DIVISION OF ADMINISTRATIVE LAW APPEALS

GUIDE FOR PEOPLE APPEARING

WITHOUT A LAWYER (“PRO SE”)

**I. GENERAL MATTERS**

**1. Submitting Documents to DALA:** The only acceptable ways to submit documents to DALA are by U.S. mail (or its equivalent, such as Fed Ex), personal delivery, or fax. You cannot submit documents in electronic form, such as by e-mail. Our mailing address is:

Division of Administrative Law Appeals

One Congress Street, 11th Floor

Boston, MA 02114

**2. Legal Advice:** A magistrate, or staff member at DALA cannot give you legal advice or serve as your lawyer or other representative at your hearing. A magistrate or staff member can give you only technical advice, such as advising you which form to submit.

1. **Ex Parte Communication with the Magistrate:** Communicating with a magistrate without the lawyer for the state agency being part of the communication is called “ex parte communication.” You cannot communicate ex parte with a magistrate – not in person, not on the telephone, and not in writing.
2. **Sending Copies of All Submissions to the Lawyer for the State Agency:** When you submit documents to DALA, you must do two things. One, send a copy to the lawyer for the state agency. Two, when you submit documents to DALA, tell DALA that you have also sent them to the lawyer for the state agency. Unless you do both things, DALA might not accept your documents.
3. **Following the Rules:** You must follow DALA’s rules. You can find the rules for pre-hearing matters and hearings starting at [801 CMR 1.01.](http://www.mass.gov/anf/hearings-and-appeals/admin-appeals-proc/practice-and-procedures/801-cmr-1-00/) “CMR” stands for “Code of Massachusetts of Regulations.” The symbol “§” means “section.” You must review and follow these rules, even though you are not a lawyer and do not have a lawyer with you.

1. **Following Time Limits and Orders:** 801 CMR has deadlines for various stages of the case. The magistrate might set additional deadlines for your specific case. If you cannot meet a deadline, you should ask for a postponement, which is called a “continuance,” with a motion. If you miss a deadline, your case can be dismissed.
2. **Motions:** A motion is a request. Filing a motion means to send the request. A motion must generally be in writing. All pre-hearing motions must be in writing. Some motions made during hearings can be oral. You cannot make motions over the telephone or by showing up in person at DALA and talking to the receptionist. If you need to extend a deadline, need to reschedule your hearing, need extra time, or, if you need anything else, file a motion explaining what you request and why.
3. **Contact With the Lawyer for the State Agency:** You can negotiate directly with the lawyer for state agency at any time.
4. **General Conduct:** During your case, you should be treated in most ways as if you are a lawyer. You must be prepared, respectful to everyone, honest, cooperative, and on time. If you disagree with the lawyer or witness for the state agency, you must do so with respect and without disruption. If you are disrespectful or disruptive, it can hurt your case, including having it dismissed.

**II. HOW TO APPEAL**

 When a state agency makes a decision that you want to appeal, it usually explains in writing, along with the decision, how to appeal. If the state agency does not explain how to appeal, contact the agency and ask. Follow the rules (such as sending the appeal to the right place) and meet the deadline for an appeal. Otherwise, your case could be over before you appeal it.

**III. BEFORE THE HEARING**

1. **Pre-Hearing Memorandum:** Before the hearing, you may be given the opportunity to file a pre-hearing memorandum to assist the Magistrate to understand your position at the hearing. You should follow any instructions about the memorandum that the magistrate issues.

1. **Exhibits:** You should also contact the opposing party(s) to determine whether you can agree on the exhibits to be introduced at the hearing. If you can, they should be pre-numbered and submitted to the magistrate before the hearing. Whether you reach agreement or not, any lengthy exhibits (5 or more pages) you propose to introduce should have page numbers.

