

PART 7. DENIAL AND EXCLUSION HEARINGS

MR 432.1701 General provisions

Rule 701. (1) A person whose application for a license or a transfer of ownership has been denied, whose license has not been renewed, who has been placed on an exclusion list, or who has been denied an approval from the board required in these rules may request a hearing. The hearing will be de novo.

(2) The petitioner shall submit an original and 2 copies of any request, pleading, or other written document submitted to the board at its offices in Ingham County and serve each party or attorney of record and provide a proof of service on each party or attorney of record.

MR 432.1702 Request for hearing

Rule 702. (1) A request for hearing shall meet the following requirements:

- (a) Be in writing.
- (b) State the name, current address, and current telephone number of the petitioner.
- (c) State in detail the reasons why, and the facts upon which the petitioner will rely to show that, the petitioner's application for a license should not have been denied, the license should have been renewed, the transfer of ownership should have been approved, the petitioner should not have been placed on the exclusion list or that approval should have been granted, including specific responses to any facts enumerated in the board's notice of denial, notice of non-renewal, or notice of exclusion.
- (d) A petitioner shall sign, verify, and date a request for hearing. A petitioner shall have the verification notarized and shall include a certification stating, "Under the penalty of perjury, the undersigned has examined this request for hearing and to the best of my knowledge and belief, it is true, complete, and correct."

(2) A petitioner shall submit a request for hearing within 21 days after service of the notice of denial, notice of non-renewal, exclusion, or disapproval. The request for hearing shall meet the following requirements:

- (a) The petitioner must submit a request for hearing to the board at the board's office in Ingham County.
- (b) A request for a hearing submitted by certified mail or overnight express mail shall be deemed submitted in a timely manner if it is postmarked not later than 21 days after service of a notice of denial, of nonrenewal, or exclusion in accordance with the act.

(3) A request for a hearing shall be deemed granted unless denied.

(4) Once a request for a hearing is granted, the executive director shall assign a title and case number to the matter.

(5) A request for a hearing may not be withdrawn or voluntarily dismissed if the board determines that withdrawal or voluntary dismissal is not in the best interest of the public and the gaming industry. If the board allows a petitioner to withdraw a hearing request, then the initial denial, non-renewal, or placement on the exclusion list becomes a final board order.

(6) The board shall appoint a board member or an administrative hearing officer to conduct a hearing in accordance with this rule. The board shall serve the petitioner with a copy of the letter of appointment. The letter shall serve as notice of the pendency of the hearing. The hearing officer who is to conduct the hearing shall establish a hearing date and notify the parties. The hearing officer may hold prehearing conferences to resolve discovery disputes or any other matters. The board member or hearing officer may do the following:

- (a) Issue subpoenas to compel the attendance of witnesses and the production of papers and documents.
- (b) Authorize the taking of depositions.
- (c) Administer oaths.
- (d) Receive evidence.
- (e) Rule on amendment to pleadings and the admissibility of evidence.
- (f) Exclude, sequester, and examine witnesses.
- (g) Set reasonable time frames within which a party may present evidence and within which a witness may testify.
- (h) Permit and set limits on oral argument.
- (i) Issue interim orders.
- (j) Establish dates and times for all hearings.
- (k) Recess a hearing from day to day and place to place.
- (l) Request briefs before or after the board member or hearing officer files written recommendations, findings of fact, and conclusions of law.
- (m) Perform other duties necessary to ensure the parties are provided a fair and proper hearing.

(7) Default judgment or dismissal may result at any stage of the proceeding. If a petitioner fails to take action for which it is responsible for a period of 60 days, then default judgment may be entered against the petitioner and the case may be dismissed unless the petitioner shows good cause for failing to take action.

MR 432.1703 Representation at Hearing

Rule 703. At a hearing, a petitioner may represent himself or herself or may be represented by an attorney.

MR 432.1704 Discovery

Rule 704. Discovery may be granted, in the discretion of the hearing officer, after the filing of a written request stating the reasons why discovery is necessary, and after adverse parties and attorneys of record have had an opportunity to respond to the request. Witness and exhibit lists must be exchanged 10 days before a hearing or earlier if ordered by the hearing officer. The hearing officer may exclude any witnesses or exhibits not disclosed in a timely manner.

