

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 31.00: ADJUDICATORY PROCEEDINGS: SUPERVISOR OF RECORDS

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31.01: Scope and Application of Rules

- (1) The following rules govern procedure in adjudicatory proceedings, conducted before the Office of the Secretary of State, Supervisor of Public Records. These rules are subject to the provisions of St. 1973 c. 981 and are subject to M.G.L. c. 30A as amended.
- (2) The following rules are limited to those hearings brought about as a result of M.G.L. c. 3, § 45. In accordance with said provisions, any hearings brought under these rules are limited in scope to hearings relating to proceedings for the disqualification of persons acting as Legislative Agents, as defined in M.G.L. c. 3, § 39. These rules are applicable only to the extent that the proceedings conform to the definition of "Adjudicatory Proceedings" as defined in M.G.L. c. 30A, § 1(1).
- (3) The Secretary of the Commonwealth may, at his discretion, designate the Supervisor of Public Records to represent the Secretary in all aspects material to these rules and to any subsequent hearings. The Supervisor is to have all rights and powers designated to the Secretary of the Commonwealth.

31.02: General Provisions

- (1) Office Hours. The offices of the Secretary of State shall be open from 8:45 A.M. to 5:00 P.M. except Saturdays, Sundays and Legal Holidays.
- (2) 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 agency, party or other person.
- (3) 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 agency is closed, the period shall run until the end of the following business day. In computing time, Saturdays, Sundays and legal holidays are to be excluded.
- (4) Extension of Time. It shall be within the discretion of the agency to extend, for good cause shown, any time limit prescribed or allowed by these rules. All requests for extensions shall be made by motion in accordance with 950 CMR 31.03(6). The agency shall notify all parties of its action upon the motion. Extensions shall be granted only when the agency is satisfied that good cause has been shown, and not otherwise.
- (5) Signatures. Every application, notice, pleading, 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, and representing the said filing party. This signature constitutes a certificate 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.

31.03: Pleadings and Motions

(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 and appeals.

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

1. A title which indicates as appropriate the nature of proceedings and the parties involved therein.
2. The complete name and address of the party filing the pleading.
3. The name of the agency 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.
6. In the case of appellate proceedings, a clear and concise statement of the appellant's objections to the decision or action from which the appeal was taken.
7. A prayer setting forth the relief sought.
8. If the party filing the pleading is represented by counsel, the name and address of the attorney.

(c) Any agency may print or otherwise duplicate forms to be filled out and used in initial pleadings. When such forms are available the agency may require their use.

(2) Answer. Any party may file with the agency 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 31.03(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, it shall be filed within seven days.

(5) Withdrawal of Pleadings. A party desiring to withdraw a pleading filed with an agency shall file a motion for withdrawal, in accordance with 950 CMR 31.03(6). If any party has an objection thereto, he shall within ten days after receipt of said motion, file a statement with the agency setting forth the reasons for his objection and serve a copy of same, in accordance with 950 CMR 31.04 of 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 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 agency so agree:

- (a) Any pleading in any proceeding in which a hearing has been held.
- (b) Any formal complaint.

(6) Motions. An application to the agency for an order to take any action or to enter any order after initial pleading or answer shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state specifically the grounds therefore, and shall set forth the action or order sought. A copy of all motions made in writing, or reduced to writing at the request of the agency, shall be served upon the parties in accordance with 950 CMR 31.04.

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(7) Motion for Specifications. Where a party makes a reasonable showing that he cannot frame an answer to an initial pleading based upon the allegations as they appear in such initial pleading, he may, at any time prior to the time within which an answer may be filed, move for specifications or for a more definite statement of the allegations. Such a motion shall be filed in accordance with 950 CMR 31.03(6) and shall identify the defects complained of or the details desired. The agency shall grant such motions as justice requires, but shall disallow motions which clearly have been filed for purposes of delay or harassment. If the motions are allowed, the party called upon to clarify his pleading shall file specifications within seven days of being notified of such allowance, and the party who has moved for specifications shall file his answer, if any, within seven additional days.

31.04: Service

(1) By the Agency. Service of complaints, orders, decisions, pleadings, motions, processes, and other documents of the agency shall be by certified mail.

