the following matters:

(A) simplification of issues;

(B) the final list of witnesses and exhibits to be utilized at the hearing;

(C) admissions and stipulations of fact;

(D) stipulations regarding admission and authenticity of documents;

- (E) requests for official notice;
- (F) discovery disputes;
- (G) pending motions; and
- (H) other matters that will promote the orderly and prompt conduct of the hearing.

(2) At the conclusion of the prehearing conference, a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the ~~action-proceeding~~ unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice.

(f) **Failure to participate, appear, comply or cooperate.** A party's failure to participate in good faith in the preparation of a scheduling order or prehearing conference order; failure to comply with a scheduling order or prehearing conference order; failure to comply with or cooperate in discovery; or failure to appear at, substantially prepare for, or participate in good faith in, any hearing or conference, may result in any of the following sanctions:

- (1) striking of any pleading in whole or in part;
- (2) an order prohibiting a party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (3) an order directing that designated facts be taken as established for purposes of the proceeding;
- (4) staying the proceeding;
- (5) default judgment; or
- (6) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.

(g) **Post prehearing conference.** If additional exhibits are discovered after the prehearing conference order is issued or after the date final documents and exhibits are exchanged, the party intending to use them shall immediately notify all other parties and furnish copies of the additional exhibits to such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses. These additional exhibits or the testimony of the additional witnesses shall not be admitted at the hearing without the agreement of all parties or without a showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the exhibit or witness testimony were not permitted.

(h) **Service and filing of papers.** Service of papers upon a party shall be made by personal delivery, regular first-class mail, facsimile transmission or electronic mail. All papers required to be served by a party shall be filed with the Administrator ~~within the applicable time for service in~~ accordance with the scheduling order. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator 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.

(i) **Signature and certification.** Every filing of a party represented by counsel shall be signed by at least one counsel of record and shall state ~~that counsel's business name, bar number,~~ address, email address, and telephone number. A party who is not represented by counsel shall sign ~~his individual name the filing~~ and state his the party's name, residential address, email address, and telephone number on every filing. The signature of counsel or a party shall constitute a certification that:

- (1) the person signing the filing has read the filing;
- (2) to the best of his 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 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; and

(3) ~~If~~ if a filing is not signed, the Administrator, or the Hearing Officer, shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

(j) **Computation of time.** A paper is filed when it is received by the Administrator. Unless otherwise specifically provided by ~~the Securities Act or~~ this Subchapter, computation of any time period prescribed by this Subchapter, or by an order of the Administrator, or the Hearing Officer, begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, state holiday, or any other day when the Department's office is not open for public business, in which event the period runs until the end of the next business day. If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service, the date of mailing is the date of service, and three (3) days shall be added to the prescribed time period.

660:2-9-4. Authority to subpoena witnesses [AMENDED]

(a) Subpoenas.

(1) Any party to an individual proceeding shall have the right to have subpoenas issued to require the attendance and testimony of witnesses at a designated time and place, or to require the production of documents and tangible items in the possession or under the control of the witness at a designated time and place. A party requesting the issuance of a subpoena shall submit the proposed subpoena in writing to the Administrator or the Hearing Officer. The proposed subpoena shall contain the name and address of the person to be subpoenaed; the name, bar number, address, email address, and telephone number of counsel of record, or if the party is not represented, the name, address, email address, and telephone number of the party requesting the subpoena; and if the production of documents or tangible items is sought, a particular description of such documents or tangible items. Where it appears to the Administrator, or the Hearing Officer, that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or not relevant, ~~he~~ the Administrator or Hearing Officer may, in ~~his~~ the Administrator's or Hearing Officer's discretion, as a condition precedent to the issuance of the subpoena, require the party seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrator, or the Hearing Officer, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant, ~~he~~ the Administrator or the Hearing Officer may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires.

