

930 CMR: STATE ETHICS COMMISSION

930 CMR 1.00: RULES OF PRACTICE AND PROCEDURE

Section

1.01: Formal Rules

1.02: Miscellaneous Provisions Applicable to All Adjudicatory Proceedings

1.03: Advisory Opinions to Municipal Employees

1.01: Formal Rules

(1) Scope, Construction and Definitions.

(a) Scope. 930 CMR 1.00 governs the conduct of Adjudicatory Proceedings of the State Ethics Commission.

(b) Construction. 930 CMR 1.00 shall be construed to secure a just and speedy determination of every Adjudicatory Proceeding.

(c) Definitions. The following words when used in 930 CMR 1.00, except as otherwise required by the context, shall have the following meanings:

Adjudicatory Hearing. An evidentiary hearing held to resolve disputed factual issues in an Adjudicatory Proceeding.

Adjudicatory Proceeding. A proceeding before the Commission initiated pursuant to M.G.L. c. 268B, § 4(c) to determine whether there has been a violation of M.G.L. c. 268A or 268B.

Authorized Representative. An attorney or other person authorized by a Party to represent him or her in an Adjudicatory Proceeding.

Commission. The State Ethics Commission as established by M.G.L. c. 268B, § 2.

Commissioner. A duly appointed member of the State Ethics Commission.

Documents. All writings, drawings, graphs, charts, photographs, sound recordings, images, and other data and data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form.

E-filing. Electronic document filing in accordance with the Commission's Electronic Case Filing Administrative Procedures Manual ("ECF Manual"), which is posted on the Commission's website, www.mass.gov/ethics.

Final Decision. A decision by the Commission pursuant to 930 CMR 1.01(10)(o)3.

Legal Advisor. A member of the Commission's Legal Division assigned to assist the Presiding Officer in connection with an Adjudicatory Proceeding.

Papers. All written communications filed in an Adjudicatory Proceeding, including motions, pleadings, and other documents.

Party. The Petitioner and Respondent, as defined in 930 CMR 1.01(1)(c): Petitioner and Respondent, and such other Person(s) who as a matter of constitutional right or by any provision of the General Laws are entitled to participate fully in the Adjudicatory Proceeding.

Person. A business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons.

Petitioner. The State Ethics Commission's Enforcement Division.

Presiding Officer. The Commissioner duly designated by the Commission to conduct an Adjudicatory Proceeding.

Respondent. The person who is the subject of the Adjudicatory Proceeding and whose conduct is alleged to have violated M.G.L. c. 268A or 268B.

(2) Representation.

(a) Appearance. An individual may appear on his or her own behalf. A duly authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture, and an authorized trustee may represent a trust. Any Party in an Adjudicatory Proceeding shall have the right to be accompanied, represented and advised by an Authorized Representative.

(b) Notice of Appearance. An appearance shall be made in an Adjudicatory Proceeding by filing a written notice with the Commission. Such notice shall contain the name, mailing address and telephone number of the Authorized Representative. An Order to Show Cause, Answer, or other pleading containing such information shall be treated as a notice of appearance.

1.01: continued

(3) Time.

(a) Timely Filing. Papers required or permitted to be filed under 930 CMR 1.00, any Scheduling or other Order, or any provision of the applicable law, must be filed electronically in accordance with the ECF Manual. A Respondent may seek permission from the Presiding Officer to file non-electronically. Filings that are not filed electronically shall be deemed filed and served upon receipt.

(b) Notice of Commission Actions. Notice of actions and other communications from the Commission shall be deemed received upon the date of issuance if issued electronically, or upon the day of hand delivery, or, if mailed, three days after deposit in the U.S. mail.

(c) Computation of Time. Unless otherwise specifically provided by law or 930 CMR 1.00, computation of any time period referred to in 930 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Commission's office is closed, in which event the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the Commission's office is closed shall be excluded in the computation.

(d) Extension and Shortening of Time. It shall be within the discretion of the Commission or Presiding Officer, upon its or his or her own initiative or upon motion for good cause shown, to extend or to shorten any time limit contained in 930 CMR 1.00. All requests for such changes shall be made by motion before the expiration of the original or previously extended time period. The filing of such motion shall toll the time period sought to be extended or shortened until the Commission or Presiding Officer acts on the motion. 930 CMR 1.01(3)(d) shall not apply to any limitation of time prescribed by the General Laws of the Commonwealth.

(4) Filings Generally.

(a) Title. Papers filed with the Commission shall state the docket number, if assigned, the title of the Adjudicatory Proceeding, and the name of the Person in whose behalf the filing is made.

(b) Personal Privacy Protection. Unless ordered otherwise by the Commission or the Presiding Officer, Parties shall refrain from filing with the Commission papers including any of the following, and shall redact papers as necessary to comply with 930 CMR 1.01(4)(b):

1. Home Addresses. Certificates of service shall indicate that service was made without identifying any home address at which service was made. If a home address is pertinent to a violation or defense, the Parties should bring the matter to the attention of the Presiding Officer. A Party appearing on his or her own behalf shall provide his or her home address to the Commission and to each other Party, but need not include such home address on filings, and said home address shall not be made public.

