

950 CMR 59.00: STATE BALLOT LAW COMMISSION; ADJUDICATORY PROCEEDINGS

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59.01: General Provisions

(1) Scope and Authority. 950 CMR 59.00 governs adjudicatory proceedings before the State Ballot Law Commission. 950 CMR 59.00 is promulgated under authority of M.G.L. c. 55B, § 4 and is in conformance with the provisions of M.G. L. c. 30A.

(2) Construction. 950 CMR 59.00 shall be construed to secure a just and speedy determination for every proceeding before the State Ballot Law Commission.

(3) Definitions. Terms used in 950 CMR 59.00 shall have the meanings provided in M.G.L. c. 50, § 1 and as follows:

Adjudicatory Proceedings. Proceedings before the State Ballot Law Commission regarding matters brought before it in accordance with the provisions of M.G.L. c. 55B.

Authorized Representative. An attorney, legal guardian or other person authorized by a party to represent him in the adjudicatory proceeding.

Commission The State Ballot Law Commission.

Commissioner. A member of the State Ballot Law Commission.

Objection. A challenge made to the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot or to place an initiative or referendum on the ballot and any other matter within the jurisdiction of the Commission as contained in M.G.L. c. 55B.

Objector. A person who initiates the adjudicatory proceeding by filing an objection.

Papers. All written communications filed in an adjudicatory proceeding, including objections, motions, pleadings and other documents.

Party.

- (a) The specifically named person whose legal rights, duties or privileges are being determined in the adjudicatory proceeding;
- (b) any other person who as a matter of constitutional right or by any other provision of the General Laws is entitled to participate fully in the proceeding;
- (c) or any person allowed by the Commission to intervene;
- (d) the objector, the respondent, all other candidates for the office (but at a primary for nomination); and
- (e) the state committee of any affected political party.

Person. An individual, the first ten signers of a state initiative or referendum petition, the state committee of a political party or any other legal entity.

Presiding Officer. The Chairman of the State Ballot Law Commission.

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Respondent.

- (a) A candidate whose nomination is objected to;
- (b) The first ten signers of a state initiative or referendum petition which is objected to; and
- (c) Any other person against whom an objection is filed.

Secretary. The Secretary means the Elections Division of the Office of Secretary of the Commonwealth.

(4) Computation of Time.

- (a) As provided in M.G.L. c. 50, § 4, in computing time periods, Saturdays, Sundays and holidays shall generally be included, unless the term “weekday” is used; but when the last day for performing an act is a Saturday, Sunday or holiday, the next weekday shall be considered the last day instead.
- (b) Notice is given by the Commission and service is made by mail whenever the paper is deposited in the United States mail, properly addressed and postage paid.
- (c) A paper is filed with the Commission whenever it is received in the office of the Secretary.

(5) Secretary of the Commission. A member of the Elections Division or designee, as determined by the Secretary of the Commonwealth, shall serve as secretary to the Commission. The Secretary shall transmit all required notices and maintain the files of the Commission.

59.02: Jurisdiction, Timing and Filing

(1) Jurisdiction.

- (a) The Commission has jurisdiction over the following objections:
  - 1. Objections to state nominations, under M.G.L. c. 55B, § 4;
  - 2. Objections to signatures on state initiative and referendum petitions under M.G.L. c. 55B, § 4; and
  - 3. Any other objections over which it has jurisdiction by law.
- (b) The Commission has no jurisdiction over matters concerning state ballot questions other than initiative and referendum petitions, concerning city or town nominations or ballot questions or concerning the content of state ballots, including ballot statements and ordering of candidates’ names. The Commission also has no jurisdiction over nominations or petitions which are not in apparent conformity with law, have accordingly been invalidated by the Secretary, and thus now are seeking access to the ballot.

(2) Standing. Any registered voter in the appropriate district may file an objection with the Secretary, which objection must include the objector’s voting address as indicated on the current annual register of voters. The objection must be accompanied by a \$25 filing fee, which shall be refunded only if the Commission declines jurisdiction of the objection. The objection must also be accompanied by a certificate of voter registration in substantially the form prescribed by M.G.L. c. 55B, § 5.

