DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ADMINISTRATIVE HEARING RULES

(By authority conferred on the Executive Director of the Michigan Administrative Hearing System by Executive Order Nos. 2005-1, 2011-4, and 2011-6, MCL 445.2021, 445.0230, 445.2032**,** sections 32 and 49 of 1973 PA 186, MCL 205.732 and 205.749, sections 2233, 12561, and 13322 of 1978 PA 368, MCL 333.2233, 333.12561 and 333.13322 and Executive Reorganization Order Nos. 1997-2 and 1998-2, MCL 29.451 and 29.461, section 57 of 1989 PA 300, MCL 281.1352, parts 31, 32, 41, 55, 63, 111, 115, and 201 of 1994 PA 451, MCL 324.101 to 324.90106, Executive Order 1995-16, MCL 324.99903, section 7 of 1909 PA 106, MCL 460.557, section 2 of 1909 PA 300, MCL 462.2, section 5 of 1919 PA 419, MCL 460.55, article 5, section 6 of 1933 PA 254, MCL 479.6, sections 6 and 6a of 1939 PA 6, MCL 479.6 and 479.6a, section 675, 1949 PA 300, MCL 257.675, section 5 of 1969 PA 200, MCL 247.325, section 23 of 1972 PA 106, MCL 252.323, section 210 of 1956 PA 218, MCL 500.210, section 614 of 1978 PA 368, MCL 333.16141, section 308 of 1980 PA 299, MCL 399.308, and Executive Reorganization Orders 1996-1 and 2003-1, MCL 445.2001, 445.2011, sections 6 and 9 of 1939 PA 280, MCL 400.6 and 400.9**,** sections 2226 and 2233 of 1978 PA 368, MCL 333.2226 and 333.2233, section 6 of 1939 PA 280, MCL 400.6 and Executive Reorganization Order Nos. 2005-1 and 2011-4, MCL 445.2021 and 445.2030, section 46 of 1974 PA 154, MCL 408.1046**,** section 12 of 1978 PA 390, MCL 408.482, section 213 of 1969 PA 317, MCL 418.213, and Executive Reorganization Order Nos. 1996-2, 2002-1, and 2003-1, MCL 445.201, 445.2004, 445.2011**,** section 34 of 1936 PA 1, MCL 421.34, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2011-4, 2011-6, MCL 445.2001, 445.2011, 445.2030, 445.2032**,** sections 7, 9a and 27 of 1939 PA 176, MCL 423.7, 423.9a, 423.27, and sections 12, 14 of 1947 PA 336, MCL 423.212 and 432.214 and Executive Reorganization Order Nos. 1996-2, 2011-4, and 2011-5, MCL 445.2001, 445.2030, 445.2031**,** section 2 of 1943 PA 240, MCL 38.2**,** section 15 of 1964 PA 287, MCL 388.1015, sections 1531, 1531i, 1535a, and 1539b of 1976 PA 451, MCL 380.1531, 380.1531i, 380.1535a, 380.1539b, and Executive Reorganization Order Nos. 1996-1 and 1996-7, MCL 388.993 and 338.994, section 1701 and 1703 of 1976 PA 451, MCL 380.1701, 380.1703 and Executive Order 2005-1, MCL 445.2021, section 6 of 1953 PA 232, MCL 791.206.)

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R 792.10101 Scope.

Rule 101. (1) These rules govern practice and procedure in administrative hearings conducted by the Michigan administrative hearing system under Executive Reorganization Order No. 2005-1, MCL 445.2021, Executive Reorganization Order No. 2011-4, MCL 445.2030, and Executive Reorganization Order No. 2011-6, MCL 445.2032.

(2) The rules in part 1 apply to all administrative hearings conducted by the hearing system, except hearings specifically exempted under MCL 445.2021, MCL 445.2030, and MCL 445.2032, and subject to prevailing practices and procedures established by state and federal statutes and the rules for specific types of hearings contained in parts 2, 3, and 5 to 19 of the rules.

(3) The rules in this part do not govern part 4 proceedings before the Michigan public service commission, except R 792.10106(2), (3), (4), (5), (6), and (7), provisions for disqualification and recusal of administrative law judges.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10102 Construction of rules.

Rule 102. (1) These procedural rules shall be construed to secure a fair, efficient, and impartial determination of the issues presented in contested cases consistent with due process.

(2) These rules are not intended to displace any statutorily mandated procedure. If a statute prescribes a procedure that conflicts with these rules, the statute governs.

(3) If an applicable rule does not exist, the 1985 Michigan rules of court and the provisions of chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287 apply.

(4) A heading or title of a part or section of these rules shall not be considered as a part of the rules or used to construe these rules more broadly or narrowly than the text of these rules would indicate, but shall be considered as inserted for the convenience to users of these rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10103 Definitions.

Rule 103. For purposes of these rules, the words and phrases defined in this rule have the meanings ascribed to them.

(a) "Act" means 1969 PA 306, MCL 24.201 to 24.328, also known as the administrative procedures act of 1969.

(b) "Administrative law judge" means any person assigned by the hearing system to preside over and hear a contested case or other matter assigned, including, but not limited to, tribunal member, hearing officer, presiding officer, referee, and magistrate.

(c) "Adjournment" means a postponement of a hearing to a later date.

(d) "Administrator" means the person, commission, or board with final decision making authority in a contested case, other than an administrative law judge or a tribunal member.

(e) "Agency" means a bureau, division, section, unit, board, commission, trustee, authority, office, or organization within a state department, created by the constitution, statute, or department action. Agency does not include an administrative unit within the legislative or judicial branches of state government, the governor's office, a unit having direct governing control over an institution of higher education, the state civil service commission, or an association of insurers or nonprofit organization of insurer members created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(f) "Authorized representative" means a person, other than an attorney, representing a party in a proceeding.

(g) "Contested case" means a proceeding or evidentiary hearing in which a determination of the legal rights, duties, or privileges of a named party is made after an opportunity for a hearing.

(h) "Continuance" means a resumption of a hearing at a later date under these rules.

(i) "Date of receipt" means the date on which the hearing system receives a filing.

(j) "Department" means the state department of licensing and regulatory affairs, unless otherwise specified as a separate constitutionally created state department.

(k) "Hearing system" means the Michigan administrative hearing system created under the authority of Executive Reorganization Order No. 2005-1, MCL 445.2021.

(l) "Person" means an individual, partnership, corporation, association, municipality, agency, or any other entity.

(m) "Petitioner" means a person who files a request for a hearing.

(n) "Referring authority" means a court, state, or local political subdivision including, but not limited to, a department, agency, bureau, tribunal, mayor, city council, township supervisor, township board, village manager, or village board.

(o) "Respondent" means a person against whom a proceeding is commenced.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10104 Computation of time.

Rule 104. (1) In computing any period of time prescribed or allowed by these rules, the time in which an act is to be done shall be computed by excluding the first day, and including the last, unless the last day is a Saturday, Sunday, or state legal holiday, in which case the period will run until the end of the next day following the Saturday, Sunday, or state legal holiday.

(2) Unless otherwise specified by the administrative law judge, rule, or statute, the date of receipt of a filing by the hearing system shall be the date used to determine whether a pleading or other paper has been timely filed with the hearing system.

(3) Except where otherwise specified, a period of time in these rules means calendar days, not business days.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R792.10105 Motion for extension of time.

Rule 105. Requests for extensions of any time limit established in these rules shall be made by written motion and filed with the hearing system before the expiration of the period originally

prescribed or previously extended, except as otherwise provided by law, or by stipulation of the parties. A motion under this rule shall be granted only for good cause or on the written stipulation of the parties, and only if the order for extension does not conflict with R 792.10102.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10106 Administrative law judge; disqualification and recusal; substitution; communications.

Rule 106. (1) The administrative law judge shall exercise the following powers when appropriate:

(a) Conduct a full, fair, and impartial hearing.

(b) Take action to avoid unnecessary delay in the disposition of proceedings.

(c) Regulate the course of the hearing and maintain proper decorum. An administrative law judge may exercise discretion with regard to the exclusion of parties, their attorneys or authorized representatives or other persons, and may adjourn hearings when necessary to avoid undue disruption of the proceedings.

(d) Administer oaths and affirmations.

(e) Provide for the taking of testimony by deposition.

(f) Rule upon offers of proof.

(g) Rule upon motions and examine witnesses.

(h) Limit repetitious testimony and time for presentations.

(i) Set the time and place for continued hearings and fix the time for the filing of briefs and other documents.

(j) Direct the parties to appear, or confer, or both, to consider clarification of issues, stipulations of facts, stipulations of law, settlement, and other related matters.

(k) Require the parties to submit prehearing orders and legal memorandum.

(l) Examine witnesses as deemed necessary by the administrative law judge to complete a record or address a statutory element.

(m) Grant applications for subpoenas and subpoena witnesses and documents to the extent authorized by statute.

(n) Issue proposed orders, proposals for decision, and final orders and take any other appropriate action authorized by law.

(o) On motion, or on an administrative law judge's own initiative, adjourn hearings, except where statutory provisions limit adjournment authority.

(2) An administrative law judge may be recused, or disqualified, from a case based on bias, prejudice, interest, or any other cause provided for in this rule.

(3) An administrative law judge may be recused in any proceeding in which the impartiality of the administrative law judge might reasonably be questioned, including but not limited to, instances in which any of the following exist:

(a) The administrative law judge has a personal bias or prejudice concerning a party, a party's authorized representative, or a party's attorney.

(b) The administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(c) The administrative law judge served as an attorney in the matter in controversy.

(d) An attorney with whom the administrative law judge previously practiced law serves as the attorney in the matter in controversy.

(e) The administrative law judge has been a material witness concerning the matter in controversy.

(f) An administrative law judge shall voluntarily disclose to the parties any known conditions listed in subdivisions (a) to (e) of this subrule.

(4) An administrative law judge who would otherwise be recused by the terms of this rule may disclose on the record the basis of disqualification and may ask the parties and their attorneys to consider, out of his or her presence, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties agree that the administrative law judge should not be disqualified, the administrative law judge may preside over the proceeding. The agreement shall be incorporated into the hearing record.

(5) Any party seeking to disqualify an administrative law judge shall move for the disqualification promptly after receipt of notice indicating that the administrative law judge will preside or upon discovering facts establishing grounds for disqualification, whichever is later. A motion for recusal shall be made in writing and shall be accompanied by an affidavit setting forth definite and specific allegations that demonstrate the facts upon which the motion for disqualification is based.

(6) If the challenged administrative law judge denies the motion for disqualification, a party may move for the motion to be decided by a supervising administrative law judge.

(7) If an administrative law judge is disqualified, incapacitated, deceased, otherwise removed from, unable to continue a hearing, or to issue a proposal for decision or final order as assigned, another administrative law judge shall be assigned to continue the case by the hearing system director or his or her designee. To avoid substantial prejudice or to enable the administrative law judge to render a decision, the newly assigned administrative law judge may order a rehearing on any part of the contested case. This rule applies whether the substitution occurs before or after the administrative record is closed.

(8) Once a case has been referred to the hearing system, no person shall communicate with the assigned administrative law judge relating to the merits of the case without the knowledge and consent of all other parties to the matter, except as follows:

(a) The administrative law judge may communicate with another administrative law judge relating to the merits of cases at any time or the hearing system staff as provided by, 1969 PA 306, MCL 24.271 to 24.287.

(b) The administrative law judge may, when circumstances require, communicate with parties, attorneys, or authorized representatives for scheduling, or other administrative purposes that do not deal with substantive matters or issues on the merits, provided that the administrative law judge reasonably believes that no party will gain procedural or tactical advantage as a result of the communication. The administrative law judge shall make provision to promptly notify all other parties of the substance of the communication and allow an opportunity to respond.

(9) If an administrative law judge receives a communication prohibited by this rule, the administrative law judge shall promptly notify all parties, attorneys or authorized representatives of the receipt of such communication and its content.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10107 Attorneys and authorized representation; misconduct; withdrawal and substitution.

Rule 107. (1) A party may appear in person, by an attorney or by an authorized representative where permitted by statute or rule. To appear on behalf of a party, an attorney or authorized representative shall file a notice of appearance. A pleading, motion, or other document signed and filed by an attorney or authorized representative on behalf of a client is deemed the appearance of the attorney or authorized representative. An appearance by an attorney or authorized representative is an appearance by his or her firm or office. After a notice of appearance has been filed or after an appearance is made on the record, service of all papers in a proceeding shall be made upon the person whose name appears on the notice of appearance, at the address indicated on the notice of hearing, and shall be effective as service on the party represented.

(2) An attorney or authorized representative who has entered an appearance may withdraw from the case, or be substituted for another attorney, only by order of the administrative law judge. Timely notice of withdrawal or substitution shall be provided to all parties, their attorneys or authorized representatives, and the administrative law judge.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10108 Correction of transcripts.

Rule 108. (1) The administrative law judge may specify corrections to an official hearing transcript or make provisions for any party to request relevant corrections of the official hearing transcript.

(2) If the administrative law judge specifies the corrections, the administrative law judge shall provide 7 days notice to all parties and a reasonable time for responses in support of or in opposition to all or part of the proposed corrections.

(3) If a party files a request for corrections, all other parties may, within 7 days after the filing, file a response to the proposed corrections.

(4) The administrative law judge shall specify the corrections made to the transcript, either upon the record or by order served on all parties.

(5) Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected with notice to the parties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10109 Filing.

Rule 109. (1) Unless authorized to be filed electronically using an electronic filing system, all filings shall be on 8 ½ x 11 inch paper.

(2) Documents received by the hearing system after 5 p.m. eastern standard time are considered filed on the following business day.

(3) Submission by facsimile may be allowed, under all of the following provisions:

(a) A cover sheet that includes the following information should accompany every transmission:

(i) Case name.

(ii) Case number.

(iii) Document title.

(iv) Name, telephone number, and facsimile number of sender.

(b) A facsimile consisting of more than 20 pages will not be accepted.

(c) When a party files by facsimile, the party shall then immediately send a facsimile copy of the filing to all other parties named in the case caption, when a facsimile number is available. The party shall then serve notice to all other known parties pursuant to the notice requirements of these rules.

(4) Filings shall not be accepted by e-mail unless specifically authorized by the administrative law judge, or pursuant to an order issued by the executive director of the hearing system.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10110 Service of documents and other pleadings; manner of service; date of service; statement or proof of service.

Rule 110. (1) A party shall serve all documents and pleadings filed in a hearing system proceeding on all other parties. Unless otherwise directed by the administrative law judge, "parties" are the persons named in the case caption. If an appearance has been filed by an attorney or authorized representative of a party, documents and pleadings shall be served on the attorney of record or authorized representative.

(2) Service on a party may be completed electronically on request of, or with permission of, the party receiving the documents.

(3) Service, other than electronic, may be completed by mail, facsimile, or commercial delivery service or by leaving a copy of the document at the residence, principal office, or place of business of the person or agency required to be served.

(4) When service of any document or pleading is completed by mail or commercial delivery service, the date of service is the date of deposit with the United States post office, inter-departmental mail delivery system, or other carrier.

(5) When service of any document or pleading is completed by hand, electronically, or by any other method authorized by these rules, the date of service is the date of receipt as indicated by a date stamp or other verifiable date on the document or pleading.

(6) The person or party serving documents on other parties pursuant to this rule shall file with the hearing system a written statement of service stating the method or manner of service, the identity of the server, the names of the parties served, and the date and place of service. When service is completed electronically, the statement of service shall also state the e-mail addresses of the sender and the recipient. Failure to timely file the statement of service will not affect the validity of service.

(7) If a question concerning proper service is raised, the person or party serving the documents shall submit a proof of service. When service is made by mail, the return post office receipt shall be proof of service. When service is made by private delivery service, the receipt

showing delivery shall be sufficient proof of service. When service is made in any other manner authorized by these rules, verified proof of service shall be made by filing an affidavit of the person or party serving the documents. Disputes with respect to proper service will be resolved by the administrative law judge assigned to the matter.

(8) The administrative law judge assigned by the hearing system may decline to consider any document or pleading not served pursuant to these rules.

(9) Mailing a copy under this rule means enclosing it in a sealed envelope addressed to the person to be served and placing it into an intra-departmental mail delivery system or depositing the sealed envelope with first class postage fully prepaid in the United States mail or other commercial delivery service.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10111 Notice of hearing.

Rule 111. If the notice of hearing is issued by the hearing system, the notice shall contain, at a minimum, all of the following:

(a) The address and phone number, if available, of the hearing location.

(b) A statement of the date, hour, place, and nature of the hearing.

(c) A statement that all hearings shall be conducted in a barrier-free location and in compliance with the americans with disabilities act provisions that states the following:

"If accessibility is requested (i.e. braille, large print, electronic or audio reader), information which is to be made accessible must be submitted to the hearing system at least 14 business days before the hearing. If the hearing system is unable to accomplish the conversion prior to the date of hearing, an adjournment shall be granted. If a party fails to provide information for conversion pursuant to this rule, the administrative law judge has discretion to deny adjournment."

(d) A statement of the legal authority and jurisdiction under which the hearing is being held.

(e) The action intended by the agency, if any.