(2) A party requesting the issuance of a subpoena to an out-of-state witness may be required to show the relevance of the information sought and the witness' contacts with this state as a condition precedent to the issuance of the subpoena. If after consideration of all circumstances, the Administrator, or the Hearing Officer, determines that the information sought is not relevant or the witness' contacts with the state are insufficient to establish jurisdiction over the witness, ~~he~~ the Administrator or the Hearing Officer may refuse to issue the subpoena.

(b) **Service.** Service of a subpoena in this state shall be by personal delivery or by certified mail with a return receipt requested and delivery restricted to the person named in the subpoena. Service shall be made at least three (3) days before the person is required to appear. Service of a subpoena outside of this state shall be served by any person in any manner prescribed for the

service of a subpoena in a civil action in the state in which the subpoena is being served. The party requesting the subpoena shall be responsible for, and bear the cost of, service.

~~(c) **Return of service.** **Proof of service of subpoena.** The party requesting the subpoena shall promptly file a return of service with the Administrator including a certificate signed by the person making service. The party requesting the subpoena shall promptly file a notice with the Administrator advising that service has been made upon the person named in the subpoena. If service is effected by mail the notice shall include a copy of the return receipt reflecting delivery and acceptance by certified mail, return receipt requested and delivery restricted to the person named in the subpoena. If service is effected by personal delivery to the person named in the subpoena the notice shall include a written, notarized affidavit affirming such delivery by the person making delivery.~~

(d) **Objection to subpoena.** A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Administrator within ten (10) days of service of the subpoena or by the date the person is ordered to appear, whichever is earlier.

(e) **Enforcement of subpoenas.**

(1) If a person under subpoena fails to appear as required, or fails to produce the documents or tangible items set forth in the subpoena, a party may apply to the Administrator for enforcement of the subpoena.

(2) An application to the Administrator for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Administrator may establish.

(3) Upon a timely request by a party for enforcement of a subpoena, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained to enforce the subpoena, ~~as authorized by the Securities Act.~~

(f) **Fees.** Non-party witnesses subpoenaed pursuant to this section shall be paid the same fees and mileage as are paid witnesses in the courts of the state of Oklahoma. Such fees shall be paid by the party requesting that the subpoena be issued ~~at the time~~ within twenty (20) days after the witnesses' testimony is completed.

660:2-9-5. Representation [AMENDED]

(a) **Right to counsel.** Any party shall have the right to appear in person and by counsel, provided, however, that such counsel representing the party must be duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may be present during the giving of evidence, ~~may~~ have a reasonable opportunity to examine and inspect all documentary evidence, ~~may~~ examine witnesses, and ~~may~~ present evidence ~~in his~~ on the client's behalf.

(b) **Notice of appearance.** An attorney representing a party shall promptly file a notice of appearance with the Administrator. The notice of appearance shall contain all of the following:

- (1) the attorney's name, address, email address, telephone number, and bar number;
- (2) the firm name, address, and telephone number if the attorney is a member of a firm; and
- (3) the name, address, email address, and telephone number of the person represented.

(c) **Service on attorney.** After a notice of appearance has been filed, service of all papers ~~may~~ shall be made upon the attorney or firm of record and shall be effective as service upon the person represented.

(d) **Withdrawal.** Any attorney who withdraws from representing a party must file a written notice of withdrawal with the Department and the Administrator or Hearing Officer and must serve the notice of withdrawal on all attorneys then of record and on all unrepresented parties. The notice must contain the effective date of the withdrawal, the current name, address, email address, and telephone number of each party who will no longer be represented, and, if known, the name of the person who will represent the party from that time forward. Withdrawal of a

party's attorney after the service of a notice of hearing is not grounds for the continuance of the hearing unless good cause is shown.

