

Kansas Administrative Regulations

Kansas Corporation Commission

Article 1.—Rules of Practice and Procedure

82-1-230. Hearings; evidence and procedure.

(a) Rules of evidence. The rules of evidence as stated in article four of the Kansas code of civil procedure shall be applied by the commission at all of its hearings. However, the presiding officer may relax the rules of evidence if the presiding officer believes that it is in the public interest to do so and will aid in ascertaining the facts. If an objection is made to the admissibility of evidence, the presiding officer may rule upon the objection or may receive the evidence subject to a subsequent ruling on the objection by the commission. The presiding officer may exclude inadmissible evidence on the presiding officer's own motion and may order cumulative evidence discontinued. All parties may note their exceptions on the record to any ruling or other action of the presiding officer.

(b) Order of procedure at hearings. The presiding officer shall determine the order of procedure at hearing.

(1) Unless otherwise ordered by the presiding officer, the following shall apply:

(A) The applicants shall open and close at hearings on applications.

(B) The complainant shall open and close at hearings on formal complaints.

(C) The staff counsel shall open and close at hearings on investigations initiated by the commission.

(2) In a hearing in which several proceedings have been consolidated for hearing on a common record, the presiding officer shall designate the party who may open and close.

(3) The presiding officer shall designate when each intervenor may be heard.

(4) In all hearings, the presiding officer may direct departures from the suggested order of procedure.

(c) Examination and cross-examination of witnesses.

(1) Subject to the provisions of K.A.R. 82-1-229, concerning the use of prefiled testimony, each witness shall be examined and cross-examined orally and under oath in the order determined by the presiding officer. The direct examination of each witness shall be followed by cross-examination of the witness. Redirect examination, if any, shall be limited in scope to the testimony upon cross-examination. Recross examination, if any, shall be limited in scope to the testimony upon redirect examination.

(2) No more than one attorney for each party shall examine or cross-examine a witness. The presiding officer may require that only one attorney be allowed to cross-examine a witness on behalf of all parties united in interest. To facilitate the orderly and expedient conduct of hearings, the presiding officer may appoint a member of the commission's legal staff to assist any party not represented by counsel in cross-examining witnesses and in presenting evidence.

(d) Going off the record. All testimony shall be taken on the record unless permission to go off the record is first granted, upon request, by the presiding officer.

(e) Excluded evidence. If an objection to a question propounded to a witness is sustained by the presiding officer, the examining attorney may make a proffer of the excluded evidence. The presiding officer may add other statements to clearly show the character of the evidence, the form in which it was offered, the objection made, and the ruling made. Upon request, the excluded testimony or evidence shall be marked and preserved for the record upon appeal.

(f) Further evidence. At any stage of the hearing, or after the close of the testimony, the presiding officer may call for further evidence upon any issue and may require such evidence to be presented by the party or parties concerned or by the staff counsel, either at the hearing or at a further hearing.

(g) "Late-filed" exhibits. The presiding officer may authorize any party to the proceeding to file, within a designated time period, specific documentary evidence as part of the record. Exhibit numbers may be assigned in advance at the hearing to these items of documentary evidence.

(h) Administrative notice. In addition to matters that are required or permitted to be judicially noticed by K.S.A. 60-409 and amendments thereto, the presiding officer may

take administrative notice of commission files and records in deciding matters pending before it.

(i) Briefs. Submission of briefs by the parties may be authorized or required by the presiding officer or the commission. The period of time in which briefs and reply briefs shall be filed may be fixed by order setting the procedural schedule or at the close of the hearing by the presiding officer. Any brief required by an order setting the procedural schedule may be waived by the presiding officer at the close of the hearing or by further commission order. Briefs shall be served in the same manner and upon the same persons as required for other pleadings.

(j) Closing the record. A hearing shall be concluded and the matter shall be submitted to the commission when all parties have submitted any requested briefs and all parties have completed oral arguments. If the parties submit no briefs and make no oral arguments, the presiding officer shall announce that the record of exhibits and testimony is closed and that the matter is taken under advisement. The matter shall then be submitted to the commission.

(k) Reopening the record. After the record of testimony has been closed by the presiding officer, any party may apply to reopen the record for good cause shown. However, no record shall be reopened for further hearing except upon order of the commission. Any record of any hearing may be reopened by the commission on its own motion.

(Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1985; amended July 23, 1990; amended Oct. 10, 2003.)

***** Authenticated Kansas Administrative Regulation *****