



MASSACHUSETTS DIVISION OF BANKS GUIDE TO AGENCY FORMAL ADMINISTRATIVE HEARINGS

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What is this Guide about?

This *Guide to Formal Administrative Hearings* is designed to inform the public about how and when the Massachusetts Division of Banks (Division) conducts formal administrative hearings. It is provided for information only and is not intended to provide legal advice or to address every situation that may arise. Please seek the advice of an attorney for answers to any specific legal questions. The information provided here is current through April 2017, and you should be aware that changes to law or policy may occur.

An administrative hearing with the Division offers the regulated community, the Division, and the public the opportunity to have certain kinds of problems presented to an impartial hearing officer. The Administrative Hearing Officer is responsible for recommending that final action be taken by the agency's top official – the Commissioner of Banks. An administrative hearing is like a court hearing, where each side of a dispute is given the opportunity to testify, submit documents or other evidence, cross-examine witnesses and make arguments in support of the action it believes the agency should take on a particular issue.

Where can I find the rules that apply to these proceedings?

The procedures that will be followed in an administrative hearing are listed in Massachusetts General Laws and regulations that should be consulted for detailed or definitive guidance as to issues touched on in this *Guide*. Those laws and regulations are:

- Massachusetts General Laws, chapter 30A, sections 10 and 11; and
- The Standard Adjudicatory Rules of Practice & Procedure found at 801 CMR 1.00 *et seq.*

Copies of these laws and regulations can also be obtained at the following links:

[G.L. c. 30A](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30a) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30a>)
[801 CMR 1.00 et seq.](http://www.mass.gov/anf/hearings-and-appeals/admin-appeals-proc/practice-and-procedures/801-cmr-1-00/) (<http://www.mass.gov/anf/hearings-and-appeals/admin-appeals-proc/practice-and-procedures/801-cmr-1-00/>)

Who is involved in an Administrative Hearing?

An Administrative Hearing Officer and a Docket Clerk will be assigned to an administrative action at the beginning of the process. An Administrative Hearing Officer essentially serves as a “judge” for the administrative hearing: providing and independent and neutral review of the petition or complaint filed by the Division, ruling on any motions, presiding over any evidentiary hearing, and recommending the final action that the Commissioner should take. The Docket Clerk has many duties, including accepting documents to be filed and communicating with parties about scheduling.

The Division may work in conjunction with a private entity to provide representatives to serve as Administrative Hearing Officers and Docket Clerks, including JAMS. JAMS is an alternative dispute resolution provider, which contracts with numerous retired judges and attorneys. Contact information for JAMS is listed at the end of this Guide.

At other times an independent Division hearing officer with no prior knowledge or involvement in the matter, petition or complaint, will be assigned to serve as an Administrative Hearing Officer. As such, he or she provides an independent and neutral recommendation to the Commissioner. In all cases, the Division will assign an attorney to represent the Division and in effect, serve as “prosecutor” of any regulatory violation.

How much does a hearing cost?

There is no fee associated with requesting a hearing. Parties generally bear their own expenses and costs associated with preparing for a hearing. However, in certain circumstances an Administrative Hearing Officer can recommend the award of costs and attorney fees.

Who can request an administrative hearing?

Any licensed person or entity regulated by the Division who has been issued a regulatory action regarding the enforcement of the laws enforced by the Division may request an administrative hearing, if the request is filed within the statutory time frame (usually 20 or 21 days after a regulatory action is issued, depending on the action taken). The regulatory action issued by the Division will specify the timeframe in which the licensed person or entity is required to respond. The most common regulatory actions issued by the Division that would result in an administrative hearing include but are not limited to, a Temporary Order to Cease and Desist and/or an Order to Show Cause. The Division can also request a hearing to obtain an order requiring that corrective actions be taken, or seeking other relief allowed by law. Issues typically addressed in administrative hearings are agency decisions relating to mortgage lenders, mortgage brokers, mortgage loan originators, foreign transmittal agencies, debt collectors, motor vehicle sales finance companies and small loan companies. These are often the result of an agency action requiring the licensed individual or entity to cease engaging in the licensed business or requesting a revocation of the licensed entities ability to engage in certain activities based on alleged violations of applicable laws and regulations. Certain regulatory actions may also trigger administrative hearing rights for depository institutions.