(f) A statement of the issues or subject of the hearing. On request, the administrative law judge may require the agency or a party to furnish a more definite and detailed statement of the issues.

(g) A citation to the Michigan administrative hearing system administrative hearing rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10112 Assignment of docket number.

Rule 112. Upon receipt of a request for a hearing, the hearing system shall assign a docket number to the proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10113 Mailing address and telephone number of parties.

Rule 113. (1) All parties to a case shall keep the hearing system informed of their current mailing addresses, telephone numbers, and facsimile numbers.

(2) Failure to keep the hearing system informed of a current mailing address, telephone number, or facsimile number may result in the hearing proceeding in the absence of a party who fails to appear.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10114 Prehearing conferences.

Rule 114. (1) The administrative law judge may hold a prehearing conference to resolve matters prior to the hearing.

(2) A prehearing conference may be convened to address matters including, but not limited to, any of the following:

(a) Issuance of subpoenas.

(b) Factual and legal issues.

(c) Stipulations.

(d) Requests for official notice.

(e) Identification and exchange of documentary evidence.

(f) Admission of evidence.

(g) Identification and qualification of witnesses.

(h) Motions.

(i) Order of presentation.

(j) Scheduling.

(k) Alternative dispute resolution.

(l) Position statements.

(m) Settlement.

(n) Any other matter that will promote the orderly and prompt conduct of the hearing.

(3) At the discretion of the administrative law judge, all or part of a prehearing conference may be recorded.

(4) Prehearing conferences may be conducted in person, by telephone, by videoconference, or other electronic means at the discretion of the administrative law judge.

(5) When a prehearing conference has been held, the administrative law judge shall issue a prehearing order which states the actions taken or to be taken with regard to any matter addressed at the prehearing conference.

(6) If a prehearing conference is not held, the administrative law judge may issue a prehearing order to regulate the conduct of proceedings.

(7) If a party fails to appear for a prehearing conference after proper notice, the administrative law judge may proceed with the conference in the absence of that party.

(8) A party who fails to attend a prehearing conference is subject to any procedural agreement reached, and any order issued, with respect to matters addressed at the conference.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10115 Motion practice.

Rule 115. (1) All requests for action addressed to the administrative law judge, other than during a hearing, shall be made in writing. Written requests for action shall state specific grounds and describe the action or order sought. A copy of all written motions or requests for action shall be served pursuant to these rules.

(2) All motions shall be filed at least 14 days prior to the date set for hearing unless other scheduling provisions prevent compliance with this timeline or the need for the motion could not reasonably have been foreseen 14 days prior to hearing.

(3) A response to a motion may be filed within 7 days after service of the written motion unless otherwise ordered by the administrative law judge or unless other scheduling provisions prevent compliance with this timeline. Either party may request an expedited ruling.

(4) All motions and responses shall include citations of supporting authority and, if germane, supporting affidavits or citations to evidentiary materials of record.

(5) The administrative law judge has discretion to require oral argument on a motion or allow or deny oral argument based on a request from a party.

(6) A request for oral argument on a motion shall be made in writing.

(7) Notice of oral argument on a motion shall be given prior to the date set for hearing. At the discretion of the administrative law judge, a hearing on a motion may be conducted in whole or in part by telephone. The administrative law judge shall rule upon motions within a reasonable time.

(8) Multiple motions may be consolidated for oral argument.

(9) A party may withdraw a motion for oral argument at any time.

(10) Any relief granted by the administrative law judge in response to a motion should be incorporated in a written order, the proposal for decision, or the final order.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10116 Stipulations.

Rule 116. (1) The parties may agree upon facts, or any portion of facts, in controversy by written stipulation or by a statement entered into the record.

(2) Stipulations shall be used as evidence at the hearing or subsequent proceedings.

(3) Stipulations are binding on the parties that have acknowledged acceptance of the stipulations.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10117 Discovery.

Rule 117. Except as otherwise provided for by statute or rule or by leave of the administrative law judge, discovery in a contested case shall not be allowed.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10118 Joint hearing; consolidation of proceedings; other orders.

Rule 118. When separate pending cases involve a substantial and controlling common question of fact or law, the administrative law judge may take any of the following actions:

(a) Order a joint hearing on any or all of the issues noticed for hearing.

(b) Order consolidation of the cases.

(c) Issue additional orders that expedite proceedings in a cost effective manner.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10119 Location.

Rule 119. (1) The hearing system may schedule a hearing at any location unless location is dictated by statute or controlling rules.

(2) A party may file a motion asserting good cause for change of venue.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10120 Record.

Rule 120. (1) The hearing system shall maintain an official record of each case or proceeding.

(2) The record shall include all of the following:

(a) Notice of hearings and orders of adjournment.

(b) Prehearing orders.

(c) Motions, pleadings, briefs, petitions, requests, agency rulings and intermediate written rulings.

(d) Evidence presented.

(e) A statement of matters officially noticed.

(f) Offers of proof, objections, and rulings.

(g) An official recording of the proceeding prepared by the administrative law judge.

(h) Transcripts, if ordered by the administrative law judge or submitted by a party prior to issuance of a final decision.

(i) Final orders or orders on reconsideration.

(j) Written notation of any ex parte communications referred to on the record.

(3) The administrative law judge may authorize the use of tape recorders, cell phones, and other mechanical, electronic, or video recording devices. The administrative law judge may prohibit devices for any of the following reasons:

(a) The device is obtrusive or disruptive.

(b) The device may cause intimidation of witnesses.

(c) The device may disclose the identity of witnesses or parties entitled to privacy.

(d) The device may intrude on attorney-client communication.

(4) Recordings, other than the official recording prepared by the administrative law judge or court reporter hired by the hearing system, shall not be accepted to challenge the official record unless adopted by the administrative law judge.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10121 Telephone and electronic hearings.

Rule 121. (1) The administrative law judge may conduct all or part of a hearing by telephone, video-conference, or other electronic means.

(2) All substantive and procedural rights apply to all hearings under this rule.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10122 Initial procedures; converting to prehearing.

Rule 122. An initial hearing may be either an evidentiary hearing or a prehearing conference. For good cause, the administrative law judge may convert an initial hearing from an evidentiary hearing to a prehearing conference.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10123 Hearing by brief.

Rule 123. (1)When it appears to the administrative law judge that a material issue of fact does not exist, and the questions to be resolved are solely questions of law, the administrative law judge may direct that the hearing be conducted by submission of briefs.

(2) After consulting with the parties, the administrative law judge shall prescribe the time limits for submission of briefs and provide direction on whether filings are to be either simultaneous or successive.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10124 Presentation.

Rule 124. (1) A party may make or waive a closing statement. If a party elects to make a closing statement, the administrative law judge may order closing arguments to be submitted in writing and may require written proposed findings of fact and conclusions of law.

(2) Unless otherwise directed by the administrative law judge, the party having the burden of proof shall go forward first with presentation of evidence. A party may submit rebuttal evidence.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10125 Evidence; admissibility; objections; submission in written form.

Rule 125. (1) The Michigan rules of evidence, as applied in a civil case in circuit court shall be followed in all proceedings as far as practicable, but an administrative law judge may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(2) Irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(3) Effect shall be given to the rules of privilege recognized by law.

(4) Objections to offers of evidence may be made and shall be noted in the record.

(5) For the purpose of expediting a hearing, and when the interests of the parties will not be substantially prejudiced, the administrative law judge may require submission of all or part of the evidence in written form.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10126 Evidence to be entered on record; documentary evidence.

Rule 126. (1) Evidence in a proceeding shall be offered and made a part of the record if admitted by the administrative law judge. Other factual information shall not be used as the basis of the decision of the administrative law judge, unless parties are provided notice. Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available. Upon timely request, a party shall be given an opportunity to compare a copy with the original, when available. Documentary evidence may be incorporated by reference if the materials are available for examination by the parties.

(2) If materials and exhibits offered, but not admitted, are made part of the record for purposes of appeal, they shall be clearly marked by the administrative law judge as "rejected".

(3) Exhibits that are rejected as duplicates of material already contained in the file or record, shall be returned to the party offering the exhibits, and shall not be included in the record on appeal.

(4) Exhibits introduced into evidence, but later withdrawn, shall not be considered part of the record on appeal.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10127 Official notice of facts; evaluation of evidence.

Rule 127. An administrative law judge may take official notice of judicially cognizable facts, and general, technical, or scientific facts within an agency's specialized knowledge. The administrative law judge shall notify parties at the earliest practicable time of any officially noticed fact which pertains to a material disputed issue. On timely request before issuance of a final decision, the parties shall be provided an opportunity to dispute the fact or its materiality.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10128 Witnesses.

Rule 128. (1) The testimony of all witnesses shall be upon oath or affirmation.

(2) Witnesses may be sequestered by the administrative law judge on his or her own initiative, or upon request of a party.

(3) Opposing parties shall be entitled to cross examine witnesses.

(4) The testimony of a witness may be taken by deposition with permission of the administrative law judge. A party taking a deposition shall give notice to all parties.

(5) The administrative law judge may limit the number of witnesses to prevent cumulative or irrelevant evidence, and to prevent unnecessary delay.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10129 Summary disposition.

Rule 129. (1) A party may make a motion for summary disposition of all or part of a proceeding. When an administrative law judge does not have final decision authority, he or she may issue a proposal for decision granting summary disposition on all or part of a proceeding if he or she determines that that any of the following exists:

(a) There is no genuine issue of material fact.

(b) There is a failure to state a claim for which relief may be granted.

(c) There is a lack of jurisdiction or standing.

(2) If the administrative law judge has final decision authority, he or she may determine the motion for summary decision without first issuing a proposal for decision.

(3) If the motion for summary disposition is denied, or if the decision on the motion does not dispose of the entire action, then the action shall proceed to hearing.

(4) In hearings held under the occupational code, 1980 PA 229, MCL 339.101 to 339.2919, the administrative law judge shall not issue an order of summary disposition.

(5) In hearings held under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, the administrative law judge or magistrate shall not issue an order of summary disposition pursuant to subrule (1)(a) of this rule.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10130 Post-hearing briefs.

Rule 130. A party may request an opportunity to submit a post-hearing brief. The administrative law judge may grant or deny the request based on the nature of the proceedings. The administrative law judge may also require a post-hearing brief on his or her own initiative.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10131 Proposals for decision.

Rule 131. (1) When the final decision is made by a person who did not conduct the hearing or review the record, the decision, if adverse to a party other than the agency itself, shall not be made until a proposal for decision is served on the parties and an opportunity is given to each party adversely affected to file exceptions and present written arguments to the person who will make the final decision. On review of a proposal for decision, the final decision authority shall have all of the powers which it would have if it had presided at the hearing.

(2) The proposal for decision shall be prepared by a person who conducted the hearing or who has read the complete record. A proposal for decision shall contain findings of fact and conclusions of law and an analysis or rationale for conclusions.

(3) A decision shall become a final decision in the absence of exceptions or review by an entity with final decision authority.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R792.10132 Exceptions.

Rule 132. Except in occupational board cases, and cases where the administrative law judge has final decision authority, the parties may file exceptions to a proposal for decision within 21 days after the proposal for decision is issued and entered. An opposing party may file a response to exceptions within 14 days after exceptions are filed.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10133 Final decisions and orders.

Rule 133. (1) Except where a controlling statute mandates the period for issuing final decisions or orders, an administrative law judge with final decision authority shall issue a final decision within a reasonable period of time. The final decision shall be in writing or stated on the record. A written final decision shall include separate sections entitled "findings of fact" and "conclusions of law." Findings of fact set forth in statutory language shall include a concise statement of the underlying supporting facts. Findings of fact shall be based exclusively on the evidence. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling on each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion.

(2) A decision or order shall be based on the record as a whole or a portion of the record. A decision or order shall be supported by competent, material, and substantial evidence.

(3) A copy of the decision or order shall be delivered or mailed on the date it is entered and issued to each party and any authorized representatives or attorneys of record.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10134 Default judgments.

Rule 134. (1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10135 Request for reconsideration.

Rule 135. (1) If the decision or order of an administrative law judge is final, a party may file a request for reconsideration and the administrative law judge may grant the request for reconsideration upon a showing of material error.

(2) A request for reconsideration shall state with specificity the material error claimed. A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted.

(3) A request for reconsideration shall be filed within 14 days after the issuance of a decision or order, or such other time fixed by statute or rule governing specific proceedings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10136 Request for rehearing.

Rule 136. (1) Where for justifiable reasons the record of testimony made at the hearing is found to be inadequate for purposes of judicial review, the administrative law judge on his or her own initiative, or on request of a party, shall order a rehearing.

(2) A request for a rehearing shall be filed prior to submission of a proposal for decision to the final decision authority or prior to issuance of a final decision by the administrative law judge. If a request for rehearing is granted the hearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for any further department, agency, or judicial review. A decision from the original hearing may be amended or vacated after the rehearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10137 Appeals.

Rule 137. If an appeal of a final decision or order is taken to circuit court, probate court or the court of appeals, the appellant shall file a copy of the claim or application of appeal with the hearing system.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 2. TAX TRIBUNAL

SUBPART A. GENERAL PROVISIONS.

R 792.10201 Scope.

Rule 201. (1) The rules in parts 1 and 2 govern practice and procedure in all contested cases before the tribunal. To the extent there is a conflict between the rules in parts 1 and 2 the rules in part 2 shall govern.

(2) The rules in part 2 shall be known and shall be referred to as the "tax tribunal rules" and may be cited as "TTR."

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10203 Definitions.

Rule 203. As used in these rules:

(a) "Tax tribunal act" means 1973 PA 186, MCL 205.701 to 205.779.

(b) "Clerk" means the chief clerk or a deputy clerk of the tribunal.

(c) "Entire tribunal" means the hearing division of the tribunal other than the small claims division.

(d) "Non-property tax appeal" means any contested case, other than a property tax appeal, over which the tribunal has jurisdiction.

(e) "Property tax appeal" means any contested case relating to real and personal property assessments, valuations, rates, special assessments, refunds, allocation, or equalization or any other contested case brought before the tribunal under the state's property tax laws.

(f) "Referee" means a contractual small claims hearing referee whose powers are limited to those provided by the tribunal.

(g) "Small claims division" means the residential property and small claims division created by section 61 of the tax tribunal act, MCL 205.761.

(h) The terms defined in the tax tribunal act and in 1893 PA 206, MCL 211.1 to 211.155, have the same meanings when used in these rules.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10205 Payment of fees or charges.

Rule 205. Tribunal fees or charges shall be paid separately for each contested case in cash or by check, money order, or other draft payable to the order of "State of Michigan." Payments shall be mailed or delivered to the clerk of the tribunal at the tribunal's office. Tribunal fees or charges may also be paid separately for each proceeding electronically, if provided for by the tribunal.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10207 Records; removal; public access; electronic signatures.

Rule 207. (1) The original paper record for each contested case, including all pleadings and documents filed and exhibits offered in the contested case, shall not be taken from a hearing room or the tribunal's office except as authorized by the tribunal.

(2) The printed copy of any pleading, motion, document, or exhibit submitted through the tribunal's e-filing system shall be a paper representation of that electronic pleading, motion, document, or exhibit, and shall be included in the original paper record for that contested case in the order in which the electronic pleading, motion, document, or exhibit was received through the tribunal's e-filing system, as provided in section 7 of 2000 PA 305, MCL 450.837.

(3) After the time for appeal has expired, the clerk shall make a party's paper exhibits available for return to the party. If a paper exhibit is not claimed within 90 days after the paper exhibit is made available for return, then the clerk may dispose of the paper exhibit at his or her discretion.

(4) Except upon order of the tribunal for good cause shown or as otherwise provided by law, all public records of the tribunal are available for inspection. Copies may be obtained from the clerk upon payment of the charge provided in R 792.10217 and R 792.10267.

(5) Pleadings and documents submitted through the tribunal's e-filing system shall be "signed" by typing "/s/ John Smith Attorney," "/s/ John Smith Authorized Representative," or "/s/ John Smith," if a party is appearing on his or her own behalf on the signature line of the pleading or document, or by applying a graphic representation of the signature to the pleading or document.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10209 Costs.

Rule 209. (1) The tribunal may, upon motion or its own initiative, award costs in a contested case, as provided by section 52 of the tax tribunal act, MCL 205.752.

(2) If costs are awarded, a bill of costs shall be filed and served within 21 days of the entry of the order awarding costs, unless otherwise provided by the tribunal. A party may file a response objecting to the bill of costs or any item in the bill within 14 days after service of the copy of the bill, unless otherwise provided by the tribunal. Failure to file an objection to the bill of costs within the applicable time period constitutes a waiver of any right to object to the bill.

(3) The bill of costs shall state separately each item claimed and the amount claimed, and shall be verified by affidavit of the party or the party's attorney or authorized representative. The affidavit shall state that each item is correct and was necessarily incurred.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10211 Service of decisions, orders, and notices.

Rule 211. Service of decisions**,** orders**,** and notices entered in a contested case shall be made on each party at that party's last known mailing or e-mail address, unless an attorney or authorized representative is appearing on behalf of that party. If an attorney or authorized representative is appearing on behalf of that party, then service shall be made on the attorney or

authorized representative at his or her last known mailing or e-mail address, as provided in section 52 of the tax tribunal act, MCL 205.752. Service by mail or e-mail on an attorney or authorized representative shall constitute service on his or her office.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10213 Appeals.

