

Massachusetts Department of Transportation Highway Division Standard Operating Procedures			S.O.P. No. ALJ-01-01-1-000 Page 1 of 5
Subject: Office of the Administrative Law Judge Rules of Practice and Procedures			Distribution:
Effective: 4/1/16	Issued: 4/1/16	Supersedes:	Authorized: Albert Caldarelli (signature on original)

I. PURPOSE

The purpose of these Rules is to ensure the impartial and efficient disposition of Appeals brought before the Office of the Administrative Law Judge.

II. SCOPE

These Rules govern the proceedings of the Office of the Administrative Law Judge and are established pursuant to M.G.L. c.6C, §3(1) and §40.

III. ADMINISTRATION

The Office of the Administrative Law Judge is established pursuant to M.G.L. c. 6C, §40, as amended by St. 2009, c. 25, §8. Its essential function is to make fair and impartial decisions on disputes involving the Department, including: construction contract disputes appealed from decisions of the Chief Engineer, appeals from the denial of outdoor advertising permits by the Department’s Division of Outdoor Advertising, contractor appeals from decertification of disadvantaged minority business enterprises, appeals from decisions of the Department’s Right of Way Bureau pursuant to the requirements of 49 CFR Part 24 §24.10, and other matters as assigned by the Secretary of Transportation. To accomplish its essential function, the Office of the Administrative Law Judge is authorized to establish rules and procedures for fair and efficient disposition of disputes and appeals.

IV. DEFINITIONS

- A. **Administrative Law Judge.** The hearing examiner appointed pursuant to M.G.L. c. 6C, §40.
- B. **Appeal.** Any matter properly brought before the Office of the Administrative Law Judge in accordance with a contract, statute, regulation or assignment of the Secretary of Transportation.
- C. **Appellant.** The party who initiates an Appeal to be heard and decided by the Administrative Law Judge.
- D. **Authorized Representative.** An attorney, legal guardian or other person authorized by a Party to represent him in a Proceeding.
- E. **Construction Contract Appeal.** An Appeal brought before the Office of the Administrative Law Judge pursuant to Division I, Subsection 7.16 of the Department’s Standard Specifications for construction contracts, and in accordance with Standard Operating Procedure CSD 25-14-1-000 “Claim Administration and Dispute Resolution Process”.

Massachusetts Department of Transportation Highway Division Standard Operating Procedures			S.O.P. No. ALJ-01-01-1-000 Page 2 of 5
Subject: Office of the Administrative Law Judge Rules of Practice and Procedures			Distribution:
Effective: 4/1/16	Issued: 4/1/16	Supersedes:	Authorized: Albert Caldarelli (signature on original)

- F. **Department.** The Massachusetts Department of Transportation established pursuant to M.G.L. c. 6C; the party who must answer an Appeal to be heard and decided by the Administrative Law Judge.
- G. **Hearing.** A Proceeding at which evidence and witness testimony are presented to the Administrative Law Judge.
- H. **Proceedings.** The activities and Hearings of the Office of the Administrative Law Judge.

V. **REPRESENTATION**

An Appellant may appear at a Proceeding in his or her own behalf, or may be accompanied, represented and advised by an Authorized Representative.

VI. **APPEAL – HOW TAKEN**

- A. **Notice of Appeal.** All Appeals shall be taken by filing a Notice of Appeal with the Office of the Administrative Law Judge.
- B. **Timing.** Unless otherwise provided in the applicable contract, statute, or regulation, the Notice of Appeal must be filed within 30 calendar days of the Department decision or action being appealed.
- C. **Manner of Filing.** The Notice of Appeal shall be made in writing and delivered either by hand or by U.S. Mail to the Office of the Administrative Law Judge, 10 Park Plaza, Suite 6620, Boston, MA 02116.
- D. **Content of Notice of Appeal.** The Notice of Appeal shall identify the Department decision or action being appealed, and briefly state the facts upon which the Appellant is relying, the basis of the Appeal, and the relief sought.

VII. **ENTRY OF APPEAL**

- A. **Docket.** Upon receipt of a properly filed Notice of Appeal, the Office of the Administrative Law Judge shall enter the Appeal on its docket
- B. **Notice to the Parties.** The Office of the Administrative Law Judge will notify the Appellant and Department's General Counsel that the Appeal has been entered on the docket.
- C. **Department's Representative.** The Department shall assign staff counsel, who shall enter his/her appearance.
- D. **Initial Status Conference.** The Administrative Law Judge may initiate or upon the application of any Party, may call upon the Parties to participate in an initial status conference to clarify issues concerning the Notice of Appeal.

Massachusetts Department of Transportation Highway Division Standard Operating Procedures			S.O.P. No. ALJ-01-01-1-000 Page 3 of 5
Subject: Office of the Administrative Law Judge Rules of Practice and Procedures			Distribution:
Effective: 4/1/16	Issued: 4/1/16	Supersedes:	Authorized: Albert Caldarelli (signature on original)

VIII. SCHEDULE

- A. **Tracking Order.** Unless ordered otherwise by the Administrative Law Judge, Standing Order 1-16 attached hereto as Appendix A shall apply to all Appeals brought before the Office of the Administrative Law Judge.
- B. **Time Extensions.** The Administrative Law Judge may, for good cause shown, extend any time limit contained in these Rules. All requests for extensions of time shall be made by motion.