(2) On the Agency. For the purpose of proceedings under these rules only, service upon the agency may be effected by filing the paper or papers with the clerk or secretary to:

Office of the Secretary of State
Supervisor of Public Records
One Ashburton Place, Room 1701
Boston, Massachusetts 02108

(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 agency or a hearing examiner shall be served by personal delivery or by first-class mail upon all parties to the proceedings. Proof of service shall accompany all paper when filed or shall be filed within ten days thereafter.

31.05: Intervention

(1) Substitution of Parties. An agency 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 agency, 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 in accordance with 950 CMR 31.03(6), which motion shall state therein the grounds for intervention.

31.06: Evidence

(1) Evidence. Unless otherwise provided by any law, agencies 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. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

(2) Rights of Parties. Every party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify; and to submit rebuttal evidence.

(3) Offering Evidence. All evidence, including any records, investigation reports, and documents in the possession of the agency of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in 950 CMR 201.06(4). Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

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(4) Official Notice. Agencies may take notice of any fact which may be judicially noticed by the courts, and in addition, may take notice of general, technical or scientific facts within their specialized knowledge, provided, however, that such facts and knowledge shall be offered and made part of the record of the proceeding. Parties shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

(5) 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 agency. Said motion shall be filed in accordance with 950 CMR 31.03(6) and shall be granted in the discretion of the agency where justice requires.

(6) Stipulations. In the discretion of the agency, the parties may, by stipulation in writing filed with the agency 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 agency need not be bound by any such stipulation.

(7) 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 an agency is made or sought, makes known to the agency the action which he desires taken or his objection to such action and his grounds therefore; 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 his objection and his grounds therefore.

(8) Decisions. Every agency decision shall be in writing or stated in the record. The decision shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision, unless the General Laws provide that the agency need not prepare such statement in the absence of a timely request to do so. Parties to the proceeding shall be notified in person or by mail of the decision; of their rights to review or appeal the decision within the agency or before the courts, as the case may be; and of the time limits on their rights to review of appeal. A copy of the decision and of the statement of reasons, shall be delivered or mailed upon request to each party and to his attorney of record.

(9) Official Record. The agency shall make available an official record which shall include testimony and exhibits, and which may be in narrative form. The agency is to arrange to transcribe shorthand notes or sound recordings to be later transcribed. The agency may require the payments of the reasonable costs for copies.

(10) Subpoenas. In conducting adjudicatory proceedings, agencies shall issue, vacate, modify and enforce subpoenas in accordance with the following provisions:

(a) Agencies shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents relating to any matter in question in the proceeding. Agencies may administer oaths and affirmations, examine witnesses, and receive evidence. The power to issue subpoenas may be exercised by any person or persons designated by the agency for such purpose.

(b) The agency may prescribe the form of subpoena, but it shall adhere, in so far as practicable, to the form used in civil cases before the courts. Witnesses shall be summoned in the same manner as witnesses in civil cases before the courts, unless another manner is provided by any law. Witnesses summoned shall be paid the same fees for attendance and travel as in civil cases before the courts, unless otherwise provided by law.

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(c) Any party to an adjudicatory proceeding shall be entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding. The party may have such subpoenas issued by a notary public or justice of the peace, or he may make written application to the agency, which shall forthwith issue the subpoenas requested. However issued, the subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. Unless otherwise provided by any law, the agency need not pay fees for attendance and travel to witnesses summoned by a party.

(d) Any witness summoned may petition the agency to vacate or modify a subpoena issued in its name. The agency shall give prompt notice to the party, if any, who requested issuance of the subpoena. After such investigation as the agency considers appropriate it may grant the petition in whole or part upon a finding that the testimony, or the evidence whose production is required, does not relate with reasonable directness to any matter in question, or 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.

(e) Upon the failure of any person to comply with a subpoena issued in the name of the agency and not revoked or modified by the agency as provided in 950 CMR 31.06, any justice of the superior court, upon application by the agency or by the party who requested that the subpoena be issued, may in his discretion issue an order requiring the attendance of such person before the agency and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished by the court for contempt.