Rule 213. An appeal from a decision of the tribunal shall be taken in accordance with section 53 of the tax tribunal act, MCL 205.753. If an appeal is taken to the court of appeals, then the appellant shall file a copy of the claim of appeal or application for leave to appeal with the clerk of the tribunal together with the appropriate filing fee, as provided in R 792.10217 and R 792.10267.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. MATTERS BEFORE ENTIRE TRIBUNAL.

R 792.10215 Scope.

Rule 215. The rules in subpart a and in this subpart govern practice and procedure in all contested cases pending in the entire tribunal and shall be known as the entire tribunal rules. If an applicable entire tribunal rule does not exist, the 1995 Michigan rules of court, as amended, and sections 71 to 87 of the administrative procedures act (apa), MCL 24.271 to 24.287, and sections 121 to 128 of the apa, MCL 24.321 to 24.328, shall govern.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10217 Fees and charges.

Rule 217. The following fees shall be paid to the clerk in all entire tribunal proceedings upon filing, unless otherwise provided by the tribunal:

(a) The fee for filing property tax appeal petitions: Filing fee

(i) Allocation, apportionment, and equalization appeals.....$250.00.

(ii) Valuation appeals.

Value in contention*	Filing fee**
$100,000 or less	$250.00.
$100,000.01 to $500,000	$400.00.
More than $500,000	$600.00.

*Value in contention is the difference between the assessed value as established by the board of review and the state equalized value contended by the petitioner or the difference between the taxable value as established by the board of review and the taxable value contended by the petitioner, whichever is greater.

**The filing fee for multiple, contiguous parcels owned by the same person is the filing fee for the parcel that has the largest value in contention, plus $25.00 for each additional parcel, not to exceed a total filing fee of $2,000.00.

(b) The fee for filing a motion to amend a property tax appeal petition to add a subsequent year assessment is equal to 50% of the fee provided in subdivision (a)(ii) of this rule for the assessment to be added.

(c) The fee for filing a property tax appeal petition contesting a special assessment or a non-property tax appeal petition is $250.00.

(d) The fee for filing a property tax appeal petition contesting the classification of property is $150.00.

(e) The fee for filing a stipulation for entry of consent judgment instead of a property tax appeal or non-property tax appeal petition is $50.00.

(f) If a petition has been filed, the fee for filing a stipulation for entry of consent judgment is $50.00.

(g) The fee for filing a motion for immediate consideration or a motion for summary disposition or partial summary disposition is $100.00.

(h) The fee for filing a motion to withdraw a petition is $0.00.

(i) The fee for the filing of a stipulation or motion by an attorney or authorized representative who has entered an appearance in a proceeding to withdraw from or be substituted for in that proceeding is $0.00.

(j) The fee for the filing of all other motions is $50.00.

(k) The fee for the filing of multiple motions in a single document is the largest fee that would have been charged if each motion had been filed separately.

(l) The fee for the certification of the record on appeal to the court of appeals is $100.00.

(m) The fee for copies of pleadings and other documents is $ .50/page.

History: 2013 AACS.

R 792.10219 Commencement of contested cases; motions to amend to add a subsequent tax year; election of small claims division and entire tribunal; other filings.

Rule 219. (1) A contested case is commenced by mailing or delivering a petition to the tribunal with the appropriate filing fee within the time periods prescribed by statute. A contested case may also be commenced with the tribunal by electronic submission of a petition within the time periods prescribed by statute, if provided for by the tribunal.

(2) A motion to amend a property tax appeal petition to include an assessment in a subsequent tax year is considered to be filed within the time periods prescribed by statute if it has been mailed, delivered, or submitted electronically to the tribunal with appropriate filing fee on or before the expiration of the applicable time period, unless otherwise provided by the tribunal.

(3) A petitioner, who files a defective petition and the tribunal is unable to determine the division of the tribunal in which the contested case is being filed, will be presumed to have elected to have the matter heard in the small claims division. If a motion to transfer is filed after the scheduling of the hearing and the motion is granted by the tribunal, the petitioner shall pay all entire tribunal filing fees and any costs incurred by the respondent as a result of the transfer, unless otherwise provided by the tribunal.

(4) Pleadings, motions, and documents are considered filed upon mailing or delivery, as provided by rule 2.107 of the Michigan court rules. Pleadings, motions, and documents may also be submitted through the tribunal's e-filing system, if provided for by the tribunal. Pleadings, motions, and documents submitted through the tribunal's e-filing system are considered filed upon successful submission of the pleading, motion, or document. Unsuccessful submissions through the tribunal's e-filing system due to a system-wide outage are considered timely if filed on the following business day.

(5) Submissions by mail are considered filed on the date indicated by the U.S. postal service postmark on the envelope containing the submissions. Submissions by commercial delivery service are considered filed on the date the submissions were given to the commercial service for delivery to the tribunal as indicated by the receipt date on the package containing the submissions. Submissions by personal service are considered filed on the date the submissions were received. Submissions through the tribunal's e-filing system by 11:59 p.m. on a business day are considered filed on that business day. Submissions on a Saturday, a Sunday, or a holiday

are considered filed on the following business day, as provided by section 35a of the tax tribunal act, MCL 205.735a.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10221 Pleadings; amended and supplemented pleadings; content of pleadings, motions, and documents; service of pleadings, motions, and documents.

Rule 221. (1) An application for review or any other document initiating a contested case is considered to be a petition. See also R 792.10227. A document raising an affirmative defense or allegations in response to a petition is considered to be an answer. The petition and answer are pleadings and no other pleadings shall be allowed, except that an answer may be made to petitions filed by parties who are later substituted for or joined in a contested case. A petition or answer may be amended or supplemented by leave of the tribunal only. With the exception of amendments to include a prior or subsequent tax year assessment in property tax appeal, leave to amend or supplement shall be freely given when justice so requires. Amendments to include a prior or subsequent tax assessment in a property tax appeal must be filed as required by law. See section 35a of the tax tribunal act, MCL 205.735a and section 53a of 1893 PA 206, MCL 211.53a.

(2) All pleadings and motions filed with the tribunal shall contain all of the following information:

(a) The caption "Michigan Tax Tribunal."

(b) The title of the appeal.

(c) The docket number of the appeal after it is assigned by the tribunal.

(d) A designation showing the nature of the pleading or motion.

(3) All documents, other than pleadings and motions, shall contain both of the following:

(a) The docket number of the appeal after it is assigned by the tribunal.

(b) A designation showing the nature of the document.

(4) The petition shall note the docket number assigned by the tribunal and be served as provided for in this rule within 45 days of the issuance of the notice of docket number, unless otherwise provided by the tribunal. Failure to serve the petition with noted docket number within 45 days of the issuance of the notice of docket number shall result in the dismissal of the contested case, unless otherwise provided by the tribunal.

(5) The petition with noted docket number, if it is a property tax appeal petition other than a property tax petition contesting a special assessment, shall be served by a petitioner, other than a unit of government, in the following manner:

(a) Mailed by certified mail or delivered by personal service to the following officials at their last known address:

(i) The certified assessor or board of assessors of the unit of government that established the assessment being appealed.

(ii) The city clerk, in the case of cities.

(iii) The township supervisor or clerk, in the case of townships.

(b) Mailed by first-class mail or delivered by personal service to the following officials at their last known address:

(i) The county equalization director for any county affected.

(ii) The county clerk for any county affected.

(iii) The secretary of the local school board.

(iv) The treasurer of the state of Michigan.

(6) The petition with noted docket number, if it is a property tax appeal petition other than a property tax appeal petition contesting a special assessment, shall be served by a petitioner that is a unit of government by certified mail or by personal service on the party or parties-in-interest with respect to the property or properties at issue. The petition shall also be served by first-class mail or by personal service on the following officials at their last known address:

(a) The county equalization director for any county affected.

(b) The county clerk for any county affected.

(c) The secretary of the local school board.

(d) The treasurer of the state of Michigan.

(7) The petition with noted docket number, if it is a property tax appeal petition contesting a special assessment, shall be served by certified mail or by personal service on the clerk of the unit of government, authority, or body levying the special assessment being appealed at the clerk's last known address.

(8) The petition with noted docket number, if it is a non-property tax appeal petition, shall be served by certified mail or by personal service on either of the following officials at their last known address:

(a) The treasurer of the state of Michigan, if the tax was levied by the department of treasury.

(b) The clerk of the local unit of government, if the tax was levied by the local unit of government.

(9) Proof of service shall be submitted within 45 days of the issuance of the notice of docket number establishing by either a written acknowledgment receipt of the petition with noted docket number that is dated and signed by the persons authorized under these rules to receive it or by certification stating the facts of service. Failure to submit the proof of service may result in the dismissal of the contested case.

(10) Answers, motions, and documents filed with the tribunal shall be served concurrently by first-class mail or personal service, as provided in R 792.10211 and in rule 2.107 of the Michigan court rules. Answers, motions, and documents filed with the tribunal may also be served electronically, if provided for by the tribunal.

(11) Proof of service shall be submitted with all answers, motions, and documents establishing by either a written acknowledgment receipt of the answer, motion, or document that is dated and signed by the person authorized under these rules to receive it or by certification stating the facts of service. Failure to submit the proof of service may result in the holding of a party or parties in default, as provided by R 792.10231.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10223 Appearance and representation; amicus curiae.

Rule 223. (1) An attorney or authorized representative may appear on behalf of a party in a contested case by signing the petition or other document initiating the participation of that party in the contested case or by filing an appearance. The tribunal may require an attorney or

authorized representative to provide a written statement of authorization signed by the party on whose behalf the attorney or authorized representative is appearing.

(2) If a petition or other document initiating the participation of a party is signed by an attorney or authorized representative, that petition or document shall state the name of the party on whose behalf the attorney or authorized representative is appearing; the attorney or authorized representative's name; the name of their firm, if any; and the firm's mailing and e-mail addresses and telephone number. If there is no firm, the attorney or authorized representative shall state the attorney or authorized representative's mailing and e-mail addresses and telephone number. The attorney or authorized representative shall promptly inform the clerk and all parties or their attorneys or authorized representatives in writing of any change in that information.

(3) An appearance filed by an attorney or authorized representative shall state the name of the party or parties on whose behalf the attorney or authorized representative is appearing; the attorney or authorized representative's name; the name of their firm, if any; and the firm's mailing and e-mail addresses and telephone number or, if there is no firm, the attorney or authorized representative's mailing and e-mail addresses and telephone number. The attorney or authorized representative shall promptly inform the clerk and all parties or their attorneys or authorized representatives in writing of any change in that information.

(4) An attorney or authorized representative may withdraw from a contested case or be substituted for by stipulation or order of the tribunal. The stipulation shall be signed by the party or parties, the attorney or authorized representative, and the new attorney or authorized representative, if any. If the stipulation is signed by a new attorney or authorized representative, the new attorney or authorized representative shall also submit an appearance, as provided by this rule. If the stipulation is not signed by a new attorney or authorized representative, the stipulation shall indicate the mailing and e-mail addresses for the service of notices, orders, and decisions and the telephone number for contacting that party.

(5) In the absence of an appearance by an attorney or authorized representative, a party is considered to appear for himself, herself, or itself. If a party is appearing for himself, herself, or itself, that party shall promptly inform the clerk and all parties or their attorneys or authorized representatives in writing of any change in that party's mailing and e-mail addresses and telephone number.

(6) Parties may be added or dropped by order of the tribunal on its own initiative or on motion of any interested person at any stage of the contested case and according to terms that are just.

(7) The tribunal may, upon motion, order a person or, upon motion or its own initiative, order a state or local governmental unit to appear as amicus curiae or in another capacity as the tribunal considers appropriate.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10225 Motions.

Rule 225. (1) All requests to the tribunal requiring an order in a contested case, including stipulated requests, shall be made by written motion filed with the clerk and accompanied by the appropriate fee, unless otherwise provided by the tribunal. Motions may be amended or

supplemented by leave of the tribunal only, and leave to amend or supplement shall be freely given when justice so requires.

(2) If the motion is not accompanied by the appropriate fee or the tribunal is unable to determine whether the appropriate fee was paid, the tribunal shall issue a notice of no action. If the appropriate fee is paid within 21 days of the issuance of the notice of no action or as otherwise provided by the tribunal, action shall be taken on the motion. If the appropriate fee is not paid within 21 days of the issuance of the notice of no action or as otherwise provided by the tribunal, the motion shall be re-filed with appropriate filing fee.

(3) Motions shall be served concurrently on all other parties of record unless an attorney or authorized representative has filed an appearance on behalf of those parties and then service shall be made on the attorney or authorized representative and proof of service shall be filed with the clerk.

(4) Written opposition to motions, other than motions for which a motion for immediate consideration has been filed or motions for reconsideration, shall be filed within 21 days after service of the motion, unless otherwise provided by the tribunal.

(5) Written opposition to motions, for which a motion for immediate consideration has been filed, shall be filed within 7 days after service of the motion for immediate consideration, if the motion for immediate consideration includes a statement verifying that the party filing the motion has notified all parties of the filing of the motion for immediate consideration and indicating whether the parties will be filing a response to the motion or motions for which the motion of immediate consideration was filed. If the motion for immediate consideration does not include that statement, written opposition to those motions shall be filed within 21 days after service of the motion for immediate consideration, unless otherwise provided by the tribunal.

(6) Pleading on motions shall be limited to the motion and a brief in support of the motion and a single response to the motion and a brief in support of the response. A brief in support of a motion or response, if any, shall be filed concurrently with the motion or response.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10227 Petitions.

Rule 227. (1) A petition shall contain a statement of facts, without repetition, upon which the petitioner relies in making its claim for relief. The statement shall be made in separately designated paragraphs. The contents of each paragraph shall be limited, as far as practicable, to a statement of a single fact. Each claim shall be stated separately when separation facilitates the clear presentation of the matters set forth. See also R 792.10221.

(2) A petition shall not cover more than 1 assessed parcel of real property, except as follows:

(a) A single petition involving real property may cover more than 1 assessed parcel of real property if the real property is contiguous and within a single assessing unit.

(b) A single petition involving personal property may cover more than 1 assessed parcel of personal property located on the same real property parcel within a single assessing unit.

(c) A single petition involving personal property may cover personal property located on different real property parcels if the property is assessed as 1 assessment and is located within a single assessing unit.

(d) A single petition may include both real and personal property, if the personal property is located on the real property parcel or parcels at issue within a single assessing unit.

(3) Each petition shall contain all of the following information:

(a) The petitioner's name, legal residence or, in the case of a corporation, its principal office or place of business, mailing address, if different than the address for the legal residence or principal place of business, e-mail address, and telephone number.

(b) The name of the opposing party or parties.

(c) A description of the matter in controversy, including the type of tax, the year or years involved, and, in a property tax appeal, all of the following information:

(i) The present use of the property, the use for which the property was designed, and the classification of property.

(ii) Whether the matter involves any of the following:

(A) True cash value.

(B) Taxable value.

(C) Uniformity.

(D) Exemption.

(E) Classification.

(F) A combination of the areas specified in subparagraphs (A) to (E) of this paragraph.

(G) Special assessment.

(H) Non-property taxes, interest, and penalties.

(iii) For multifamily residential property, whether the property is subject to governmental regulatory agreements and a subsidy and the type of subsidy involved.

(d) A statement of the amount or amounts in dispute, which shall include the following, as applicable:

(i) In taxable value contested cases, a statement indicating whether there is a dispute relative to the value of an addition or a loss.

(ii) In non-property tax appeals, a statement of the portion of the tax admitted to be correct, if any, and a copy of the assessment or other notice being appealed attached to the petition.

(e) In true cash value, taxable value, uniformity, exemption, classification, or special assessment contested cases, a statement as to whether the matter in controversy has been protested, the date of the protest and, if applicable, the date of receipt of the disputed tax bill.

(f) A clear and concise statement of the facts upon which the petitioner relies, except for facts that the opposing party has the burden of proving.

(g) The relief sought.

(h) The signature of the petitioner or petitioner's attorney or authorized representative.

(4) In equalization, allocation, and apportionment contested cases, the petition shall be sworn to and be in compliance with applicable statutes.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10229 Answers.

Rule 229. (1) The respondent shall have 28 days from the date of service of the petition to file an answer or responsive motion. Failure to file an answer or responsive motion within 28 days

may result in the holding of the respondent in default and the conducting of a default hearing, as provided in R 792.10231.

(2) The answer shall be written to fully advise the petitioner and the tribunal of the nature of the defense and shall contain a specific admission or denial of each material allegation in the petition. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the answer shall so state and the statement shall have the effect of a denial. If the respondent intends to qualify or deny only a part of an allegation, then the answer shall specify so much of the allegation as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground on which the respondent relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to paragraphs of the petition to which they relate.

(3) An answer may assert as many defenses as the respondent may have against a petitioner. A defense is not waived by being joined with 1 or more other defenses. All defenses not asserted in either the answer or by appropriate motion are waived, except for either the following defenses:

(a) Lack of jurisdiction.

(b) Failure to state a claim upon which relief may be granted.