2. Social Security Numbers.

3. Names of Minor Children.

4. Dates of Birth.

5. Financial Account Numbers.

The responsibility for redacting this information rests solely with the Party making the filing. The Commission will not review each pleading for compliance with 930 CMR 1.01(4)(b).

(c) Signatures. Papers filed with the Commission shall be signed in accordance with the ECF Manual and shall state the work address and telephone number of the signing Party or Authorized Representative (if the Respondent is *pro se*, signature by an Authorized Representative is not required). This signature constitutes a certification by the signer that he or she has read the document and knows the content thereof, and that such statements are true; that the document is not interposed for delay; and that, if the document has been signed by an Authorized Representative, he or she has full power and authority to do so. When permission has been granted to file non-electronically, a Party or Authorized Representative must sign each filing and by doing so makes the same representations.

(d) Designation of Commission. The Commission shall be designated by its name and not by the name(s) of particular individual(s) holding office, and if, while the Adjudicatory Proceeding is pending, a change occurs in an individual(s) holding office, the Adjudicatory Proceeding shall not abate, and no substitution of Parties shall be necessary.

1.01: continued

(e) Form:

1. Size. All Papers shall be on paper 8½ inches wide by 11 inches long, with left-hand margins not less than 1½ inches wide and other margins not less than one inch.

2. Commission Format. The Commission may provide forms to be used by the Parties.

(f) Copies. No copies of Papers need be filed, except as provided in 930 CMR 1.01(10)(m) below with respect to briefs, and except in cases where a Respondent has been granted permission to file non-electronically. A Respondent granted such permission shall file the original of each required Paper together with two additional copies.

(g) Service.

1. Orders to Show Cause. Orders to Show Cause shall be filed electronically with the Commission and assigned a docket number by the Legal Division. Immediately thereafter, the Petitioner shall serve the Order to Show Cause on the Respondent and file a certificate of service. Service of the Order to Show Cause shall be by e-mail unless no e-mail address is available for the Respondent, in which case service shall be by regular mail.

2. Filing Subsequent to Orders to Show Cause. All Papers filed with the Commission must be served upon all other Parties to the Adjudicatory Proceeding by e-mail, unless the Respondent has obtained permission to file by non-electronic means or the Respondent has not provided an e-mail address, in which case service by and upon the Respondent shall be by delivery in hand, or by deposit in the United States mail, postage prepaid, properly addressed. All Papers filed with the Commission shall be accompanied by a certificate of service.

(h) Compliance. Failure to comply with the provisions of 930 CMR 1.01(4)(a) through (g) shall be grounds for refusal by the Commission to accept Papers for filing.

(5) Initiation of Adjudicatory Proceedings.

(a) Order to Show Cause. An Adjudicatory Proceeding shall be initiated by the filing by the Petitioner of an Order to Show Cause setting forth the grounds for such action. An Order to Show Cause shall be deemed issued upon its filing and service in compliance with 930 CMR 1.01(4)(a) through (h). The Order to Show Cause shall contain a statement of the basis for the commencement of the Adjudicatory Proceeding and the source of authority to conduct such a Proceeding. The Order to Show Cause shall state expressly whether relief is sought pursuant to M.G.L. c. 268A, §§ 9, 15, or 21, and, if such relief is sought, the nature of such relief. Petitioner shall notify the Commission when an Order to Show Cause has common facts with a previously filed Order to Show Cause.

(b) Scheduling Order. A Scheduling Order establishing case deadlines shall be issued after the Order to Show Cause has been filed.

(c) Answer. Within 21 days of the issuance of an Order to Show Cause, the Respondent shall file an Answer containing a full, direct and specific answer to each claim set forth in the Order admitting, denying, or explaining material facts. If there is insufficient knowledge to answer with specificity, this shall be so stated and the response shall be treated as a general denial. The Answer shall contain all affirmative defenses which are relied upon and must cite any statute(s) and/or regulation(s) which form the basis of each defense. All allegations contained in the Order to Show Cause which are not specifically admitted in the Answer shall be deemed denied. All new matters contained in the Answer shall be treated as if denied.

(d) Representation to the Commission. By presenting to the Commission an Order to Show Cause or an Answer, a Party certifies that to the best of the Party's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; that the factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and that the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information. If, after notice and a reasonable opportunity to respond, the Commission or the Presiding Officer determines that 930 CMR 1.01(5)(d) has been violated, the Commission or the Presiding Officer may strike the unsupported matter and order such other relief as is warranted.

1.01: continued

(e) Pleadings. The Commission or the Presiding Officer upon its, his, or her own initiative or upon the motion of any Party may, in its, his, or her discretion, order any Party to file an Answer or other pleading, or to reply to any pleading and further permit either Party to amend its pleadings upon conditions just to all Parties.

(f) Duties of Presiding Officer. A Presiding Officer may issue such nondispositive orders as are necessary for the fair and orderly administration of an Adjudicatory Proceeding and for the prompt resolution of matters.

(6) Motions.