IX. POSITION PAPERS

- A. **Submission Requirement.** All legal and factual issues to be decided on Appeal must be fully briefed by the Parties in written submissions.
- B. **Timing.** Unless ordered otherwise by the Administrative Law Judge, a Party shall file its position paper within the time mandated in Standing Order 1-16.
- C. **Format.** Position papers shall be submitted on standard size (8 ½ x 11 inch) paper. If submitted electronically, the position paper must be able to be printed on standard size (8 ½ x 11 inch) paper. For Construction Contract Appeals only, the Appellant's position paper must be in the form of a fully completed Statement of Claim. See Appendix B.
- D. **Page Limits.** A Party may include any relevant information and legal argument that he/she deems necessary to fully present his/her position. Unless ordered otherwise by the Administrative Law Judge, position papers are not limited to any specific number of pages.
- E. **Appellant.** The Appellant's position paper shall contain the following:
- i. A statement identifying the Department decision or action being appealed;
 - ii. A statement of the alleged facts relevant to the issues presented for review, with appropriate references to documentation and/or other evidence supporting such factual allegations;
 - iii. The legal basis of the Appeal, including reference to applicable legal authority; and
 - iv. The precise relief sought.
- F. **Department.** The Department's position paper shall conform to the requirements of subsections (a) through (e) above, except that a statement of the alleged facts need not be made unless the appellee is dissatisfied with the statement of the Appellant.
- G. **Reply.** The Appellant is permitted but is not required to file a Reply to the Department's position paper. No further position papers may be filed unless authorized by the Administrative Law Judge.

Massachusetts Department of Transportation Highway Division Standard Operating Procedures			S.O.P. No. ALJ-01-01-1-000 Page 4 of 5
Subject: Office of the Administrative Law Judge Rules of Practice and Procedures			Distribution:
Effective: 4/1/16	Issued: 4/1/16	Supersedes:	Authorized: Albert Caldarelli (signature on original)

X. CONFERENCES

- A. **Status Conferences.** The Administrative Law Judge may call upon the Parties to participate in status conferences to address scheduling issues, the status of discovery and other pre-Hearing matters.
- B. **Final Pre-Hearing Conference.** The Administrative Law Judge may call upon the Parties to participate in a Final Pre-Hearing conference to consider:
- i. timing, scheduling and other logistics concerning the Hearing;
 - ii. the simplification or clarification of the issues;
 - iii. the possibility of obtaining stipulations, admissions, agreements on matters already of record, or similar agreements which will reduce or eliminate the need of proof;
 - iv. whether there are discovery request and the scope of such discovery;
 - v. whether there are any pre-Hearing motions or legal issues to be decided;
 - vi. identification of witnesses; and
 - vii. such other matters as may aid in the fair and efficient decision on the Appeal.

XI. HEARINGS

- A. **Scope.** The Administrative Law Judge shall conduct a fair and impartial Hearing on the Appeal.
- B. **Summons.** Pursuant to M.G.L. c.6C, §40, the Administrative Law Judge shall, at the request of the Appellant or the Department or on his own motion, summon witnesses and require the production of books and records and take testimony under oath.
- C. **Adjudicatory Proceedings.** The Hearing shall be conducted in compliance with the requirements of M.G.L. c.30A, if applicable.
- D. **Conduct of the Hearing.** The Administrative Law Judge shall define issues, receive and consider all relevant and reliable evidence, including examining witnesses under oath, exclude irrelevant or unduly repetitious evidence, ensure an orderly presentation of the evidence and issues, ensure a record is made of the proceedings; and reach a fair, independent and impartial decision based upon the issues and evidence presented at the hearing and in pre-Hearing submissions and in accordance with the law.
- E. **The Parties.** Each Party may present his or her own case, or may be assisted by an Authorized Representative, and shall have a right to present witnesses, present and establish all relevant facts and circumstances by oral testimony and documentary evidence, advance any pertinent arguments without undue interference, question or refute any testimony, and examine and introduce evidence.

Massachusetts Department of Transportation Highway Division Standard Operating Procedures			S.O.P. No. ALJ-01-01-1-000 Page 5 of 5
Subject: Office of the Administrative Law Judge Rules of Practice and Procedures			Distribution:
Effective: 4/1/16	Issued: 4/1/16	Supersedes:	Authorized: Albert Caldarelli (signature on original)

- F. **Time Limits.** A Party will be permitted to fully present all evidence and legal argument that he/she deems necessary to his/her position on Appeal. Subject to the general rules of conduct provided above or as ordered otherwise by the Administrative Law Judge, Parties are not subject to any specific time limits with respect to their presentations at the Hearing.
- G. **Recording.** The Hearing will be recorded by electronic medium and such recording will be maintained in the files of the Office of the Administrative Law Judge. The Administrative Law Judge may permit any Party at his/her own expense to make his/her own stenographic or electronic record of the Hearing
- H. **Decision.** After conclusion of the Hearing, the Administrative Law Judge will render a written decision as promptly as administratively feasible.
- i. **Chapter 30A Decision.** Decisions shall conform to the requirements of M.G.L. c.30A, §11(8), if applicable.
 - ii. **Report and Recommendation.** For Construction Contract Appeals, the Administrative Law Judge, after a Hearing, shall render to the Secretary of Transportation a report of the matter, including a recommendation as to the disposition of the claim, in accordance with M.G.L. c.6C, §40.