(3) Time of Filing Objection. An objection must be filed at or before 5:00 P.M. of:

- (a) the third day after the last day to file nomination papers or certificates of nomination with the state secretary;
- (b) the 30<sup>th</sup> day after the last day to file state initiative or referendum petitions with the state secretary;
- (c) the seventh day after the last day to file supplemental signatures necessary to place a state initiative questions on the ballot after rejections by the general court;
- (d) the sixth day after a state primary;

(4) Notice.

- (a) Not later than the day after an objection is filed, the objector shall mail a copy of the objection to the respondent by registered or certified mail, return receipt requested.

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(b) The Secretary shall give written notice to all parties by registered or certified mail, return receipt requested. The notice shall contain a copy of the objection, the date, time, and place of the hearing, and a summary of commission procedures. In addition, the Secretary shall make a reasonable effort to notify all parties by telephone or email at once. The written notice must be given not later than 5:00 P.M. of:

1. The Wednesday after the last day to file objections to nomination papers or certificates of nomination for regular elections, or state initiative or referendum petitions;
2. The Friday after the last day to file objections to supplemental signatures necessary to place a state initiative question on the ballot after rejection by the general court;
3. The Tuesday after the last day to file objections to nominations made by regular state primaries.

(c) Any person that does not file an appearance at or before the first hearing in the proceeding shall not become a party until that person files an appearance.

(d) The date of the hearing contained in the Secretary's notice may be the date of an assignment session, at which the Commission may dispose of preliminary matters and continue the hearing to a later date.

(5) Withdrawal of Objection. The objector may withdraw an objection at any time by filing a notice in writing with the Secretary. The filing fee shall not be refunded.

(6) Hearing. The hearing on an objection shall not be held before:

- (a) The second Monday after the last day to file objections to certificates of nomination, nomination papers, or state initiative or referendum petitions, except for nomination for special state primaries and elections;
- (b) The Wednesday after the last day to file objections to supplemental signatures necessary to place a state initiative question on the ballot after rejection by the general court;
- (c) The Monday after the last day to file objections to nominations made by state primaries, except for special state primaries.

(7) Representation.

(a) Appearance. An individual may appear in his own behalf. Any party in an adjudicatory proceeding shall have the right to be represented and advised by an attorney licensed to practice in Massachusetts. 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 every adjudicatory proceeding by filing a written notice with the Commission or presiding officer. Such notice shall contain the name, address and telephone number of the authorized representative.

(8) Time.

(a) Timely Filing. Papers required or permitted to be filed under 950 CMR 59.00 or any provision of the applicable law must be filed at the Commission or with the Secretary within the time limits for such filing as are set by 950 CMR 59.00 or other provision of law.

(b) Papers filed in the following manner shall be deemed to be filed as set forth in 950 CMR 59.02(8)1. through 3.:

1. Hand-delivery During Business Hours: By hand-delivery during regular business hours shall be deemed filed on the day delivered.
2. Hand-delivery During Non-business Hours: By hand-delivery during non-business hours shall be deemed filed on the next regular business day.
3. Mailing: By placing in U.S. Mail shall be deemed filed when received by the Secretary.

(c) All papers shall show the date received by the Commission and the Commission shall cooperate in giving date receipts to persons filing papers by hand-delivery.

(d) Extension of Time. It shall be within the discretion of the Commission or presiding officer, for good cause shown, to extend any time limit contained in 950 CMR 59.02(8). All requests for extensions of time 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 until the Commission or presiding officer acts on the motion. This division shall not apply to any limitation of time prescribed by the Massachusetts General Laws.

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(9) Filings Generally.

(a) Title. Papers filed with the Commission shall state the docket number, if any, the title of the proceeding, the name of the person on whose behalf the filing is made and the name of the person whose action is complained of.

