

**RULES of PROCEDURE
for
PERSONAL PROPERTY FORFEITURE HEARINGS**

PF1 **Applicability.** These rules apply to all personal property forfeiture hearings arising out of Chapter 10.105 RCW (felonies) and RCW 69.50.505(5) (drug trafficking) for which the chief law enforcement officer's designated hearing officer is John E. Galt. The state's model rules [Washington Administrative Code 1-08] are not applicable to these proceedings.

These rules address most normal circumstances which might arise in personal property forfeiture proceedings. The possibility exists that a situation may arise which does not lend itself to full, literal compliance with these rules. Therefore, the Hearing Officer reserves the right to exercise reasonable and necessary flexibility and discretion when applying these rules to extraordinary circumstances.

PF2 **General Procedural Rules and Definitions.**

A. All personal property forfeiture hearings and associated proceedings will be conducted in accordance with Title 34 RCW as required by RCW 10.105.010(5) and 69.50.505(5). Specifically, the procedures of RCW 34.05.413-.419, 428-.455, .461, and .467-476 govern personal property forfeiture proceedings. These rules are supplementary thereto and, *inter alia*, address those matters where procedural discretion is allowed by said provisions.

B. The definitions within RCW 34.05.010 apply except as modified herein.

- i. "Agency" means the law enforcement agency which seized the item(s) of personal property in question.
- ii. "Agency head" means the chief law enforcement officer of the Agency.
- iii. "Presiding officer" means John E. Galt, Hearing Officer, serving as the Chief's Designee.
- iv. "Service," in addition to the processes spelled out in statute, may be effected, upon the request of or with the permission of the intended recipient, by facsimile transmission or other electronic means such as E-mail.

PF3 **Chief's Designation of Hearing Officer.** The Agency head has designated in writing, pursuant to RCW 10.105.010(5) and 69.50.505(5), John E. Galt, Hearing Officer, to act in his/her stead on claims arising under Chapters 10.105 and 69.50 RCW.

PF4 **Hearing Officer.**

A. John E. Galt is a quasi-judicial Hearing Officer providing independent, contract hearing services to a variety of public agencies, including the Agency.

B. The Hearing Officer's business address, telephone number, FAX number, and E-mail address are as follows:

Address: 927 Grand Avenue Telephone: (425) 259-3144
Everett, WA FAX: (425) 259-3144
98201-1305 E-mail: jegalt755@gmail.com

C. Except as authorized by RCW 34.05.455, the Hearing Officer may not communicate directly or indirectly regarding any issue in a case with anyone who will be a participant in the case or who has a direct or indirect interest in the outcome of the case.

D. Materials for a pending case may be mailed, FAXed, E-mailed or hand-delivered to the Hearing Officer using the address information contained in Rule PF4(B), above. Verbal communication with the Hearing Officer is strictly limited to procedural matters only. Senders are responsible for confirming receipt of FAX and E-mail transmissions. All E-mail regarding a pending case will be converted to paper copy and brought to the hearing for possible entry into the record.

PF5 Acknowledgement of Receipt of Claims. The Agency (or its legal counsel) shall be responsible for compliance with RCW 34.05.419(2) regarding providing the claimant with the name, address and telephone number of a contact person for the claim. Said contact person shall be an employee of the Agency or its legal counsel's office.

PF6 Submittal of Claim to Examiner. The Agency (or its legal counsel) shall forward all claims to the Hearing Officer within 21 calendar days of the filing of such claims. The Hearing Officer shall thereafter have jurisdiction (unless properly removed to a court of competent jurisdiction) and shall process claims in accordance with applicable law and these Rules of Procedure.

PF7 Removal to Court of Competent Jurisdiction.

A. It shall be the claimant's responsibility to comply with all applicable statutes and court rules in removing a claim to a court of competent jurisdiction.

B. If a claim is properly removed to a court of competent jurisdiction within the statutory 45 day period for such removal, its handling and disposition shall be governed by applicable statutes and court rules. Proper removal to a court of competent jurisdiction shall automatically terminate the Hearing Officer's jurisdiction over the claim.

PF8 Prehearing Conferences.

A. The Hearing Officer may in his sole discretion elect to convene a prehearing conference to discuss procedural matters with the parties. Any prehearing conference shall be held not sooner than 45 days (unless the claimant waives in writing the right to remove the claim to a court of competent jurisdiction and agrees to an earlier date) nor more than 90 days after the filing of a claim.

