



ICC EVALUATION SERVICE, LLC, RULES OF PROCEDURE FOR HEARINGS CONCERNING REVOCATION OR MODIFICATION OF EVALUATION REPORTS

1.0 PREAMBLE

The fundamental purpose of these rules of procedure is to set forth fair and objective procedural rules for the conduct of hearings concerning revocation and modification of evaluation reports issued by ICC Evaluation Service, LLC (ICC-ES). The purpose of the hearing shall be for fact finding, and the procedures governing the hearing shall include but not be limited to all the following:

- 1.1 Testimony under oath
- 1.2 Right to cross examination and to confront adversary witnesses.
- 1.3 Right to representation.
- 1.4 Issuance of a formal decision.

2.0 NOTICE OF GROUNDS FOR REVOCATION OR MODIFICATION

2.1 Upon the determination by ICC-ES that a hearing under these rules is necessary, ICC-ES shall deliver to the affected proponent a written statement setting forth in ordinary and concise language the factual basis for ICC-ES's seeking revocation or modification of the subject evaluation report or listing. This written statement shall include a specific reference to the grounds for revocation or modification as set forth in the applicable ICC-ES rules of procedure. The notice shall be signed by the president of ICC-ES or his designated representatives and shall be accompanied by a copy of these rules of procedure.

2.2 The notice shall be served upon the affected proponent by certified United States mail with postage prepaid at the most current address of the proponent as contained in the records of ICC-ES. Notice in the same manner shall also be served upon any additional listee set forth in the subject evaluation report.

3.0 RESPONSIVE STATEMENT

3.1 Within fifteen days after service of the notice of hearing, the proponent may file with ICC-ES a written response which may:

- 3.1.1 Object to the notice upon the ground that it does not state acts or omissions upon which ICC-ES may proceed;
- 3.1.2 Object to the form of the notice upon the ground that it is so indefinite or uncertain that the proponent cannot identify the rules that have been violated or otherwise prepare a defense;

3.1.3 Admit the matters contained in the notice in whole or in part and agree to revocation or modification as requested in the notice; and

3.1.4 Present new matter by way of defense

3.2 In the event that a responsive statement is filed, all objections to the form of the notice shall be deemed waived unless objection is made by the proponent on the grounds set forth in Subsections 5.1.1. and 5.1.2.

3.3 The responsive statement shall be in writing, signed by or on behalf of the proponent, and shall state the proponent's mailing address. The responsive statement need not be verified or follow any particular form.

4.0 APPOINTMENT AND QUALIFICATIONS OF HEARING OFFICER

4.1 **Appointment of Hearing Officer:** Upon notice of revocation or modification hearing being served by ICC-ES, the chairman of the Evaluation Committee of ICC-ES shall select a hearing officer to preside at the hearing. In making this selection, the chairman shall select an individual who is either a retired judge of the United States District Court, the State Court of Appeal or the State Supreme Court; an acting or retired state or federal administrative law judge; or, if appropriate, a qualified individual who has particular expertise or experience concerning the issues to be adjudicated at the hearing as formulated by the notice.

4.2 **Scheduling Hearing:** Immediately upon appointment, the hearing officer shall arrange for the prompt scheduling of the hearing date. The hearing officer shall ensure that thirty days' written notice of the hearing date is provided to ICC-ES and to the proponent of the evaluation report that is the subject of the hearing. Any request for a continuance or rescheduling of the hearing date shall be submitted, in writing, to the hearing officer and served by mail upon ICC-ES no later than ten days prior to the hearing. The hearing officer shall grant a continuation of the hearing date only upon the agreement of all parties or upon the party requesting the continuance demonstrating that good cause for the continuance exists.

5.0 EXCHANGE OF EVIDENCE BEFORE HEARING

5.1 Upon receipt of a written request from the affected proponent or ICC-ES, the other party shall, within 30 days of receipt of such a request, provide to the requesting party the following:

5.1.1 The names and addresses of any witnesses known by ICC, ICC-ES or the affected proponent, as the case may be, to have personal knowledge of facts

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relevant to the hearing including, but not limited to, those intended to be called by ICC-ES or the affected proponent, as the case may be, to testify at the hearing and whose testimony would not be inadmissible based on any evidentiary privilege; and

5.1.2 Any written statements obtained by ICC-ES or the affected proponent, as the case may be, pertaining to the subject matter of the hearing which are not subject to any evidentiary privilege.

5.1.3 All writings or documents of any nature which are relevant, not subject to any evidentiary privilege, and would be otherwise admissible in evidence including, but not limited to, reports of technical or expert witnesses, whether or not said writings, documents or reports will be introduced as evidence at the hearing.

5.2 The hearing officer shall have the power to enforce the rights, remedies, procedures, duties, liabilities, and obligations to exchange evidence under this paragraph by the imposition of the same terms, conditions, consequences, liabilities, sanctions and penalties as can be or may be imposed in like circumstances in a civil action by a superior court of the State of California, except the power to order the arrest or imprisonment of a person.

6.0 SUBMISSION OF WRITTEN DOCUMENTS, REPORTS AND AFFIDAVITS TO HEARING OFFICER

Either party may, seven days prior to the date of the hearing, furnish to the hearing officer any written documents, reports or affidavits either party intends to enter into evidence at the hearing. The party shall, concurrently therewith, mail a copy of the written documents, report or affidavits to the other party. Any such written documents, reports or affidavits shall not constitute evidence unless and until admitted at the hearing by the hearing officer, and either party may offer further and additional evidence at the time of the hearing irrespective of any submission made to the hearing officer prior to the hearing.