(a) General Requirements. A Party may request by motion any order or action not inconsistent with law or 930 CMR 1.00. The Presiding Officer shall rule on all motions except as provided in 930 CMR 1.01(6), and may deny a motion which would terminate an Adjudicatory Proceeding. However, only the Commission may terminate an Adjudicatory Proceeding. The Presiding Officer may, in his or her discretion, refer any motion to the Commission for decision. Motions must be made in accordance with the deadlines established by the Scheduling Order, and any memorandum in support of a motion must be filed with the motion; untimely motions may be denied. Oppositions to motions must be filed and served within seven days of receipt, unless otherwise provided by the Scheduling Order or regulation. Motions and oppositions to motions shall not exceed 20 double-spaced pages in length unless the prior permission of the Presiding Officer is obtained. Whether to grant a hearing on a motion is within the discretion of the Presiding Officer or the Commission.

(b) Motion for More Definite Statement. If a pleading to which a responsive pleading is required is so vague or ambiguous that a Party cannot reasonably frame a responsive pleading, the responding Party, within the time permitted for such responsive pleading, may move for a more definite statement before filing its responsive pleading. The motion shall set forth the defects complained of and the details desired. If the motion is granted, the more definite statement shall be filed within ten days of receipt of the order or within such other time as may be ordered. If the more definite statement is not filed within the prescribed deadline, the Commission or Presiding Officer may dismiss the Adjudicatory Proceeding, grant the relief sought, or make such other order as it or he or she deems appropriate.

(c) Motion to Dismiss.

1. General Grounds. The Respondent may move to dismiss for failure of the Petitioner to prosecute or to comply with 930 CMR 1.00 or with any order of the Commission or Presiding Officer, or for failure of the Order to Show Cause to state a claim upon which relief may be granted. A Presiding Officer may deny such a motion, but only the Commission may grant such a motion. The granting of such a motion shall be considered a Final Decision, and shall be made in writing as provided by 930 CMR 1.01(10)(o).

2. Failure to Prosecute. When the record discloses the failure of the Petitioner to file documents required by 930 CMR 1.00, to respond to notices or correspondence, or to comply with orders of the Commission or Presiding Officer, or otherwise indicates an intention by the Petitioner not to continue with the prosecution, the Commission or Presiding Officer may issue an order requiring that the Petitioner show cause why the case should not be dismissed for lack of prosecution. If the Petitioner shall fail to show such cause, the case may be dismissed with prejudice. Any such dismissal shall be granted only by the Commission, shall be a Final Decision, and shall be made in writing as provided by 930 CMR 1.01(10)(o).

(d) Motion for Decision on the Pleadings. Any Party may move for decision on the pleadings in accordance with the Scheduling Order. If matters outside the pleadings are presented, the motion shall be treated as one for Summary Decision.

(e) Motion for Summary Decision.

1. Any Party may move, in accordance with the Scheduling Order, for Summary Decision in his or her favor, as to all or part of a matter. A motion for Summary Decision shall be supported by a statement of the facts that the moving party contends are undisputed, supported by citations to pleadings, affidavits, discovery responses, or other evidentiary materials. A Party responding to a Motion for Summary Decision shall respond to the movant's statement of undisputed facts and shall indicate as to each fact whether it is undisputed, with citations to evidentiary materials. If the motion is granted as to part of the matter and further proceedings are necessary to decide the remaining issues, a hearing shall be held. A Presiding Officer may deny a Motion for Summary

1.01: continued

Decision, but only the Commission may grant such a motion. Where the Commission determines that the undisputed facts entitle a non-moving Party to Summary Decision, the Commission may grant Summary Decision in favor of the non-moving party.

2. When the record discloses the failure of the Respondent to file documents required by 930 CMR 1.00, to respond to notices or correspondence, or to comply with orders of the Commission or Presiding Officer, or otherwise indicates a substantial failure to cooperate with the Adjudicatory Proceeding, the Presiding Officer may issue an order requiring that the Respondent show cause why a Summary Decision should not be entered against him or her. If the Respondent fails to show such cause, a Summary Decision may be entered in favor of the Petitioner. Any such Summary Decision shall be granted only by the Commission, shall be a Final Decision, and shall be made in writing as provided in 930 CMR 1.01(10)(o).

(f) Consolidation of Proceedings. Any Presiding Officer, upon notice of motion by a Party or otherwise in his or her discretion, may consolidate multiple Adjudicatory Proceedings that involve common issues, common facts, or common Parties.

(7) Discovery.

(a) Generally. Discovery shall commence promptly following the filing of an Answer and shall be conducted in accordance with the Scheduling Order. Failure to serve discovery requests or to file discovery motions in compliance with the Scheduling Order shall be grounds for their denial.

(b) Requests for Documents. Any Party to an Adjudicatory Proceeding may request any other Party to produce or make available for inspection, copying or photocopying, any documents or tangible things, not privileged, and not previously supplied, which are in the possession, custody, or control of the Party to whom the request is made and which are relevant to the proceeding. The request shall set forth the items requested by individual item or category with reasonable particularity. Such production shall be made at a time and place agreed upon by the Parties, or, absent such agreement, at the office of the Commission or such other place as the Commission shall designate within 14 days of receipt of the request in the absence of a Scheduling Order, or, when a Scheduling Order has been issued, as required by the Scheduling Order. Documents may be produced in paper or electronic form, as convenient.

