

TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Investigations
660:2-7-3. [AMENDED]
Subchapter 9. Individual Proceeding Practices and Procedures
660:2-9-3. [AMENDED]

AUTHORITY:

Administrator, Oklahoma Department of Securities; 71 O.S. §§1-605, 1-608

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n/a

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n/a

ANALYSIS:

The rule amendments impose the duty to supplement subpoena compliance when responses become materially incomplete. The proposed rule amendments also authorize the use of requests for admissions in discovery; impose a duty to supplement discovery when prior responses become materially incomplete or incorrect; impose page limitations on motions and responsive pleadings thereto; and set forth additional sanctions for failures to comply with or cooperate in discovery.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2016:

SUBCHAPTER 7. INVESTIGATIONS

660:2-7-3. Investigative processes

(a) **Authority.** Investigations under the statutes administered by the Administrator shall be conducted by representatives designated and duly authorized for this purpose. Such

representatives are authorized to exercise and perform the duties of their office in accordance with the statutes of the state of Oklahoma and the regulations of the Administrator, including administration of oaths and affirmations, in any matter under investigation by the Administrator. Nothing in this section shall prohibit the Administrator or his designee from expanding or restricting the scope of any investigation at any time during an investigation.

(b) **Investigative hearings.** Investigative hearings, as distinguished from hearings in individual proceedings, may be conducted in the course of any investigation undertaken by the Administrator, including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Administrator. Investigative hearings may be held before the Administrator, or his designee, for the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation. Such hearings shall be non-public.

(c) **Subpoena to testify or produce records.** While the Administrator encourages voluntary cooperation in investigations, the Administrator, or his designee, at any stage of any investigation, may issue a subpoena ordering the person named therein to appear before a designated representative at a designated time and place, including the offices of the Department, to provide testimony by deposition, sworn statement or affidavit and/or to produce documentary evidence relating to any matter under investigation. Such testimony shall only be reduced to writing or otherwise recorded in any manner by the person taking the testimony, or under his direction.

(d) **Subpoena to grant access.** The Administrator may issue a subpoena to grant access to, to examine, and to copy documents, books or other records of any person being investigated.

(e) **Service.** Subpoenas shall be served in the manner provided by law.

(f) **Written examination.** The Administrator, or his designee, may issue an order requiring persons to file a report or statement, or answers in writing and under oath to specific questions, relating to any matter under investigation.

(g) **Rights of witness.** Any person under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation, subject to the confidentiality requirements provided by law. Any person required to testify shall be entitled to review a copy of the transcript of his own testimony, if transcribed, at the offices of the Department of Securities. Any person required to submit documentary evidence shall be entitled to retain or, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, provided that such counsel is duly licensed to practice law by the Supreme Court of Oklahoma. Such counsel may question such person briefly at the conclusion of the examination to clarify any of the answers such person has given.

(h) **Confidentiality.** Information or documents obtained by the Administrator and subpoenas issued in connection with an investigation shall be kept confidential and shall not be made available to the public, unless expressly ordered by the Administrator, disclosed pursuant to the provisions of Subchapter 9 of this Chapter or as otherwise provided by law.

(i) **Duty to Supplement.** Any person who has responded to a subpoena must supplement its response in a timely manner if the person learns that in some material respect the disclosure or response is incomplete.

SUBCHAPTER 9. INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

660:2-9-3. Prehearing proceedings and processes

(a) **Scheduling.** As soon as is practicable after the request for hearing is received, but in no event later than thirty (30) days after the request for hearing is received, the Administrator, or the Hearing Officer, shall enter a scheduling order that is intended to expedite the disposition of the action and insure the fair, orderly and efficient conduct of the proceedings. The parties shall

confer in person or by telephone and attempt to prepare a single agreed scheduling order to submit to the Administrator or the Hearing Officer. If the proposed scheduling order is acceptable to the Administrator, or the Hearing Officer, no scheduling conference need be held. If the parties are unable to agree, the Administrator, or the Hearing Officer shall issue an appropriate scheduling order or hold a scheduling conference in person or by telephone. The scheduling order ~~should~~ shall establish at least the following:

- (1) a schedule of discovery;
- (2) any limitations to be placed on discovery;
- (3) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing;
- (4) identification of any expert witness intended to be called;
- (5) the date for exchanging the documents and exhibits intended to be utilized at the hearing and the final list identifying all witnesses intended to be called at the hearing; and
- (6) such other matters as may aid in the disposition of the matter.

(b) **Discovery.**

(1) Discovery may be obtained by one or ~~both~~ more of the following methods:

~~(4)~~(A) A party may serve a written request on any other party requiring the party to produce, within fifteen (15) days, for inspection and copying, any documents or tangible items that are in the possession, custody or control of the party and relevant to the subject matter of the individual proceeding and are not privileged. The number of requests to produce or permit inspection shall not exceed thirty (30) in number except by agreement of the party being required to produce or by order of the Administrator, or Hearing Officer; ~~and/or,~~