(4) In a special assessment contested case, the answer shall specify the statutory authority under which the special assessment district was created.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10231 Defaults; "default hearing" defined; dismissals; withdrawals; transfers.

Rule 231. (1) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or the tribunal, the tribunal may, upon motion or its own initiative, hold that party in default. A party held in default shall cure the default as provided by the order holding the party in default and, if required, file a motion to set aside the default accompanied by the appropriate fee within 14 days of the entry of the order holding the party in default or as otherwise provided by the tribunal. Failure to comply with an order of default may result in the dismissal of the contested case or the conducting of a default hearing as provided in this rule.

(2) For purposes of this rule, "default hearing" means a hearing at which the defaulted party is precluded from presenting any testimony, submitting any evidence, and examining the other party's witnesses.

(3) A petition may be withdrawn upon motion filed by the petitioner before the answer or first responsive motion has been filed with the tribunal. Once the answer or first responsive motion has been filed, a petition may be withdrawn upon motion filed by petitioner only if the other party or parties do not object to the withdrawal.

(4) Failure of a party to properly prosecute the contested case, comply with these rules, or comply with an order of the tribunal is cause for dismissal of the contested case or the conducting of a default hearing for respondent. Upon motion made within 21 days of the entry of the order, an order of dismissal may be set aside by the tribunal for reasons it considers sufficient. See R 792.10225.

(5) By stipulation of the parties or by a petitioner's motion and notice to the respondent, the tribunal may transfer a matter to the small claims division by order.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10233 Applicability of discovery procedures to equalization, allocation, and apportionment contested cases.

Rule 233. For equalization, allocation, and apportionment contested cases, the prehearing and discovery procedures fixed by R 792.10237 to R 792.10247 do not apply, unless otherwise provided by the tribunal.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10237 Valuation disclosure; witness list.

Rule 237. (1) For purposes of this rule and R 792.10255, "valuation disclosure" means documentary or other tangible evidence in a property tax contested case that a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and contains the party's value conclusions and data, valuation methodology, analysis, or reasoning.

(2) A party's valuation disclosure in a property tax contested case shall be filed with the tribunal and exchanged with the opposing party as provided by the tribunal. However, a party may, if the party has reason to believe that the opposing party may not exchange a valuation disclosure as provided by the tribunal, submit a valuation disclosure to the tribunal together with a motion and appropriate filing fee requesting the tribunal's leave to withhold the valuation disclosure until the opposing party exchanges a valuation disclosure with that party.

(3) A party shall submit to the tribunal and the other party or parties a prehearing statement, as required by R 792.10247. The prehearing statement shall provide the other party or parties and the tribunal with the name and address of any person who may testify and with a general summary of the subject area of the testimony. A person who is not disclosed as a witness shall not be permitted to give testimony, unless, for good cause shown, the tribunal permits the testimony to be taken.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10239 Interrogatories to parties.

Rule 239. (1) A party to a contested case may serve upon all adverse parties written interrogatories to be answered by the party to whom the interrogatories are directed.

(2) Interrogatories shall be answered separately and fully in writing under oath. If an interrogatory is objected to, the reasons for objection shall be stated in place of an answer. The answers shall be signed by the person making them and shall contain information that is available to the party served or that could be obtained by the party from its employees, agents, representatives, or persons who may testify on the party's behalf. The party to whom the interrogatories are directed shall serve a copy of the answers on the party or the party's attorney or authorized representative submitting the interrogatories and on all other parties or their attorneys or authorized representatives within 28 days after service of the interrogatories.

(3) If any of the interrogatories have not been answered within the time specified under subrule (2) of this rule, then the tribunal, on motion and for good cause shown, may issue an order compelling a response.

(4) To the extent that answers are admissible as evidence before the tribunal, answers to interrogatories may be used against the party making them, and an adverse party may introduce an answer that has not been previously offered in evidence by a party.

(5) A person who answers interrogatories is not the witness of the party who submits the interrogatories.

(6) By tribunal order, interrogatories may be limited, as justice requires, to protect the answering party from annoyance, expense, embarrassment, oppression, or violation of a privilege.

(7) A party who has given a response that was complete when made is not under a duty to supplement the response to include information thereafter acquired, unless provided by the tribunal, except as follows:

(a) To supplement the response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as a witness at the hearing, the subject matter on which the witness is expected to testify, and the substance of the witness's testimony.

(b) To amend a prior response that the party knows was incorrect when made based on information obtained by the party, or to amend a prior response that was correct when made, but that is no longer true and failing to amend the response is, in substance, a knowing concealment.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10241 Depositions.

Rule 241. Parties may stipulate to take depositions or may, by written motion, request to take the testimony of any person, including a party, by deposition for the purpose of discovery or for use as evidence in the contested case, or for both purposes, and the tribunal, in its discretion, may order the taking of depositions.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10243 Requests for production of documents and tangible things for inspection, copying, or photographing; inspection of property.

Rule 243. (1) A party to a contested case may serve upon another party a request to produce or permit the inspection and copying or photographing, by or on behalf of the requesting party, of any designated documents, papers, books, records, accounts, letters, photographs, objects, or tangible things, which are not privileged, which come within the scope of discovery permitted by rule 2.302(B) of the Michigan court rules, and which are in the party's possession, custody, or control.

(2) A party to a contested case may serve upon another party a request to permit entry and inspection of the property under appeal by or on behalf of the requesting party.

(3) A party upon whom a request is served under subrule (1) or (2) of this rule shall serve a copy of the response to the request on the party or party's attorney or authorized representative submitting the request and on all other parties within 28 days of service of the request.

(4) If a party upon whom a request is served under subrule (1) or (2) of this rule does not comply with the request, then the tribunal may, upon motion or its own initiative, order the party to do either of the following:

(a) Produce or permit the inspection and copying or photographing, by or on behalf of the requesting party, of any designated documents, papers, books, records, accounts, letters, photographs, objects, or tangible things, which are not privileged and come within the scope of discovery permitted by rule 2.302(B) of the Michigan court rules, and which are in the party's possession, custody, or control.

(b) Permit entry and inspection of the property under appeal.

(5) The order may specify the time, place, and manner of making the production or permitting the inspection and copying or photographing of any designated documents, papers, books, records, accounts, letters, photographs, objects, or tangible things or entry and inspection of the property under appeal. The order may prescribe other terms and conditions as are just.

(6) The tribunal may order a person who has been served with a subpoena duces tecum under R 792.10253 to produce or permit the inspection and copying or photographing of designated documents or other tangible things relevant to the subject matter of the pending contested case and within the scope of discovery.

(7) If the party or person claims that the item is not in his, her, or its possession or control or that he, she, or it does not have information calculated to lead to discovery of the item's whereabouts, then he, she, or it may be ordered to submit to examination before a tribunal member or to other means of discovery regarding the claim.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10247 Prehearing conference; joint hearing and consolidation.

Rule 247. (1) Except as provided by R 792.10233 or as otherwise provided by the tribunal, a prehearing conference shall be held in all contested cases before the entire tribunal for scheduling a hearing in the contested case.

(2) Not less than 14 days before the prehearing conference or as otherwise provided by the tribunal, each party shall file and exchange a prehearing statement in a form determined by the tribunal.

(3) The purposes of the prehearing conference are as follows:

(a) To specify, in a property tax appeal, the present use of the property, the use for which the property was designed, and the classification of the property.

(b) To specify all sums in controversy and the particular issues to which they relate.

(c) To specify the factual and legal issues to be litigated.

(d) To consider the formal amendment of all petitions and answers or their amendment by prehearing order, and, if desirable or necessary, to order that the amendments be made.

(e) To consider the consolidation of petitions for hearing, the separation of issues, and the order in which issues are to be heard.

(f) To consider all other matters that may aid in the disposition of the contested case.

(4) The administrative law judge who conducts the prehearing conference shall prepare, and cause to be served upon the parties or their representatives, not less than 14 days in advance of hearing, an order summarizing the results of the conference specifically covering each of the items stated in this rule and R 792.10114. The summary of results controls the subsequent course of the contested case unless modified at or before the hearing by the tribunal to prevent manifest injustice.

(5) When a contested case is ready for prehearing as determined by the tribunal, the clerk shall schedule the contested case for a prehearing conference at a time and place to be designated by the tribunal or shall place the contested case on a prehearing general call.

(6) Notice of the date, time, and place of the prehearing conference shall be provided to the parties not less than 28 days before the date of the prehearing conference, unless otherwise provided by the tribunal.

(7) The clerk shall send notice of the prehearing general call and scheduling order to all parties whose case is placed on the prehearing general call not less than 28 days before the commencement of the prehearing general call, unless otherwise ordered by the tribunal. The notice shall set forth the time period in which the prehearing conference will be held and the dates for the filing and exchange of valuation disclosures, prehearing statements, and the closure of discovery.

(8) The tribunal may direct the parties or the parties' attorney or authorized representative to furnish it with a prehearing brief as to the legal issues involved in the proceeding and designate the manner and time for filing and serving of the briefs.

(9) Failure to appear at a duly scheduled prehearing conference may result in the dismissal of the contested case or the scheduling of a default hearing as provided in R 792.10231(4).

(10) Discovery shall not be conducted after completion of the prehearing conference, unless otherwise provided by the tribunal.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10249 Stipulations.

Rule 249. A consent judgment may be entered upon submission of a stipulation with appropriate fee, if the stipulation is signed by all parties or their attorneys or authorized representatives and the stipulation is found to be acceptable to the tribunal. The stipulation shall be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form.

History: 2013 AACS.

R 792.10251 Hearings.

Rule 251. (1) When a contested case is ready for hearing, the clerk shall schedule the matter for a hearing at a time and place to be designated by the tribunal. The clerk shall send notice of the time, date, and place of a hearing to all parties or their attorneys or authorized representatives not less than 28 days before the hearing, unless otherwise provided by the tribunal.

(2) The tribunal may, on motion or its own initiative, adjourn a hearing.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10253 Subpoenas.

Rule 253. (1) On written request of a party to a contested case, the tribunal, through the clerk, shall, as provided by section 36 of the tax tribunal act, MCL 205.736, issue subpoenas for the attendance and testimony of witnesses and, if appropriate, the production of evidence at hearing or deposition, including, but not limited to, books, records, correspondence, and documents in their possession or under their control.

(2) A party may serve a subpoena by mailing or delivery as provided by rule 2.105 of the Michigan court rules. However, a party may not serve a subpoena less than 3 business days before a scheduled hearing, unless otherwise provided by the tribunal.

(3) Proceedings to enforce a subpoena may be commenced in the circuit court for the county in which the hearing is held.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10255 Conduct of hearings.

Rule 255. (1) All hearings before the entire tribunal shall be recorded either electronically or stenographically, or both, in the discretion of the tribunal.

(2) Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure signed by that witness and containing that witness' value conclusions and the basis for those conclusions. This requirement does not preclude an expert witness from rebutting another party's valuation evidence. The expert witness may not, however, testify as to the value of the property at issue unless the expert witness submitted a valuation disclosure signed by that expert witness.

(3) If a witness is not testifying as to the value of property or as an expert witness, then his or her testimony in the form of opinions or inferences shall be limited to opinions or inferences that are rationally based on the perception of the witness and that are helpful to a clear understanding of his or her testimony or the determination of a fact in issue, as provided in rule 701 of the Michigan rules of evidence.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10257 Rehearings or reconsideration.

Rule 257. (1) The tribunal may order a rehearing or reconsideration of any decision or order upon its own initiative or the motion of any party filed within 21 days of the entry of the decision or order sought to be reheard or reconsidered.

(2) No response to the motion may be filed and there is no oral argument, unless otherwise provided by the tribunal.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10259 Witness fees.

Rule 259. A witness who is summoned to a hearing, or whose deposition is taken, shall receive the same fees and mileage as witnesses in the circuit courts of the state. A witness shall not be required to testify until the fees and mileage provided for have been tendered to him or her by the party at whose instance he or she has been subpoenaed.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. MATTERS BEFORE SMALL CLAIMS DIVISION.

R 792.10261 Scope.

Rule 261. The rules in subpart A and this subpart govern practice and procedure in all contested cases pending in the small claims division and shall be known as the small claims rules. If an applicable small claims rule does not exist, then the entire tribunal rules govern, except for rules that pertain to discovery, which, in the small claims division, is by leave of the tribunal only.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10263 Jurisdiction.

Rule 263. (1) A property tax appeal petition contesting a property's state equalized or taxable value may be heard in the small claims division if any 1 of the following properties is exclusively involved:

(a) Real property classified as residential.

(b) Real property that has a principal residence exemption, as provided in section 7cc of 1893 PA 206, MCL 211.7cc.

(c) Real property classified as agricultural.

(d) Real property with less than 4 rental units.

(e) Any other property where the value in contention is not more than the amount provided by section 62 of the tax tribunal act, MCL 205.762.

(2) A non-property tax appeal petition may be heard in the small claims division if the amount of tax in dispute is not more than the amount provided by section 62 of the tax tribunal act, MCL 205.762, exclusive of interest and penalty charges.

(3) A property tax appeal petition contesting a special assessment may be heard in the small claims division if the amount of the special assessment in dispute is not more than the amount provided by section 62 of the tax tribunal act, MCL 205.762.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10265 Records.

Rule 265. (1) A formal transcript shall not be taken for any contested case conducted in the small claims division, unless otherwise provided by the tribunal.

(2) An informal transcript of a contested case conducted in the small claims division is not a record of the proceeding, unless otherwise provided by the tribunal.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10267 Fees.

Rule 267. (1) There is no fee for the filing of a property tax appeal petition, a motion, or a stipulation for entry of consent judgment in a small claims division proceeding contesting a

property's state equalized or taxable value, if the property has, at the time of the filing of the petition, a principal residence exemption of at least 50% for all tax years at issue.

(2) There is no fee for the filing of a property tax appeal petition, a motion, or a stipulation for entry of consent judgment in a small claims division proceeding contesting the denial of a poverty exemption only.

(3) For all other small claims appeals, the following fees shall be paid to the clerk upon filing:

(a) The fee for filing a property tax appeal petition contesting a property's state equalized or taxable value for property classified as residential real is 50% of the filing fee provided in R 792.10217(a). If the petition contains multiple, contiguous parcels of property owned by the same person, there shall be an additional $25.00 fee for each additional parcel, not to exceed a total filing fee of $1,000.00.

(b) The fee for filing a property tax appeal petition contesting a property's state equalized or taxable value for property that is not classified as residential real is the fee provided in R 792.10217(a).

(c) The fee for filing a property tax appeal petition contesting the denial of a principal residence or qualified agricultural exemption is $25.00.

(d) The fee for filing a property tax appeal petition contesting a special assessment or a non-property tax appeal petition is $100.00.

(e) The fee for filing a property tax appeal petition contesting the classification of property is $75.00.

(f) The fee for filing a stipulation for entry of consent judgment instead of a property tax appeal or non-property tax appeal petition is $25.00.

(g) If a petition has been filed, the fee for filing a stipulation for entry of consent judgment is $25.00.

(h) The fee for filing a motion for immediate consideration or a motion for summary disposition or partial summary disposition is $50.00.

(i) The fee for filing a motion to withdraw a petition is $0.00.

(j) The fee for the filing of a stipulation or motion by an attorney or authorized representative who has entered an appearance in a proceeding to withdraw from or be substituted for in that proceeding is $0.00.

(k) The fee for the filing of all other motions is $25.00.

(l) The fee for the filing of multiple motions in a single document is the largest fee that would have been charged if each motion had been filed separately.

(4) The fee for the certification of the record on appeal to the court of appeals is $100.00.

(5) The fee for copies of pleadings and other documents is $ .50/page.

History: 2013 AACS.

R 792.10269 Petitioner's election of small claims division.

Rule 269. A petitioner who wishes to have a matter heard in the small claims division must elect to do so.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10271 Protest to local board of review; subsequent year assessments.

Rule 271. (1) For an assessment dispute as to the valuation or exemption of property classified as commercial personal property, industrial personal property, or utility personal property, the property's assessment shall be protested to the local board of review unless the statement of assessable personal property is filed, as required by section 19 of the general property tax act, 893 PA 206, MCL 211.19, prior to the commencement of the board of review, as provided by section 35a of the tax tribunal act, MCL 205.735a.

(2) For an assessment dispute as to the valuation or exemption of property classified as agricultural real or personal, residential, real or timber-cutover real, the property's assessment shall be protested to the local board of review, unless otherwise excused by law.

(3) The appeal for each subsequent year for which an assessment has been established is added automatically to the petition for an assessment dispute as to the valuation or exemption of property at the time of hearing. For this subrule, an assessment has been established once the board of review has conducted its statutorily required March board of review meeting.

(4) The tribunal may, on request and for good cause shown, exclude subsequent years from consideration at the time of hearing, if the subsequent years can be handled more expeditiously in a subsequent contested case.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10273 Transfers.

Rule 273. (1) A party may, by motion and notice to the opposing party or parties, request a transfer of the contested case from the small claims division to the entire tribunal.

(2) If the motion is filed with the tribunal after the notice of hearing in the contested case has been issued by the tribunal, the parties shall appear at the hearing and be prepared to conduct the hearing, unless otherwise provided by the tribunal.

