

950 CMR 101.00: ADJUDICATORY PROCEEDINGS: CORPORATIONS DIVISION

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101.01: General Information

(1) Scope and Application of the Rules. 950 CMR 101.00 *et. seq.* governs procedures in "adjudicatory proceedings" conducted before the Corporations Division of the Office of the State Secretary and subject to the provisions of M.G.L. c. 30A, the State Administrative Procedures Act. "Adjudicatory proceedings" are defined by the Act as proceedings "in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing." (M.G.L. c. 30A 1(1)) The rules contained herein are not applicable to hearings which do not conform to the definition of "adjudicatory proceedings." Where good cause appears, and waiver is not contrary to statute, the Division may permit deviation from these rules.

950 CMR 101.00 *et. seq.* generally, but not exclusively, applies to M.G.L. c. 156B commonly referred to as the Business Corporation Law. Specific attention is devoted for the sake of the hearing process to M.G.L. c. 156B, § 11 and is reprinted here in part for reference.

M.G.L. c. 156B § 11 -- Assumption of Corporate Name, etc.; Reservation of Name, etc.

(a) A corporation may assume any name which, in the judgment of the state secretary, indicates that it is incorporated; but it shall not assume the name or trade name of another corporation established under the laws of the Commonwealth, or of a corporation wherever established, firm, association or person carrying on business in the commonwealth, at the time of incorporation or change of name of the corporation assuming any such name or within three years prior thereto, or assume a name which is under reservation under the laws of the commonwealth for another or proposed corporation wherever established, or assume a name so similar to any of the foregoing as to be likely to be mistaken for it, except with the written consent of the said corporation, firm or association or of such person previously filed with the state secretary. The supreme judicial or superior court shall have jurisdiction in equity, upon the application of any person interested or affected, to enjoin such corporation from doing business under a name assumed in violation of any provision of 950 CMR 101.01, although articles of organization or articles of amendment may have been approved and filed.

(b) If within 30 days after the date when articles of organization or articles of amendment effecting a change of name of any corporation are filed in the office of the state secretary, any corporation or person in whose name a corporate name is under reservation, or any other corporation or any firm, association or person carrying on business in the commonwealth at the time when such articles are so filed, or within three years prior thereto, shall protest in writing to the state secretary that the name assumed by the corporation is the same as the name, name under reservation or trade name of the party protesting or so similar thereto as to be likely to be mistaken for it, the state secretary shall, as soon as reasonably may be, hear the party protesting and the corporation which assumed the name, giving written notice of the hearing to each. If after the hearing the state secretary shall be of the opinion that the assuming of the name violates any provisions of 950 CMR 101.01(1)(b), he shall file a statement withdrawing

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his approval of said articles of organization or articles of amendment in so far as they relate to the name assumed by the corporation and give written notice thereof to the party protesting and to the corporation, such withdrawal to take effect 60 days after the date of filing. After the expiration of said period of 60 days, the corporation shall have no right to use the name assumed and may be enjoined from doing business under such name by the supreme judicial or superior court upon application of the attorney general or any person interested or affected.

(2) Communications. All communications, including correspondence, motions and pleadings should be addressed and filed with the Corporations Division, Office of the Secretary of State, One Ashburton Place, Room 1710, Boston, Massachusetts 02108.

(3) Date of Receipt. All communications, including correspondence, motions and pleadings, shall be deemed to be filed or received on the date on which they are actually received by the Division, party or other person.

(4) Computation of Time. Computation of any period of time referred to in these rules shall begin with the first day following that on which the act which initiates such period of time occurs. When the last day of the period so computed is a day on which the office of the Division is closed, the period shall run until the end of the next business day. When such period of time, with the intervening Saturdays, Sundays and legal holidays counted, is five days or less, the said Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise such days shall be included in the computation.

(5) Extensions of Time. It shall be within the discretion of the Division to extend, for good cause shown, any time limit prescribed or allowed by these rules. All requests for extensions shall be made by motion and shall be made before the expiration of the period originally prescribed or as previously extended. The Division shall notify all parties of its action upon the motion. Extensions shall be granted only when the Division is satisfied that good cause has been shown, and not otherwise.

(6) Signatures. Every application, notice, pleading, petition, complaint, motion, brief, memorandum and other document shall be signed by the filing party or by one or more attorneys, in their individual names on behalf of the filing party. This signature constitutes a certification by the signer that he has read the document; that to the best of his knowledge every statement contained in the instrument is true; and that it is not interposed for delay.

(7) Ex Parte Communication. In an adjudicatory proceeding no party shall communicate *ex parte* with any member of the Division or any employee of the Division involved in the decisional process, with respect to the merits of that or any other related proceeding. In an adjudicatory proceeding, if any *ex parte* communication is directed to any person in violation of the first sentence, the hearing officer or his designee and all other parties shall be immediately informed of the substance of the communication and the circumstances of its receipt, provided, that a request for information with respect to the status of an adjudicatory proceeding shall not be prohibited by 950 CMR 101.01(7).

101.02: Pleadings

(1) Initial Pleading.