B. Not less than 7 days notice of the date, time and place of the conference will be provided to the claimant, the claimant's representative of record (if any) and the Agency's legal counsel. A shorter notice period may be used upon the agreement of both parties. Issuance of the prehearing conference notice shall constitute commencement of the adjudicative proceedings. [RCW 34.05.413(5)]

C. Conferences may be held in person or by telephonic conference call. Attendance at the conference is mandatory for the claimant and/or representative and for the Agency's representative. Failure to attend a prehearing conference to which a party has not objected will result in entry of a default judgment against the party who fails to attend. [RCW 34.05.440(2)]

- D. Prehearing conferences will be conducted relatively informally. The conference will not be recorded. The Hearing Officer will issue an order memorializing the conference shortly after its conclusion.

PF9 Admissibility of Test Reports. Admissibility of test reports by experts shall be governed by the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 6.13(b).

PF10 Prehearing Document Exchange.

- A. By not later than the close of the prehearing conference or three weeks prior to the date of the hearing (when no conference is held), the claimant: shall have provided the Agency's representative with copies of all documents which will be offered as exhibits at the hearing; and shall have stated the grounds or exception upon which the claim is based.
- B. By not later than the close of the prehearing conference or three weeks prior to the date of the hearing (when no conference is held), the Agency shall have provided the claimant with copies of any and all applicable affidavits for search warrant, search warrants, returns of search warrant, property logs, police reports and any documents which will be offered as exhibits at the hearing.
- C. Discovery by formal, written interrogatories or depositions will not normally be authorized but may be allowed in extraordinary cases by the Hearing Officer after considering a written request (with supporting justification) therefor by a party and written response by the other party.
- D. No document not disclosed to the opposing party through the document exchange process may be entered as evidence at the hearing except at the Hearing Officer's discretion in extraordinary circumstances.
- E. The document exchange period may be extended by and at the discretion of the Hearing Officer upon request of either party made in a timely fashion.

PF11 Settlement.

- A. Execution of a written settlement agreement between the parties prior to the date of the scheduled hearing shall automatically terminate the Hearing Officer's jurisdiction over the item(s) covered by said agreement.
- B. Where the settlement agreement covers all items for which a valid claim has been made, the hearing will be automatically cancelled.
- C. Settlement subsequent to the convening of the hearing shall be subject to the Hearing Officer's approval.
- D. The Hearing Officer shall be immediately notified by one or both parties upon execution of any settlement agreement. FAX, E-mail, or telephonic (followed by written confirmation) notification is preferred.

PF12 Hearing Sequence.

- A. Agency testimony, witnesses and evidence.
- B. Claimant (either *pro se* or with counsel) testimony, witnesses and evidence.
- C. Agency closing argument/remarks.
- D. Claimant closing argument/remarks
- E. Agency rebuttal of Claimant closing argument/remarks (if desired).

PF13 Decision. The Hearing Officer will issue a written decision within 15 days of the close of the hearing unless a longer period is agreed to by the claimant in writing or verbally on the record of the hearing. Service of the decision on the parties shall be effected by the Hearing Officer within five days of decision issuance.

PF14 Effect of Decision. The Hearing Officer's decision shall constitute the final decision for the Agency.

PF15 Reconsideration.

- A. Petitions for reconsideration shall be filed in writing with both the Hearing Officer and with the opposing party within 10 days after service of the Hearing Officer's written decision; PROVIDED, That requests pursuant to RCW 34.05.440(3) for vacation of default forfeiture orders must be filed within 7 days after service of the Hearing Officer's written order.
- B. If the Hearing Officer determines to accept the petition but does not believe that additional testimony, evidence, or argument is necessary to its proper adjudication, he shall issue an Order on the merits of the petition.
- C. If the Hearing Officer determines to accept the petition but does not believe that additional testimony or evidence is necessary to its proper adjudication, he shall issue an Order granting the opposing party fourteen (14) days in which to submit written argument on the petition. The Hearing Officer shall thereafter issue a written decision on the merits of the petition.
- D. If the Hearing Officer determines to accept the petition but believes that further hearing is necessary to its proper adjudication, he shall issue an Order reconvening the prehearing conference/hearing for a date not less than seven (7) days subsequent to the service of said Order. The Hearing Officer shall issue a written decision on the merits of the petition following the reconvened hearing.

PF16 Procedural Motions.

- A. Procedural motions (e.g.: a motion to dismiss a claim, a motion for default forfeiture, etc.) shall be filed in writing with both the Hearing Officer and the opposing party.
- B. A party filing a procedural motion shall present with any such motion a proposed order in a form ready for signature by the Hearing Officer. Any motion not accompanied by a proposed order will be considered only at the Hearing Officer's discretion.
- C. The Hearing Officer may allow the non-moving party an opportunity to submit a written response to the motion. When allowed, the response period shall normally not exceed 10 days.

Revised effective October 22, 2013.

John E. Galt, Hearing Officer