

CHAPTER XI
FORMAL COMPLAINTS

Section 1. Filing of a Formal Complaint; Service; Satisfaction or Answer.

(a) A formal complaint may be made by the Administrator on his own motion or by any person, setting forth in writing the act done or omitted to be done by the provider in violation of a state or federal law, order, or rule or standard of the Division. The complaint shall show the venue at the top of the page, "Before the Division of Community Programs, Department of Health and Social Services of the State of Wyoming," and shall bear a heading showing the names of the complainant and of the respondent. The complaint shall state:

(i) The name, address, and telephone number of the complainant;

(ii) The name, address, and telephone number, if known, of the respondent;

(iii) A clear and complete statement of the alleged violation complained of, together with all the facts which will give the Administrator and the respondent a clear and full understanding of the nature of the alleged violation. The allegations may be supported by sworn statements attached to the complaint as exhibits;

(iv) A definite statement of the exact relief prayed for; and

(v) The signature of the complainant or his attorney and if by the attorney, then his name, address, and telephone number.

(b) The complainant shall submit to the Administrator as many copies of the complaint and exhibits as are necessary for the Administrator to serve them on each respondent.

(c) When a formal complaint has been filed with the Administrator, he shall assign a docket number to the case. The docket number shall identify the nature of the case; that is, "C" for "complain," or "P" for "protest," and the year the case is filed and the chronological number of the cases filed before the Division. For example, "C-83-1" or "P-83-1."

(d) The Administrator shall thereupon serve each respondent with a copy of the complaint and all the exhibits and his order requiring the defendant to satisfy the complaint if satisfaction is appropriate, or to file an answer to the complaint within twenty (20) days after receipt of the complaint.

(e) If the respondent satisfies a formal complaint within the time specified in Subsection (d) of this section, he shall file with the Administrator a statement of satisfaction signed by the complainant and by the respondent and setting forth when and in what manner the complaint has been satisfied. The proceeding shall thereupon be dismissed.

(f) If the respondent does not satisfy the complaint within the time specified in Subsection (d) of this section, he shall file his Answer within the specified time. The Answer shall clearly and

completely advise the parties and the Administrator of the nature of the defense. It shall admit or deny individually and specifically each allegation of the complaint.

Section 2. Continuances; Amendments; Attorney General's Assistance.

(a) For good cause shown, continuances and extensions of time shall be granted at the discretion of the Administrator.

(b) The Administrator may permit any pleadings to be amended or corrected or any omission therein to be supplied.

(c) The Office of the Attorney General may assist the Division to investigate, prepare, present, and prosecute contested cases as provided in W.S. 16-3-111 and 16-3-112(c).

Section 3. Hearing.

(a) Upon the written request of any party, the Administrator shall grant a hearing when:

(i) A formal complaint has been filed with the Administrator;

(ii) The Administrator has issued his order that the respondent satisfy the complaint or file his answer to the complaint; and

(iii) The respondent has not satisfied the complaint and has filed his Answer to the complaint.

(b) The Administrator shall fix the time and place for the hearing which shall be held at least twenty (20) days after the notice of the hearing setting. The notice shall contain:

(i) The names of the parties;

(ii) The time and place of the hearing;

(iii) The legal authority and jurisdiction under which the hearing is to be held;

(iv) The state law or rule alleged to have been violated;

(v) A concise statement of the matters asserted; and

(vi) The docket number.

(c) Service of notice of the hearing shall be as prescribed in Chapter II, Section 3(c) of these rules.

(d) Before the day of the hearing, the presiding officer on his own motion or upon motion by a party, shall meet with the parties for a conference to consider simplification of the issues, preliminary motions, stipulations and admissions of facts, clarification or limitation of evidence,

and any other matters that may expedite the proceedings and assure a just conclusion of the case. Prehearing memoranda may be filed and submitted by the parties to each other and to the presiding officer. Stipulation, limitations, agreements, and orders on motions made at the prehearing conference shall be recited in the record and shall control the course of the proceedings, unless modified during the hearing to prevent injustice.

Section 4. Hearing Proceedings; Presiding Officer.

