

Denial & Exclusion Hearing Process

The hearing officer conducts the contested case hearing. As such, the hearing officer is authorized to perform a variety of duties including issuing subpoenas to compel the attendance of witnesses and production of documents, authorizing depositions, administering oaths, receiving evidence and questioning witnesses, setting schedules, issuing interim orders, and performing other duties to make sure the parties are provided a fair and proper hearing. A party or its attorney cannot communicate directly or indirectly with the hearing officer regarding any pending matter unless notice is given and all parties have the opportunity to participate.

The hearing officer may impose sanctions and penalties if a party fails to appear at a scheduled hearing, has acted in bad faith to delay the process, or has otherwise abused the hearing process. If a Petitioner refuses to testify on his or her own behalf when questioned or fails to answer a subpoena, the hearing officer may conclude that the testimony or answer would have been adverse to the case of the party refusing to testify. If the Petitioner or its agent fails to answer a subpoena or refuses to testify fully at the MGCB request, the failure may be construed as an independent ground for a finding that the Petitioner should have been denied a license or transfer of ownership.

Pre-Hearing Conference

The hearing officer must schedule a pre-hearing conference before the evidentiary portion of a hearing begins if requested by either party. The pre-hearing conference may be used to enter stipulations as to undisputed issues. The parties must stipulate, if possible, to all undisputed matters. At the pre-hearing conference, the hearing officer may hear argument on motions filed by the parties and may consider other matters necessary to assist in conducting the hearing.

Discovery, Witnesses and Exhibits

The hearing officer may allow discovery, including the taking of depositions and compelling the production of papers and documents, if a party files a written request stating the reasons why discovery is necessary.

The parties must exchange witness and exhibit lists at least 10 days before the hearing. The hearing officer may exclude any witnesses or exhibits not disclosed in a timely manner.

Hearing

The parties may present opening statements. The Petitioner presents his or her case first followed by the adverse party's case. Testimony given is under oath and subject to cross examination by the parties. The hearing officer may also question the witnesses. The Petitioner may present rebuttal evidence. The parties may then present closing argument. The hearing officer may require or allow the parties to submit post hearing briefs, proposed findings of fact, and conclusions of law within 10 days of the conclusion of the hearing.

The contested case hearing will be recorded. The record will be transcribed if requested by a party. The requesting party must pay for the transcript.

The contested case hearing is held under the provisions of the Michigan Administrative Procedures Act, Public Act 306 of 1969, as amended, MCL 24.201 et seq. The parties may call witnesses subject to the discretion of the hearing officer and may object to offers of evidence made by the other party. The rules of evidence for a non-jury civil case in circuit court will be followed as far as possible but the hearing officer may admit evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing officer may exclude irrelevant, immaterial or unduly repetitious evidence and may take official notice of any generally accepted information or technical or scientific matter within the field of gaming and any other fact that may be judicially noticed by the Michigan courts. All information and materials presented at a public hearing is subject to public disclosure.

Burden of Proof

At all times during the proceeding, the Petitioner has the burden of proof to establish by clear and convincing evidence, any of the following:

- Petitioner should have been awarded a license.
- Petitioner's license should have been renewed.
- Petitioner's transfer of ownership should have been approved.
- Petitioner should not have been placed on the exclusion list.
- Petitioner should have been granted approval.

Findings and Final Order

The hearing officer will issue written findings of fact, conclusions of law, and recommendations within 90 days after either the hearing has concluded or the parties have filed post-hearing briefs or proposed findings of fact. The parties may file objections within 60 days after the findings of fact, conclusions of law, and recommendations are issued. The MGCB will affirm the findings of fact, conclusions of law, and recommendations issued by the hearing officer if no party files objections.

The MGCB will issue its final order within 60 days of the later of either hearing oral argument by the parties; receiving the parties' briefs; the date the hearing officer issues his or her written recommendations, findings of fact, and conclusions of law; or the expiration of time for the parties to file objections to the hearing officer's written findings of fact, conclusions of law, and recommendations. The MGCB may require the parties to present oral argument. The MGCB final order becomes effective when it is personally delivered to the parties or upon posting by certified mail.