

DEPARTMENT OF LABOR AND ECONOMIC GROWTH
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
STATE RETIREMENT BOARD - GENERAL HEARING RULES

(By authority conferred on the State Office of Administrative Hearings and Rules by Executive Order 2005-1, MCL 445.2021.)

PART I. PROCEDURAL RULES

R 38.71 Applicability.

Rule 71. (1) These rules apply to hearings held under the jurisdiction of the State Employees' Retirement Board.

(2) The terms defined in 1943 PA 240, MCL 38.1 et seq; 1969 PA 306, MCL 24.201 et seq; and R 38.21(1) have the same meaning when used in these rules.

History: 2008 AACCS.

R 38.72 Notice of hearing.

Rule 72. Notification of any hearing shall state the date, time, place, and issues involved. Notice shall be mailed by first-class mail at least 35 days before the hearing.

History: 2008 AACCS.

R 38.73 Appearance.

Rule 73. (1) If a party is represented by an attorney, the attorney shall file a written appearance.

(2) An appearance made at a hearing shall be made in person either by the individual who requested the hearing or by legal counsel.

History: 2008 AACCS.

R 38.74 Filing of documents.

Rule 74. If a document is not filed and served within the time limits established by these rules, the presiding officer or the board shall strike the document unless the individual serving the document establishes good cause as to why the document was not filed and served timely.

History: 2008 AACCS.

R 38.75 Service.

Rule 75. (1) A party shall serve all documents filed in a contested case on all other parties and the presiding officer. Service shall be made in person or by first-class mail with postage fully paid and addressed to the individual to be served at the individual's last known address.

(2) The date of service shall be the date of personal service or the date that the document is placed in first-class mail.

(3) A party who files a document in a contested case hearing shall file a proof of service that establishes the document was simultaneously and properly served on all other parties.

History: 2008 AACCS.

R 38.76 Pre-hearing conference; scope.

Rule 76. (1) If a presiding officer determines that a pre-hearing conference will aid in the efficient resolution of the contested case, then the presiding officer may direct the parties or their attorneys to participate in a pre-hearing conference, either in person or by telephone, to do any of the following:

- (a) State and simplify the factual and legal issues involved.
- (b) Consider motions to be disposed of before hearing and other preliminary matters.
- (c) Identify proposed documentary evidence and determine its authenticity, if possible.
- (d) Estimate the time for hearing.
- (e) Consider other matters that may aid in the resolution of the contested case.

(2) The presiding officer may provide a written summary of the items discussed to each party after the pre-hearing conference.

(3) At a pre-hearing conference, the presiding officer may direct the parties to file a hearing brief as to any of the issues involved in the action. If the parties are directed to submit hearing briefs, then the parties shall submit briefs to the presiding officer not less than 10 days before the hearing, unless a different date is set by the presiding officer.

History: 2008 AACS.

R 38.77 Presiding officer.

Rule 77. (1) The State Office of Administrative Hearings and Rules shall designate presiding officers in contested case proceedings.

(2) A presiding officer shall issue orders that are necessary for the fair and efficient determination of the issues presented. These include, but are not limited to, an order in response to a motion to do any of the following:

- (a) Extend the time to file a closing argument.
- (b) Extend the time to file exceptions and/or replies.
- (c) Adjourn a hearing.
- (3) A party shall comply with an order of a presiding officer
- (4) Neither the presiding officer nor any attorney in a contested case may issue a subpoena.

History: 2008 AACS.

R 38.78 Adjournment or continuance of hearing.

Rule 78. A hearing shall not be adjourned or continued except upon an order of the presiding officer. Unless made during a hearing, all motions and requests for an adjournment, or a continuance, shall be filed in writing and state concisely the reasons why an adjournment or continuance is necessary.

History: 2008 AACS.

R 38.79 Hearing record.

Rule 79. A verbatim record shall be made of each hearing held. Upon request, a party may order a transcript. The requestor shall pay the cost of the transcript.

History: 2008 AACS.

R 38.80 Form; time for filing motion.

Rule 80. (1) A request to the presiding officer for an order in a pending action shall be by motion, in writing, unless made during a hearing. The request shall state the relief or order sought, the grounds and authority on which the request is based, and be signed by the party or the party's attorney.

(2) A copy of the written motion and brief, if any, shall be served in accordance with R 38.75(1). If a motion or response is supported by affidavit, then the affidavit shall be filed and served with the motion or response.

(3) A party opposing a motion shall serve a response and any brief and supporting affidavit or affidavits within 14 days after service of the motion unless otherwise ordered by the presiding officer.

(4) The presiding officer may limit or dispense with oral arguments on motions.

History: 2008 AACS.

R 38.81 Motion for summary disposition.

Rule 81. (1) A party may move for summary disposition on all or any part of the claim at any time. The motion shall state that the moving party is entitled to summary disposition on 1 or more of the following grounds and shall specify the grounds on which the motion is based:

(a) The petitioner has failed to state a claim upon which relief can be granted.

(b) There is no genuine issue as to a material fact, except as to the relief to be granted.

(c) The board lacks jurisdiction of the subject matter.

(d) The claim or defense is barred because it is untimely.

(e) The claim or defense is barred because of some other legal impediment or other disposition of the claim.

(2) If the motion for summary disposition is based on subrule (1)(a) of this rule, then only pleadings may be considered. A motion based on subrule

(1)(b), (c), (d) or (e) of this rule shall be supported by affidavits or other documentary evidence and shall specifically identify the issues on which the moving party believes there is no genuine issue of material fact. The affidavits, together with the pleadings and documentary evidence then filed in the action, or submitted by the parties, shall be considered. If a motion is made under subrule (1)(b) of this rule and supported as provided in this rule, then an adverse party shall, by affidavits or otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for hearing.

(3) A presiding officer shall rule on a motion for summary disposition in a proposal for decision.

History: 2008 AACS.

R 38.82 Discovery.

Rule 82. (1) Discovery shall not be allowed in any contested case hearing conducted under the act or these rules except depositions may be taken upon written approval of the board where it is established that it is impractical or impossible to otherwise obtain the evidence. If the board approves the taking of a deposition, it shall be taken in conformity with the Michigan court rules.

(2) The petitioner shall serve a list of witnesses 20 days before the scheduled hearing date. The respondent shall serve a list of witnesses 10 days before the scheduled hearing date. A party shall not call as a witness a person who was not included on a witness list unless the presiding officer finds that the party has established good cause as to why the person was not included on the party's witness list.

History: 2008 AACS.

R 38.83 Closing arguments.

Rule 83. The presiding officer shall notify the parties whether written or oral closing arguments shall be scheduled and the time deadlines for such arguments.

History: 2008 AACS.

R 38.84 Proposal for decision.

Rule 84. The presiding officer shall prepare a proposal for decision within a reasonable time after the closing of the record. It shall include findings of fact, conclusions of law, and a recommended decision. The proposal for decision shall be served on each of the parties and the hearing coordinator of the retirement system.

History: 2008 AACS.

R 38.85 Considerations of documents.

Rule 85. The presiding officer shall admit the administrative record if offered into evidence at the hearing.

History: 2008 AACS.

R 38.86 Testimony; telephone and other electronic means.

Rule 86. A presiding officer shall not take the testimony of a witness by way of a telephone conference call or other electronic means unless all of the following occur:

(a) The party who wants to take such testimony serves a motion at least 10 days before the date of the hearing.

(b) The presiding officer concludes that it is impractical or impossible to otherwise obtain the testimony.

(c) The presiding officer concludes that the witness is not needed to appear in person so that the witness's appearance and demeanor may be observed for credibility purposes.

History: 2008 AACS.