(c) Depositions. A Party to an Adjudicatory Proceeding may take one deposition of a single witness of not more than four hours' duration, upon notice filed and served at least ten days before the date of the deposition. Further depositions shall be taken only pursuant to agreement of the Parties, or pursuant to approval by the Commission or Presiding Officer of a motion made as set in 930 CMR 1.01(7)(c)1. and (g). Depositions shall be taken at the Commission's office in Boston unless the Presiding Officer determines that this would create hardship for the deponent.

1. Form and Content. A motion to take a deposition must be filed and served at least ten days before the date of the proposed deposition. A motion requesting a deposition shall state the name of the witness to be deposed, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, and the reason why the testimony being sought is significant, not privileged and not discoverable by an alternative means, or the reason why the deposition is needed in order to preserve testimony. Whether or not to grant such a motion is within the sound discretion of the Commission or Presiding Officer. If the motion is allowed, the moving Party shall give at least five days' notice of the deposition.

2. Scope and Conduct of Deposition. Every witness deposed shall be duly sworn. Adverse Party(ies) shall have the right to question the witness. Objections to questions shall be in short form, stating the ground of objection relied upon. The testimony shall be reduced to writing and, unless waived, shall be signed by the witness and certified by the stenographer. Subject to appropriate rulings on objections and the Parties' agreement regarding its use, the deposition shall be received in evidence as if the testimony contained therein had been given by the witness in the Adjudicatory Hearing.

3. Recording by Other Than Stenographic Means. The Presiding Officer may order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

1.01: continued

(d) Interrogatories. A Party to an Adjudicatory Proceeding may obtain relevant information from another Party by serving written questions, known as interrogatories, upon any other Party. Interrogatories may be used for the purpose of discovering relevant, not privileged, information not previously supplied through voluntary discovery. No Party, without approval of the Commission or Presiding Officer, shall serve more than 25 interrogatories, including all discrete subparts. Each interrogatory shall be separately and fully answered under the penalties of perjury unless it is objected to, in which event, the reasons for the objection should be stated in *lieu* of an answer. Such answers shall be provided within 21 days of receipt of the interrogatories in the absence of a Scheduling Order, or, when a Scheduling Order has been issued, as required by the Scheduling Order.

(e) Requests for Admissions. Any Party to an Adjudicatory Proceeding may serve upon any other Party written requests for admission of the truth of any relevant matter, including but not limited to the genuineness of any documents attached to such requests, after commencement of the Adjudicatory Proceeding.

1. Each matter for which an admission is requested shall be separately set forth. The truth of the matter is admitted unless within 30 days the Party to whom the request is directed serves either:

- a. a written statement signed by the Party under penalties of perjury specifically denying the matter; or
- b. a written statement signed by the Party under penalties of perjury stating that the Party has made reasonable inquiry and the information known or readily obtainable by the Party is insufficient to enable the Party to admit or deny; or
- c. a written objection to the request, signed by the Party or the Party's Authorized Representative. When good faith requires that a Party qualify an answer or deny only a part of the matter for which an admission is requested, the Party shall specify so much of it as is true and qualify or deny the remainder.

2. Any matter admitted under this rule shall be treated as established unless the Presiding Officer upon motion permits withdrawal or amendment of the admission.

(f) Objection/Protective Orders. Any motion seeking relief from a discovery request shall be filed within the time permitted by the Scheduling Order. A hearing may be scheduled upon the motion but such a hearing shall not be mandatory. Protective orders may be issued upon motion or upon the Presiding Officer's own initiative to protect a Party from annoyance, embarrassment, oppression, undue burden or expense, or to protect confidential information or documents. Orders of the Commission or Presiding Officer may include limitations on the scope, method, time and place of discovery or provisions for protecting confidential information or documents.

(g) Motion for Order Compelling Discovery. Upon reasonable notice to other Parties, and within the time permitted by the Scheduling Order, a Party may file with the Commission a motion to compel discovery accompanied by a detailed statement of the reasons for such discovery request in the event that a request is not honored, or only partially honored, or interrogatories or questions at depositions are not completed/answered. Such motion shall also include a statement of the moving Party's good faith efforts to resolve the dispute.

(8) Intervention and Participation. Any person whose name is mentioned during an Adjudicatory Hearing of the Commission and who may be adversely affected thereby may file a written request to make an oral or written statement in opposition to such adverse mention. The Commission or the Presiding Officer shall, in their discretion, regulate the time, place and method of any oral statement offered pursuant to 930 CMR 1.01(8).

(9) Stipulations. The Parties may agree upon any pertinent facts and law in the Adjudicatory Proceeding by written stipulation filed in accordance with the Scheduling Order or by oral stipulation made at the hearing. Parties are encouraged to stipulate to facts not reasonably subject to dispute. In making its findings, the Commission is not bound by any stipulation which it finds to be factually or legally erroneous.

(10) Conferences and Adjudicatory Hearings.

(a) Conferences. The Presiding Officer, upon his or her own initiative or upon the request of any Party, may call upon the Parties to appear for, or to make themselves available by telephone or other means for, a conference or conferences. Any agreements reached by the Parties at such a conference shall be set forth in an order. The scheduling of a conference shall be solely within the discretion of the Commission or Presiding Officer.