(a) An initial pleading, as used herein, shall refer to any paper or document by which an adjudicatory proceeding may be commenced. Such papers or documents shall include but not be limited to applications, petitions, charges, complaints, protests and appeals.

(b) Every initial pleading, as far as possible, shall contain the following:

1. A title which indicates either the nature of the proceedings or the parties involved therein.
2. The complete name and address of the party filing the pleading.
3. The name of the Division to which the pleading is directed.
4. The name and address of all other parties.
5. A clear and concise statement of the facts upon which the pleading is maintained.

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6. A prayer setting forth the relief sought.
 7. If the party filing the pleading is represented by counsel, the name and address of the attorney.
- (c) The Division may print or otherwise duplicate forms to be filled out and used as initial pleadings. When such forms are available the Division may require their use.
- (2) Answer. Any party may file with the Division an answer to an initial pleading within 14 days after service of the document to which the answer is directed. All allegations contained in said initial pleading which are not specifically admitted are deemed denied. All new matters contained in said answer shall be deemed denied.
- The answer shall contain but not be limited to the following:
- (a) A clear and concise statement identifying the party filing the answer and the matter to which the answer relates.
 - (b) A clear and concise statement of all matters upon which the party relies.
- (3) Replies. There shall be no reply other than an answer as provided in 950 CMR 101.02(2).
- (4) Amendments to Pleadings. Leave to file amendments to any pleading will be allowed or denied as a matter of discretion; provided, however, leave to amend shall be freely given as justice requires. If amendment is made to an initial pleading, the answer to said amended pleading, if any, shall be filed within seven days.
- (5) Withdrawal of Pleadings. A party desiring to withdraw a pleading filed with the Division shall file a motion for withdrawal, in accordance with 950 CMR 101.03. If any party has an objection thereto, he shall, within ten days after receipt of said motion, file a statement with the Division setting forth the reasons for his objection and serve a copy of same, in accordance with 950 CMR 101.03, on each party. An objecting party may, as of right, have a hearing on the motion to withdraw if, at the time of filing, he so requests. In the absence of objections or a request for hearing, the motion of withdrawal shall, within 30 days after the filing thereof, be deemed allowed, unless otherwise ordered; provided, however, that this paragraph shall not be construed as effecting withdrawal of the following, unless all parties thereto including the Division so agree:
- (a) Any pleading in any proceeding in which a hearing has been held.
 - (b) Any formal complaint.

101.03: Service

- (1) By the Division. Service of complaints, orders, decisions, pleadings, motions, processes, and other documents of the Division shall be by First Class mail.
- (2) On the Division. For the purpose of proceedings under 950 CMR 101.03 only, service upon the Division may be effected by filing the paper or papers with the Director or any attorney employed by the Division.
- (3) Parties and Other Persons. All papers, including but not limited to, applications, notices, pleadings, petitions, motions, briefs, memoranda and other documents, filed by any party or other person with the Division or a hearing examiner shall be served by personal delivery or by registered mail upon all parties to the proceedings. Proof of service shall accompany all papers when filed or shall be filed within ten days thereafter.

101.04: Parties

- (1) Substitution of Parties. The Division may, on motion, at any time in the course of any proceeding, permit such substitution of parties as justice or convenience may require.
- (2) Intervention. Any party not initially joined in the action or proceeding shall be permitted to intervene. In the discretion of the Division, any person not a party may be permitted to intervene in any action or proceeding. A person or party desiring to intervene shall file a motion which shall state therein

the grounds for intervention.

101.05: Evidence

- (1) Rules of Evidence. The Division, as provided in M.G.L. c. 30A, § 11, need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
- (2) Matters for Official Notice.
 - (a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of this Commonwealth and in addition, the Division may take notice of general, technical, or scientific facts within its specialized knowledge; provided, that any party shall on timely request be afforded an opportunity to contest the matters of which official notice is to be taken.
 - (b) Official notice in any Division proceeding also may be taken of any fact alleged, presented, or found in any other Division proceeding or of the status and disposition of such proceeding; provided that the parties shall be afforded an opportunity to contest the matters of which official notice is to be taken.
- (3) Objections and Exceptions. Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party, at the time that a ruling of the Division is made or sought, makes known to the Division the action which he desires taken or his objections to such action and his grounds therefor. If a party does not have the 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 the action taken or refused, shall state his objection and his grounds therefor.
- (4) Production and View of Objects. A party may file a motion for the production or view of any object which relates to the subject matter of any proceeding then pending before the Division. Said motion shall be filed in accordance with 950 CMR 101.03 and shall be granted in the discretion of the Division where justice requires.
- (5) Exhibits. Every party shall have the right to introduce exhibits.

101.06: Stipulations

In the discretion of the Division, the parties may, by stipulation in writing filed with the Division at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. In making its findings, the Division need not be bound by any such stipulation.

