

ILLINOIS REGISTER
ILLINOIS RACING BOARD
NOTICE OF ADOPTED RULES

PART 204
HEARINGS AND ENFORCEMENT PROCEEDINGS

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Section 204.10 Applicability

- a) This Part shall apply to all hearings conducted by the Board pursuant to the Act:
 - 1) in its review of final decisions, orders, or rulings of the stewards of any race meeting;
 - 2) in its conduct of hearings on the propriety of the ejection or exclusion of occupation licensees as authorized by the Act; and
 - 3) in its enforcement proceedings, investigations and inquiries into matters within the jurisdiction of the Board including, but not limited to, proceedings instituted by orders to show cause.

- b) As used this Part, the word "hearing officer" means a member of the Board, or an attorney licensed to practice law in Illinois employed by the Board as a hearing officer. The word "person" means organization licensee, occupation licensee, applicant for an occupation licensee or individual excluded from a race track or race tracks. The word "petitioner" means any person requesting a hearing pursuant to Section 204.20.

Section 204.20 Requests for Hearing

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- a) Any person aggrieved by a final ruling of the Stewards may, as a matter of right, request a Board hearing. The hearing shall be a proceeding de novo.
- b) All requests for hearings shall:
 - 1) be in writing;
 - 2) contain an address and telephone number where the petitioner may be notified; and
 - 3) identify the Stewards' ruling and state the specific reasons for the request.
- c) Requests for hearing under this Part shall be filed no later than five business days after receipt of notice of the Stewards' ruling, ejection, exclusion or other action of the Board. If the petitioner is the subject of a pre-hearing suspension or exclusion, the Board shall conduct its hearing within seven regular business days after the receipt of the request unless the petitioner requests a postponement upon good cause shown and specifically waives the seven day hearing requirement.
- d) For appeals concerning civil penalties of \$500 or less or disqualifications based on an occurrence in the race such as interference or a claim of foul where no penalty was assessed against the driver or jockey, the petitioner shall be required to submit to a Director's Review Conference conducted pursuant to Section 204.25.
- e) For appeals concerning a suspension, exclusion, civil penalty greater than \$500, redistribution of the purse after the race results have been finalized by the Stewards, or disqualification based on a violation of 11 Ill. Adm. Code 603 (Medication), the petitioner shall be entitled to an administrative hearing pursuant to this Part or shall be given the option of submitting to a Director's Review Conference conducted pursuant to Section 204.25. Should a petitioner request a Director's Review Conference, his or her right to an administrative hearing shall be deemed waived.
- f) Notwithstanding subsections (d) and(e), any single member of the Board may sua sponte direct that any appeal be subject to a formal administrative hearing if the case merits the Board's personal attention.
- g) Requests for hearing may be filed in person at, or by mail addressed to, the Board's office at 100 W. Randolph, Suite 7-701, Chicago, Illinois 60601. Requests submitted by mail will be deemed timely if postmarked no later than five business days after receipt of notice of the Stewards' ruling, ejection or exclusion or other action of the Board.

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Section 204.25 Requests and Proceedings for Director's Review Conference

- a) Any properly filed appeal concerning a ruling of the Stewards resulting in a civil penalty in an amount of \$500 or less or for a disqualification based on an occurrence in the race such as interference or a claim of foul for which no penalty was assessed against the jockey or driver, shall be required to submit to a Director's Review Conference conducted pursuant to this Section.
- b) Any properly filed appeal concerning a ruling of the Stewards resulting in a suspension, exclusion, civil penalties greater than \$500, redistribution of the purse after the race results are finalized by the Stewards, or disqualification based on a violation of 11 Ill. Adm. Code 603 (Medication), may, in lieu of an administrative hearing, request a Director's Review Conference.
- c) The Director's Review Conference process affords licensees the opportunity to resolve protests without a formal administrative hearing before an Administrative Law Judge. The Executive Director of the Board or his or her designee shall serve as the designated reviewer in accordance with the provisions of this Section. The Executive Director or reviewer shall have authority and knowledge of the rules and regulations of the Board sufficient to make a reasoned and appropriate resolution of the matter.
- d) All requests for a Director's Review Conference shall:
 - 1) be in writing;
 - 2) contain an address and telephone number where the petitioner may be notified;
 - 3) identify the Stewards' ruling and state the specific reasons for the request; and
 - 4) include a list of all supporting documentation to be presented at the Director's Review Conference.
- e) Unless availability of the Executive Director and/or designee requires otherwise, the Director's Review Conference shall be conducted within 30 calendar days after the request.
- f) Board counsel and any Board employee who may be called as a witness shall not serve as the designated reviewer. Administrative Law Judges shall in no instance serve as the designated reviewer under this Section.
- g) At the Director's Review Conference, Board counsel shall present the Stewards' evidence to the reviewer. The licensee may be represented by counsel or may appear without counsel and present his or her evidence and witnesses. The reviewer shall consider all relevant evidence.