MR 432.1705 Prehearing conference

Rule 705. A hearing officer shall schedule a prehearing conference at the request of either party or on the hearing officer's own initiative on any matters deemed necessary to facilitate the denial, nonrenewal, or exclusion hearing.

MR 432.1706 Motions for summary judgment and other appropriate motions

Rule 706. (1) The hearing officer may recommend a directed finding, dismissal, or summary judgment upon the filing of an appropriate motion by any party.

(2) Affidavits, depositions, admissions, or other documentary evidence may be submitted by a party to support or oppose the motion. Against a motion so supported, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits, depositions, admissions or other documentary evidence, set forth specific facts showing that there is a genuine issue for a contested case hearing.

(3) If requested by one of the parties, the hearing officer shall hear arguments on the motion for summary judgment or other appropriate motion. The hearing officer may require the parties to brief their positions in support of or against the motion for summary judgment or other appropriate motion.

MR 432.1707 Continuance

Rule 707. (1) A motion to continue a hearing or deposition must be made not less than 10 days before the hearing or deposition date, unless the requesting party can show good cause otherwise.

(2) A continuance may be granted by the hearing officer upon a showing of good cause.

(3) The hearing officer may order a continuance of a hearing on the hearing officer's own initiative.

MR 432.1708 Proceedings

Rule 708. (1) The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative

responsibility of establishing, by clear and convincing evidence, any of the following:

- (a) The petitioner should have been awarded a license.
- (b) The license should have been renewed.
- (c) The transfer of ownership should have been approved.
- (d) The petitioner should not have been placed on the exclusion list.
- (e) Approval should have been granted.

(2) Testimony shall be given under oath or affirmation. The hearing officer or recorder shall be authorized to administer oaths.

(3) All parties may present an opening statement on the merits. The petitioner proceeds first. An adverse party may reserve an opening statement for a later time. The hearing officer may determine the length of time each party is permitted for the presentation of an opening statement.

(4) The petitioner shall then present the petitioner's case-in-chief.

(5) Upon conclusion of the petitioner's case-in-chief, an adverse party may move for a directed finding. The hearing officer may hear arguments on the motion or may grant, deny, or reserve any decision on the arguments on the motion, with or without argument.

(6) If a motion for directed finding is not made, or if a motion is denied or a decision on a motion for a directed finding is reserved, then the adverse party may present its case.

(7) Each party may conduct cross-examination of adverse witnesses.

(8) Upon conclusion of the adverse party's case, the petitioner may present evidence in rebuttal.

(9) The hearing officer may ask questions of the witnesses and may request or allow additional evidence at any time, including additional rebuttal evidence.

(10) Both parties may present closing argument. The petitioner proceeds first, then the adverse party. After closing argument, the petitioner may present rebuttal argument. The hearing officer may determine the length of time each party is permitted for the presentation of closing argument.

(11) The hearing officer may require or allow the parties to submit post-hearing briefs, proposed findings of fact, and conclusions of law within 10 days of the conclusion of the hearing or within such other time period the hearing officer orders.

MR 432.1709 Evidence

Rule 709. (1) The hearing shall be conducted in accordance with Act No. 306 of the public Acts of 1969, as amended, being § 24.201 et. seq. of Michigan Compiled Laws, and

known as the Michigan administrative procedures act, except as otherwise provided in these rules or the act.

(2) The parties shall, to the fullest extent possible, stipulate all matters that are not or should not be in dispute.

(3) The parties may make objections to evidentiary offers. When an objection is made, the hearing officer may receive the disputed evidence subject to a ruling at a later time.

(4) The hearing officer may take official notice of any generally accepted information or technical or scientific matter within the field of gaming and any other fact that may be judicially noticed by courts of Michigan. The parties shall be informed of any information, matters, or facts officially noticed and shall be given reasonable opportunity to refute the evidence.

