

**CHAPTER 123. PRACTICE AND PROCEDURE**

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**§ 123.1. Conduct of investigations.**

Investigations by the Commission shall be conducted, through its members and staff, in a manner consistent with the provisions of this subpart.

**§ 123.2. Staff authority.**

Staff members designated as the Executive Director, Chief Counsel, Counsel, Director of Field Operations and Special Agents shall have the authority to administer oaths and affirmations, conduct interviews, receive and record testimony, receive and inspect documents and records, and otherwise obtain evidence and gather information by any lawful means.

**Source**

The provisions of this § 123.2 amended April 18, 1980, effective April 19, 1980, 10 Pa.B. 1592. Immediately preceding text appears at serial page (5292).

**§ 123.3. Subpoenas.**

(a) A person considered to have information relevant to an investigation may be required by subpoena to appear and testify at a Commission hearing. A person, corporation or entity or association of any kind having possession or control of documents or records deemed relevant to an investigation may be required by subpoena to produce the materials at a Commission hearing or, at the election of the Commission, to make them available for inspection by one or more members of the Commission or one or more members of the Commission staff. Subpoenas may be served by a person designated by the Executive Director. This subsection supersedes 1 Pa. Code § 35.142(a) and (b) (relating to subpoenas).

(b) The Commission will have the right to retain or have access to subpoenaed documents and records for a reasonable period, and to make copies of them.

(c) All witnesses subpoenaed by the Commission shall be entitled to compensation and payment for expenses as provided by law. This subsection supersedes 1 Pa. Code § 35.142(c).

**Source**

The provisions of this § 123.3 amended April 18, 1980, effective April 19, 1980, 10 Pa.B. 1592. Immediately preceding text appears at serial page (5292).

**§ 123.4. Hearings.**

(a) Hearings may be conducted by and before any one or more members of the Commission or any one or more members of the Commission staff.

(b) Every hearing constituted and conducted under subsection (a) shall be deemed a hearing and proceeding by and before the Commission, and all powers and remedies available to the Commission will apply thereto.

(c) At the direction of the Chairperson, a member of the Commission who does not attend any hearing may be given full access to a transcript thereof or, if no transcript is made, a report of the information received therein prior to the making by the Commission of any finding, recommendation or report based in any part upon information received in the hearing.

**Source**

The provisions of this § 123.4 amended April 18, 1980, effective April 19, 1980, 10 Pa.B. 1592. Immediately preceding text appears at serial page (5293).

**§ 123.5. Rights of witnesses.**

The following rights shall be available to witnesses appearing at a hearing:

(1) *Copies of rules.* Witnesses to appear under subpoena shall be provided with a copy of this chapter. Witnesses who appear voluntarily may obtain a copy of this chapter upon request.

(2) *Hearing participants.* At closed hearings, persons permitted to be in the hearing room shall be limited to members of the Commission, staff members of the Commission, the witness, interpreters when needed, and—for the purpose of taking the evidence—a stenographer. No other persons may be present during the conduct of the hearing; however, the witness shall have the right to have his attorney available for consultation outside the hearing room while he testifies.

(3) *Objections.* Witnesses shall have the right to object to questions, state the grounds of their objections and obtain a ruling thereon. Rulings by the presiding officer shall be final.

(4) *Closing statement.* Witnesses who believe that the effect of testimony is unsatisfactory for any reason shall be given reasonable time in which to make an oral statement under oath or affirmation at the close of their testimony. Any such statement shall be uninterrupted; except that it may be interrupted or terminated by the presiding officer if he determines that a reasonable time has

expired or that the statement is impertinent, scandalous, or otherwise improper. The witness may elaborate by written statement under oath or affirmation. The written statement shall be received in full as part of the hearing record if submitted within ten days of the date of the appearance of the witness, except that the Commission may strike any impertinent, scandalous, or otherwise improper matter from the statement.

**Source**

The provisions of this § 123.5 amended April 18, 1980, effective April 19, 1980, 10 Pa.B. 1592. Immediately preceding text appears at serial page (5293).

**§ 123.6. Public access.**

Hearings may be open or closed to the public, in whole or in part, as the Commission may direct. Evidence received in closed hearings will not be released to the general public without the approval of the Commission.

**§ 123.7. [Reserved].**

**§ 123.8. Presiding officer.**

(a) The Chairperson of the Commission will preside over all hearings at which he is present. The Chairperson may designate a member of the Commission or its staff to preside over any hearing at which he will not be present. In the absence of such designation, a member will be chosen by the majority vote of the members present and voting to preside over such hearing; except that if no member is present the Executive Director, Chief Counsel, or Counsel for the Commission shall preside over such hearing. This subsection supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

(b) The presiding officer shall administer oaths and affirmations to witnesses, rule upon matters arising in the course of the hearing, and take such actions as may be necessary to ensure that the hearing proceeds in an orderly and proper manner. This subsection supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

**Source**

The provisions of this § 123.8 amended April 18, 1980, effective April 19, 1980, 10 Pa.B. 1592. Immediately preceding text appears at serial page (5294).

**§ 123.9. Questioning.**

The authority to question witnesses at a hearing shall be limited to the presiding officer, other members of the hearing panel, and such other persons as may be permitted to do so by the presiding officer.

**§ 123.10. Testimony.**

(a) All testimony received at hearings shall be under oath or affirmation. The presiding officer may receive any evidence by testimony, deposition, exhibit, exemplar, or otherwise which he deems relevant and shall not be bound by the rules of evidence applicable in courts of law. Any witness desiring to read or place in the record of the hearing a prepared or written statement shall, unless excused from this requirement by the presiding officer, file a copy thereof with the Commission at least 24 hours in advance of the hearing. The presiding officer shall determine whether such statement may be read or placed in the record.

(b) Subsection (a) supersedes 1 Pa. Code § 35.137 (relating to oral examination).

**Source**

The provisions of this § 123.10 amended April 18, 1980, effective April 19, 1980, 10 Pa.B. 1592. Immediately preceding text appears at serial page (5295).

**§ 123.11. Right of rebuttal.**

(a) Any person who is individually identified, expressly or by clear implication, in a public hearing or report of the Commission, and who believes that evidence or comment made public in such hearing or report tends to defame him or otherwise adversely affect his reputation, shall have the right to appear personally at a public hearing and testify in his own behalf as to matters relevant to such evidence or comment.

(b) The rebuttal provided for in subsection (a) may be claimed as a matter of right up to 10 days from the date on which the evidence or comment was made public.

**Notes of Decisions***Construction with Constitution*

Under the scheme of this regulation, there was no forum for an individual who believed that their reputation has been adversely affected to seek a remedy until after the possible damage had been done. This was clearly an unconscionable abrogation of a state protected constitutional right without procedural due process. *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. 1995).

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