31.07: Hearings

(1) Notice of Hearing. The agency shall notify all parties and interveners 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 31.04.

(2) Hearing.

(a) Presiding Officer. Unless the statute shall otherwise specify, the hearing shall be conducted by a duly appointed hearing officer, the agency chairman, or a member of the agency appointed by the chairman to conduct the hearing.

(b) Quorum. Where the hearing is to be conducted before the members of the agency, a quorum for purposes of conducting the hearing shall be a majority of the members.

(c) Power of Presiding Officer. The presiding officer shall initially make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing.

(d) Sworn Testimony. All testimony given at an agency hearing shall be under oath administered by the presiding officer.

(e) 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 agency. After all the 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 a witness immediately after his testimony has been received.

(f) 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 by the courts of this Commonwealth. Where such decorum is not observed, the agency may take such action as it deems appropriate.

(3) Hearing Officer. The Supervisor of Public Records may serve as hearing officer, as allowed by M.G.L. c. 3, § 45. He shall have all powers conferred on the Secretary of the Commonwealth and he is empowered to make all decisions that would finally determine the proceeding. The hearing officer's decision shall comply with 950 CMR 31.06(8).

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(4) Oral Argument. A party shall have a right before the close of the hearing to argue orally, but the agency may impose reasonable limitations upon the length of such argument. The Agency 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.

31.08: Consolidation: Continuances: Satisfaction of Complaint

(1) Consolidation. The agency 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. An agency 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.

31.09: Briefs

(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 agency shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

(2) Subsequent to Hearing. The agency 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 agency. 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 agency may suspend the above provision; in such cases, the agency shall allow reasonable inspection of the original by all parties.

(3) Reopening Hearings. A party may, at any time prior to the rendering of a decision by the agency, 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 31.03(6) and shall be granted only for good cause shown. The agency shall notify all parties of its action upon the motion. Notwithstanding the above, the agency 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 agency, the parties shall be notified, and the hearing shall not be convened less than five days after the sending of such notice.

(4) Rehearing; Reargument; Reconsideration. Any party may file a motion for rehearing, reargument, or reconsideration within 30 days after a receipt of a final decision of the agency. Such motion shall be filed in accordance with 950 CMR 31.03(6) 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 agency.

(5) Appeal Provisions. Appeals from administrative tribunals are dealt with generally in M.G.L. c. 30A, § 14 giving jurisdiction in the Supreme Judicial Court and the Superior Court in equity to aggrieved persons.

31.10: Disqualification Hearings of Legislative Agents

(1) On or immediately after July 15 and January 15, the Supervisor of Public Records is to commence the necessary investigations needed to determine those legislative agents not

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complying with M.G.L. c. 3, § 43. The Supervisor of Public Records is to determine those agents who have not complied with the above provision either by failure to file or by failure to file properly.

(2) Upon such determination, the Supervisor of Public Records, by certified mail, is to notify the delinquent agents that such persons are in violation of M.G.L. c. 3, § 43. This notice is to detail the information sought by this office as per M.G.L. c. 3, § 43. Demand is to be made for reply within 14 days.

(3) If a reply is not received within 14 days, a second notice will be sent by the Supervisor of Public Records to the delinquent party indicating that such party is subject to disqualification procedures pursuant to M.G.L. c. 3, § 43. This notice will show cause for such disqualification by detailing all violations. It will also note that a reply within 10 days is demanded; failure to do so will result in automatic commencement of disqualification procedures.

(4) Upon failure to receive a reply deemed to comply with the statutory requirements, within the time allotted as per prior communications, the Supervisor of Public Records shall initiate disqualification proceedings pursuant to M.G.L. c. 30A and all other applicable laws and pursuant to the rules for adjudicatory proceedings of the office of the Secretary of the Commonwealth regarding the disqualification of legislative agents.

(5) M.G.L. c. 30A shall govern notice requirements and other such procedures.

(6) The hearing proceedings shall follow the adjudicatory rules for hearings involving the disqualification of legislative agents and M.G.L. c. 30A.

REGULATORY AUTHORITY

950 CMR 31.00: M.G.L. c. 3, § 45.