(3) If the request is granted, the moving party shall pay all entire tribunal filing fees and any reasonable costs incurred by the opposing party or parties as a result of the transfer, unless otherwise provided by the tribunal.

(4) With the permission of the petitioner, the tribunal may refer a contested case properly pending in the small claims division to the entire tribunal.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10275 Appearance and representation.

Rule 275. (1) Petitioner's failure to appear or be represented at a scheduled hearing may result in a dismissal of the contested case.

(2) The tribunal may, upon request of a party filed with the tribunal before the hearing scheduled in that contested case, conduct a hearing in the absence of a party. If a hearing is conducted with a party being absent, then the tribunal shall render a decision based on the testimony provided by the opposing party or parties, if any, and all pleadings and written evidence properly submitted by all parties not less than 21 days before the date of the scheduled hearing or as otherwise provided by the tribunal under R 792.10287(1).

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10277 Commencement of proceedings.

Rule 277. (1) The petition shall be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form.

(2) The petition shall set forth the facts upon which the petitioner relies in making petitioner's claim for relief.

(3) For property tax contested cases, a copy of the notice or action taken by the local board of review shall be attached. For special assessment proceedings, a copy of the resolution confirming the special assessment roll shall be attached. For non-property tax proceedings, a copy of the final assessment notice or other order being appealed shall be attached.

(4) Any evidence attached to or submitted with a petition shall be served on the opposing party or parties or their attorney or authorized representative, as required by R 792.10287(1). Evidence not served on the opposing party or parties or their attorney or authorized representative may be excluded, as provided by R 792.10287(1).

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10279 Answers.

Rule 279. (1) An answer to a petition shall be filed with the tribunal and served on the opposing party or parties within 28 days after the tribunal serves the notice of docket number on the respondent. Failure to file and serve the answer as required by this rule may result in the holding of respondent in default, as provided by R 792.10231.

(2) The answer shall be on a form made available by the tribunal or shall be in the form of a written response that is in substantial compliance with the tribunal's form.

(3) The answer shall set forth the facts upon which the respondent relies in defense of the matter.

(4) For property tax contested cases, a copy of the notice or action taken by the local board of review for the assessments being appealed shall be attached. For special assessment contested cases, the answer shall specify the statutory authority under which the special assessment district was created and a copy of the resolution confirming the special assessment roll shall be attached. For non-property tax contested cases, a copy of the final notice of assessment or other order being appealed shall be attached.

(5) Any evidence attached to or submitted with the answer must be served on the opposing party or parties or their attorney or authorized representative, as provided by R 792.10287(1). Evidence not served on the opposing party or parties or their attorney or authorized representative may be excluded, as provided by R 792.10287(1).

(6) Service of the answer and any evidence filed with the answer shall be made on the opposing party or parties unless an attorney or authorized representative has entered an appearance in the proceeding on behalf of that opposing party or parties and then service shall be made on the attorney or authorized representative.

(7) The party who files the answer shall also file with the tribunal a statement attesting to the service of the answer on the opposing party or parties or their attorney or authorized representative. The statement shall specify who was served with the answer and the date and method by which the answer was served. Failure to make proof of service does not affect the validity of the service.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10281 Stipulations.

Rule 281. A consent judgment may be entered upon submission of a stipulation with appropriate fee, if the stipulation is signed by all parties or their attorneys or authorized representatives and the stipulation is found to be acceptable to the tribunal. The stipulation shall be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form.

History: 2013 AACS.

R 792.10283 Hearing sites; accessibility; accommodations.

Rule 283. (1) For property tax contested cases, the hearing may be conducted telephonically, by video conferencing, or in-person. If the hearing is in-person, the hearing shall be conducted in the county in which the property is located or in a county contiguous to the county in which the property is located or at a site agreed upon by the parties and approved by the tribunal. A rehearing by a tribunal member shall be at a site to be determined by the tribunal.

(2) For non-property tax contested cases, the hearing may be conducted telephonically, by video conferencing, or in-person. If the hearing is in-person, the hearing shall be conducted at a site to be determined by the tribunal.

(3) For all contested cases, a video conference or in-person hearing shall be conducted in a location that is accessible to mobility-impaired individuals. Accessible parking shall also be available.

(4) A person who has a disability and who needs to be accommodated for effective participation in a hearing shall contact the tribunal in writing or telephonically not less than 7 days before the scheduled hearing date.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10285 Notice of hearing.

Rule 285. Notice shall be sent to the parties or their attorneys or authorized representatives of the time and date of the hearing, if telephonic, and the time, date, and place of the hearing, if by video conference or in-person, not less than 45 days before the hearing, unless otherwise ordered by the tribunal.

History: 2013 AACS.

R 792.10287 Evidence.

Rule 287. (1) A copy of all evidence to be offered in support of a party's contentions shall be filed with the tribunal and served upon the opposing party or parties not less than 21 days before the date of the scheduled hearing, unless otherwise provided by the tribunal. Failure to comply with this subrule may result in the exclusion of the valuation disclosure or other written evidence at the time of the hearing because the opposing party or parties may have been denied the opportunity to adequately consider and evaluate the valuation disclosure or other written evidence before the date of the scheduled hearing.

(2) Service of the evidence shall be made on the opposing party or parties unless an attorney or authorized representative has entered an appearance in the contested case on behalf of that opposing party or parties and then service shall be made on the attorney or authorized representative.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10289 Exceptions; filing of exceptions; "good cause" defined; service of exceptions; location of rehearing.

Rule 289. (1) A party may submit exceptions to a decision by a referee or an administrative law judge, other than tribunal member, by filing the exceptions with the tribunal and serving a copy on the opposing party or parties within 20 days of the entry of the decision. The exceptions are limited to the evidence submitted prior to or otherwise admitted at the hearing and any matter addressed in the proposed opinion and judgment and shall demonstrate good cause as to why the decision should be adopted, modified, or a rehearing held. For purposes of this subrule, "good cause" means error of law, mistake of fact, fraud, or any other reason the tribunal considers sufficient and material.

(2) The opposing party or parties may file and serve a response to the exceptions within 14 days of the service of the exceptions on that party.

(3) Service of the exceptions or response shall be made on the opposing party or parties unless an attorney or authorized representative has entered an appearance in the contested case on behalf of that opposing party or parties and then service shall be made on the attorney or authorized representative.

(4) The party who files exceptions or a response shall also file with the tribunal, or include as a part of the exceptions or response, a statement attesting to the service of the exceptions or response on the opposing party or parties or their attorney or authorized representative. The statement shall specify who was served with the exceptions or response and the date and method by which the exceptions or response was served.

(5) A rehearing, if held, shall be conducted by a tribunal member in a manner to be determined by the tribunal and may be limited to the evidence considered at the hearing.

History: 2013 AACS; 2015 MR 1, Eff. Jan. 15, 2015.

PART 3: DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF NATURAL RESOURCES

R 792.10301 Scope of rules; statutory procedures; absence of procedures.

Rule 301. (1) These rules govern all contested case proceedings before the department of environmental quality and the department of natural resources and requests for declaratory rulings.

(2) These rules do not apply to proceedings under parts 615 and 617 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.61501 to 324.61527 and MCL 324.61701 to 324.61738.

(3) If a rule does not address an issue of procedure, then chapter 4 of the act, 1969 PA 306, MCL 24.271 to MCL 24.287 applies.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10302 Definitions.

Rule 302. (1) As used in this part:

(a) "Department" means the department of environmental quality or the department of natural resources.

(b) "Director" means the director of the department of environmental quality or the department of natural resources.

(c) "Final decision maker" means the director or any other person to whom the director has delegated final decision making authority in contested cases.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10303 Petition for contested case; required information; submission to the hearing system; acknowledgment of receipt.

Rule 303. (1) A written petition for a contested case shall be on the form provided by the department or other document that includes all of the following information:

(a) Facts or conduct that warrants a contested case.

(b) The identity of the persons involved and their relationship to the subject matter.

(c) Specific sections of applicable statutes and rules, if known.

(d) The specific remedies sought.

(e) A copy of the department's decision being challenged, if made in writing.

(2) The petition shall be signed by the person requesting a contested case or the person's authorized representative. A petition shall be mailed or delivered to the department. The date of receipt by the department shall be the date a petition is filed. Unless otherwise stated in a statute, a petition shall be filed within 60 days from the date of the department's decision to be considered timely. A person shall submit a petition on a form provided by the department or a document that complies with subrule (1) of this rule.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10304 Contested case docket; docket numbers; notice to parties of docketing a case; commencement of contested case proceeding; no progress docket.

Rule 304. (1) The hearing system office shall maintain a docket of all pending petitions.

(2) A case docket number shall be assigned to all petitions. The number shall correspond, if possible, to the permit, application, or document number used by the department in the matter that is the subject of the petition. Parties shall include the docket number and petitioner's name on the first page of all pleadings or correspondence filed in a case.

(3) The hearing system shall provide a copy of the petition to the respondent and inform all parties of the docket number at the time of acknowledgment. The acknowledgment is considered notice of the commencement of the contested case proceeding.

(4) A no-progress docket shall be maintained by the hearing system. Failure of a petitioner to respond in a timely manner to any directive of the hearing system may result in placing the case on the no progress docket.

(5) A party whose case is placed on the no-progress docket shall be given notice and time to show cause why the case should not be dismissed for undue delay. A party shall submit the requisite documents, or otherwise respond to unanswered requests, as part of that party's response to the notice. If a party fails to respond to the notice within 21 days of its date, the case shall be dismissed with prejudice.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10305 Depositions; discovery; failure to comply; order directing compliance; effect of refusal to obey order.

Rule 305. (1) The taking and use of depositions and other discovery shall be allowed only upon stipulation of the parties or by leave of the administrative law judge.

(2) A motion for discovery shall not be filed unless the discovery sought has been previously requested of a party and refused. The motion shall describe the nature of the discovery sought and the purpose of the discovery. A party against whom the discovery request is directed shall have 14 days to respond to the motion or within a time frame specified by the administrative law judge. If discovery is granted, it shall proceed in the same manner as in the circuit courts. A deposition or other discovery taken pursuant to this subrule may be offered as evidence at the discretion of the administrative law judge.

(3) If a party refuses to comply with an order issued under subrule (1) of this rule, then the administrative law judge, on his or her own initiative or on the motion of a party, may enter orders addressing the noncompliance, including but not limited to, any of the following:

(a) Deem that the facts sought under the original order are established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.

(b) Prohibit the noncompliant party from admitting new evidence supporting or opposing designated claims or defenses.

(c) Order that pleadings or parts of pleadings are stricken, stay further proceedings until compliance is established, dismiss the proceedings or part of the proceeding, or default the noncompliant party.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10306 Application for intervention; filing; service; answers; oral argument; rulings.

Rule 306. (1) A person who has legal standing and who seeks to intervene as a party in a contested case shall file an application to intervene with the hearing system setting forth the legal authority and facts supporting intervention. A person who files an application shall serve copies on all parties known to the person at the time of application and provide proof of service at the time of filing. The hearing system shall advise an applicant for intervention of the names and addresses of parties not served by the applicant, who shall then serve those parties and file a proof of service consistent with R 792.10307.

(2) An application under subrule (1) of this rule shall not be granted until all parties have had an opportunity to answer the application in writing, unless the applicant is the permit holder. An answer must be filed within 14 days after the date of service of the application or within the period of time established by an order of the administrative law judge.

(3) The administrative law judge shall consider whether intervention would be in conflict with R 792.10102 or prejudice the rights of the existing parties. To avoid prejudice, intervention by a person may be denied or limited.

(4) The applicable statute and rules shall govern the issue of standing in a contested case hearing and these rules shall not be construed to either expand or restrict the legal standing of any person to intervene as a party in a contested case.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 4: PUBLIC SERVICE COMMISSION.
PRACTICE AND PROCEDURE BEFORE THE COMMISSION

SUBPART A. GENERAL PROVISIONS

R 792.10401 Scope.

Rule 401. The rules in this part apply to Michigan public service commission proceedings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10402 Definitions.

Rule 402. As used in this part:

(a) "Applicant" means one who applies, requests, or petitions for permission, authorization, or approval.

(b) "Commission" means the Michigan public service commission.

(c) "Complainant" means one who files a complaint pursuant to these rules.

(d) "Complaint" means an initial pleading filed by a complainant.

(e) "Intervenor" means one permitted to intervene in a proceeding pursuant to these rules.

(f) "Party" means a person by or against whom a proceeding is commenced or a person who is permitted to intervene, a person who protests an application for motor carrier authority, or the staff of the commission in any proceeding in which the staff participates. Parties to a proceeding shall designate themselves as applicants, complainants, intervenors, respondents, protestants, or staff according to the nature of the proceeding and the relationship of the parties.

(g) "Person" means any of the following entities:

(i) A natural person.

(ii) Corporation.

(iii) Municipal corporation.

(iv) Public corporation.

(v) Body politic.

(vi) Government agency.

(vii) Association.

(viii) Partnership.

(ix) Receiver.

(x) Joint venture.

(xi) Trustee.

(xii) Common law or statutory trust guardian.

(xiii) Executor.

(xiv) Administrator.

(xv) Fiduciary of any kind.

(xvi) Staff.

(h) "Pleading" means any of the following:

(i) An application, petition, complaint, or other document requesting initiation of a proceeding before the commission.

(ii) An answer to a document described in paragraph (i) of this subdivision.

(iii) A reply to an answer described in paragraph (ii) of this subdivision.

(iv) A petition to intervene or the staff's written appearance or notice of intention to participate.

(v) An objection to a petition to intervene.

(i) "Presiding officer" means the administrative law judge assigned by the hearing system or other person assigned by the commission to preside over and hear a proceeding or part of a proceeding held before the commission. The commission or a commissioner is a presiding officer only when it or he or she presides over and hears a proceeding or part of a proceeding.

(j) "Prima facie case" means a case in which, assuming all the facts in the complaint are true, the complainant is requesting a remedy that is within the jurisdiction of the commission to grant.

(k) "Proof of publication" means an affidavit stating the facts of publication, including the date, publication, and manner of publication with a copy of the publication attached.

(l) "Proof of service" means an affidavit stating the facts of service, including the date, place, and manner of service and the parties served.

(m) "Protestant" means a motor carrier who files a written protest to an application for motor carrier authority pursuant to the provisions of the motor carrier act, 1933 PA 254, MCL 475.1 to 475.49.

(n) "Respondent" means one against whom a complaint is filed or against whom an investigation, order to show cause, or other proceeding on the commission's own motion is commenced and a utility rendering the same kind of service within a municipality or part of a municipality proposed to be served by another utility in a proceeding under the provisions of R 792.10447.

(o) "Secretary" means the person designated by the commission as its secretary or, in the absence of the secretary, the person designated by the commission as its acting secretary.

(p) "Staff" means an employee or employees of the commission other than the presiding officer and commissioners.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10403 Applicability; construction.

Rule 403. (1) These rules govern practice and procedure in all proceedings before the commission, except as otherwise provided by statute or these rules. In areas not addressed by these rules, the presiding officer may rely on appropriate provisions of the currently effective Michigan court rules.

(2) These rules shall be liberally construed to secure a just, economical, and expeditious determination of the issues presented.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10404 Information, documents, and communications.

Rule 404. (1) Pleadings and other documents shall be in writing and shall conform to all requirements of these rules. The secretary, upon reasonable request, shall provide advice about the form of pleadings and other documents to be filed in a proceeding.

(2) Pleadings and other documents filed with the commission shall be printed, typewritten, or reproduced and shall be on paper 8 1/2 inches x 11 inches in size, or folded to that size, or shall be on forms supplied by the commission, except when specific permission to the contrary is granted by the commission, its secretary, or the presiding officer.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10405 Pleadings; verification and effect; adoption by reference; signature of attorney.

Rule 405. (1) Unless otherwise provided by these rules, statute, or commission order, a pleading need not be verified or accompanied by an affidavit.

(2) Statements in a pleading may be adopted by reference when they are clearly identified and a copy is attached.

(3) Every pleading of a party represented by an attorney shall be signed by an attorney of record. A party who is not represented by an attorney shall sign the pleading.

(4) If a pleading is not signed, it shall be subject to rejection by the presiding officer or the commission unless it is signed promptly after the omission is called to the attention of the pleader.

(5) The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer of all of the following:

(a) He or she has read the pleading.

(b) To the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(c) The pleading is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10406 Filing and service of documents.

Rule 406. (1) Pleadings and other documents are filed with the commission by filing with the secretary. Unless otherwise provided by statute or order of the commission or presiding officer, the filing and service of notices, pleadings, motions, and other documents or copies required to be filed or served in a proceeding shall be made electronically in accordance with the e-dockets user manual, with the exception of filings made in residential complaint proceedings. The filing and service of notices, pleadings, motions, and other documents required to be filed in residential complaint proceedings shall be made by deposit with the United States postal service for first-class mailing or by delivery in person.

(2) Unless otherwise provided by rule or statute, the date of filing is the date the pleading or other document is received by the commission if deposited with the United States postal service. If filed electronically, the date of filing is determined in accordance with the e-dockets user manual.The date of service is the date it is deposited with the United States postal service for first-class mailing or is delivered in person, unless otherwise provided by the commission, if deposited with the United States postal service. If served electronically via e-mail, the date of service is the date the e-mail is sent.

