

(4) The examiner may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the examiner finds that a hearing conducted by telephone:

- (i) Would provide a full and fair evidentiary hearing;
- (ii) Would not prejudice any party; and
- (iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

* * * * *

(f) *Written statements of direct testimony.* (1) Except as provided in paragraph (f)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the examiner finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the examiner's notice stating the time of the hearing.

* * * * *

(i) *Script or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the examiner finds that recording the hearing verbatim would expedite the proceeding and the examiner orders the hearing to be recorded verbatim.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the

examiner determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the examiner shall order the verbatim transcription of the recording as requested by the party.

(3) If a reporter transcribes or records the testimony at a hearing, the reporter shall deliver the original transcript or recording, with exhibits thereto attached, to the examiner, who will retain such copy for the official file and for use in preparing his or her report. The reporter will also deliver to the examiner such other copy or copies as may be ordered by the Department, which copy or copies the examiner will forward to the hearing clerk.

(4) Parties to the proceeding, or others, who desire a copy of the transcript or recording of the hearing may place orders at the hearing with the reporter, who will furnish and deliver such copies direct to the purchaser upon payment of the applicable rate.

* * * * *

§ 47.16 [Amended]

37. Section 47.16 is amended as follows:

- a. Paragraphs (a)(3) and (a)(4) are revised and (a)(5) and (a)(6) are added to read as set forth below.
- b. Paragraph (b) is revised to read as set forth below.
- c. Paragraph (d)(1) is revised to read as set forth below.
- d. In paragraph (e), in the first sentence, the word "him" is removed and the words "the officer" added in its place.
- e. In paragraph (e), in the second sentence, the word "He" is removed and the words "The officer" added in its place.

§ 47.16 Depositions.

(a) * * *

(3) the proposed time of the deposition which, unless otherwise agreed, shall be at least 30 days after the date of the mailing of the application; (4) the proposed place of the deposition; (5) the proposed manner in which the deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition); and (6) the reasons for taking the deposition.

(b) *Examiner's order for taking deposition.* (1) If, after examination of the application, the examiner is of the opinion that the deposition should be taken, the examiner shall order the taking of the deposition. The order shall be filed with the hearing clerk and shall

be served by the hearing clerk upon the parties in accordance with § 47.4.

- (2) The order shall state:
 - (i) The time of the deposition (which unless otherwise agreed shall not be less than 20 days after the filing of the order);
 - (ii) The place of the deposition;
 - (iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);
 - (iv) The name of the officer before whom the deposition is to be made; and
 - (v) The name of the deponent.

(3) The deposition shall be conducted in the manner (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition) agreed to by the parties.

(4) If the parties cannot agree on the manner in which the deposition is to be conducted:

- (i) The deposition shall be conducted by telephone unless the examiner determines that conducting the deposition by audio-visual telecommunication:
 - (A) Is necessary to prevent prejudice to a party;
 - (B) Is necessary because of a disability of any individual expected to participate in the deposition; or
 - (C) Would cost less than conducting the deposition by telephone.

(ii) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:

- (A) Is necessary to prevent prejudice to a party;
- (B) Is necessary because of a disability of any individual expected to participate in the deposition; or
- (C) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

* * * * *

(d) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or some person under the officer's direction. In lieu of oral examination, parties may transmit written questions to the officer prior to examination and the officer shall propound the written questions to the deponent.

* * * * *