1.01: continued

(b) Adjudicatory Hearings, When and Where Held. Adjudicatory Hearings will be held at the Commission's office in Boston unless the Presiding Officer determines that a hearing should be held at some other place. All Adjudicatory Hearings shall be public, unless, prior to an Adjudicatory Hearing, a Party moves to close the Adjudicatory Hearing, and the Commission grants the motion. The Party moving to close the Adjudicatory Hearing shall bear the burden to demonstrate by clear and compelling evidence that closure is necessary to protect important interests, that such interests outweigh the public's right of access to the Adjudicatory Hearing, and that no alternative to closure is available. Any order of closure shall be supported by written findings. Commission deliberations following the conclusion of an Adjudicatory Hearing shall be conducted in executive session, and shall be closed to the public.

All Adjudicatory Hearings shall be scheduled for a date within 90 days of the issuance of the Order to Show Cause, except as provided in 930 CMR 1.01(10)(b). The scheduling of the Adjudicatory Hearing within this 90 day period shall be solely within the discretion of the Commission or the Presiding Officer. The Presiding Officer in his or her discretion or for good cause shown may schedule an Adjudicatory Hearing beyond the 90 day period, continue a previously scheduled Adjudicatory Hearing, or advance a case for Adjudicatory Hearing. In the event of the unexcused absence of a Party from an Adjudicatory Hearing, the Commission may enter a default judgment against that Party, which default judgment shall constitute a Final Decision pursuant to 930 CMR 1.01(10)(o) unless vacated by the Commission upon motion of the defaulting Party filed within 14 days of the entrance of the default judgment.

(c) Pre-hearing Requirements Concerning Admissibility of Exhibits and Testimony.

1. Parties must file and serve upon each other the following not less than 21 days prior to the Adjudicatory Hearing:
 - a. a witness list including the name of each witness;
 - b. an expert witness list, if applicable, including the name, professional address, qualifications and subject matter of the testimony of each expert witness expected to be called, and, for each expert, a report setting forth the opinions to which the expert is expected to testify and the basis therefor;
 - c. an exhibit list;
 - d. stipulations of law and fact if any;
 - e. any proposed excerpts from an opposing Party's statements that will be offered as evidence.
2. Not later than ten days before the Adjudicatory Hearing, the Parties shall exchange written objections, if any, to each other's proposed exhibits, expert testimony, and opposing Party excerpts, and, with respect to such excerpts, where the objection is lack of completeness, shall indicate in writing what additional language is deemed necessary to complete the excerpt. Not later than seven days before the Adjudicatory Hearing, the Parties shall meet to discuss evidentiary issues. The Parties shall discuss their exhibit lists and objections with the goal of resolving evidentiary disputes between themselves if possible. The Parties are encouraged to stipulate to the admissibility of exhibits and testimony as to which there is no objection. To the extent that the Parties cannot agree, either or both Parties may request a conference by telephone or otherwise with the Presiding Officer to resolve those issues before the Adjudicatory Hearing. Prior to such a conference, each Party shall submit a brief outline of the issues to be resolved.
3. The Parties shall prepare two sets of binders containing all stipulated exhibits for use at the Adjudicatory Hearing by the Presiding Officer and the witnesses. These binders shall be provided to the Legal Advisor at least two days before the Adjudicatory Hearing.
4. It shall be grounds for objection to any exhibit and any expert testimony offered at an Adjudicatory Hearing that notice to the opposing Party was not given in compliance with 930 CMR 1.01(10)(c).
5. Any exhibit and any expert testimony of which the opposing Party has been given notice in compliance with 930 CMR 1.01(10)(c) and to which no objection has been raised is presumptively admissible absent good cause shown for the lack of objection.

1.01: continued

(d) Conduct at Adjudicatory Hearings. The Presiding Officer shall conduct the Adjudicatory Hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and administer an oath or affirmation to all witnesses. The Presiding Officer may, if appropriate or necessary, exclude any person, including an Authorized Representative, from an Adjudicatory Hearing for contemptuous conduct. An Authorized Representative who engages in contemptuous conduct during an Adjudicatory Hearing may be suspended or excluded from further practice before the Commission based upon written findings made by the Commission or Presiding Officer.

(e) Order of Proceedings. It shall be the usual practice for the Petitioner to present the first opening statement, to present its evidence before the Respondent, and to present the last closing argument, but the Presiding Officer may in his or her discretion vary the order of presentation.

(f) Presentation of Proof. All Parties shall have the right to be represented by counsel or other Authorized Representative, call and examine witnesses, introduce exhibits, cross-examine witnesses who testify, submit evidence, make objections, bring motions, make oral arguments, and make brief closing arguments. The scheduling of witnesses and of cross-examination, including whether to grant any Party's application to permit a witness to testify via tele-conferencing or other electronic means, and whether to permit redirect and recross, will be decided by the Presiding Officer in his or her discretion. Upon completion by the Petitioner of the presentation of evidence, the Respondent may move to dismiss on the grounds that, upon the facts and/or the law, the Petitioner has not sustained its case. Such a motion may be acted upon when it is made or at the close of all the evidence. A Presiding Officer may deny such a motion, but only the Commission may grant such a motion. The granting of such a motion shall be considered a Final Decision, and shall be made in writing as provided by 930 CMR 1.01(10)(o). The Parties may advocate in their closing arguments concerning the sanction(s) which should be imposed by the Commission in the event that it makes a determination that a violation has occurred. The Commission may, upon motion of a Party or upon the advice of the Presiding Officer, grant the Parties an opportunity to make such closing arguments before the Commission. The Presiding Officer or Commission, as the case may be, may limit the time of closing arguments.

