

**CONTRIBUTORY RETIREMENT APPEAL BOARD
STANDING ORDER 2008-1¹**

**STANDING ORDER CONCERNING APPEALS
FROM THE DIVISION OF ADMINISTRATIVE LAW APPEALS**

1. Applicability.

This Order governs practice before the Contributory Retirement Appeal Board (Board) in all matters arising out of appeals to the Board from decisions of the Division of Administrative Law Appeals (DALA) under G. L. c. 32, § 16(4). This Order is intended to supplement the Standard Adjudicatory Rules of Practice and Procedure found in 801 Code Mass. Regs § 1.01. This Order supersedes all existing requirements set by the Board regarding practice before the Board. This Order shall be construed to secure the just, speedy, and fair determination of every matter.

The Board, through its chair, in the interests of justice and after due notice to parties, may relax the application of this Order in a particular case. In any situation in which this Order does not specifically apply, the Board or its chair may exercise discretion so as to achieve a just, speedy, and fair determination of the issue.

2. General Provisions.

a. Office. The principal office of the Board is in care of its chair, who is the Assistant Attorney General designated from time to time by the Attorney General.

b. Date of Receipt of Communications. Other than appeals and notices of objection submitted under G. L. c. 32, § 16, all communications, including correspondence, motions, and other

¹ As amended June 12, 2009. Originally adopted October 3, 2008.

pleadings, shall be deemed filed or received on the day on which they are actually received by the office of the chair.

c. Computation of Time. Computation of any period of time referred to in this Order shall begin with the first day following that on which the act that initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the chair is closed, in which event the period shall run until the end of the next following business day. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. A "legal holiday" includes those days specified by G. L. c. 4, § 7, and any other day appointed as a holiday by the President or the Congress of the United States, or designated by the Laws of Massachusetts.

d. Extension of Time. Except as otherwise provided by law, the chair may, in his or her discretion, extend any time limit for good cause:

(1) with or without motion or notice, if the request is made before the expiration of the period originally prescribed or as extended by a previous order, or,

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

e. Signatures. Every document submitted to the Board shall be signed by the filing party or by an authorized representative, accompanied by the signer's legibly printed or typewritten name. This signature constitutes a certificate that the signer has read the document, that to the best of the signer's knowledge and belief every statement contained in the instrument is true, and that it is not interposed for delay.

f. Certificates of Service. The last page of every paper served in accordance with this Order shall contain a brief statement showing the date on which and the manner in which service of the paper was made on each other party. The statement may be in the following form:

I certify that a true copy of the above document was served upon (each party appearing pro se and) the authorized representative for each (other) party by mail (by hand) on (date). (Signature).

g. References to parties. In this Order, the party objecting to a DALA decision is referred to as the appellant; the opposing party is referred to as the appellee. In the case of cross-objections, the petitioner shall be the appellant and the respondent shall be the appellee.

h. Electronic submissions. Electronic submissions in searchable "pdf" format are encouraged in addition to, but not in place of, paper submissions. An electronic submission does not satisfy any of the filing or service requirements of G. L. c. 32, § 16(4) or this Order, except that

(1) a party making such an electronic submission need file only one paper copy of the communication with the chair; and

(2) the parties, by written agreement, may agree to the electronic service, but not submission, of communications.

3. Quorum of the Board.

a. Final Board Decisions on the Merits. A quorum for making a final Board decision on the merits of any appeal consists of two Board members. Although normally the designee of the Public Employment Retirement Administration Commission (PERAC) will not participate in any appeal to which PERAC is a party, such participation is permitted whenever necessary for the Board to have a quorum. In the event that the votes are equally divided on an appeal, the appeal shall be deemed denied.

b. Administrative Matters. In all matters involving the administration of Board business, and unless otherwise specifically noted in this Order or decided by the Board, the chair may act for the Board.

4. Board Review of DALA Decisions.

a. Appeals From DALA Decisions.

(1) Manner, Time, and Place of Filing of Notice of Objection.

In a matter assigned by the Board to DALA, an appeal to the Board from a final DALA decision is commenced by filing a written notice of objection with the Board. The notice of objection must be postmarked no later than fifteen days after the date of the DALA decision. A copy of the notice of objection simultaneously shall be served by mail on all other parties.

(2) Content of Notice of Objection. A notice of objection shall

(i) state the date of the DALA decision;

(ii) be accompanied by a copy of the DALA decision; and

(iii) state the part, or parts, of the DALA decision to which objection is made.

(3) Supplementation of Notice of Objection. Within forty days of the date of the DALA decision, the appellant shall supplement the notice of objection by filing with the chair three copies each, and serving on each other party one copy, of:

(a) all exhibits admitted into evidence before DALA, numbered as they were numbered by DALA, and either bound together with consecutively numbered pages or separated by numbered tabs, together with a table of contents identifying each exhibit;

(b) a memorandum of no more than twenty pages containing a clear and precise statement of the relief sought and the findings of fact, if any, and legal conclusions to which objection is made, together with a clear and precise statement of the particular facts, with exact references to the record, and authorities specifically supporting each objection; and

(c) if the Board's passing on an objection may require a review of oral proceedings before DALA, the transcript of the relevant portion of those proceedings.

(4) Response. Within thirty days of service of the supplementation of notice of objection, any party opposing the appeal shall file with the chair three copies, and serve on each other party one copy, of a response, in the form of a written memorandum of no more than twenty pages, containing a clear and precise statement of any facts that supplement or contradict the statement of facts in the appellant's memorandum, with exact references to the record, and legal arguments that the appellee wishes the Board to consider.