How would I learn of an agency action affecting me?

If you are someone regulated by the Division, you may be advised of the initial agency decision by letter, or by notice of violation through an administrative action most commonly in the form of a Temporary Order to Cease and Desist or an Order to Show Cause.

How do I request a Formal Hearing?

The Formal Hearing process is initiated in all administrative cases by the Division filing an “Administrative Complaint” with the Administrative Hearing Officer. The Administrative Complaint most commonly filed in the form of Temporary Order to Cease and Desist or an Order to Show Cause. The Order issued by the Division will provide the manner in which the affected party may request an Administrative Hearing. Please note, if a request for an Administrative Hearing is not received by the Division within the statutory time frame, the licensed person or entity may lose any right to appeal the Order.

How will I know if I have been named as a party in an administrative proceeding?

An affected party will be named by the Division in the Administrative Complaint and a copy will be mailed to the party or their representative. The affected party should read the Administrative Complaint thoroughly as they may be required to submit a response (depending on the nature of the regulatory action). If the party wishes to, the Administrative Complaint will explain the timeframe by which they may need to request an Administrative Hearing. (Please note, if a request for an Administrative Hearing is not received by the Division within the statutory time frame, the licensed person or entity may lose any right to appeal.) If the parties are unable to reach a settlement, the Administrative Hearing Officer will be notified and most often the Administrative Hearing Officer will schedule a Prehearing Conference and will issue a notice to both parties notifying them of the date and time of the Prehearing Conference.

What if I cannot be present at the Prehearing Conference?

The Notice of the Prehearing Conference issued by the Administrative Hearing Officer gives notice that the failure to appear may result in an unfavorable decision against the person who does not appear. Prior to the prehearing conference, a party may request from the Hearing Officer to hold the Prehearing Conference telephonically, giving notice to all other parties in the case at the same time the request is made. Also, if the Administrative Hearing Officer is contacted in advance, the Prehearing Conference can usually be rescheduled for a more convenient date and time. This can be accomplished by

calling the Docket Clerk assigned to the case (identified in the Notice). The Docket Clerk will coordinate a telephone conversation among all persons involved and the Administrative Hearing Officer to reschedule if deemed appropriate.

Do I need a lawyer for these hearings?

No. An individual can appear at hearings on his or her own behalf without a lawyer. While a person may choose to represent himself or herself at a hearing, banking laws are complex, and it may be preferable to have the guidance and assistance of an attorney familiar with banking laws and regulations.

How do I find a lawyer who can handle these matters?

Several local bar associations have referral services that will help you find a lawyer in a particular location or whose practice includes a particular subject. The Massachusetts Bar Association has a lawyer referral service which may be reached at 617-654-0400

What happens at a Prehearing Conference?

The Prehearing Conference is an informal meeting of the persons involved and the Administrative Hearing Officer to discuss in general the issues of the case. At the Prehearing Conference, the Administrative Hearing Officer will set the timing of any prehearing discovery and hear any pending motions. He or she may also schedule the date and location of the Formal Hearing. The Administrative Hearing Officer may discuss referral for mediated settlement discussions, as described in this *Guide* in the section titled “Is there a way to work things out without a formal hearing?”

What is “Discovery”?

Discovery is a term meaning the ways in which each side obtains information about the case. It may take many forms, such as depositions, interrogatories, requests for production of documents, or requests for admissions. A deposition is when a witness is asked questions and his or her answers are recorded by a stenographer. Interrogatories are written questions from one person involved in the lawsuit to another. Requests for production of documents or items ask a witness to provide written or tangible specified things to a person involved in the case. Requests for admissions ask a person involved in a case to admit that certain things are true.

Where do I file documents?

The originals of all documents should be filed with the designated Docket Clerk. If the designated Administrative Hearing Officer and Docket Clerk are affiliated with a private entity such as JAMS, the documents should be filed directly with that designated entity. A copy of all documents filed must be sent to all persons involved in the case, including the Division's attorney.

Can other people participate in the hearing?

Persons who are not formally named in the petition or complaint can participate in a hearing as witnesses for either side. They can also request permission of the Administrative Hearing Officer to be allowed to participate in a limited way. Members of the public may attend hearings, except insofar as confidential information or documents are discussed.