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- h) The Illinois Administrative Procedure Act [5 ILCS 100], Section 16 of the Illinois Horse Racing Act [230 ILCS 5], and Sections 204.40, 204.50, 204.60, 204.65, 204.70, 204.80, 204.85, 204.90, 204.100, 200.110, 204.120, 204.130 and 204.140 of this Part shall not apply to the Director's Review Conference. Rules of evidence shall be construed liberally, and hearsay shall be allowed at the reviewer's discretion. The reviewer may ask questions of the witnesses and the parties during the Director's Review Conference.
- i) Director's Review Conferences conducted under this Part shall be recorded by audiotape or other similar media.
- j) At the conclusion of the Director's Review Conference, the reviewer shall issue a written report of his or her findings. The reviewer can find in favor of the licensee, uphold the Stewards' ruling, or modify the penalty. Decisions of the reviewer may not be appealed to the Board, but are subject to the Administrative Review Law [735 ILCS 5/Art. III].
- k) Requests for a Director's Review Conference may be filed in person at, or by mail addressed to, the Board's office at 100 W. Randolph, Suite 7-701, Chicago, Illinois 60601. Requests submitted by mail will be deemed timely if postmarked no later than five regular business days after receipt of notice of the Stewards' ruling, ejection or exclusion or other action of the Board.

Section 204.30 Purse Distribution

Upon receipt of a request for hearing that may affect the distribution of a purse in a race, the Board shall serve notice of the hearing upon each of the owners of all other horses involved in the race as identified in the official program.

Section 204.40 Appointment and Disqualification

- a) The Board shall designate a hearing officer to preside at any hearing conducted pursuant to this Part.
- b) Grounds for disqualification of a hearing officer shall include, but not be limited to:
 - 1) Conflict of interest (including but not limited to, financial interest or benefit derived from the racing industry); and
 - 2) Demonstrable bias on the issue.

Section 204.50 Transcripts

- a) A transcript shall be produced by a court reporter designated by the Board for all hearings conducted pursuant to this Part. Copies of the

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transcript shall be filed in the Board's principal office and made available for public inspection upon reasonable request.

- b) In its discretion, the Board may require that petitioners bear reasonable costs of the production of hearing transcripts.

Section 204.60 Appearances

- a) The appellant need not be represented by an attorney.
- b) Only licensed attorneys may appear before the Board in a representative capacity.
- c) A partnership may appear pro se by a partner.
- d) A corporation may appear pro se by an officer or director.

Section 204.65 Discovery

- a) Upon written request served on the opposing party, a party shall be entitled to:
 - 1) The name and address of any witness who may be reasonably expected to testify on behalf of the opposing party, together with a brief summary of the subject matter of each witness= anticipated testimony; and
 - 2) All documents or other materials in the possession or control of the opposing party that the opposing party reasonably expects to introduce into evidence in either its case-in-chief or in rebuttal. Rebuttal documents, to the extent that they are not immediately identifiable, shall be tendered to the opposing party forthwith upon identification.
- b) A party may obtain discovery only by making a written request to produce witness lists, documents, and other materials, as provided in subsection (a) of this Section.
- c) Witnesses, documents, and other materials that were not properly disclosed in response to a request for production may be barred or excluded from the hearing, and the Board may impose additional sanctions or penalties against the offending party.
- d) Discovery requests under this Section shall not be cause for postponement or delay of hearings or of the Board's disposition of the proceedings.

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Section 204.70 Service

- a) Persons filing papers with the Board shall simultaneously serve copies on all parties to the proceeding with proof of service in the manner authorized by the Civil Practice Law (735 ILCS 5/Art. II).
- b) All papers required to be filed with the Board must be filed at the Board's principal office at 100 West Randolph, Suite 7-701, Chicago, Illinois 60601, during regular business hours.

Section 204.80 Subpoenas

- a) Subpoenas for the attendance of witnesses or for the production of books or documents may be issued by the Board upon its own motion or upon reasonable request of a party.
- b) Requests for subpoenas to compel the production of books or documents shall specifically identify the material sought.
- c) Witness fees shall be the same as provided by the Circuit Courts of the State of Illinois.