(b) Signatures. Papers filed with the Commission shall be signed and dated by the party on whose behalf the filing is made or by party's authorized representative and shall state the address and telephone number of such party or authorized representative. This signature constitutes a certification by the signer that he has read the document and knows the content thereof, that it is not interposed for delay and that if the document has been signed by an authorized representative that he has full power and authority to do so.

(c) Form.

1. Size and Printing Requirement. All papers, except those submittals and documents which are kept in a larger format during the ordinary course of a party's business, shall be hand-printed or typewritten on paper eight to 8½ inches wide, by ten to 11 inches long, with left-hand margins not less than 1½ inches wide and other margins not less than one inch. The impression shall be on only one side of the page, unless there are more than four pages, and shall be double-spaced except that quotations in excess of three lines shall be single-spaced and indented. Mimeographed, multi-graphed, photo and digital duplicated papers will be accepted as hand-printed or typewritten. All papers shall be clear and legible.

Commission Forms. The Commission may provide forms to be used by the parties.

(d) Copies. The original of all papers shall be filed together with such number of additional copies as the Commission or statute may require.

(10) Service. Simultaneously with the filing of any and all paper with the Commission, the party filing such papers shall send a copy thereof to all other parties to the proceedings, by delivery in hand, or by United States mail, postage prepaid, properly addressed. If the party is represented by an authorized representative, service on authorized representative constitutes service on the party. Under M.G.L. c. 55B, § 5 and 950 CMR § 59.02(4)(a), an objection need not be mailed until the day after filing, and the certificate of service may so specify. All papers filed with the Commission shall be accompanied by a statement signed under the pains and penalty of perjury that copies have been sent specifying the mode of service, date the party to whom sent, the party's address, and address of service. Failure to comply with 950 CMR 59.02(10) shall be ground for refusal the Commission to accept papers for filing.

59.03: Initiating Adjudicatory Proceeding and Motions(1) Initiation of Formal Adjudicatory Proceedings.

(a) Claim for Adjudicatory Hearing. Any person having a right to initiate an adjudicatory proceeding shall commence such action by filing an objection. Such objection shall be filed with the Secretary within the time prescribed by the applicable provision of law or regulation.

(b) Form and Content. The objection shall state clearly and concisely the facts which are grounds for the proceeding, the relief sought, and any additional information required by applicable statutes and regulations. It shall contain in detail each ground of objection. The Commission may provide forms to be used for objections.

(c) Answer. At any time before the hearing, the respondent shall file an answer to the objection.

1. The answer shall contain full, direct and specific answers to each claim set forth in the objection admitting, denying, or explaining material facts.

2. If there is insufficient knowledge to answer with specificity, it shall so be stated and, thus, shall be treated as a general denial.

3. The answer shall contain all affirmative defenses which are relied upon and may cite the statute(s) and/or regulation(s) which form the basis of each defense.

4. All allegations contained in the objection which are not specifically denied in the answer shall be deemed admitted.

5. All new matters contained in the answer shall be treated as if denied by the objector.

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(d) Amendments and Withdrawal of Pleadings. The Commission or presiding officer upon his own initiative or upon the motion of any party may, in his 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.

(2) Motions.

(a) General Requirements.

1. Presentations/Objection to Motion.

a. A party may request of the Commission or presiding officer an order or action not inconsistent with law or 950 CMR 59.00. Such a request shall be called a motion.

b. Motions may be made in writing at any time after the commencement of an adjudicatory proceeding, or they may be made orally during a hearing.

c. Each motion shall set forth the grounds for the desired order or action and state whether a hearing is desired.

d. After a written motion is filed with the Commission or presiding officer, any party may file written objections to the allowance of the motion and shall, if desired, request a hearing within the time as determined by the Commission.