(g) Witnesses and Evidence.

1. Witnesses. All testimony shall be under oath or affirmation, and the Presiding Officer shall administer oaths. A Party calling a witness shall provide the witness with a copy of 930 CMR 1.00 prior to the Adjudicatory Hearing. A copy of 930 CMR 1.00 shall also be available at any Adjudicatory Hearing.

2. Evidence. Relevant evidence may be admitted even if it would be inadmissible under the laws of the Commonwealth or other jurisdictions, provided that:

- a. It is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs; and
- b. It is reliable in the judgment of the Presiding Officer.

Parties may present evidence at the hearing relevant to the sanctions to be imposed by the Commission in the event it makes a determination that a violation has occurred.

3. Offer of Proof. When evidence is excluded by the Presiding Officer, a party may make an offer of proof so that the record reflects what was excluded. An offer of proof shall state the substance of such proof, and, if the excluded proof is documentary, a copy of such evidence shall be marked for identification.

(h) Evidence Included. All evidence, including any records, investigative reports, documents, and stipulations, which is to be relied upon in making a Final Decision, must be offered and made a part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference of any matter previously filed during the Adjudicatory Proceeding. At the close of the hearing, all exhibits shall remain in the custody of the Presiding Officer or his or her designee.

(i) Administrative Notice. The Commission or Presiding Officer may find a fact without either Party submitting proof if the fact is not subject to reasonable dispute, either because it is generally known, or because it is readily ascertainable from reliable sources. The Parties must be notified of the material to be so noticed and given an opportunity to object and offer contrary evidence.

1.01: continued

- (j) Authentication. An official record kept within the Commonwealth, or an entry therein, when admissible for any purpose, may be proved by an official publication thereof, by a copy authenticated as true and accurate by the officer having legal custody of the record or the custodian's deputy, or by any other means of authentication recognized under the laws of the Commonwealth.
- (k) Subpoenas. In conducting an Adjudicatory Proceeding, the Presiding Officer may issue, vacate, modify and enforce subpoenas requiring the attendance and testimony of witnesses and/or the production of documents or other evidence in accordance with the following provisions:
1. Issuance. An attorney representing a Party may issue a subpoena in the name of the Commission. A Party not represented by counsel may make written application to the Presiding Officer to issue a subpoena in the name of the Commission. However issued, every subpoena shall show on its face the name and address of the requesting Party. Notice to any Party shall not be required for issuance of a subpoena. The Commission may prescribe the form of subpoena but, insofar as practicable, such form shall adhere to the form used in civil cases before the courts.
 2. Motion to Vacate or Modify. Any Person to whom a subpoena is directed may file a written motion to vacate or modify the subpoena. The Commission or Presiding Officer shall give prompt notice to the Party who issued or requested issuance of the subpoena. The Commission or Presiding Officer may grant such petition in whole or in part upon a finding that the testimony or the evidence requested is not probative of any fact in question, or upon a finding that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.
 3. Costs. Witnesses shall be paid the same fees for attendance and travel by the Party issuing the subpoena as in civil cases before the courts.
- (l) Transcript of Adjudicatory Hearing: Correction and Transmission to Commission.
1. Recording and Transcripts. The Adjudicatory Hearing shall be recorded. The Parties shall be notified by the Legal Advisor when the transcript has been prepared. The Respondent may arrange to obtain a transcript from the stenographer at his or her own expense.
 2. Correction of Transcript. Within seven days after having received notice from the Legal Advisor that the transcript has been prepared, a Party may file proposed corrections. A copy of such proposed corrections shall be served on the opposing Party, who shall have three days from receipt to make any objections. The Presiding Officer shall thereupon rule on such proposals and may make corrections on his or her own initiative. Corrections may be made only to make the transcript conform to the evidence presented at the Adjudicatory Hearing. Once any such corrections are made, or the time for proposing such corrections has elapsed, the Presiding Officer shall certify the record and forward the transcript to the Commission.
- (m) Briefs. The Parties may submit briefs at or after the close of the Adjudicatory Hearing upon terms fixed by the Presiding Officer. Such briefs shall not exceed 20 pages in length unless the prior permission of the Presiding Officer is obtained. Six copies of each brief shall be filed with the Commission unless the Presiding Officer shall direct a lesser number. A copy shall be served upon the opposing Party, its Authorized Representative, or counsel if represented.
- (n) Settling the Record.
1. Contents of Record. The record of the Adjudicatory Hearing may consist of the following items: pleadings, conference memoranda, magnetic tapes, orders, briefs and memoranda, answers to interrogatories and requests for admissions, depositions, transcripts, exhibits, and other papers or documents which the Presiding Officer has specifically designated be made a part of the record. The record shall be available for inspection by the Parties.
 2. Evidence After Completion. No evidence shall be admitted after completion of an Adjudicatory Hearing or after a case has been submitted on the record, unless otherwise ordered by the Presiding Officer upon a showing of good cause.
 3. Weight of Evidence. The weight to be attached to any evidence in the record, including evidence concerning the credibility of witnesses, rests within the sound discretion of the Commission. The Commission or Presiding Officer may in any case require either Party, with appropriate notice to the other Party, to submit additional evidence on any matter relevant to the Adjudicatory Proceeding.