660:2-9-6. Conduct of individual proceeding [AMENDED]

(a) **Order of proceeding.** The hearing shall proceed as follows:

- (1) The Administrator, or the Hearing Officer, shall call the hearing to order;
- (2) the Administrator, or the Hearing Officer, shall briefly explain the purpose and nature of the hearing;
- (3) the Administrator, or the Hearing Officer, may allow the parties to present preliminary matters;
- (4) the Administrator, or the Hearing Officer, may allow the parties to make opening statements;
- (5) the Administrator, or the Hearing Officer, shall state the order of presentation of evidence;
- (6) witnesses shall be sworn or put under affirmation to tell the truth; and
- (7) the Administrator, or the Hearing Officer, may allow the parties to present summations and closing argument.

(b) **Rules of evidence.** The rules of evidence need not be strictly followed or observed by the Administrator, or the Hearing Officer, during the hearing in order to obtain a full and fair disclosure of facts relevant to the matters at issue. However, the admissibility of evidence shall be governed by the provisions of Section 310 of the Administrative Procedures Act.

(c) **Official notice.** ~~Notice may be taken by the~~ The Administrator, or the Hearing Officer, may take official notice of judicially cognizable general, technical, or scientific facts. In addition, notice may be taken of generally recognized practices, ~~and procedures and facts~~ relating to the ~~securities~~ applicable industry. Parties shall be notified either before or during the hearing of the material noticed and they shall be afforded an opportunity to contest the material so noticed. ~~The Administrator, Administrator's or the Hearing Officer, Officer shall utilize his experience,~~ technical competence, and specialized knowledge may be used in evaluating the evidence presented.

(d) **Examination of witnesses.**

- (1) Witnesses shall testify under oath or affirmation. If the Administrator, or the Hearing Officer, determines that a witness is hostile or unresponsive, the Administrator, or the Hearing Officer, may authorize the party calling the witness to proceed as if the witness were under cross-examination.
- (2) A party may conduct direct examination or cross-examination of a witness ~~without strict adherence to formal rules of evidence, particularly, the rules on hearsay,~~ in order to obtain a full and fair disclosure of facts relevant to the matters at issue.
- (3) Upon request by any party, the Administrator, or the Hearing Officer, may exclude witnesses other than parties from the hearing room when those witnesses are not testifying. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though the individual may also be a witness. An expert witness who is to render an opinion based on the testimony given at the hearing may remain in the hearing room during all testimony. The Administrator, or the Hearing Officer, may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the absence of the witness.
- (4) No witness shall testify by telephone or other electronic means unless by agreement of the parties or by order of the Administrator or the Hearing Officer.

(5) The Administrator or the Hearing Officer may question any witness provided that all parties shall have the right of cross-examination of those witnesses.

SUBCHAPTER 11. PROCEDURES FOR INSPECTING AND/OR COPYING PUBLIC RECORDS

660: 2-11-4. Hours of Inspection. [AMENDED]

All public records of the Department shall be available for inspection during the regular business hours of the Department. Such hours shall be 8:00 a.m. to ~~5:00 p.m.~~4:30 p.m., Monday through Friday, except legal holidays.

660: 2-11-5. Procedures for inspection of records [AMENDED]

(a) **Requests for inspection.** To inspect a public record in the possession of the Department, the person requesting the record shall execute a Form OAD 25 - REQUEST FOR RECORD INSPECTION and deliver it to the Record Custodian responsible for the requested record designated in 660:2-11-3. ~~Such request shall be accompanied by the fees set forth in 660:2-11-7.~~ All record inspection forms must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian may demand reasonable identification of any person requesting a record.

(b) **Place of inspection.** All inspections of public records shall be performed in the offices of the Department under the supervision of the Record Custodian or a designee.

(c) **Identification of records.** A written request for inspection of a record shall reasonably describe the record sought. In instances where the person requesting the record cannot provide sufficient information to identify a record, the Record Custodian shall assist in making such identification.

(d) **Delay or denial of requests for inspection.** If the record requested is not available for inspection at the time requested, ~~within three (3) business days following the day the request for inspection is received by the Record Custodian,~~ the Record Custodian shall, no later than seven (7) business days prior to the requested record inspection date, notify the person requesting the record:

- (1) that the record will be available for inspection at a later time by returning Form OAD 26 - RECORD INSPECTION DELAY NOTICE; or
- (2) that the record will not be available for inspection, by returning to the person requesting the record a copy of Form OAD 27 - RECORD INSPECTION DENIAL.