2. Action on Motions.

a. The Commission shall hear the motion at the same time as the hearing on the merits, or at another time to be specified by the commission.

b. The Commission may grant requests for continuances for good cause shown or may in the event of unexcused absence of a party permit the hearing to proceed, and the unexcused party's motion or objections will be regarded as submitted.

c. The Commission may rule on a motion without holding a hearing if delay would seriously injure a party, or if the motion involves a matter as to which the presentation or testimony or oral argument would not advance the Commission's understanding of the issues involved or if disposition without a hearing would best serve the public interest.

d. The Commission may act on a motion when all parties have responded thereto, or the deadline for response has passed, whichever comes first. If the Commission acts on the motion before then, such ruling may be subject to modification or rescission should there be timely filed objections to the motion.

3. Factual Basis. The parties may offer at a hearing on the motions only such evidence as is relevant to the particular motion. This evidence may consist of facts which are presented orally by sworn testimony, supported by allowable affidavits, or which appear in records, files, depositions, or answers to interrogatories.

(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 may within the time permitted for such responsive pleading, 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 such time as may be ordered. If the more definite statement is not filed within the prescribed deadline, the Commission or presiding officer may either dismiss the adjudicatory proceeding, grant the relief sought, or make such other just orders as may be deemed appropriate.

(c) Motion to Strike. A party may move to strike, or the Commission on its own motion may strike from any pleading any insufficient allegation or defense or any redundant, immaterial, impertinent or scandalous matter.

(d) Motion to Dismiss.

1. General Grounds. Any party may move to dismiss for failure of the other party to prosecute or to comply with 950 CMR 59.00 or any order of the Commission or presiding officer.

a. 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.

b. The Commission may act upon the motion then, or may wait until the close of all the evidence. The granting of such motion shall be considered a decision and a written decision shall be made as provided 950 CMR 59.00.

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2. Failure to Prosecute. When the record discloses the failure of the objector to file documents required by applicable law and 950 CMR 59.00, respond to notices or correspondence, comply with orders, or otherwise indicates an intention not to continue with the prosecution of an appeal, the Commission may issue an order requiring that the objector show cause why the objection should not be dismissed for lack of prosecution. If the objector fails to show such cause, the appeal may be dismissed with prejudice.
- (e) Motion for Decision on the Pleadings. After the pleadings are closed, and with such time as not to delay the proceedings, and party may move for judgment on the pleadings. If matters outside the pleadings are presented, the motion shall be treated as one for summary decision.
- (f) Motion for Summary Decision. Any party may, with or without supporting affidavits, move for summary decision in his favor, as to all or part of a matter. If the motion is granted as to part of the matter and further proceedings are necessary to decide the remaining issues, a hearing shall so be held.
- (g) Substitution of Parties. The Commission or presiding officer may, on motion, at any time in the course of an adjudicatory proceeding, permit such substitution of parties as justice or convenience may require.
- (h) Consolidation of Proceedings. In such cases where there are multiple adjudicatory proceedings and where these adjudicatory proceedings involve common issues, a party shall notify the Commission of this fact, stating with particularity the common issues, and the presiding officer or Commission may in its discretion consolidate the proceedings.

59.04: Discovery and Intervention

- (1) Discovery.
- (a) 1. 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, not previously supplied, which are in the possession, custody, or control of the party upon whom the request is made, and which are relevant to the subject matter of the proceeding.
2. Procedure. The request may be served upon the party after commencement of the action and shall set forth the times to be inspected by individual item or category with reasonable particularity. Such inspection shall be made at the office of the Commission or such other place as the Commission shall designate. The party upon whom the request is served shall respond at least 24 hours before hearing.
- (b) Depositions. The testimony of any witness may be taken by deposition, upon motion made by a party, upon approval by the Commission or presiding officer.
1. Form and Content. A motion requesting a deposition shall state the name and address 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, the name and address of the person before whom the deposition is desired, and the reason why such deposition should be taken.
2. Authorization to Take. The Commission or presiding officer shall allow the motion only upon a showing that the parties have agreed to submit the deposition in *lieu* of testimony by the witness or the witness to be deposed cannot appear before the Commission or presiding officer without substantial hardship, and that testimony being sought is significant, not privileged and not discoverable by an alternative means. If the motion is allowed, the Commission or presiding officer shall give reasonable notice of the taking of the deposition to all parties.
3. Officer Before Whom Deposition Is Taken. Depositions shall be taken orally before a person having power to administer oaths.
4. Scope and Conduct of Deposition. Every witness testifying upon deposition shall be duly sworn, and the adverse party(ies) shall have the right to cross-examine.
- a. Objections to questions shall be in short form, stating the ground of objection relied upon.
- b. The testimony shall be reduced to writing and shall unless waived be signed by the witness, and certified by the officer before whom the deposition is taken.
- c. After the deposition has been subscribed and certified, it shall be forwarded to the Commission or presiding officer.