(5) The parties may call witnesses subject to the discretion of the hearing officer and in accordance with Act No. 306 of the Public Acts of 1969, as amended, being § 24.201 et. seq. of Michigan Compiled Laws, and known as the Michigan administrative procedures act. A former member of the board or former employee of the board may appear to testify before the board as a fact witness about actions by the member or employee during his or her tenure as member or employee with the board. A licensee, applicant, or the board shall not compensate a fact witness for his or her appearance other than a standard witness fee and reimbursement for travel expenses as established by statute or court rule.

MR 432.1710 Prohibition on ex parte communication

Rule 710. A party or its attorney shall not communicate directly or indirectly with the hearing officer regarding any pending matter, except upon notice and opportunity for all parties to participate. A party who does have ex parte communication with the hearing officer may be subject to sanctions and penalties.

MR 432.1711 Sanctions and penalties

Rule 711. (1) The hearing officer may impose sanctions and penalties if the hearing officer finds that a party has failed to appear at a scheduled hearing, has acted in bad faith for the purpose of delay, or has otherwise abused the hearing process. Sanctions and penalties include, but are not limited to, a fine or default judgment or directed finding on 1 or more issues.

(2) If a petitioner refuses to testify on his or her own behalf with respect to any question propounded to him or her, then the hearing officer may infer that the testimony or answer would have been adverse to the case of the party refusing to testify.

(3) If the petitioner or its agent fails to answer a subpoena or refuses to testify fully at the request of the board, then the failure to answer may be deemed independent grounds for a finding that the petitioner should have been denied a license or the transfer of ownership. The hearing officer may also infer

therefrom that such testimony would have been adverse to the petitioner.

MR 432.1712 Transmittal of record and recommendation to board

Rule 712. (1) Oral proceedings involving contested issues shall be recorded stenographically or by such means that adequately ensure the preservation of the testimony or oral proceedings and shall be transcribed at the request of a party. The requesting party shall pay for the transcript.

(2) Within 90 days of the conclusion of the hearing, or the submission of post-hearing briefs or proposed findings of fact, the hearing officer shall issue, to the board and to the parties, written findings of fact, conclusions of law, and recommendations. Findings of fact shall be based exclusively on testimony, evidence, and matters within the record. The findings of fact shall be stated separately. Within 60 days from the issuance of the findings of fact, conclusions of law, and recommendations of the hearing officer, the parties may file objections to the written findings of fact, conclusions of law, and recommendations issued by the hearing officer.

(3) All of the following requirements apply to a final board order:

(a) When issuing a final board order, the board shall consider the record as a whole or shall consider the portion of the record cited by any party to the proceeding and supported by, and in accordance with, the competent, material, and substantial evidence. The board may require that the parties present oral argument before the board. The board may take any of the following actions:

(i) The board may affirm the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer as its final board order.

(ii) The board may modify the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer.

(iii) The board may dissolve the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer.

(iv) The board may remand the matter, with instructions, to the hearing officer for further proceedings.

(v) In the absence of an objection or notice by the board to review any issue relating to the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer, the board shall affirm the written recommendations, findings of fact, and conclusions of law.

(vi) The board shall issue a written order or the proceeding shall be remanded to the hearing officer

for further proceedings within 60 days of any of the following, whichever is later, unless the period is waived or extended with the written consent of all parties or for good cause shown:

(A) The date that the written recommendations, findings of fact, and conclusions of law were issued under subrule (2) of this rule.

(B) The receipt of briefs or proposed findings of fact.

(C) The close of oral argument;

(D) Expiration of the time for filing of objections to the written findings of fact, conclusions of law, and recommendations of the hearing officer.

(b) The board shall serve copies of the final board order on the parties by personal delivery or certified mail.

(c) A final board order shall become effective upon personal delivery to the parties or upon the posting of certified mail.

MR 432.1713 Status of applicant for licensure or transfer upon filing request for hearing on notice of denial

Rule 713. An applicant who has been denied a license, whose license has not been renewed, who has a request for transfer of ownership denied, whose request for transfer of an ownership interest has been denied, or who has been placed on an exclusion list and who has requested a hearing under this rule is considered an applicant for purposes of compliance with applicable statutory provisions and board rules.

For more information contact:

Michigan Gaming Control Board
P.O. Box 30786
Lansing, Michigan 48909
Attention: Hearings Clerk
Telephone (517)-241-1063

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