(5) Re-submission of briefs, memoranda, and other argument submitted to DALA. Except for some independent legal reason, for example, establishing that a factual concession was made or whether an argument was presented to DALA or waived, and then only to the extent necessary, no party shall re-submit a copy of any brief, memorandum, or other argument previously submitted to DALA.

b. Board initiated Review of DALA decisions. In a matter assigned by the Board to DALA, any Board member may initiate Board review of all or any part of the DALA decision by providing written notice to DALA, with simultaneous copies to other Board members and the parties, postmarked no later than fifteen days after the date the DALA decision is made. The written notice shall include a statement of the issue or issues to be reviewed.

(1) Cases in which no party objects to the DALA decision. In the event that no party files a timely notice of objection to the DALA decision, any party wishing to have its views considered by the Board shall, within forty-five days of the notice of Board review, file with the Chair three copies, and serve on each other party one copy, of a memorandum of no more than twenty pages clearly and precisely stating that party's views on the part or parts of the DALA decision under review, together with the particular facts, with exact references to the record, and authorities specifically supporting each of the party's views.

(2) Cases in which a party has objected to the DALA decision.

In the event that a party files a timely notice of objection to the DALA decision, any party wishing to have the Board consider its views on the part or parts of the DALA decision identified for review by the Board shall include in the memorandum provided for by Paragraph 4.a(3)(b) or 4.a(4) of this Order a clear and precise statement of the particular facts, with exact references to the record, and authorities specifically supporting each of the party's views.

5. Motions.

(a) Generally. Applications to the Board for an order shall be made by written motion; shall state the precise relief and order sought; and shall state with particularity the grounds for granting relief.

(b) Submission of Motion and Opposition to Motion.

(1) Submission of Moving Papers. The moving party shall include with the motion a clear and concise statement of reasons, including supporting authorities, why the motion should be granted. The statement of reasons may be included in the motion itself or may be contained in a separate document. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion. A proposed order shall be served with the motion.

(2) Submission of Opposition to Motion. A party opposing a motion may serve an opposition within fourteen days of service of the motion, or such additional time as is allowed by the Board. As part of any opposition, the party shall serve a clear and concise statement of reasons, with supporting authorities, why the motion should not be allowed. Affidavits and other documents setting forth or evidencing facts on which the opposition is based, if any, shall be included with the opposition. A proposed order may be included with the opposition.

(3) Procedure for Filing and Serving Motions and Oppositions. The moving party shall serve a copy of the moving papers on every other party, and shall serve copies of a notice of motion on the Chair. Every opposing party shall serve on the moving party an original and a copy, and on every other party a copy, of any opposition. Upon receipt of the opposition, if any, the moving party shall physically attach the original of the opposition and the original moving papers, and shall promptly file with the Board the combined documents and a separate document listing the title of each paper in the combined documents. If the moving party does not receive an opposition within three business days after expiration of the time permitted for service of oppositions, then the moving party shall file with the Board the moving papers initially served on the other parties with an affidavit reciting compliance with this Order and receipt of no opposition in a timely fashion. The moving party shall give prompt notice of the filing of the motion to all other parties by serving a notice of filing accompanied by a copy of the document listing the title of each paper filed.

(4) Sanction for Noncompliance. The Board may deny or decline to act on any motion submitted without compliance with the requirements of this rule.

(5) Motion Conferences. Ordinarily, motions will be decided on the papers. In the event, however, that the Board believes that a conference is necessary or helpful to disposition of a motion, the Board will order the parties to attend a conference on the motion. By order of the chair, conferences may be held by telephone.

(c) Appeal of Order Granting or Denying a Motion.

The full Board will not entertain an interlocutory appeal of a ruling on a motion.

6. Form of Motions, Memoranda, and Other Papers.

(a) General provisions. Except on order of the chair, all motions, memoranda, and other papers (other than non-argumentative

correspondence) shall be produced by any duplicating or copying process that produces a clear black image on white paper. However produced, the page shall be eight and one-half inches in width and eleven inches in height. Pages shall be firmly bound.

(b) Format. The following provisions shall govern the format of text on a page for all motions, memoranda, and other papers (other than non-argumentative correspondence):

(1) The top, bottom, left, and right margins shall be at least one inch. Page numbers may appear in the margin.

(2) The typeface shall be a proportional, serif font (such as Century Schoolbook, the typeface used in this Order) of 12 points or larger size and not exceeding 10.5 characters per inch.

(3) Text shall be double-spaced, except that argument headings, footnotes, and indented quotations may be single-spaced. For purposes of this provision, single spacing means not more than six lines of text per vertical inch; double spacing means not more than three lines of text per vertical inch and not more than twenty-seven double-spaced lines on a page.

(4) The text may appear on both sides of the page.

(c) Citations to Authorities. Reported decisions of the Supreme Judicial Court and the Appeals Court shall be cited to the official report of the case. References to decisions and other authorities should include, in addition to the page at which the decision or section begins, a page reference to the particular material upon which reliance is placed, and the year of the decision; as, for example, 354 Mass. 593, 597-98 (1956).

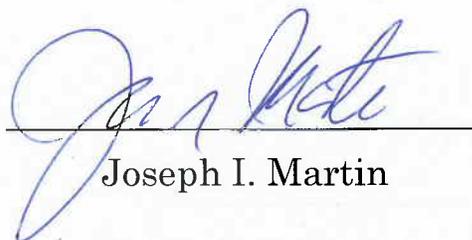
(d) Unreported Decisions. A copy of any decision cited to the board that is not reported in the official reports of the Supreme Judicial Court, the Appeals Court, or another State or Federal court shall be filed with the paper containing the citation.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



David A. Guberman
Assistant Attorney General
Chairman
Attorney General's Appointee



Joseph I. Martin
Public Employee
Retirement Administration
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Joseph L. Cohen, M.D.
Commissioner of Public Health
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Vacant
Governor's Appointee

Date: October 3, 2008

Amended: June 12, 2009