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d. 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 proceeding.

5. Recording by Other than Stenographic Means. The Commission or 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, persevering, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

(c) Interrogatories. A party to the adjudicatory proceeding may move for leave to serve written interrogatories upon any other party for the purpose of discovering relevant, not privileged information not previously supplied through voluntary discovery. Interrogatories may be served after commencement of the proceeding. No party, without approval of the Commission or presiding officer, shall serve more than 30 interrogatories including subsidiary or incidental questions.

1. Answers to Interrogatories. Each interrogatory shall be separately and duly 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 filed within such time as the Commission or presiding officer specifies.

Stipulations. In the discretion of the Commission or presiding officer, the parties may, by written stipulation filed with the Commission or presiding officer at any stage of the proceeding, or by oral stipulation made at the hearing, agree upon any pertinent facts in the proceeding. In making its finding, the Commission or presiding officer need not be bound by any stipulation which is found to be in contravention of law or erroneous on its face.

(d) Objection/Protective Orders. The party upon whom the request for discovery is served may, within 24 hours of service of the request, file with the Commission or presiding officer objections to the request or move for protective order. A prompt hearing shall be scheduled upon the motion. Protective orders may be issued to protect a party from annoyance, embarrassment, oppression or undue burden or expense. Orders of the Commission or presiding officer may include limitations on the scope, method, time and place for discovery or provisions for protecting confidential information or documents.

(e) Motion for Order Compelling Discover. Upon reasonable notice to other parties, a party may file with the Commission or presiding officer a motion to compel discovery in the event that a request is not honored, or only partially honored, or interrogatories or questions at depositions are not completed/answered.

(f) List of Signatures. Not later than the third weekday before the date of the hearing contained in the Secretary's notice, the objector shall file and cause to be delivered to the respondent a list of all signatures on the respondent's nomination paper or petition which are drawn in question by the objection, showing the page and line where each is located, and the reason why each is alleged to be improper. In the case of an objection to a nomination for a special primary or election, however, this list must be filed and delivered by the deadline file objections.

(2) Intervention and Participation.

(a) Initiation. Any person not initially a party, who with good cause wishes to intervene in, or participate in, an adjudicatory proceeding shall file a written request (petition) for leave to intervene or participate in the proceeding. Except as otherwise provided 950 CMR 59.00, the petition shall be subject to 950 CMR 59.03(2): *Motions* and the Commission or presiding officer shall act pursuant to 950 CMR 59.03(2).

(b) Form and Content. The petition shall state the name and address of the person making the petition. It shall describe the manner in which the person making the motion is affected by the proceeding. It shall state the contention of the person making the petition as to why intervention or participation should be allowed, the relief sought and the statutory or other law in support thereof.

(c) Filing the Petition. Unless an applicable statute requires otherwise, the petition may be filed at any time following the commencement of the adjudicatory proceeding, but in no event, later than the date fixed by the Commission. Petitions filed may be allowed at the discretion of the Commission or the presiding officer, provided that the parties are given notice and opportunity to object.

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(d) Rights of Intervenors. Intervenors shall be persons substantially and specifically affected by the proceeding. Any person permitted to intervene shall have all the rights of, and be subject to, all limitations imposed upon a party, however, the Commission or presiding officer may exclude repetitive or irrelevant material. Every petition to intervene shall be treated as a petition in the alternative to participate.