Is there a way to work things out without a Formal Hearing?

At any time prior to the Administrative Hearing Officer rendering a decision, the parties may agree to a mutually satisfactory resolution of the issues. The Administrative Hearing Officer may encourage parties to engage in settlement discussions that allow the parties the opportunity to try to work things out short of a Formal Hearing. Settlement discussions are an informal, non-binding process that may bring about a mutually agreeable resolution to a dispute in a less costly and less time-consuming way than the traditional administrative hearing.

At the initial Prehearing Conference, the Administrative Hearing Officer may ask the parties involved whether the parties have discussed settlement. After consulting the parties involved, the Administrative Hearing Officer may encourage the parties to discuss settlement and request that the parties schedule a settlement conference.

At a settlement conference, the parties involved meet to discuss the dispute and to explore its resolution. Each is given an opportunity to discuss his or her perspective on the dispute. All discussions in settlement are confidential. Statements made during settlement discussion may not be used as evidence at a formal administrative hearing.

Participants involved in settlement discussions must have full authority to negotiate on behalf of their respective positions. Should an agreement be reached, it will be put into writing as an "Agreed Order." Agreements reached in mediation are not final or binding unless and until they have been incorporated into an Agreed Order and signed by the Commissioner. At the conclusion of mediation, both parties will file a letter with the Administrative Hearing Officer notifying him/her of the status of the dispute.

Is there a process for filing “Motions”?

Motion practice is actively used in matters before the Administrative Hearing Officer. Filing a motion is simply asking the Administrative Hearing Officer to rule on a particular issue. The kinds of motions most commonly filed are:

- Motions for more definite statement (asking that the Administrative Hearing Officer order the petitioner or plaintiff to state his or her complaint more clearly);
- Motions for continuance or extension of time (asking to delay a hearing date or the time to submit a required filing);
- Motions to dismiss or for summary decision (asking for a determination on the case without having a full hearing because no material facts are in dispute. The motion can be made prior to the Formal Hearing, or after the non-moving party has presented all of their evidence.); and,
- Motions in limine (asking in advance of the hearing for a ruling on the admissibility of evidence).

A response to a motion must be filed within seven (7) days. If no response is filed, or if the opponent does not appear at any hearing scheduled on the motion, the Administrative Hearing Officer may grant the motion without further hearing. If the Administrative Hearing Officer grants a Motion to Dismiss or a Motion for Summary Decision, no formal hearing will be held. The regulations governing motions are found at 801 CMR 1.00 *et seq.*

What is a “Formal Hearing”?

The Formal Hearing is the opportunity for each person involved to “tell his or her side” of the story. It is when the evidence is received and made a part of the “record,” which is the sum of all information the Administrative Hearing Officer may use to reach his or her findings, conclusions and recommendations. Evidence may consist of testimony, documents, photographs, or other things presented to the Administrative Hearing Officer. When facts are in dispute, the Formal Hearing allows the Administrative Hearing Officer the opportunity to examine the credibility of all witnesses and decide whose story is true.

Where will the Conference or Formal Hearing be held?

Prehearing Conferences may be held at the offices of the Administrative Hearing Officer or at a designated Hearing Room at 1000 Washington Street, Boston, Massachusetts. People living outside of Boston can, in most circumstances, arrange in advance to participate by phone in a Prehearing Conference by calling a designated number. At

Formal Hearings, however, persons involved must appear in person or be represented by an attorney. The location of the Formal Hearing depends on the type of case involved, and the Administrative Hearing Officer has some discretion as to where to set the hearing in some instances. The Administrative Hearing Officer will provide, upon request, reasonable accommodation for individuals with special needs, including auxiliary aids and services necessary to afford an individual with a disability an equal opportunity to participate in all services, programs and activities. Any individual who requires special accommodations in connection with any proceeding before the Administrative Hearing Office should contact the designated Docket Clerk at least one week before the date the accommodations will be needed.

How do I get witnesses to show up?

The Administrative Hearing Officer can issue “Subpoenas,” which are orders requiring a person to attend or to produce documents or other items. These Subpoenas are issued on request, and the requester must serve them on the witness and provide a copy to each other person involved in the case. The Subpoena provides notice of the time and place where testimony is to be taken and may also identify documents the witness is to bring.