Section 204.85 Proceedings for Hearings Involving Action by the Board

- a) The Board shall conduct a de novo hearing. Except as otherwise provided (e.g., prima facie evidence rule at Section 603.55), counsel for the Board shall have the burden of proof by a preponderance of evidence.
- b) Any testimony shall be given under oath or affirmation.
- c) Both parties may present an opening statement on the merits.
- d) Upon conclusion of the petitioner's case, the Board may present evidence in rebuttal to the petitioner's case.
- e) Both parties may present closing arguments. The Board proceeds first, then the petitioner, and thereafter the Board may present rebuttal closing argument.
- f) Each party may conduct cross-examination of any witnesses presented. The Board may also, as a matter of right, examine the petitioner as an adverse witness.

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Section 204.90 Proceedings for Hearings Involving Action by Organization Licensees

- a) The burden of proof will at all times be on the organization licensee. The organization licensee shall have the responsibility of establishing just cause for its actions by a preponderance of the evidence.
- b) The Board shall designate a hearing officer to preside at any hearing regarding actions by organization licensees. Pursuant to a subsequent hearing, the Board will determine the propriety of the actions of the organization licensee. The Board's role in all hearings conducted pursuant to this section is limited to an adjudication of the propriety of the organization licensee's actions. The Board shall not otherwise be a party to any proceedings arising under this Section.
- c) For all hearings conducted pursuant to this Section, the organization licensee and the petitioner shall equally share the entire cost of the hearing officer's fees.
- d) For all hearings conducted pursuant to this Section, the organization licensee and the petitioner shall arrange for a court reporter to transcribe the entire proceedings. The parties shall arrange for a copy of the transcript, together with any exhibits admitted into evidence, to be forwarded to the Board. The organization licensee and the petitioner shall equally share the entire cost of the court reporter and transcript.
- e) Requests for hearings pursuant to this Section shall conform with the requirements described in Section 204.20.
- f) Discovery for hearings pursuant to this Section shall conform with the parameters described in Section 204.65.
- g) Hearings pursuant to this Section shall otherwise conform with the requirements and parameters of Sections 204.85, 204.100, 204.110, 204.120, and 204.130.

Section 204.100 Evidence

- a) All witnesses testifying at hearings shall testify upon oath or affirmation.
- b) The Board shall consider all relevant evidence.
- c) The Board shall not be bound by technical rules of evidence.

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- d) The hearing officer shall have the authority to rule upon motions and objections, exclude inadmissible evidence and in all other ways monitor the hearing.
- e) Exhibits shall be plainly marked and identified. The record shall reflect the identity of the party offering an exhibit and shall indicate whether it was admitted into evidence.
- f) The hearing officer and the Board may take official notice of:
 - 1) the customs, usages and traditions of horse racing;
 - 2) matters within its specialized knowledge and expertise;
 - 3) all matters of which the Circuit Courts of the State of Illinois may take judicial notice.
- g) If a party has acted in bad faith or for purposes of delay at any point in the hearing process, or has acted to impede the Board in the discharge of its functions, that party may be liable for a civil penalty pursuant to Section 9(l) of the Act.

Section 204.110 Stipulations

Parties may stipulate to all matters not in dispute and that stipulation shall be made part of the record.

Section 204.120 Continuances

The hearing officer may if good cause has been shown, grant a continuance at the request of any party or on his own motion. A hearing may be adjourned by the hearing officer to permit further testimony or argument.

Section 204.130 Closing Arguments

- a) The hearing officer shall allot a reasonable amount of time for closing arguments.
- b) The parties may with leave of the hearing officer file briefs in lieu of closing arguments.

Section 204.140 Findings of Fact and Conclusions of Law

Orders of the Board disposing of contested matters upon the merits shall set forth the Board's findings of fact and conclusions of law and shall be served by certified mail.

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SOURCE: Appeals and Enforcement Proceedings, amended December 30, 1977; codified at 5 Ill. Reg. 10876; amended at 10 Ill. Reg. 3825, effective February 13, 1986; amended at 18 Ill. Reg. 7419, effective April 29, 1994, amended at 22 Ill. Reg. 14494, effective August 1, 1998; amended at 26 Ill. Reg. 10806, effective July 1, 2002; amended at 34 Ill. Reg., 12883, effective August 20, 2010; amended at 37 Il. Reg. _____, effective December 16, 2013.