(e) Rights of Participants. Any person substantially and specifically affected by a proceeding shall be permitted to participate. Permission to participate shall be limited to the right to argue orally at the close of hearing and shall include the right to file a brief. Permission to participate, unless otherwise stated, shall not be deemed to constitute an expression that the person allowed to participate is a party in interest who may be aggrieved by any final decision. A person who petitioned to intervene and who was allowed only to participate, may participate without waiving his rights to administrative or judicial review of the denial of said motion to intervene.

#### 59.05: Adjudicatory Hearing

(1) Hearings and Conferences.

(a) Pre-hearing Conference.

1. The Commission or presiding officer may upon its own initiative or upon the application of any party, call upon the parties to appear for a conference to consider:

- a. the simplification or clarification of the issues;
- b. the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreement which will avoid unnecessary proof;
- c. the limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
- d. the possibility of agreement disposing of all or any of the issues in dispute; and
- e. such other matters as may aid in the disposition of the adjudicatory proceeding.

2. Those matters agreed upon by the parties shall be electronically recorded in the presence of the parties and/or reduced to writing and shall be signed by the parties, and shall thereafter constitute part of the record.

3. The scheduling of a pre-hearing conference shall be solely within the discretion of the Commission or presiding officer.

(b) Submission Without a Hearing. Any party may elect to waive a hearing and to submit its case upon the record. Submission of a case without a hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses.

(c) Hearings, When and Where Held. Hearings will be held at a location designated by the Commission. Any party may, by motion, request that hearing be held at some place other than that designated, due to disability or infirmity of any party or witness, or where justice and equity would best be served.

Upon motion of any party and upon good cause shown, the Commission or presiding officer may in its discretion advance a case for hearing.

(d) Conduct of Hearings.

1. General. Hearings shall be conducted in a manner consistent with the standards of decorum commonly observed in any court but, at the discretion of the Commission, may be less formal as may be reasonable and appropriate under particular circumstances.

2. Decorum. All parties, authorized representatives, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the Commission or presiding officer may take appropriate action.

3. Duties of Presiding Officer. The presiding officer shall conduct the hearing, and, in consultation with Commission members, make all decisions regarding admission or exclusion of evidence or any other procedural matters. The majority of the Commission may overrule any decision made by the presiding officer regarding these matters. The presiding officer shall administer an oath or affirmation to all witnesses.

4. Participation. One or more commissioners may conduct the hearing.

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(e) Order of Proceedings.

1. Opening. Except as otherwise required by law, it shall be the usual practice that in proceedings initiated by the objection, the objector shall open. In hearings resulting from investigations or Orders to Show Cause, the party or Commission conducting the investigation or the Commission issuing the Order to Show Cause shall open.

2. Discretion of Commission/Presiding Officer. Where evidence is peculiarly within the knowledge of one party, or in cases in which adjudicatory proceedings have been consolidated, or where there are multiple parties, the presiding officer or Commission may direct who shall open and shall designate the order of presentation.

(f) Presentation.

1. Rights of Parties. All Parties shall have the right to present evidence, cross-examine, make objections, bring motions and make oral arguments.

a. Cross-examination shall occur immediately after any witness' testimony has been received.

b. Whenever appropriate, the presiding officer or Commission shall permit redirect and recross.

2. First Presentation. The party opening the hearing shall have the right to present his position through evidence and testimony first.

3. Second Presentation. The party taking the position contrary to that of the party opening shall have the right to present his position upon completion of the opening party's case.

(g) Witnesses and Evidence.

1. Oath. A witness' testimony shall be under oath or affirmation.

2. Evidence. Unless otherwise provided by any law, the Commission need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law.

a. 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.

b. Weight to be given evidence presented will be within the discretion of the Commission.

c. Based on its experience that in general it is not the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, the Commission will not admit into evidence affidavits bearing directly on an ultimate fact in dispute, such as a voter's affidavit that the voter did or did not actually sign a nomination paper or petition, except upon motion for good cause shown.