**IV. THE HEARING**

1. Before the hearing formally begins, the magistrate will often ask if there is any “housekeeping” or anything that needs to be discussed to make the hearing go more smoothly. You should tell the magistrate if any of your witnesses have scheduling limitations, if you have problems with your exhibits or the other party’s exhibit packet, if you need to break at certain times for medical reasons, or anything else that might affect the flow of the hearing.
2. The hearing follows a trial format, but is less formal. It is tape recorded or digitally recorded. There may also be a stenographer present if a party requests and provides it. The typical procedure is: Magistrate welcomes participants and reads a formal opening statement into the record. The magistrate puts the documents into the hearing record as exhibits. You and the other party have a chance to make an opening statement. Whoever asked for the hearing goes first.
3. Assuming you have requested the hearing, you then present your witnesses one by one. First you ask the questions (direct examination). The other party then will ask the witness questions (cross-examination). The magistrate may also ask questions. If you are testifying, the magistrate will most likely permit you to testify in narrative form without the question/answer format. When you have finished presenting all your witnesses, the other party will present its witnesses by asking the first round of questions. Then you may ask questions. The magistrate may also ask questions. When all the witnesses are finished, the magistrate will ask if you would like to make a closing statement. Then the hearing will finish.
4. The magistrate will not make a decision right away. You will receive a written decision in the mail.
5. The purpose of the hearing is to gather evidence. The magistrate’s role is to manage the flow of the evidence and to ensure that each party can participate in the process. The magistrate is aware of how difficult it is to represent yourself. The magistrate is neutral at all times. She or he cannot represent you or give you any legal advice.
6. If you want to testify, the magistrate will administer an oath to you which may apply to most of your speech at the hearing. You may be questioned by both the other party and the magistrate.

**V.** **DEFINITIONS**

You may see these terms in the hearing rules or in other documents relating to your case. You may also hear them during conference calls, negotiations or at hearing.

Admissible: Made part of the official record of the Hearing that the Magistrate will consider when making a Decision. The Magistrate can only pay attention to evidence that is “admitted” into the record.

Burden of Proof: The moving party in a dispute has the burden of proof, which means it is that party’s responsibility to establish in the record that it is more likely than not that the principal allegations are true. If you request the hearing and you do not meet your burden of proof, you will not “win” your case.

Closing Statement: Your final argument at the end of the hearing in support of your claim.

Discovery: The process in which parties request and exchange information with one another after the Hearing Request has been filed and before the hearing begins. Interrogatories, requests for documents, and depositions are all different tools for discovery.

Dismiss: The Magistrate closes the file. DALA will not take any more action on the hearing request.

Dismiss with Prejudice: The case is closed and DALA cannot consider the issues again.

Dismiss without Prejudice: The case is closed but DALA may consider the issues again if the case is reopened or the issues are properly raised again.

Evidence: Testimony at the hearing, documents that are submitted as evidence, and sometimes, agreement between the parties on uncontroversial facts.

Examination: Formal questioning. Direct examination is you questioning your witnesses. Cross examination is you questioning the state agency’s witnesses, or the lawyer for the state agency questioning you.

Exclude: To keep a document or part of a witness’s testimony out of evidence.

Exhibits: Documents that are submitted and accepted as evidence.

Expedited Hearing: A hearing that is scheduled and resolved more quickly than usual, due to pressing circumstance.

Inadmissible: Documents or testimony that do not meet the standards for inclusion into the hearing record.

Joinder: Adding another party to the proceeding that or who may have an interest in the outcome.

Objections: A statement made when you want the magistrate to ignore a document or part of a witness’ testimony. There must be a good legal reason for an objection.

Opening Statement: Your formal introduction of the issues and facts to the magistrate.

Party: A necessary participant in the case; one of the sides in the case.

*Pro Se*: Means “for oneself.” A *pro se* party is one who represents him/herself at Hearing, as opposed to being represented by an attorney or other representative.

Recess: A break or pause in the hearing.

Show Cause: Means “tell me why.” An Order to Show Cause asks the parties to state in writing why a certain action proposed by the magistrate should not be taken. If the parties do not respond, or do not provide convincing reasons for the magistrate to take the action, it will likely be taken. Most typically, an Order to Show Cause is issued if the magistrate believes there is a reason to dismiss a claim.

Subpoena: An order commanding a person to appear at a certain date and time, in a certain location, in order to give testimony in a legal proceeding.

Subpoena Duces Tecum: An order requiring that specified documents be turned over to a party for use in a legal proceeding.