(3) In all residential complaint cases, a party shall file an original and 7 copies of each document.

(4) Confidential filings shall be made in accordance with the e-dockets user manual. Filings may be removed from the e-docket only after submission of a written formal request for removal to the executive secretary along with a detailed explanation of the reason for requesting removal. Filers are advised to consult mpsc guideline 2014-1 for a description of documents that may be rejected for filing.

(5) If the required number of copies are not filed, a document shall be subject to rejection by the presiding officer or the commission unless the party files the additional copies promptly after the omission is called to the attention of the party.

(6) A party shall serve on all other parties a copy of each document that the party files with the commission. After notice of hearing has been given in a proceeding, a party shall serve, on the assigned presiding officer or, if a presiding officer has not been assigned, on the administrative law manager assigned by the hearing system to the commission, a copy of each document that the party files.

(7) When a party has appeared by attorney, service upon the attorney is service upon the party.

(8) Service on municipalities shall be made on supervisors of townships and on clerks of other municipalities.

(9) Within 7 days after a document is served, the person serving the document shall file proof of service or acceptance of service by the person served or that person's attorney.

(10) Not less than 7 days prior to the date set for the initial prehearing, an applicant may file a request that the commission read the record in a pending proceeding and dispense with the proposal for decision. A copy of the request shall be served upon the other parties to the proceeding and upon the director of regulatory affairs. Applicants are cautioned that such requests will be granted only under extraordinary circumstances.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.1407 Proceedings; location; time.

Rule 407. Meetings of the commission and hearings in all proceedings held pursuant to any statute or these rules shall be held in Lansing or such other place as the commission may direct on such days and at such hours as the commission, the secretary, or the presiding officer may direct.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10408 Cost of copies of decisions and transcripts.

Rule 408. A copy of the decision or order in a proceeding shall be furnished free of charge to each party to the proceeding. Copies of transcripts and additional copies of decisions shall be furnished at rates consistent with current policy and statutes.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10409 Computation of time.

Rule 409. In computing any period of time prescribed or allowed by these rules, by order of the commission or the presiding officer, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a day on which the commission's offices are not open for business, in which case the period shall run until the end of the next day on which the commission's offices are open for business.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. INTERVENTIONS

R 792.10410 Petitions.

Rule 410. (1) A person who is not a complainant, respondent, protestant, applicant, or staff, as defined in these rules, and who claims an interest in a proceeding may petition for leave to intervene. Unless otherwise provided in the notice of hearing, a petition for leave to intervene shall be filed with the commission not less than 7 days before the date set for the initial hearing or prehearing conference and the petition shall be served on all parties to the proceeding. All parties shall have an adequate opportunity to file objections to, and to be heard with respect to, the petition for leave to intervene. A petition for leave to intervene that is not filed in a timely manner may be granted upon a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceeding. Except for good cause, an intervenor whose petition is not filed in a timely manner, but who is nevertheless granted leave to intervene, shall be bound by the record and procedural schedules developed before the granting of leave to intervene.

(2) A petition for leave to intervene shall set out clearly and concisely the facts supporting the petitioner's alleged right or interest, the grounds of the proposed intervention, and the position of the petitioner in the proceeding to fully and completely advise the parties and the commission of the specific issues of fact or law to be raised or controverted. If affirmative relief is sought, the petition for leave to intervene shall specify that relief. Requests for relief may be stated in the alternative.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10411 Objections; answers.

Rule 411. Any party may file an objection to a petition for leave to intervene or an answer to a request for affirmative relief contained in a petition for leave to intervene on or before the date set for the initial hearing or prehearing conference. The objection or answer shall be served on the person filing the petition and all parties. Any party may file an objection or answer to a petition that is not filed in a timely manner on or before the date set by the presiding officer. The objection shall set out clearly the supporting facts, law, and argument.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10412 Grant or denial.

Rule 412. (1) At the initial hearing or prehearing conference or as soon as otherwise practicable and appropriate, the presiding officer shall grant or deny, in whole or in part, a petition for leave to intervene or, if appropriate, may authorize limited participation.

(2) When 2 or more parties have substantially identical interests and positions, the presiding officer may, to avoid repetitive, cumulative, or redundant evidence, require coordinated participation.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10413 Participation without intervention.

Rule 413. (1) In a proceeding to fix rates or investigate conditions of service of a utility or motor carrier subject to the jurisdiction of the commission, a person may appear without a formal petition for leave to intervene. There shall be a full disclosure of the identity of the person and the interest of the person in the proceeding. The position to be taken shall be fully and fairly stated, the contentions of the person shall be reasonably pertinent to the issues in the proceeding, and any right to unduly broaden the issues shall be disclaimed.

(2) An appearance pursuant to this rule entitles the person to make a statement at a time provided for that purpose by the presiding officer, but the person shall not be regarded as a party to the proceeding. A statement shall not be given under oath and shall not be subject to cross-examination by the parties.

(3) A person participating in a case pursuant to this rule is not entitled to notice of adjournment or any other notice, except as otherwise provided by law, and is not entitled to be served with pleadings or other documents.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10414 Motor carrier proceedings.

Rule 414. A motor carrier or other person desiring to participate in a motor carrier proceeding shall comply with the provisions of the motor carrier act, 1933 PA 254 MCL, 475.1 to 479.49. When these rules conflict with the motor carrier act or the motor carrier rules, the motor carrier act and the motor carrier rules shall prevail.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. HEARINGS

R 792.10415 General provisions.

Rule 415. (1) A contested case proceeding shall be held when required by statute and may be held when the commission so directs.

(2) After a proceeding has been assigned to a presiding officer, the presiding officer may rule on all matters of evidence, scheduling, and motions. The presiding officer shall seek to secure a timely disposition of the proceeding, recognizing any applicable legislative directives.

(3) An oral hearing before the commission shall be made a matter of record. The record of the hearing in a contested case shall be transcribed. In all other cases, the record of the hearing need not be transcribed unless a request for a transcript is made by the commission, a party, or the presiding officer. A transcript shall be indexed to show the location of the testimony of each witness and the introduction and receipt into evidence or rejection of all prepared testimony and exhibits. If offered by a party, prefiled testimony shall be bound into the record.

(4) The presiding officer may make provision for any party to request material and relevant corrections of the transcript within a reasonable time after the filing of each volume of the transcript. If the presiding officer does not provide otherwise, any party may file with the commission, within 7 days after each volume of the transcript is filed with the commission, a request for correction of the transcript. Within 7 days after the filing of any request, other parties may file responses in support of, or in opposition to, all or part of the proposed corrections. Thereafter, the presiding officer shall, either upon the record or by order served on all parties, specify the corrections to be made to the transcript. Further, the commission or the presiding officer may specify corrections to be made to the transcript by providing 7 days' notice to all parties and providing a time for responses.

(5) The commission or the presiding officer, or the administrative law manager assigned by the hearing system in any proceeding in which a presiding officer has not been assigned, may order proceedings consolidated for hearing on any or all matters at issue in the proceedings or may order the severance of proceedings or issues in a proceeding if consolidation or severance will promote the just, economical, and expeditious determination of the issues presented.

(6) Tape recorders and other mechanical or electronic devices are permitted at an oral hearing if they are unobtrusive and do not cause a witness to be intimidated or interfere with the orderly conduct of the proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10416 Simplified procedure.

Rule 416. When agreed to by all parties the presiding officer may direct that a proceeding be processed under simplified procedure if it appears that substantially all issues of material fact can be resolved by means of written submissions and that efficient disposition of the proceeding can be made without an oral hearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10417 Initial notice of hearing.

Rule 417. (1) Except as otherwise provided by statute, not less than 14 days before the date set for the initial hearing, written notice of the hearing shall be provided to all parties and such other persons as the commission or its secretary may direct. For good cause, the commission or its secretary may determine a shorter or longer period for notice. The notice shall contain all of the following information:

(a) A statement of the date, hour, place, and nature of the hearing.

(b) The jurisdiction under which the hearing is to be held, including reference to the statutes, or sections of statutes, or rules involved.

(c) A short and plain statement of the matters asserted and issues involved. The commission or its secretary may prescribe the form and manner of notice to be given.

(2) Publication in the commission's bimonthly information bulletin, issued in accordance with the provisions of article 5 and section 6 of 1933 PA 254, MCL 475.1 to 479.49, shall constitute notice to all motor carriers holding intrastate motor carrier authority from the commission of the applications, transfers, orders, and other business of the commission that appear in the bulletin.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10418 Participation by staff.

Rule 418. The staff may enter an appearance in any proceeding before the commission and present testimony as to the results of its accounting, engineering, and economic investigations, studies, inspections, enforcement activities, or other technical investigations or studies. The staff may enter an appearance in any proceeding and file briefs, cross-examine witnesses, and state its position, policy, or recommendations based upon the evidence.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10419 Appearances; attorneys.

Rule 419. (1) In any proceeding before the commission that is a contested case as defined in section 3(3) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.203(3), all parties shall be represented by licensed attorneys, except that individuals who are not licensed attorneys may represent themselves or other parties as permitted by law.

(2) An attorney who is duly licensed to practice law in another state or in the courts of the United States may be permitted to practice before the commission on the same basis as in the circuit courts of this state.

(3) The presiding officer may, in his or her discretion, permit law students or recent law school graduates who are members of legal aid clinics or participants in organized programs of the prosecutor's or city attorney's office to represent a person to the same extent as permitted in the circuit courts of this state.

(4) An attorney who wishes to withdraw from a proceeding shall file a motion to withdraw.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10420 Initial procedures.

Rule 420. An initial hearing may be either an evidentiary hearing or a prehearing conference, as directed by the commission in the notice of hearing. For good cause, the presiding officer may convert an initial hearing from an evidentiary hearing to a prehearing conference.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10421 Prehearing conferences.

Rule 421. (1) A prehearing conference may be held for any of the following purposes:

(a) Identifying and simplifying the factual and legal issues to be resolved.

(b) Amending pleadings by agreement or by prehearing order.

(c) Ruling on petitions to intervene and prehearing motions.

(d) Determining the scope of the hearing.

(e) Separating issues.

(f) Providing for joint, coordinated, or consolidated presentations by parties having substantially identical interests to avoid repetitive, cumulative, or redundant evidence.

(g) Disclosing the number, names, and order of presentation of witnesses.

(h) Producing and exchanging proposed exhibits and prepared testimony of proposed witnesses, and considering the authenticity of proposed exhibits and other documents.

(i) Providing for expeditious completion of discovery.

(j) Presenting and considering appropriate legal authorities in support of, or in opposition to, the contentions of the parties.

(k) Estimating the time required for hearing and establishing a schedule.

(l) Discussing the possibility of voluntary dismissal or settlement of the proceeding.

(m) Requiring production and distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session at which the proposed exhibits and written testimony will be offered.

(n) Considering and ruling on other matters that may aid in the expeditious disposition of the proceeding.

(2) Notice of the time and place of any prehearing conference shall be given to all parties. Any person failing to attend or otherwise participate in a prehearing conference after having been served appropriate notice of the time and place shall, with respect to procedural matters, be bound, except for good cause, by any agreements reached and any orders or rulings made. If a transcript of the conference is not prepared, the presiding officer shall ensure that a written summary of the conference is prepared and served on all parties.

(3) Additional conferences may be held, as appropriate, during the course of any proceeding.

(4) At any conference held pursuant to this rule, the presiding officer may dispose of, by ruling, any procedural matter upon which the presiding officer is authorized to rule during the course of the proceeding if the parties have had appropriate notice. All rulings made at any conference held pursuant to this rule shall be binding on all parties to the proceeding unless the rulings are, for good cause, subsequently modified or reversed by the presiding officer or the commission.

(5) After proper notice, the presiding officer may, on his or her own initiative or upon the request of a party, direct that a conference telephone or other electronic device be used for a prehearing or status conference. If a transcript of the conference is not prepared, the presiding officer shall ensure that a written summary of the conference is prepared and served on all parties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10422 Adjournments.

Rule 422. (1) Unless the presiding officer allows otherwise, a request for adjournment shall be by motion or stipulation made orally at a hearing or in writing and shall be based on good cause.

(2) A motion or stipulation for adjournment shall state the party who is requesting the adjournment and the reason for the adjournment.

(3) An adjournment may be granted for good cause and shall be in writing or on the record.

(4) In granting an adjournment, the presiding officer, administrative law manager assigned by the hearing system to the commission, or commission may impose reasonable conditions.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10423 Discovery.

Rule 423. Discovery shall, as far as practicable, be conducted in the same manner as in the circuit courts of this state pursuant to the Michigan court rules or as otherwise provided by law. When appropriate, the presiding officer shall set time limitations for the conduct of discovery. Every party shall respond promptly and fully to requests for discovery. The parties shall not use discovery to harass or cause needless delay.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10424 Subpoenas; orders to attend.

Rule 424. (1) At any time in a proceeding, a commissioner or the presiding officer may issue a subpoena or order for a party or witness to attend and testify orally on a date and time certain until excused by the presiding officer and to produce specified notes, records, documents, photographs, or other tangible things.

(2) A subpoena signed by an attorney of record or the secretary or a commissioner shall have the force and effect of a subpoena signed by the commission.

(3) Except as otherwise provided in this rule and R 792.10425, the provisions of the court rules or statutes governing subpoenas in civil actions in circuit court apply.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10425 Subpoenas; service; failure to comply with subpoenas.

Rule 425. A subpoena shall be served in the manner prescribed by statute or court rule for subpoenas in civil actions in circuit court. It may be served at any place within the state. If a person fails to comply with a subpoena, or fails to attend or refuses to be sworn or testify, the presiding officer may stay further proceedings until the subpoena is obeyed. If the person who fails to obey the subpoena is a party to the proceeding or an officer, member, or employee of a party, the presiding officer may do any of the following:

(a) Strike all or part of any pleading of that party.

(b) Refuse to allow that party to support or oppose designated claims and defenses.

(c) Delay the proceeding or part of the proceeding.

(d) Take such further action as is appropriate under the circumstances.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10426 Summary disposition.

Rule 426. A party may make a motion for summary disposition of all or part of a proceeding. If the presiding officer determines that there is no genuine issue of material fact or that there has been a failure to state a claim for which relief can be granted, the presiding officer may recommend, to the commission, summary disposition of all or part of the proceeding. If the entire proceeding is disposed of, the presiding officer shall issue a proposal for decision. If only part of a proceeding is disposed of, the presiding officer may issue a partial proposal for decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10427 Evidence generally.

Rule 427. (1) The rules of evidence as applied in nonjury civil cases in circuit court shall be followed as far as practicable, but the commission may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to offers of evidence may be made and shall be noted in the record.

(2) Evidence, including records and documents in the possession of the commission, that a party desires or intends to rely on shall be offered and made a part of the record in the proceeding and other factual information or evidence shall not be considered in the determination of the case, except as otherwise permitted by law. Documentary evidence may be received in the form of copies or excerpts. Upon timely request, a party shall be given an opportunity to compare the copy with the original. If the original is so voluminous as to make its entry in evidence impracticable, the evidence may be incorporated by reference if the materials to be incorporated are made available for examination by the parties at a time and place designated by stipulation of the parties or as directed by the presiding officer. The evidence shall not be admitted where a party has failed, upon timely request, to provide other parties with reasonable access to the original document referred to or excerpted.

(3) A party shall have the right of cross-examination and shall have the right to submit rebuttal evidence. Some surrebuttal evidence may be permitted at the discretion of the presiding officer or the commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10428 Evidence; official notice.

Rule 428. Except as otherwise provided by law, the commission and the presiding officer may take official notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within the commission's specialized knowledge. The commission or the presiding officer shall notify the parties at the earliest practicable time of any noticed fact that pertains to a materially disputed issue that is being adjudicated and, on timely request, the parties shall be given an opportunity before the final decision to dispute the fact or its materiality. The commission may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10429 Evidence; documents and exhibits.

Rule 429. (1) When the evidence consists of technical matters or figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained, but not duplicated by testimony.

(2) Documentary exhibits shall be on 1 side only, on paper not exceeding 8 1/2 inches x 11 inches, and have a sufficient margin for binding, preferably a margin of 1 1/2 inches on the left side of each sheet. A larger exhibit shall be folded to not more than 8 1/2 inches x 11 inches, if practicable. An exhibit of 2 or more sheets shall be stapled together and a notation made at the top of the first sheet as to the number of sheets contained in the exhibit. Each page of the exhibit shall be numbered. An exhibit shall show, at the top right-hand corner, the docket number of the proceeding and provide space for the name of the witness and the number and date of the exhibit. Except as otherwise directed by the commission or the presiding officer, all exhibits offered in a proceeding shall be numbered sequentially regardless of the identity of the party offering them. The number of the exhibit shall be preceded with a letter indicating the identity of the party offering it; for example, "A" for applicant,"I" for intervenor,"P" for protestant, “R” for respondent, and "S" for the staff.

(3) A party introducing an exhibit shall furnish copies to all parties and such additional copies as the presiding officer may direct.

