

161—4.3(17A) Amendment.

4.3(1) Any notice of hearing, petition, statement of charges, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

4.3(2) Amendment to conform to proof. When issues not raised by the notice of hearing or the answer are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after the final decision; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the presiding officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would prejudice that party in maintaining the action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.