3. Offer of Proof. An offer of proof made in connection with an objection taken to a ruling of the presiding officer rejecting or excluding proffered testimony shall consist of a statement of the substance of the evidence which the party contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(h) Evidence Included. All evidence (including any records, investigative reports, documents, and stipulations) which is to be relied upon in making a 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.

(i) Administrative Notice. The Commission or presiding officer may take notice of any fact which may be judicially noticed by the courts of the Commonwealth or of general technical or scientific facts within the Commission's or presiding officer's specialized knowledge only if the parties are notified of the material so noticed and are given an opportunity to contest the facts so noticed.

(j) Signatures. The Commission may review and determine genuineness of signatures based on examinations of reliable exemplars provided.

(k) Subpoenas. In conducting adjudicatory proceedings, the Commission or presiding officer may issue, vacate, modify and endorse subpoenas, require the attendance and testimony of witnesses and/or the production of documents or other evidence in accordance with the following provisions:

1. Issuance. A party may make written application to the Commission or presiding officer, which may issue the subpoena requested in the name of the Commission.

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- a. However issued, every subpoena shall show on its face the name and address of the requesting party.
  - b. Notice shall not be required for issuance of a subpoena.
  - c. 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, within a reasonable period, file in writing a motion that the subpoena be vacated or modified.
    - a. The Commission or presiding officer shall give prompt notice to the party who requested issuance of the subpoena.
    - b. The Commission or presiding officer may grant such petition in whole, or in part, upon a finding that the testimony, or the evidence, whose production is requested, does not relate with reasonable directness to any matter 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 summoned by the Commission or presiding officer shall be paid the same fees for attendance and travel as in civil cases before the courts. The requesting party shall pay all costs involved with the subpoena, including fees for attendance to travel.
- (l) Transcript of Proceedings.
    1. Recording and Transcripts. Testimony and argument at the hearing shall be recorded by stenograph. Transcripts of the proceedings shall be supplied to any party, upon request, at its own expense. Any party, upon motion, may order a stenographer to transcribe the proceedings, at his own expense. In such event, a stenographic record shall be provided to the Commission or presiding officer at no expense to the Commission, and upon such other terms as the Commission or presiding officer shall order.
    2. Correction of Transcript. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing.
      - a. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the presiding officer, at any time during the hearing, or after the close of evidence, but not more than ten days or such other time as shall be allowed by the presiding officer from the date of receipt of the transcript.
      - b. The Commission or presiding officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.
  - (m) Briefs. Any briefs must be filed before the close of the hearing, unless the Commission orders otherwise.
  - (n) Settling the Record.
    1. Contents of Record. The record of the proceeding may consist of the following items: pleadings, pre-hearing conference memoranda, digital and electronic recordings, orders, briefs, memoranda, answers to interrogatories and depositions, transcripts, exhibits, and other papers or documents which the Commission or presiding officer has specifically designated be made a part of the record. The record shall at all reasonable times be available for inspection by the parties.
    2. Evidence After Completion. No evidence shall be admitted after completion of a hearing or after a case submitted on the record, unless otherwise ordered by the presiding officer.
    3. Weight of Evidence. The weight to be attached to any evidence in the record will rest within the sound discretion of the Commission or presiding officer. 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.

59.05: continued

4. Exceptions. Formal exceptions to ruling on evidence and procedure are unnecessary. It is sufficient that a party, at the time that ruling is made or sought, makes known its objection to such action and the 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 one weekday of notification of action taken or refused, shall state his objection and his grounds therefor.

59.06: Decisions

(1) Decisions. Every decision shall contain a statement of the reason therefor, including a determination of every issue of fact or law necessary to the decision. Every decision must be signed by at least three Commissioners, each of whom must have either attended all hearings or have read or heard the entire record.