1.01: continued

4. Exceptions. Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a Party, at the time that a ruling is made or sought, makes known its objection to such action and its grounds therefor, provided that, if a Party has no opportunity to object to a ruling at the time it is made, or to request a particular ruling at an appropriate time, such Party, within three days of notification of action taken or refused, shall state its objection and grounds therefor.
- (o) Decisions.
 1. Timing. Unless the Parties otherwise dispose of the matter by agreement, within 30 days of the end of the Adjudicatory Hearing, the Commission shall meet in executive session for the purpose of reviewing and beginning deliberations on the evidence before it. The "end of the Adjudicatory Hearing" shall mean the date of the conclusion of the hearing, the date on which closing arguments are made before the Commission, the date on which all Parties' briefs have been received by the Commission, or the date on which the transcript is transmitted to the Commission pursuant to 930 CMR 1.01(10)(l)2., whichever occurs last.
 2. Burden of Proof. The Petitioner must prove its case by a preponderance of the evidence.
 3. Final Decisions. All Final Decisions shall be made by a minimum of three votes of the Commission. Every Final Decision shall be in writing and shall be signed by the participating Commissioners. Commissioners may authorize Commission staff to stamp their signatures on Final Decisions. With respect to the determination of violations, every Final Decision shall contain a statement of reasons therefor, including a determination of every issue of fact or law necessary to the Final Decision. Every Final Decision shall be published within 30 days after completion of the Commission's deliberations. Any sanction to be imposed pursuant to the finding of a violation herein shall be incorporated in the Final Decision regarding that violation. The Commission's Final Decision shall include all findings required for remedies available pursuant to M.G.L. c. 268A, §§ 9, 15, or 21.
 4. Disposition Agreements. The facts set forth in a Disposition Agreement which includes remedies available pursuant to M.G.L. c. 268A, §§ 9, 15, or 21 shall constitute the findings pursuant to an Adjudicatory Proceeding required by M.G.L. c. 268A, §§ 9, 15, or 21.
- (p) Reopening of Hearings. At any time before a Final Decision is issued, on the motion of any Party or on their own initiative, the Commission or the Presiding Officer may request that the hearing be reopened for the purpose of receiving new evidence.
- (q) Motion for Reconsideration. Any Party may file a Motion for Reconsideration, setting forth specifically the grounds or statutory provision relied upon to sustain the Motion, within ten days from the date when the Commission issued the Final Decision. Facts newly raised in such a motion must be supported by affidavit.
- (r) Judicial Appeal. Within 30 days after the issuance of a Final Decision, the Respondent may file a petition for review of that Decision in Superior Court. The filing of a petition for review shall not operate as a stay of enforcement of the Commission's Decision, but the Commission may in its discretion stay enforcement.
- (s) Return of Exhibits. Upon motion after a Final Decision has become final and all appeal periods have lapsed, the Commission or Presiding Officer, in the exercise of discretion, may permit the return of original exhibits or any part thereof to the Party or Person entitled thereto. If exhibits are returned to a Party pursuant to 930 CMR 1.01(10)(s), the Commission shall retain copies.

1.02: Miscellaneous Provisions Applicable to All Adjudicatory Proceedings

- (1) General. 930 CMR 1.02 shall be applicable to all proceedings held under 930 CMR 1.01.
- (2) Availability of 930 CMR 1.00. Copies of 930 CMR 1.00 shall be posted on the Commission's website, www.mass.gov/ethics, and available from the Commission upon request by any person.
- (3) Severability. If any rule contained in 930 CMR 1.00 is found to be unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining rules will not be so affected.

1.02: continued

(4) Non-English Speaking Parties and Witnesses. If any Party in an Adjudicatory Proceeding has a concern about the ability of a Party or a witness to communicate effectively in English, the concern should be raised with the Presiding Officer at the earliest convenient time so that arrangements for an interpreter may be made.

(5) Conflicts. No Presiding Officer who has a direct or indirect interest, personal involvement, or bias in an Adjudicatory Proceeding, shall conduct a hearing in said matter, nor shall he or she participate in the decision-making process with respect to such matter.

(6) Ex-parte Communications by Parties Prohibited. No Party or Authorized Representative of a Party to an Adjudicatory Proceeding shall make any written or oral submission to the Presiding Officer and his or her Legal Advisor unless such submission is copied to, or made in the presence of, all Parties. An oral request for information on scheduling or the availability of a ruling does not violate 930 CMR 1.02(6).

(7) Docket/Decision Index.

(a) Docket. Unless otherwise proscribed by law, the Commission shall maintain on a current basis, a docket of all proceedings which shall list separately in chronological order all Papers filed and actions taken in each Adjudicatory Proceeding.

(b) Decision Index. Unless otherwise proscribed by law, the Commission shall maintain on a current basis, a Final Decision index and compilation of Final Decisions. Said index shall contain an alphabetical listing by name and subject matter of all Final Decisions rendered and shall contain a further cross-reference as to the page number in the compilation where the subject Final Decision may be found.

