

Superior Court Standing Order 1–96

Standing Order 1–96. Processing and Hearing of Complaints for Judicial Review of Administrative Agency Proceedings

(Applicable to Civil Actions in All Counties)

Processing and Hearing of Complaints for Judicial Review of Administrative Agency Proceedings

In order to facilitate and clarify the orderly processing and hearing of Complaints for Judicial Review of Administrative Agency Proceedings, it is hereby **ORDERED**, effective December 10, 2020 that:

1. Claims filed in the Superior Court seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in G. L. c. 30A, § 14, G. L. c. 249, § 4, or similar statutes, whether joined with a claim for declaratory relief under G. L. c. 231A, or any other claim, shall be heard in accordance with the following procedures.
2. The administrative agency whose proceedings are to be judicially reviewed shall, by way of answer, file the original or certified copy of the record of the proceeding under review (the record) within ninety (90) days after service upon it of the Complaint. Such record “shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties.” G. L. c. 30A, § 14(4). Upon service of a Complaint, the agency shall notify all parties of procedures for acquiring a transcript of the hearing testimony. The agency shall also inform the parties of their obligation to provide a transcript, or portions thereof, to the court if alleging that an agency's decision is not supported by substantial evidence or is arbitrary or capricious, or is an abuse of discretion. A request for a copy of the transcript must be made by a party within thirty (30) days after service of the Complaint, and such transcript or portion thereof shall be made part of the record. The Agency's certified record shall include any transcript that has been prepared but need not include a transcript of any untranscribed proceeding or portion thereof in the absence of a timely transcript request.

The court may assess the expense of preparing the record as part of the costs in the case. G. L. c. 30A, § 14(4). Additionally, “the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the

additional expenses of preparation caused by such refusal.” G. L. c. 30A, § 14(4). The court may require or permit subsequent corrections or additions to the record when deemed desirable. G. L. c. 30A, § 14(4). The Court may alter the time for filing the record for good cause shown on an appropriate motion.

2A. Records of Administrative Proceedings, filed by the administrative agency, shall comply in full with Supreme Judicial Court Rule 1:24, if practicable given size and applicable filing deadlines. Otherwise, the agency should:

(a) Make reasonable efforts to segregate, redact and file publicly all portions of the record that can practicably be redacted within the filing deadline, including in all cases a redacted copy of the decision under review; and

(b) separately file all other portions in one or more volumes, each having a first page that bears the legend: **“FILED UNDER PROVISIONAL MOTION TO IMPOUND,”** together with such a motion, which need not be served pursuant to Superior Court Rule 9A. Documents bearing that legend shall NOT be impounded without a hearing in compliance with Trial Court Rule VIII, but shall be segregated from the rest of the file in the same manner already employed by clerks' offices for third-party production of medical records, phone records and the like. The clerk shall note the existence of the segregated volume(s) on the docket sheet. The provisional motion to impound will be forwarded to the session judge for Rule VIII notice, hearing and findings ONLY if a non-party seeks to review the documents.

Notwithstanding the above, an agency need not redact from an administrative record any material that is in a public record.

3. The following motions raising preliminary matters must be served in accordance with Superior Court Rule 9A not later than twenty (20) days after service of the record by the administrative agency.

(a) Motions authorized by Mass. R. Civ. P. 12(b) or 12(e).

(b) Motion for leave to present testimony of alleged irregularities in procedure before the agency, not shown in the record (G. L. c. 30A, § 14(5)).

(c) Motion for leave to present additional evidence (G. L. c. 30A, § 14(6)).

Any party failing to serve such a motion within the prescribed time limit, or within any court-ordered extension, shall be deemed to have waived any such motion (unless relating to jurisdiction) and the case shall proceed solely on the basis of the record. Any such motion shall be promptly resolved in accordance with Superior Court Rule 9A. If the motion specified in (c) is allowed, all further proceedings shall be stayed until the administrative agency has complied with the provisions of G. L. c. 30A, § 14(6).

4. A claim for judicial review shall be resolved through a motion for judgment on the pleadings, Mass. R. Civ. P. 12(c), in accordance with Superior Court Rule 9A except as otherwise provided by this Standing Order, unless the Court's decision on any motion specified in part 3 above has made such a resolution inappropriate. A plaintiff's Rule 12(c) motion and supporting memorandum shall be served within thirty (30) days of the service of the record or of the Court's decision on any motion specified in part 3 above, whichever is later. A defendant's response shall be deemed to include a cross-motion for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c) (which should be noted in the caption of the response) and shall be served within thirty (30) days after service of the plaintiffs motion and memorandum. The plaintiff shall then promptly file the motion materials in accordance with Superior Court Rule 9A. The Court may alter the time to serve or file for good cause shown. Memoranda shall include specific page citations to matters in the record.

5. The Clerk or her/his designee will schedule a hearing date after receiving the motion materials. No pre-trial conference will be held, and no pre-trial memorandum filed, unless specifically ordered by the Court. No testimony or other evidence shall be presented at the hearing, and the review shall be confined to the record. A party may waive oral argument and submit on the brief by filing a written notice. Such waiver by a party shall not affect the right of any other party to appear and present oral argument.

Adopted effective April 1, 1996. Amended effective January 4, 1999; November 1, 2000; March 18, 2002. Amended December 5, 2014, effective February 1, 2015; December 2, 2016, effective January 1, 2017. Amended December 10, 2020, effective December 10, 2020.

So ordered,

/s/ Judith Fabricant

Judith Fabricant, Chief Justice of the Superior Court

Approved: December 10, 2020

Effective: December 10, 2020