(4) Nothing in this rule shall prohibit the use by a witness of charts, graphs, pictures, or other means of visual demonstration that are large enough to be viewed by the presiding officer and all persons in the hearing room; however, when charts, graphs, pictures, or other means of visual demonstration are used, copies conforming to the requirements of subrule (2) of this rule shall be provided to all parties and the presiding officer, together with such additional copies as the presiding officer may direct, unless the provision of copies would, in the judgment of the presiding officer, be impracticable.

(5) Documentary evidence may be submitted after the close of the record by stipulation of the parties and with the approval of the presiding officer.

(6) Written or printed documents, maps, charts, graphs, pictures, or other means of visual demonstration that are received in evidence shall not be returned to the parties, except upon approval of the commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10430 Evidence; testimony in written form.

Rule 430. (1) Direct testimony of a witness under oath shall be offered in written form, except in motor carrier cases or as otherwise provided by the commission or the presiding officer. In motor carrier cases, the presiding officer may require that direct testimony be offered in written form. Unless otherwise ordered by the presiding officer, the testimony shall be filed with the commission and a copy served on each party and the presiding officer not less than 7 days in advance of the session of the proceeding at which it is to be offered if all parties in attendance on the day on which the testimony is offered agree, any part of the 7 days may be waived. In the absence of agreement, the presiding officer may permit the offering of the testimony after providing all parties who are present not less than 24 hours to examine it, unless, for good cause, the presiding officer finds a shorter time to be reasonable.

(2) The presiding officer may authorize any witness to present oral direct testimony.

(3) In any proceeding, a witness whose testimony is submitted in written form shall be made personally available for cross-examination at the time directed by the presiding officer, unless all parties in attendance on that day waive cross-examination of the witness. If the witness whose testimony is submitted in written or exhibit form is not made available for cross-examination, the testimony shall not be received in evidence, except by stipulation of all parties in attendance on the day the testimony is submitted and with the approval of the presiding officer or as otherwise provided by law.

(4) All testimony in written form shall include page and line numbers and shall be in question and answer form.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10431 Settlements.

Rule 431. (1) All parties to proceedings before the commission are encouraged to enter into settlements when possible and the provisions of these rules shall not be construed in any way to prohibit settlements.

(2) The parties to a proceeding may agree upon some or all of the facts. The agreement shall be evidenced by a written stipulation filed with the commission or entered upon the record. The stipulation shall be regarded and used as evidence in the proceeding.

(3) When a written settlement agreement is proposed by some of the parties, it shall be served on all parties to the proceeding. Each party shall file and serve on all parties, within 14 days after being served, its agreement, objection, or nonobjection to the settlement agreement. Failure to respond in writing within 14 days, unless a different time is set by the presiding officer for good cause, shall constitute nonobjection to the settlement agreement. A party who objects to

a settlement agreement shall state those objections with particularity and shall specify how it would be adversely affected by the settlement agreement.

(4) In every proceeding, the parties to the settlement agreement shall, upon request, submit a proposed order to the presiding officer.

(5) The commission may approve a settlement agreement if all of the following conditions are met:

(a) Any party that has not agreed to the settlement has signed a statement of nonobjection or has failed to object within the 14 days provided in subrule (3) of this rule, or such other time established by the presiding officer, or the objecting party or parties under subrule (3) of this rule have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement.

(b) The commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement.

(c) The commission finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and, if the settlement is contested, is supported by substantial evidence on the record as a whole.

(6) The nature and extent of the precedential value accorded an order approving a settlement agreement shall be as specified by the parties in the settlement agreement.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10432 Motion practice.

Rule 432. (1) In a pending proceeding, a request to the commission or presiding officer for a ruling or order, other than a final order, shall be by motion. Unless made during a hearing, a motion shall be in compliance with all of the following provisions:

(a) Be in writing.

(b) State with particularity the grounds and authority on which the motion is based.

(c) State the relief or order sought.

(d) Be signed by the party or the party's attorney.

(2) Unless a different time is set by the commission or presiding officer or unless the motion is one that may be heard ex parte, a written motion, notice of the hearing on the motion, and any supporting brief or affidavits shall be served as follows:

(a) Not less than 9 days before the hearing, if served electronically or by mail.

(b) Not less than 7 days before the hearing, if served electronically or by delivery to the attorney or party under Michigan court rule 2.107(c)(1) or (2).

(3) Unless a different time is set by the commission or presiding officer, any response to a motion, including a brief or an affidavit, shall be served as follows:

(a) Not less than 5 days before the hearing, if served electronically or by mail.

(b) Not less than 3 days before the hearing, if served electronically or by delivery to the attorney or party under Michigan court rule 2.107(c)(1) or (2).

(4) Motions shall be noticed for hearing at the time designated by the commission or presiding officer.

(5) When a motion is based on facts not appearing on the record, the commission or presiding officer may hear the motion on affidavits presented by the parties or may direct that the motion be heard wholly or partly as oral testimony or deposition.

(6) The commission or presiding officer may limit oral arguments on motions and may require the parties to file briefs in support of, and in opposition to, a motion. The commission may dispense with oral argument on matters brought before the commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10433 Appeals to commission from rulings of presiding officers.

Rule 433. (1) During the course of a proceeding, a party may appeal a ruling of the presiding officer by filing an application for leave to appeal the ruling to the commission. Unless otherwise provided by the presiding officer, the application shall be filed within 14 days after an oral ruling or service of a written ruling and any response shall be filed within 14 days after service of the application.

(2) The commission will grant an application and review the presiding officer's ruling if any of the following provisions apply:

(a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding.

(b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.

(c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.

(3) An offer of proof shall be made in connection with an appeal of a ruling excluding evidence. The offer of proof shall be made on the hearing record. If the ruling excluded oral testimony, the offer of proof shall consist of a statement of the substance of the evidence that the appellant contends would be established by the testimony. If the ruling excluded written evidence or evidence that refers to documents or records, the offer of proof shall consist of a copy of the evidence, documents, or records.

(4) The application shall be supported by a clear and concise brief, pursuant to the provisions of R 792.10434, stating the basis for the appeal and showing that it complies with the provisions of this rule. The brief shall be supported by specific factual allegations as appropriate.

(5) The commission's failure to grant the application does not bar a party from asking the commission to consider the presiding officer's ruling on final disposition of the proceeding. A party's failure to file an application for leave to appeal does not constitute a waiver of the right to challenge any ruling of the presiding officer either in a brief or in exceptions to a proposal for decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10434 Oral arguments and briefs.

Rule 434. (1) Oral arguments may be made before the commission or the presiding officer at the discretion of the commission or the presiding officer, respectively. Oral arguments before

the presiding officer shall be requested before the close of the record. Oral arguments before the commission shall be requested not later than the date for filing of exceptions.

(2) Initial briefs and reply briefs may be filed at the discretion of the parties unless the commission or presiding officer requires the filing of briefs and reply briefs by all parties. Unless otherwise provided, initial briefs shall be filed within 21 days after the date of the filing of the last volume of the transcript, and reply briefs shall be filed within 14 days after the date for filing initial briefs.

(3) Briefs containing factual allegations claimed to be established by the evidence shall include a reference to the specific portions of the record where the evidence may be found. Materials incorporated by reference shall be attached. Any factual or legal issue that is not addressed in a party's initial brief shall not be addressed by that party in a reply brief, except in response to another party's brief.

(4) Proposed findings of fact, if any, shall be filed not later than the date for filing initial briefs. Each proposed finding of fact shall be numbered, stated clearly, and limited to a single proposed fact.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10435 Exceptions to proposals for decision.

Rule 435. (1) Unless otherwise provided, exceptions to a proposal for decision shall be filed within 21 days after service of the proposal for decision, and replies to exceptions, if provided for, shall be filed within 14 days after the date for filing exceptions.

(2) If a party does not file exceptions to a proposal for decision within the time permitted by this rule, any objection to the proposal for decision is waived. If a party does not object to a part of a proposal for decision, any objection by the party to that part of the proposal for decision is waived.

(3) Exceptions and replies to exceptions shall be supported by reasoned discussion of the evidence and the law. Exceptions and replies to exceptions containing factual allegations claimed to be established by the evidence shall include a reference to the specific portions of the record where the evidence may be found. Materials incorporated by reference shall be attached.

(4) Exceptions shall clearly and concisely recite the specific findings of fact and conclusions of law to which exception is taken or the omission of, or imprecision in, specific findings of fact and conclusions of law to which the party accepts.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART D. REOPENINGS AND REHEARINGS

R 792.10436 Reopening of proceedings.

Rule 436. (1) A proceeding may be reopened for the purpose of receiving further evidence when a reopening is necessary for the development of a full and complete record or there has been a change in conditions of fact or law such that the public interest requires the reopening of the proceeding.

(2) After providing due notice and an opportunity for the parties to be heard, the presiding officer, upon his or her own motion or upon motion of any party, may reopen the proceeding at any time before the date for the filing of exceptions to a proposal for decision or, if provided for, replies to exceptions. After the date for filing exceptions or replies to exceptions and until the expiration of the statutory time period for filing a petition for rehearing, the commission may reopen a proceeding upon its own motion or motion of any party.

(3) Within 21 days after service of a motion to reopen a proceeding, any party may file an answer. Any party failing to do so shall be considered to have waived objection to the granting of the motion. As soon as practicable after the time for filing answers to a motion to reopen, the presiding officer or the commission shall, in writing, grant or deny the motion. The presiding officer or the commission may provide for hearing and oral argument on a motion to reopen.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10437 Rehearings.

Rule 437. (1) A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

(2) Within 21 days after service of a petition for rehearing, any party may file an answer. Any party failing to do so shall be considered to have waived objection to the granting of the petition.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10438 Proceedings within 90 days after dismissal.

Rule 438. When an application, petition, or complaint has been dismissed by the commission because the party instituting the proceeding failed to appear and proceed at the hearing, the commission shall refuse, except for good cause, to accept for filing an application,

petition, or complaint relating to the same or substantially the same subject matter from the same party for a period of 90 days after the date of a commission order dismissing the case.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART E. COMPLAINTS

R 792.10439 Complaints; limited matters; initiating complaint.

Rule 439. A complaint shall be limited to matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility or motor carrier, including a violation of any commission rule, regulation, or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered or enforced by the commission. A complaint may be either formal or informal and may be made by a person having an interest in the subject matter of the complaint or may be made by the commission on its own motion or by the staff, subject to applicable statutory standards.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10440 Informal complaints.

Rule 440. The commission shall attempt to resolve as an informal complaint on any matter brought to its attention by any person not requesting initiation of a contested case proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10441 Formal complaints; content.

Rule 441. (1) A formal complaint shall be in writing and shall set forth all of the following:

(a) The name and address of the complainant and the complainant's attorney, if any.

(b) The name and address of the respondent.

(c) The interest of the complainant in the subject matter.

(d) A concise statement of the facts on which the complainant relies in requesting relief, with the specific allegations necessary to reasonably inform the respondent of the nature of the claims the respondent is called upon to defend, with specific reference where practicable to the section or sections of all statutes, rules, regulations, orders, and tariffs upon which the complainant relies in filing a complaint.

(e) A demand for a contested case proceeding.

(f) A clear and concise statement of the relief sought and the authority upon which the complainant relies for the relief.

(g) The signature of the person or persons filing the complaint.

(2) Two or more complainants may join in 1 complaint if their complaints are against the same respondent, involve substantially the same purposes and subjects, and are predicated upon substantially similar facts. This rule shall not be construed to authorize class actions in proceedings before the commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10442 Formal complaints; examination; rejection.

Rule 442. If the commission finds that a complaint does not state a prima facie case or does not conform to these rules, it shall notify the complainant or the complainant's attorney that the complaint is rejected, give the reasons for the rejection, and return the complaint. Nothing in this rule prohibits a complainant whose complaint has been rejected from amending and refiling the complaint. Upon the filing of a formal complaint that conforms to the provisions of R 792.10441 and states a prima facie case, the commission, acting through its staff, will commence an investigation of the matters raised in the complaint.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10443 Formal complaints; service; offers of relief; answers.

Rule 443. (1) If the complaint does state a prima facie case and conforms to the provisions of these rules, the commission shall serve upon the respondent, a notice, accompanied by a copy of the complaint, requiring that the matter complained of be satisfied or that the complaint be answered within 21 days after the date of service of the notice or within such time as the commission may, for good cause, provide.

(2) Every answer to a formal complaint shall specifically admit or deny each material allegation contained in the complaint and shall also set forth any facts relied upon by the respondent as constituting an affirmative defense. If the respondent lacks knowledge or information sufficient to form a belief as to the truth of an allegation contained in the complaint, the respondent shall indicate this lack of knowledge or information in the answer, which shall operate as a denial.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10444 Formal complaints; motions to make more definite and certain.

Rule 444. If the respondent believes that a complaint is so vague or ambiguous that the respondent cannot reasonably be required to respond to it, the respondent may file and serve, upon the complainant, a motion requesting that the allegations or other matters contained in the complaint be made more definite and certain. The motion shall specify the defect complained of and the details requested. The respondent shall answer those portions of the complaint that are not subject to the motion. If the motion is granted, the complainant shall have an opportunity to file an amended complaint within the time specified in the order granting the motion.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10445 Formal complaints; motions to dismiss and defenses.

Rule 445. A defense that the complainant is without standing to make the complaint, that the commission lacks jurisdiction over the subject matter of the complaint, or that the complaint fails to state a prima facie case or otherwise fails to conform to these rules may be raised by motion to dismiss or answer, at the option of the respondent. All other defenses to a complaint shall be raised by the answer.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10446 Formal complaint; burden of proof.

Rule 446. The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed, or may shift, as provided by law or as may be appropriate under the circumstances.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART F. SPECIFIC PROCEEDINGS

R 792.10447 Public utilities; new construction.

Rule 447. (1) An entity listed in this subrule shall file an application with the commission for the necessary authority to do the following:

(a) A gas or electric utility within the meaning of the provisions of 1929 PA 69, MCL 460.501 to 460.506, that wants to construct a plant, equipment, property, or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.

(b) A natural gas pipeline company within the meaning of the provisions of 1929 PA 9, MCL 483.101 to 483.120, that wants to construct a plant, equipment, property, or facility for furnishing public utility service for which a certificate of public convenience and necessity is required by statute.

(c) A corporation, association, or person conducting oil pipeline operations within the meaning of 1929 PA 16, MCL 483.1 to 483.9, that wants to construct facilities to transport crude oil or petroleum or any crude oil or petroleum products as a common carrier for which approval is required by statute.

(2) The application required in subrule (1) of this rule shall set forth, or by attached exhibits show, all of the following information:

(a) The name and address of the applicant.

(b) The city, village, or township affected.

(c) The nature of the utility service to be furnished.

(d) The municipality from which the appropriate franchise or consent has been obtained, if required, together with a true copy of the franchise or consent.

(e) A full description of the proposed new construction or extension, including the manner in which it will be constructed.

(f) The names of all utilities rendering the same type of service with which the proposed new construction or extension is likely to compete.

(3) A utility that is classified as a respondent pursuant to R 792.10402 may participate as a party to the application proceeding without filing a petition to intervene. It may file an answer or other response to the application.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART G. DECLARATORY RULINGS

R 792.10448 Declaratory rulings.

Rule 448. (1) Any person may request a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the commission or of a rule or order of the commission, pursuant to sections 33 and 63 of the act, MCL 24.201, MCL 24.328. A request for a declaratory ruling shall contain, or by attached exhibits show, all of the following:

(a) A complete, accurate, and concise statement of the facts or situation upon which the request is based.

(b) A concise statement of the issues presented.

(c) Specific reference to all statutes, rules, and orders to which the request relates.

(d) An analysis by the person's legal counsel of the issues presented and a proposed conclusion, or the person's analysis of the issues presented and a proposed conclusion.

(2) The commission may require that notice of the request for declaratory ruling be provided and may require a contested case proceeding instead of issuing a declaratory ruling.

(3) The decision to issue a declaratory ruling is within the discretion of the commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 5: DEPARTMENT OF TRANSPORTATION

SUBPART A. BUREAU OF HIGHWAY TECHNICAL SERVICES – HEARINGS ON TRAFFIC CONTROL ORDERS

R 792.10501 Referral of hearing to highway department staff member.

Rule 501. The hearings required to be conducted under sections 672 to 675 of 1949 PA 300, MCL 257.672 to 257.675 may be referred by the department of transportation to the hearing system, who shall hear the evidence, prepare a record, and file a report with the department of transportation.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10502 Definitions.

Rule 502. (1) As used in these rules:

(a) "Bureau" refers to the bureau of highway technical services.

(b)"City" means a home rule city duly incorporated pursuant to the laws of the state of Michigan.

(c) "Department" means the Michigan department of transportation.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10503 Appearance.

Rule 503. When an appearance is made at a hearing, it shall be made by legal counsel for and on behalf of the city or by some other person duly authorized by the legislative body of the city.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10504 Depositions.

Rule 504. Depositions may be taken upon written authority of the department of transportation or the administrative law judge if it appears to the department of transportation or the administrative law judge that it is impracticable or impossible to obtain the evidence otherwise. Where depositions are permitted, they shall be taken according to the rules for taking depositions in civil cases in this state as provided by Michigan court rule 617.6.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10505 Parties in interest.