(a) All hearings of contested cases shall be public. The hearing shall be conducted by the presiding officer who shall be appointed by the Administrator. At the request of any party, or upon his own motion, the Administrator may appoint an independent presiding officer. The presiding officer shall conduct the contested case in an impartial manner and shall withdraw at any time if he deems himself disqualified to act impartially or for any other reason.

(b) The presiding officer shall:

(i) Administer oaths and affirmations;

(ii) Rule on offers of proof and receive relevant evidence;

(iii) Take or cause depositions to be taken in accordance with the provisions of W.S. 16-3-101 through 16-3-115;

(iv) Regulate the course of the hearing;

(v) Hold conference for the settlement or simplification of the issues;

(vi) Decide procedural requests and similar matters;

(vii) Make recommended decisions when directed to do so by the Division; and

(viii) Take any other action authorized by these rules and by W.S. 16-3-101 through 16-3-115.

(c) Upon application of a party, the Administrator or the presiding officer shall issue a subpoena requiring the appearance of witnesses for the purpose of taking evidence or requiring the production of books, paper, or other documents relevant or material to the contested case. Upon motion made promptly and before the time specified in the subpoena for compliance, the Administrator or the presiding officer may quash or modify the subpoena or take other action as provided in W.S. 16-3-107(e).

Section 5. Order of Hearing Proceedings.

(a) Every party of record may appear in person and with counsel and testify in the hearing of the contested case. In all contested cases, the proceeding including all testimony shall be reported verbatim stenographically or by any other appropriate means determined by the Administrator of presiding officer. Oral proceedings shall be transcribed on request of a party upon payment of the cost for the transcript.

(b) Witnesses shall be examined orally and under oath or affirmation administered by the presiding officer. The complainant shall establish by a preponderance of evidence the controverted facts upon which he bases his complaint. In the absence of an answer by the respondent, the presiding officer shall take such proof of the facts as may be deemed proper and reasonable and make such order thereon as dictated by the circumstances. If the complainant failed to appear at the hearing, the presiding officer shall dismiss the complaint with prejudice.

(c) The Wyoming Rules of Evidence shall be followed by the presiding officer and the parties. The provisions of W.S. 16-3107 and 16-3-108 apply to contested cases before the Division, relating to reporting proceedings, transcription of the proceedings, documentary evidence, exclusion of evidence, cross examination, and judicial notice. Complainant's exhibits shall be marked by numbers beginning with "1" and respondent's exhibits shall be marked by letters of the alphabet beginning with "A."

(d) At the commencement of the hearing, the presiding officer shall announce that the hearing is open and shall call the docket number and title of the case to be heard. He may recess the proceedings when necessary and appropriate. At the close of the hearing after the parties have rested, the presiding officer shall excuse all the witnesses and close the evidence. Evidence may be reopened upon motion of a party and a showing of good cause.

(e) At hearings of contested cases, the complainant or the protestant shall open and close. On investigations on motion or order, the Administrator shall open and close. Intervenors shall follow the party on whose behalf the intervention is made.

(f) Opening and closing statements may be made by the parties or their counsel under conditions and limitations fixed by the presiding officer. Briefs may be filed by any party at the discretion of the presiding officer and within the time fixed by him.

Section 6. Decisions by the Administrator.

(a) Before rendering his decision in a contested case, the Administrator shall consider the entire record or any portion of the record to which the parties have stipulated. If a recommended decision is rendered, all parties shall be afforded a reasonable opportunity to file exceptions thereto which shall become a part of the record. As a matter of right, each party shall be permitted to file a brief with respect to the recommended decision with the Division and oral argument may be allowed at the discretion of the Administrator.

(b) A final decision or order adverse to a party in a contested case shall be in writing and shall be served immediately upon each party or upon his attorney or record. The final decision shall contain findings of fact and conclusions of law separately stated. The findings of fact shall be based exclusively on the evidence and matters officially noticed. If the findings of fact are set forth in statutory language, they shall include, also, a concise and explicit statement of the underlying facts supporting the findings. The Administrator shall serve each party with a copy of his decision and findings of fact and conclusions of law.

Section 7. Appeals. Judicial review by district courts of the final decision of the Administrator shall be pursuant to W.S. 16-3-114. Review of any final judgment of the district court under W.S. 16-3-101 through 16-3-115 by appeal to the Wyoming Supreme Court shall be taken as in other civil cases.