7.0 CONDUCT OF THE HEARING

7.1 Presentation of Evidence and Argument: Evidence shall be presented in a manner consistent with contested hearings, with ICC-ES presenting its evidence or argument first; followed by the affected proponent presenting its evidence or argument. ICC-ES shall have the opportunity to rebut any evidence presented by the proponent. Deviation from this order of evidence may only be upon the hearing officer's determining that it is in the interest of all parties to do so in order to efficiently conduct the hearing.

7.2 The proceedings of the hearing shall be reported by a court reporter, or shall be recorded, as decided by the hearing officer.

7.3 Evidentiary Rules: The following rules shall apply with respect to the presentation of evidence:

7.3.1 Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues irrespective of whether that matter was covered in

direct examination, to impeach any witness irrespective of which party first called the witness to testify, and to rebut any evidence presented.

7.3.2 The hearing officer need not follow technical rules of evidence in the conduct of the hearing except as follows:

7.3.2.1 Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to relying in the conduct of serious affairs regardless of the existence of any evidentiary rules with might make the admission of this evidence improper over objection in civil actions.

7.3.2.2 Hearsay evidence may be acceptable for the purpose of supplementing or explaining other evidence. However, hearsay evidence shall not be the sole support for a factual finding unless it would be admissible over objection in civil actions.

7.3.2.3 The rules relating to privilege shall be applied, and irrelevant and unduly repetitious evidence shall be excluded.

7.3.2.4 Evidence may be presented only by ICC-ES or the affected proponent.

7.3.2.5 Expert opinion testimony shall be considered only upon the hearing officer's determining the qualification of the witness, and any expert witness testimony must be supported by probative data.

7.3.2.6 Testimony in the form of written affidavits may be considered only if ten days prior to the hearing the party intending to offer the affidavit serves a copy of the affidavit on the opposing party, and the opposing party, within seven days after such mailing, does not mail or deliver to the party offering the affidavit a request to cross examine the affiant. If, after a request therefore, an opportunity to cross examine the affiant is not afforded, the affidavit may be introduced into evidence, but shall be given only the same effect as other hearsay evidence.

8.0 BURDEN OF PROOF

ICC-ES shall have the burden of proving, by a preponderance of the evidence, the violation or violations that are the basis for revoking or modifying the evaluation report. The burden of proof of a preponderance of the evidence is that degree of certainty on which men may reasonably act and by which their affairs may reasonably be determined. A decision of the hearing officer cannot be based on suspicion, speculation, theoretical conclusions, surmise, fanciful or fictitious pretense, inherent improbability or uncorroborated hearsay or rumor.

9.0 DECISION OF HEARING OFFICER

Within thirty days from the date the hearing is concluded, the hearing officer shall submit a written proposed decision determining the issues presented at the hearing. The decision shall include specific findings of fact as determined by the hearing officer. The proposed decision shall be presented to the Board of Directors of ICC-ES and served by mail upon the affected proponent.

10.0 DECISION BY BOARD OF DIRECTORS

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10.1 The proposed decision of the hearing officer shall be presented to the Board of Directors of ICC-ES for its independent review and decision. Within thirty days of the presentation of the proposed decision, the Board shall schedule a hearing at which time the affected proponent or ICC-ES shall be permitted to present argument but no additional evidence to the Board. The hearing shall be conducted by the Board at either a regularly scheduled meeting or a special meeting of the Board of Directors set for this purpose.

10.2 The Board shall render its decision within sixty days of the date of the hearing. In rendering its decision, the Board shall consider the case on the record, including the transcript and the argument presented. The decision of the Board shall be made by vote on the matter in accordance with the bylaws of ICC-ES. The Board may, in exercising its independent judgment, refer the matter back to the hearing officer for the taking of additional evidence. The action by the Board of Directors upon the matter shall be final and shall be effective thirty days after it is delivered or mailed to ICC-ES and the affected proponent.

10.3 If the matter is referred to the hearing officer for the taking of additional evidence, the hearing officer shall prepare a final proposed decision as provided in Section 9.0 above, on the additional evidence, the transcript and other papers which are a part of the record of the matter. A copy of the final proposed decision shall be delivered to the Board of Directors of ICC-ES and mailed to the proponent as provided for in Section 9.0 and shall be acted on by the Board of Directors in accordance with Section 10.2. The Board shall not be required to conduct

a hearing or permit argument after referring the matter to the hearing office for the taking of additional evidence.

10.4 A stay of execution may be included in the final decision or, if not included therein, may be granted by the Board of Directors at any time before the decision becomes effective. The stay of execution may be on such terms as the Board of Directors at its discretion should determine and may be conditioned upon the affected proponent taking certain actions; provided, however, that the terms of any such conditions shall be just and reasonable in light of the findings and decision in the matter.

11.0 APPEAL BY JUDICIAL REVIEW

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the California Code of Civil Procedure. Except as otherwise provided in this section, any such petition shall be filed within thirty days from the date the decision of the Board becomes final. The complete record of the proceedings, or such parts thereof as are designated by the affected proponent, shall be prepared by ICC-ES and shall be delivered to the affected proponent within thirty days after the request therefor, upon payment of the costs incurred in preparing the record. The complete record includes the pleadings, all notices and orders issued by ICC-ES, any proposed decision by the hearing officer, the final decision, the transcript of all proceedings, the exhibits submitted or rejected, the written evidence and any other papers in the case. ICC-ES may file with the court the original of any document in the record in lieu of a copy thereof.