(c) Public Inspection. Except to the extent proscribed by law, the docket, Final Decision index, and compilation of Final Decisions shall be available for inspection and copying by the public during the office hours of the Commission. The rate for copying shall be rates as set by the Executive Office for Administration and Finance.

(8) Statute of Limitations.

(a) Effective September 29, 2009, the statute of limitations governing Commission enforcement proceedings is five years from the date the Commission learns of the alleged violation, but not more than six years from the date of the last conduct relating to the alleged violation, as set forth in M.G.L. c. 268B, § 4(c).

(b) The statute of limitations set forth in M.G.L. c. 268B, § 4(c) applies to the following:

1. all Commission enforcement proceedings involving conduct that occurred on or after September 29, 2009; and
2. all Commission enforcement proceedings pending on September 29, 2009, in which, as of that date, an Order to Show Cause had not yet been filed.

(c) Commission enforcement proceedings pending on September 29, 2009 in which an Order to Show Cause had been filed as of that date are subject to the statute of limitations set forth in the former 930 CMR 1.02(10), which is available on the Commission's website, www.mass.gov/ethics.

(d) The statute of limitations set forth in M.G.L. c. 268B, § 4(c) does not revive any cause of action that was time-barred under the former 930 CMR 1.02(10) as of September 29, 2009.

(e) For purposes of M.G.L. c. 268B, § 4(c), the Commission "learns of the alleged violation" only when the Commission's Executive Director, Enforcement Division Chief or Deputy Chief, or an attorney or investigator of the Enforcement Division, has actual knowledge that an alleged violation has occurred, or a complaint alleging a violation of M.G.L. c. 268A or c. 268B has been received at the Commission's office, subject to the following exception. The Commission does not "learn of the violation" when its Executive Director, General Counsel, and/or Legal Division attorneys and staff obtain information in the context of giving advice on behalf of the Commission concerning M.G.L. c. 268A or c. 268B.

(f) The last sentence of M.G.L. c. 268B, § 4(c) provides: "The commission shall initiate such an adjudicatory proceeding within 5 years from the date the commission learns of the alleged violation, but not more than 6 years from the date of the last conduct relating to the alleged violation." The Commission interprets the last clause of that sentence as follows:

1.02: continued

1. The Commission may initiate an adjudicatory proceeding when some conduct relating to an alleged violation occurred more than six years prior to the filing of the order to show cause, as long as some conduct relating to the same alleged violation occurred less than six years prior to the filing of the order to show cause. In such circumstances, the conduct occurring more than six years prior to the filing of the order to show cause, and the conduct occurring less than six years prior to the filing of the order to show cause, may be treated as a single violation.
2. The Commission may also initiate an adjudicatory proceeding with respect to a pattern or course of continuing conduct amounting to multiple violations, when all the conduct relating to all but the last alleged violation occurred more than six years prior to the filing of the order to show cause, as long as some conduct relating to the last alleged violation that is part of the pattern or course of continuing conduct occurred less than six years prior to the filing of the order to show cause. In such circumstances, each related violation that occurred more than six years prior to the filing of the order to show cause, and the violation that occurred partly more than six years before the filing of the order to show cause and partly less than six years prior to the filing of the order to show cause, may each be treated as a separate actionable violation, for which a separate penalty may be imposed.

1.03: Advisory Opinions to Municipal Employees

- (1) Upon written request by any municipal employee, including an employee of a municipal district, a regional municipal entity, a former municipal employee or a prospective municipal employee, the Commission shall issue a formal advisory opinion under M.G.L. c. 268B, § 3(g). Copies of any such opinions, excepting the name of the requesting person and any other identifying information, shall be forwarded to any city corporation counsel, city solicitor or town counsel who has subscribed with the Commission to receive the opinions. The Commission may decline to issue an opinion if the employee has requested an opinion on the same matter from the city corporation counsel, city solicitor or town counsel and a copy of the opinion has been filed with the Commission as provided in 930 CMR 1.03(3).
- (2) An advisory opinion issued by the Commission under M.G.L. c. 268B, § 3(g) is binding on the Commission in any subsequent proceedings only with respect to the person who requested the opinion and to those upon whose behalf he requested the opinion. The Commission is not bound by an opinion whose material facts were omitted or misstated by the person in the request for the opinion, or who otherwise acted in bad faith in securing the opinion.
- (3) Any city corporation counsel, city solicitor or town counsel who files with his respective municipal clerk an advisory opinion issued under M.G.L. c. 268A, § 22 shall also file a copy of the opinion with the Commission. Following receipt of the opinion, the Commission, acting through the Executive Director, shall notify the city corporation counsel, city solicitor or town counsel of any legal conclusions in the opinion which are inconsistent with Commission conclusions on similar issues under M.G.L. c. 268A or are otherwise, in the Commission's judgment, incorrect, incomplete or misleading. If no such notification is sent by the Commission within 30 days of receipt of the opinion, the opinion will be binding upon the Commission to the extent and in the manner stated in 930 CMR 1.03(2). An advisory opinion issued by a corporation counsel, city solicitor or town counsel under M.G.L. c. 268A, § 22, a copy of which is not filed with the Commission, is not binding upon the Commission.

REGULATORY AUTHORITY

930 CMR 1.00: M.G.L. c. 268B, § 3(a).