What happens at a Formal Hearing?

The Administrative Hearing Officer will call the case by name and number, and each person will state his or her name and address, and whether he or she is represented by an attorney. If there are facts that all agree on, the Administrative Hearing Officer should be advised of these agreed facts, or “stipulations,” at the beginning of the hearing, and the stipulated facts will be taken as true without anyone having to present evidence on that issue. Stipulations save everyone time and should be explored before the hearing.

The Administrative Hearing Officer will allow each person involved to make an opening statement describing the evidence to be presented and summarizing why that person should be granted the relief requested. Following the opening statements, the person with the “burden of going forward” will present the direct testimony of his or her first witness. The opposing side in the case will then “cross-examine” the witness. All witness testimony is taken under oath.

After all witnesses are examined by all sides, each will be permitted to make a closing argument summarizing his or her case. After the hearing, the Administrative Hearing Officer may also allow the filing of briefs addressing the case as a whole or on particular legal issues.

All proceedings are digitally recorded and anyone can obtain a copy of the recording by contacting the Administrative Hearing Officer’s Docket Clerk.

What relief can be awarded?

The relief that can be awarded depends on the kind of case that is being considered. The Administrative Hearing Officer can recommend a determination that a violation of law did or did not occur and can recommend that penalties be imposed and that corrective action be taken. The amount of the penalty depends on the type of case and when the violation occurred.

The Hearing Officer can also recommend that licenses be revoked, that violations be ordered corrected, and that violators be barred from future licensure with the Division. In certain circumstances after, an Administrative Hearing Officer can recommend the award of costs and attorney fees.

This list is not complete, but serves to illustrate the most common kinds of remedies recommended by the Administrative Hearing Officer.

When and how does the Administration Hearing officer make a decision?

The case will be considered “submitted” for decision once the record in the case has closed. The record generally closes when the hearing, if required, is held and the date set for filing all briefs has passed. After the case is submitted, the Administrative Hearing Officer is to issue a Report and Recommendation to the Commissioner. The Report and Recommendation contains the Administrative Hearing Officer’s findings of fact, conclusions of law, and recommendations to the Commissioner as to how the matter should be finally resolved. The Report and Recommendation is based on the preponderance of the evidence appearing in the record as a whole.

What can I do if I disagree with the Commissioner’s Final Order?

The law provides for appeal of a Commissioner’s Final Order by filing a written petition for judicial review within thirty (30) days after entry of this Final Order and Decision, pursuant to Massachusetts General Laws chapter 30A, sections 14 and 15.

Will filing a hearing request have a negative effect on my supervisory relationship with the Division?

No, it will not. The Division does not tolerate acts or threats of retaliation by examiners or any other Division personnel against any supervised bank, credit union, licensee, or registrant. Retaliation, whether actual or threatened, destroys the sense of trust that is central to the Division’s mission to advance the public interest by ensuring a sound, competitive, and accessible banking and financial services environment.

Persons who believe they have been retaliated against may contact the Division at (617) 956-1500 and ask to speak with the Division's Chief Operating Officer to request an investigation of the matter. The Chief Operating Officer is independent from the supervision and examination process and reports directly to the Commissioner.

Who can I call if I have questions?

If an Administrative Hearing Officer has been assigned to hear the case, it is best to speak with his or her Docket Clerk, who can either answer the question or advise that it is a matter for the Administrative Hearing Officer to decide. You can speak with the Administrative Hearing Officer about the merits of a case **ONLY IF** all persons involved in the case are present in person or by telephone. Conversations with only one side present are called "ex parte" communications, which are strictly forbidden. If you need to speak to the Administrative Hearing Officer, you should first speak with his or her Docket Clerk who will guide you in this regard and help you set up a time for all to be heard by the Administrative Hearing Officer, either in person or by telephone.

Contact Information for JAMS:

JAMS
One Beacon Street, #2210
Boston, MA 02108
(617) 228-0200

Contact Information for Division of Banks:

Cynthia A. Begin, Chief Risk Officer
Massachusetts Division of Banks
1000 Washington Street, 10th Floor
Boston, MA 02118
(617) 956-1523