(2) The decision of the Commission may:

- (a) Dismiss the objection, for lack of timeliness, jurisdiction, or standing, failure to state a claim upon which relief can be granted, or any other legal reason;
- (b) Enter a decision by default against any party for failure to appear, unnecessary delay, or any failure to comply with any provision of 950 CMR 59.00 if that failure affects substantial right;
- (c) Sustain the objection on the merits, and order the Secretary not to print on the ballot the name of the respondent candidate or the question supported by the respondent petitioners;
- (d) Overrule the objection on the merits;
- (e) Make informal disposition of the proceeding by stipulation, agreed settlement, or consent order; or
- (f) Grant whatever other relief justice requires and is within the scope of its authority.

(3) Timing of Decisions. The decision must be made not later than 5:00 P.M. of:

- (a) The 21<sup>st</sup> day after the last day to file objections to nomination papers or certificates of nomination for presidential primaries and regular state primaries and elections, or to state initiative and referendum petitions;
- (b) The 14<sup>th</sup> day after the last day to file objections to nominations made by state primaries, or to supplemental signatures necessary to place a state initiative question on the ballot after rejection by the general court;
- (c) The fourth day after the last day to file objections to nomination papers or certificates of nomination for special state primaries or elections.

(4) Reopening of Hearings. On its own motion or on motion of a party, the Commission may at any time before a final decision is issued request that the hearing be reopened for the purpose of receiving new evidence.

(5) Motion for Reconsideration. A 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 a copy of the decision is mailed to the parties by the Commission or presiding officer. No motion for reconsideration may be filed or acted upon after the statutory deadline for the Commission to render a decision.

(6) Further Appeal. After the issuance of a final decision, any party who has the right to seek judicial review of the decision may file for judicial review in accordance with M.G.L. c. 55B, § 4.

(7) Withdrawal of Exhibits. After a decision has become final and all appeal periods have lapsed the Commission or presiding officer may in its discretion, upon motion, permit the withdrawal of original exhibits or any part thereof by the party or person entitled thereto.

59.07: Miscellaneous Provisions

(1) Preamble. Adjudicatory rules of practice and procedure of the State Ballot Law Commission are applicable to all proceedings held under M.G.L. c. 55B and 950 CMR 59.00.

59.07: continued

- (2) Amendment. 950 CMR 59.00 may be amended at any time, but unless provided otherwise, the amendment shall not affect any pending proceeding.
- (a) Any interested person may petition the Commission requesting the adoption, amendment, or repeal of any regulation, under M.G.L. c. 30A, § 4.
- (b) This petition shall be filed with the Secretary and shall be considered by the Commission at its next meeting.
- (c) All amendments shall be effective as of the date of publication thereof unless otherwise specifically provided.
- (3) Ex-parte Communications. No party or other person directly or indirectly involved in an adjudicatory proceeding shall submit to the presiding officer or a Commissioner involved in the decision-making process, any evidence, argument, analysis or advice, whether written or oral, regarding any matter at issue in a adjudicatory proceeding, unless such submission is part of the record or made in the presence of all Parties. 950 CMR 59.07(3) does not apply to consultation among Commission members concerning the Commission's internal administrative functions or procedures.
- (4) Records. The Secretary shall keep records of all decisions.
- (a) All records of the Commission shall be open to the public.
- (b) For this purpose, "records" does not include material excluded from the definition of "public records" under M.G.L. c. 4, § 7(26).
- (5) Notice. Except in an emergency, notice of all meetings of the Commission, including hearings, shall be given to the public, as required by M.G.L. c. 30A, § 20. The notice shall contain the date, time, and place of the meeting and, if possible, an outline of its agenda.
- (6) Open Meetings. All meetings of the Commission, including hearings, shall be open to the public, except that any deliberation regarding a decision in adjudicatory proceeding shall not be required to be open to the public.

#### REGULATORY AUTHORITY

950 CMR 59.00: M.G.L. c. 55B, § 4