660: 2-11-6. Procedures for copying records [AMENDED]

(a) **Requests for copies.** To obtain a copy of a public record in the possession of the Department, the person requesting the copy shall execute a Form OAD 28 - REQUEST FOR RECORD COPY and deliver it to the Record Custodian responsible for the requested record designated in 660:2-11-3; except that no form shall be required for requests made for records which have been reproduced for free public distribution. Such request shall be accompanied by the fees set forth in ~~660:2-11-7~~Section 1-612 of the Securities Act. All record copy forms must be completed by the person requesting the record and signed by the individual making the request. The Record Custodian, or a designee, may demand reasonable identification of any person requesting a record.

(b) **Responsibility for making copies.** All copies of public records shall be performed by the Record Custodian or a designee in the offices of the Department except where the Record Custodian or a designee determines that the size or the volume of records to be copied warrants sending the record outside the Department for copying, in which event the copies shall be made

at a place selected by the Record Custodian or a designee and under the supervision of the Record Custodian or a designee.

(c) **Identification of records.** A written request for copies of a record shall reasonably describe the record sought. In instances where the person requesting the copies cannot provide sufficient information to identify a record, the Record Custodian or a designee shall assist in making such identification.

(d) **Delay or denial of requests for copies.** If the record requested is not available for copying at the time requested, ~~within three (3) business days following the day the request for copies is received by the Record Custodian,~~ the Record Custodian or a designee shall, no later than seven (7) business days prior to the requested copy date, notify the person requesting the copies:

(1) that the record will be available for copying at a later time by returning Form OAD 29 - RECORD COPY DELAY NOTICE; or

(2) that the record will not be available for copying, by returning to the person requesting the record a copy of Form OAD 30 - RECORD COPY DENIAL.

660:2-11-7. Fees [AMENDED]

(a) **Amounts payable.** The following are the fees that shall be charged by the Department for copying and/or mechanical reproduction of public records and for the search for public records requested by the public pursuant to the Open Records Act and Section 1-612 of the Securities Act; provided, however, no record search and/or copying charge shall be assessed against officers or employees of the Department who make requests which are reasonably necessary to the performance of their official duties:

(1) **Inspection fees.** No fee shall be charged for inspection of a public record in the offices of the Department.

(2) **Copying Fees.** ~~The following fees shall be charged for copies of public records:~~

(A) ~~8 1/2" by 14" or smaller - \$.25 per page~~

(B) ~~Larger than 8 1/2" by 14" - \$1.00 per page~~

(C) ~~Certified copy 8 1/2" by 14" or smaller - \$1.00 per page~~

(D) ~~Certified copy larger than 8 1/2" by 14" - \$2.00 per page~~ Any person requesting copies of public records shall pay the fees specified in Section 1-612 of the Securities Act prior to receipt of the records.

(3) **Fee for mechanical reproduction.** For copying any public record which cannot be reproduced by photocopying, such as a computer printout or a blueprint, or where the size of the record to be copied warrants sending the record outside for copying, the person requesting the record shall be charged the actual cost to the Department of such copying, including the cost of labor, materials and equipment.

(4) Search fee. If the person requesting a record is using the records solely for a commercial purpose, a search fee shall be charged ~~equal to \$20.00 per hour~~ as set forth in Section 1-612 of the Securities Act for the time spent by employees in retrieving the record

(b) **Prepayment of fees.** The Record Custodian may require prepayment of estimated fees for requests for public records and shall require prepayment of a fee whenever the estimated amount exceeds \$200.00. The prepayment amount shall be an estimate of the costs of copying, mechanical reproduction and/or searching for the record. Any overage or underage in the prepayment amount shall be settled prior to producing the requested record or delivering the copy or mechanical reproduction of the record to the person requesting the record.