(2)(B) A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters relating to facts, the application of law to fact, or opinions about either; and the genuineness of any documents described in the request. Copies of documents shall be served with the request to admit unless they have been or are otherwise furnished or made available for inspection and copying. The number of requests to admit for each party shall not exceed thirty (30) in number except by agreement of the party being required to respond or by order of the Administrator, or the Hearing Officer. Each matter upon which an admission is requested shall be separately stated. The matter is admitted unless, within fifteen (15) days after service of the request, or within such shorter or longer time as the Administrator, or the Hearing Officer, may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter and signed by the party. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. The grounds for an objection must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(C) A party may take the testimony of a witness by oral deposition at the expense of that party. A party desiring to take the deposition of another party, or an employee thereof, shall serve written notice to the witness, or his counsel. The notice shall state the time and place for taking the deposition and shall be served at least three (3) days before the person is required to appear. A party desiring to take the deposition of a non-party witness shall serve the witness with a subpoena in accordance with 660:2-9-4. A copy of

the notice or subpoena shall be served on all other parties to the proceeding by means specified in paragraph (h) below. Unless otherwise agreed by the parties or ordered by the Administrator or Hearing Officer, a deposition under this provision shall not last more than six (6) hours, exclusive of breaks, and shall be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a day other than a legal holiday.

(2) A party who has responded to a request for production or request to admit must supplement or correct its response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the Administrator, or the Hearing Officer.

(c) Motions in general.

(1) Unless otherwise permitted by these rules or by the Administrator, or the Hearing Officer, motions shall:

(A) be made in writing and shall not exceed twenty (20) pages;

(B) state concisely the question to be determined and be accompanied by any necessary supporting documentation; and

(C) be served on all parties.

(2) A response to a written motion shall be filed within ~~ten (10)~~ fifteen (15) days after receipt of the motion but no later than one day prior to the date and time of the hearing. A response to a written motion shall not exceed twenty (20) pages. A reply to a response to a written motion may be filed within five (5) days after receipt of the response but no later than the date and time of the hearing. A reply to a response to a written motion shall not exceed five (5) pages.

(3) The Administrator, or the Hearing Officer, may allow oral argument if it appears necessary to the Administrator, or the Hearing Officer, for a fuller understanding of the issues presented.

(4) The filing or pendency of a motion does not alter or extend any time period prescribed by this Subchapter or by an order of the Administrator, or the Hearing Officer.

(d) Motions for summary decision. A party may move for summary decision as to any substantive issue in the case. The Administrator, or the Hearing Officer, may issue a summary decision if he finds that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law.

(e) Prehearing conference.

(1) Upon the request of a party or when the Administrator, or the Hearing Officer, believes it necessary or appropriate, a prehearing conference shall be held, as close to the time of hearing as is reasonable under the circumstances, to address the following matters:

(A) simplification of issues;

(B) the final list of witnesses and exhibits to be utilized at the hearing;

(C) admissions and stipulations of fact;

(D) stipulations regarding admission and authenticity of documents;

(E) requests for official notice;

(F) discovery disputes;

(G) pending motions; and

(H) other matters that will promote the orderly and prompt conduct of the hearing.

(2) At the conclusion of the prehearing conference, a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the action unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice.

(f) **Failure to participate, appear, comply or participate/cooperate.** A party's failure to participate in good faith in the preparation of a scheduling order or prehearing conference order; failure to comply with a scheduling order or prehearing conference order; failure to comply with ~~a written request for production or to appear to testify in a deposition under 660:2-9-3(b)~~ or cooperate in discovery; or failure to appear at, substantially prepare for, or participate in good faith in, any hearing or conference, may result in any of the following sanctions:

- (1) striking of any pleading in whole or in part;
- (2) ~~a preclusion~~ an order prohibiting a party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (3) an order directing that designated facts be taken as established for purposes of the proceeding;
- ~~(4)~~ (4) staying the proceeding;
- ~~(5)~~ (5) default judgment; or
- ~~(6)~~ (6) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.

(g) **Post prehearing conference.** If additional exhibits are discovered after the prehearing conference order is issued or after the date final documents and exhibits are exchanged, the party intending to use them shall immediately notify all other parties and furnish copies of the additional exhibits to such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses. These additional exhibits or the testimony of the additional witnesses shall not be admitted at the hearing without the agreement of all parties or without a showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the exhibit or witness testimony were not permitted.

(h) **Service and filing of papers.** Service of papers upon a party shall be made by personal delivery, regular first class mail, facsimile transmission or electronic mail. All papers required to be served by a party shall be filed with the Administrator within the applicable time for service. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number or electronic mail address to which service was made, if not made in person.

(i) **Signature and certification.** Every filing of a party represented by counsel shall be signed by at least one counsel of record and shall state that counsel's business address and telephone number. A party who is not represented by counsel shall sign his individual name and state his address and telephone number on every filing. The signature of counsel or a party shall constitute a certification that:

- (1) the person signing the filing has read the filing;
- (2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication; and
- (3) If a filing is not signed, the Administrator, or the Hearing Officer, shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

(j) **Computation of time.** A paper is filed when it is received by the Administrator. Unless otherwise specifically provided by the Securities Act or this Subchapter, computation of any time period prescribed by this Subchapter, or by an order of the Administrator, or the Hearing Officer, begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, state holiday, or any

other day when the Department's office is not open for public business, in which event the period runs until the end of the next business day. If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service, the date of mailing is the date of service, and three (3) days shall be added to the prescribed time period.