101.07: Hearing Procedures

- (1) Notice of Hearing. The Division shall notify all parties and intervenors of a scheduled hearing in any pending matter. Such notification shall include, but need not be limited to, the time, date, place and nature of the hearing and shall be served at least seven days prior to the hearing on all parties or others according to 950 CMR 101.03.
- (2) Hearing.
 - (a) Presiding Officer. Unless the statute shall otherwise specify, the hearing shall be conducted by a duly appointed hearing officer, the Director of the Division, or a member of the Division appointed by the Director to conduct the hearing.
 - (b) Sworn Testimony. All testimony given at a Division hearing shall be under oath administered by the presiding officer.
 - (c) Order of Presentation. The moving or complaining party shall present his evidence or testimony first. Where there is more than one moving or complaining party the order of presentation shall be in the discretion of the Division. After all evidence and testimony of the complaining or moving parties have been received, all other parties shall be allowed to present their evidence or testimony. All parties, other than the party introducing the testimony, shall be allowed to cross-examine any witness immediately after his testimony has been received.

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- (d) Conduct. All parties, counsel, witnesses, and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of this Commonwealth. Where such decorum is not observed, the Division may take such action as it deems appropriate.
- (3) Hearing Officer. Where authorized by statute, the Director of the Division may appoint a hearing officer. The hearing officer shall have all those powers conferred on the Division in the conduct of hearings.
- (4) Oral Argument. A party shall have a right before the close of the hearing to argue orally, but the Division may impose reasonable limitations upon the length of such argument. The Division may in its discretion permit additional oral argument at any time after the close of a hearing, provided all parties are given reasonable opportunity to be heard.

101.08: Consolidation; Continuances; Satisfaction of Complaint

- (1) Consolidation. The Division upon its own motion, or upon motion by a party or other person joined in the proceeding, may order proceedings involving a common question of law or fact to be consolidated for hearing on any or all of the matters in issue in such proceedings.
- (2) Continuances. The Division may, for good cause shown, grant a postponement or a continuance of proceedings.
- (3) Satisfaction of Complaint. In any proceeding in which a party is charged with the commission of an act contrary to law, the proceeding shall not be discontinued except with the consent of the party charged.

101.09: Motion to Dismiss

- (1) General Grounds. Any party may move to dismiss for failure of any other party to prosecute or to comply with these rules or with any order of the Division or Hearing Officer. Upon completion by the initiating party of the presentation of evidence, the responding party may move to dismiss on the grounds that, upon the facts and/or the law, the initiating party has not sustained its case. The Division or hearing officer may act upon the motion then, or may wait until the close of evidence. The granting of such motion shall be considered a decision.
- (2) Failure to Prosecute. When the record discloses the failure of the Petitioner to file documents required by these rules, respond to notices or correspondence, comply with orders or otherwise indicates an intention not to continue the prosecution of the hearing, the Division Hearing Officer may issue an order requiring that Petitioner show cause why the hearing should not be dismissed for lack of prosecution. If the petitioner shall fail to show cause, the petition may be dismissed with prejudice.

101.10: Briefs and Post-Hearing Procedure

- (1) Briefs. Briefs may be filed by a party or any interested person either before or during the course of a hearing, or within such time thereafter as the Division shall designate. Failure to file a brief shall in no way prejudice the rights of any party.
- (2) Filing of Documents Subsequent to Hearing. The Division may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of the hearing, such time to be determined by the Division. If a request for such subsequent filing is granted, the requesting party shall, on or before the date set for filing, send copies of all documents or exhibits which are the subject of the request to all other parties. If such requirement for copies is impracticable, the Division may suspend the above provision; in such cases, the Division shall allow reasonable inspection of the original by all parties.

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(3) Reopening Hearings. A party may, at any time prior to the rendering of a decision by the Division, move that the hearing be reopened for the purpose of receiving new evidence. Such motions shall be filed in accordance with the provisions of 950 CMR 101.03 and shall be granted only for good cause shown. The Division shall notify all parties of its action upon the motion. Notwithstanding the above, the Division may, at any time prior to the rendering of a decision, reopen the hearing on its own motion. In case of such reopening on motion of the Division, the parties shall be notified, and the hearing shall be convened not less than five days after the sending of such notice.

(4) Rehearing. Any party may file a motion for rehearing, reargument, or reconsideration within 30 days after a receipt of a final decision of the Division. Such motion shall be filed in accordance with 950 CMR 101.03 and in addition, shall include a statement of all matters alleged to have been erroneously decided and if applicable, a statement as to any newly discovered matters or circumstances that have arisen subsequent to the final decision. The filing of said motion shall not operate as a stay of execution unless so ordered by the Division.

101.11: Decision

The final decision of the Division shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision. Parties to the proceeding shall be notified by mail of the decision and shall be apprised of their rights to review or appeal the decision and of the time limits for doing so. A copy of the decision and statement of reasons shall be mailed to each party or their counsel.

101.12: Appeal Provisions

Appeals from administrative tribunals are dealt with generally in M.G.L. c. 30A, § 14 and c. 156B § 11 giving jurisdiction in the Supreme Judicial Court and the Superior Court in equity to aggrieved persons.

REGULATORY AUTHORITY

950 CMR 101.00: M.G.L. c. 30A, § 11; c. 156B.