Rule 505. The department of transportation and the city are deemed the sole parties in interest in the hearing, and they alone may present evidence, cross-examine, and exercise other legal rights afforded an interested party in a contested case.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10506 Appeal to prequalification appeal board.

Rule 506. (1) A bidder may submit a written appeal to the prequalification appeal board within 14 days after a decision.

(2) A contested case hearing shall then be scheduled and conducted in accordance with the act.

(3) An administrative law judge will conduct the hearing and may choose to consult with the board during the course of the proceedings. The administrative law judge shall prepare a proposal for decision, for approval and issuance by the board. The board retains the authority to decide any disputed issue.

(4) The decision of the prequalification appeal board constitutes the final decision of the department. An appeal may be submitted in a timely manner from an adverse decision under chapter 6 of the act, MCL 24.301 to 24.306.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. BUREAU OF HIGHWAY TECHNICAL SERVICES DRIVEWAYS, BANNERS, AND PARADES ON AND OVER HIGHWAYS HEARINGS AND APPEALS

R 792.10507 Hearing; request; time; notice; effective date of driveway permit revocation.

Rule 507. (1) After a permit application has been denied, before the department may revoke a driveway permit for failure to comply with any provision of the permit, or when the department has issued a notice of violation of these rules under chapter 8 of the act MCL 247.321 to 247.329, a person or agency has the right to a hearing before an administrative law judge in accordance with the act, MCL 24.201 to 24.328. However, a prior hearing before an administrative law judge is not required in the case of a summary suspension as provided in the act, MCL 24.201 to 24.328. A person shall file a written request for hearing with the department within 30 days after mailing or delivery, whichever occurs first, of the denial of application, notice of intent to revoke a permit, or notice of violation.

(2) The department shall hold a hearing not less than 30 days after the request is received by the department, unless good cause is shown by either party. The department shall notify the person or agency of the hearing date, time, and place not less than 10 days before the hearing.

(3) The department shall give notice of the hearing and shall conduct the hearing in accordance with the act, MCL 24.201 to 24.328.

(4) In the absence of a hearing request, a driveway permit revocation is effective 30 days after mailing or delivery of a notice of intent to revoke the permit, whichever occurs first. If, as the result of a hearing held under these rules, the decision of the administrative law judge affirms the department's revocation of a driveway permit, then the revocation shall be effective on the date specified in the order issued by the administrative law judge.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. OFFICE OF HIGHWAY SAFETY RELOCATION ASSISTANCE

R 792.10508 Definitions.

Rule 508. (1) "Commission" means the state transportation commission.

(2) "Department" means the Michigan department of transportation.

(3) "Uniform act" means the uniform relocation assistance and real property acquisition policies act of 1970, 42 U.S.C. § 4601 to § 4605.

(4) "Aggrieved relocate" means a person who may be entitled to a determination pursuant to the uniform act who is dissatisfied with the department's determination with regard to the person's eligibility for benefits or the amount of the benefits.

(5) "Person" means an individual, partnership, corporation, or association.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10509 Hearing by department.

Rule 509. An aggrieved relocatee, who wishes to contest the district agent's written decision, may file written objections with the department and may also appear before the department to present objections after written decision of the district agent. The written objections shall be filed within 30 days after written notice by the district agent. A personal appearance shall be scheduled after a written request by the aggrieved relocatee. The aggrieved relocatee may represent himself or herself at the hearing or be represented by an attorney or authorized representative. The department shall be represented by a member of the right-of-way division, and in addition, may be represented by the attorney general.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10510 Exhibits; forms; submission.

Rule 510. (1) Evidence to be presented, consisting of matters so complex as to make the presentation difficult to follow, may be presented in exhibit form and supplemented and explained but not duplicated by oral testimony.

(2) Documentary exhibits shall be typed on 1 side only of pages not exceeding 8 1/2 inches x 11 inches, or multiples thereof, with a sufficient margin for binding, preferably 1 1/2 inches to be left blank on the left side of each page. An exhibit in excess of 8 1/2 inches wide shall be folded to be not more than 8 1/2 inches x 11 inches if practicable. An exhibit of 2 or more pages shall be stapled together and notation made at the top of the first page as to the number of pages contained in the exhibit.

(3) An exhibit shall indicate the control section and parcel number on the first page and provide space for the name of the witness and number and date of the exhibit. Exhibits shall be numbered in numerical sequence regardless of the identity of the party offering them. The number of the exhibit shall be prefixed with a letter indicating the identity of the party offering it. A party introducing documentary exhibits shall furnish 3 copies to the administrative law judge.

(4) Additional documentary evidence may be submitted subsequent to the closing of the hearing upon stipulation of the parties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10511 Arguments and decisions.

Rule 511. (1) After all of the evidence is entered in the record, the aggrieved relocatee and the department may summarize their arguments and the hearing shall be closed.

(2) Within 30 days after the hearing, the administrative law judge shall send a written notice of the hearing decision by mail to the aggrieved relocatee. The written notice shall contain the reasons supporting the decision. A copy of the hearing transcript shall be available upon request.

SUBPART D. BUREAU OF HIGHWAY TECHNICAL SERVICES ADVERTISING ADJACENT TO HIGHWAYS – HEARINGS AND APPEALS

R 792.10512 Requests for hearing.

Rule 512. (1) A person aggrieved by any action or inaction of the department under the act, other than the amount of compensation to be paid pursuant to the act, is entitled to a hearing before an administrative law judge. The request shall be filed within 60 days after the grievance arises.

(2) The department shall give notice of the hearing and shall conduct the hearing in accordance with 1969 PA 306, MCL 24.201 to 24.328.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 6: DEPARTMENT INSURANCE AND FINANACIAL SERVICES

R 792.10601 Definitions

Rule 601. (1) As used in these rules:

(a) “Code” means insuance code of 1956, 1956 PA 218, MCL 500.100 to 500.150.

(b) "Director” means the director of the Michigan department of insurance and financial services.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10602 Hearing; adjournment; motion.

Rule 602. A hearing may be adjourned only upon an order of the administrative law judge. The administrative law judge may order an adjournment on his or her own initiative or upon motion of a party. The administrative law judge shall order an adjournment upon stipulation of the parties. Before a hearing, a motion for adjournment shall be made in writing and shall state with specificity the reasons an adjournment is necessary.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10603 Application for intervention; filing.

Rule 603. Any person seeking to intervene as a party may file an application to intervene. An application for the intervention shall state the grounds for intervention and the supporting facts known at the time of application in a manner that fairly advises the parties and the administrative law judge of any issues of fact or law with which the applicant is concerned. The person who files the application shall attach copies of all the proofs of service for papers served upon parties to the proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10604 Application for intervention; answers; date of filing.

Rule 604. A party to a proceeding may file an answer to an application for intervention. An application shall not be granted until all parties have had an opportunity to answer the application. An answer shall be filed within 10 days after the date of service of the application or within any reasonable and shorter period of time established by an order of the administrative law judge. If either the person seeking to intervene or a party files a motion for oral argument on the application, the administrative law judge shall grant the motion. Within 15 days after the filing of an application or within 5 days after any oral argument on the application, the administrative law judge shall rule on the application.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10605 Depositions; interrogatories; discovery.

Rule 605. The taking and use of depositions, interrogatories, and discovery shall be in the same manner and scope as in the circuit courts of the state pursuant to the Michigan general court rules or as otherwise provided by law. Where a party fails to comply with this rule, on motion by the party seeking to take and use depositions, interrogatories, or discovery, the administrative law judge may, consistent with the provisions of the Michigan general court rules and other applicable law, issue an order to effect this rule.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10606 Refusal to make discovery; order directing compliance; effect of refusal to obey order.

Rule 606. If a party refuses to comply with an order made under R 792.10605 the administrative law judge may, on his or her own initiative or on motion of a party, issue an order including, but not limited to, any of the following:

(a) An order that the facts sought by discovery shall be taken to be established for purposes of the proceeding in accordance with the claim of the party obtaining the order.

(b) An order refusing to allow the noncompliant party to support or oppose designated claims or defenses, or prohibiting the noncompliant party from introducing into evidence designated documents, things, or testimony.

(c) An order striking pleadings or parts of pleadings.

(d) An order staying further proceedings until compliance with the order is established.

(e) An order recommending dismissal of the proceeding or part of the proceeding.

(f) An order recommending a decision by default against the noncompliant party.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10607 Interlocutory appeals.

Rule 607. A party may petition the director to reverse an interlocutory order of the administrative law judge. The petition shall state with specificity the factual and legal grounds for the appeal and why there is good cause for the director to rule immediately upon the matter. Other parties shall have 7 days from the date of service of the petition to file a reply, unless the director specifies a shorter or longer response period. If the director finds there is good cause to rule immediately upon the matter, the director shall issue an order affirming or reversing the interlocutory order or shall issue an order requiring additional argument on the matter.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10608 Proposal for decision; exceptions; written arguments.

Rule 608. The administrative law judge shall specify the date by which a party may file exceptions and written arguments supporting exceptions. Written argument in support of an exception shall specify the facts and the law upon which the party relies and shall, if reference is made to the transcript, include page and volume numbers.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10609 Request for rehearing; objections.

Rule 609. A request for rehearing pursuant to section 87 of 1969 PA 306, MCL 24.287 shall state the grounds upon which the moving party relies. A party shall file any objections to a request for rehearing within 10 days of being served with the request for rehearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 7: LICENSING AND REGULATORY AFFAIRS HEALTH CODE BOARDS. DISCIPLINARY PROCEEDINGS

R 792.10701 Definitions.

Rule 701. As used in these rules:

(a) "Allegation" means a document filed by a person or governmental entity which alleges conduct that may be in violation of the code or a rule.

(b) "Applicant" means a person seeking an initial license or registration under the code.

(c) "Board" means a board created pursuant to article 15 of the code. When applied to a particular circumstance, "board" means the particular board that has jurisdiction or responsibility.

(d) "Bureau" means the bureau of health care services within the department of licensing and regulatory affairs.

(e) "Code" means part 11 of the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(f) "Complaining party" means the director of the department, or his or her designee, who files a complaint with the department.

(g) "Complaint" means a formal pleading entitled "administrative complaint" filed by a complaining party setting forth allegations of fact and law which, if proven, may result in imposition of sanctions on a licensee or registrant or adverse action against an applicant.

(h) "Department" means the department of licensing and regulatory affairs or an employee of the department who is lawfully authorized by the director to act on behalf of the department.

(i) "Petitioner" means a person seeking relicensure, registration, reinstatement, or reclassification of a license or registration under the code.

(j) "Task force" means the task force on physicians' assistants created pursuant to article 15 of the code.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10702 Petition to dissolve suspension order; hearing; record.

Rule 702. (1) A person whose license or registration has been summarily suspended shall petition for dissolution of the order before seeking judicial review. Upon receiving a petition the bureau shall immediately request an expedited hearing before an administrative law judge.

(2) Prior to the date of the scheduled hearing, the parties may file with the administrative law judge a written stipulation to dissolve the order of summary suspension, based on their stated agreement that the public health, safety or welfare does not require emergency action and continuation of the summary suspension. If such a stipulation is filed, the administrative law judge may enter an order dissolving the order of summary suspension and cancel the emergency hearing.

(3) Immediately after the hearing on the petition, the administrative law judge shall issue a written order granting or denying the requested relief.

(4) The administrative law judge shall grant the relief unless he or she finds that sufficient evidence has been produced to support a finding that the public health, safety, or welfare requires emergency action and a continuation of the suspension order.

(5) If the licensee or registrant fails to appear at the emergency hearing, the administrative law judge shall find that the public health, safety, or welfare requires emergency action and continue the order of summary suspension.

(6) The record created at the hearing shall become a part of the record at any subsequent hearing in the contested case.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10703 Compulsory mental or physical examination; objection.

Rule 703. (1) In a hearing or investigation in which mental or physical inability is alleged, a disciplinary subcommittee, administrative law judge, or the bureau with the approval of the disciplinary subcommittee may order that an applicant, licensee, petitioner, or registrant submit to a mental or physical examination in accordance with this rule and the code.

(2) If a summary suspension is ordered, an order to submit to a mental or physical examination may be issued immediately.

(3) If the applicant, licensee, petitioner, or registrant objects to being compelled to submit to examination, the objections shall be submitted in writing.

(4) Objections to an order compelling examination shall be filed within 10 days after service of the order. Upon timely receipt of an objection, a hearing on the merits of the order compelling examination shall be held before an administrative law judge.

(5) If the licensee or registrant does not show compliance with all lawful requirements for retention of the license or registration, the administrative law judge shall consider the complaint and any objections and consider the complaint and any objections and determine whether to require the licensee or registrant to submit to mental or physical examination.

(6) An applicant, licensee, petitioner, or registrant may be required to submit to a mental or physical examination if the administrative law judge determines that a reasonable basis has been shown to believe that a mental or physical examination is warranted.

(7) The applicant, licensee, petitioner, or registrant shall be given reasonable notice and opportunity to submit to a required examination. Failure to submit to the examination constitutes a ground for suspension or denial of the license or registration until the examination is taken.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10704 Adjournment.

Rule 704. (1) A compliance conference may be adjourned once by the bureau at the request of a party for good cause shown.

(2) The applicant, licensee, or registrant who is the subject of a complaint or the bureau may request and be granted not more than 1 adjournment of a hearing by the administrative law judge for good cause shown.

(3) A request by a party for an adjournment shall state the reasons for the adjournment, be in writing, and be filed not less than 5 days before the date of the scheduled hearing or compliance conference, except when the bureau or administrative law judge finds that good

cause has been shown for the failure to file within 5 days. Notice of action on a request for adjournment shall be given to the parties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10705 Evidence; objections; rulings.

Rule 705. (1) Evidence in a contested case may be received, maintained, distributed, subpoenaed, and admitted pursuant to the act, 1969 PA 306, MCL 24.271 to 24.287.

(2) Evidence may be retained in the custody of a person designated by the administrative law judge where retention is deemed necessary to preserve the evidence without undue interference with other legal proceedings.

(3) An objection to the admissibility of evidence shall be made by opposing counsel on stated grounds. The proponent of the evidence shall be afforded an opportunity to respond. A ruling on an evidentiary question shall be made on the record.

(4) The administrative law judge shall rule on motions and on the admissibility of evidence. The rulings are subject to review by the appropriate disciplinary subcommittee, board, or task force.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10706 Depositions; interrogatories; requests for admissions.

Rule 706. (1) A deposition, written interrogatories, or deposition on written interrogatories may be taken in a contested case pursuant to the Michigan court rules for use as evidence only and not for purposes of discovery. Only admissible evidence shall be taken.

(2) A written request for the admission by a designated party of the genuineness of any relevant documents described in, and exhibited with, the request, or of the truth of any relevant matters of fact set forth in the request, may be served upon all other parties in a contested case in pursuant to the Michigan court rules. Each of the matters for which an admission has been requested shall be deemed admitted, unless the designated party responds to the request in the manner set forth in the Michigan court rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10707 Burden of proof.

Rule 707. (1) The complaining party has the burden of proving, by a preponderance of the evidence, which grounds exist for the imposition of a sanction on a licensee, registrant, or applicant.

(2) A petitioner for reinstatement or reclassification of a license or registration has the burden of proving, by clear and convincing evidence, that the requirements and conditions for reinstatement or reclassification have been satisfied.

(3) An applicant for a license or registration has the burden of proving, by a preponderance of the evidence, that the pertinent requirements for the license or registration have been satisfied.

(4) The complaining party has the burden of proving, by a preponderance of the evidence, that grounds exist for the continuation of a cease and desist order.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10708 Administrative law judge; impartiality.

Rule 708. (1) A hearing shall be conducted by an administrative law judge designated by the department. The administrative law judge shall remain impartial and shall avoid even the appearance of partiality.

(2) A member of a board, task force, or disciplinary subcommittee who participates in the decision and the administrative law judge shall be deemed presiding officers for the purpose of affidavits filed alleging personal bias or disqualification.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10709 Witnesses.

Rule 709. (1) Upon motion and a showing of good cause, a prospective witness may be excluded from a hearing.

(2) Upon motion and a showing of good cause, a witness who has testified may be instructed not to communicate with a prospective witness regarding that testimony.

(3) An individual designated by the department director may attend a reinstatement or reclassification hearing and may ask questions of witnesses. A party may object to a question asked of a witness. The administrative law judge shall rule on the objection or the question shall be withdrawn as is appropriate.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10710 Rehearing.

Rule 710. (1) If a final order has not been issued, a party may file a written request for rehearing with the administrative law judge pursuant to section 87 of the act, 1969 PA 306, MCL 24.287. The request shall expressly set forth the reasons for the rehearing and the scope of the requested relief. After a reasonable opportunity for the opposing party to respond, the request shall be granted or denied and the parties shall be notified of the decision.

(2) If a rehearing is granted, it shall be noticed and conducted in the same manner as the original hearing.

(3) If a final order has been issued, a party may file a written request for rehearing with the appropriate board, task force, or disciplinary subcommittee.

(4) A consent order entered by a disciplinary subcommittee pursuant to agreement between the parties may only be modified by the disciplinary subcommittee upon agreement of the parties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10711 License; registration; duration of suspension; standards and procedures for reinstatement after revocation or suspension.

Rule 711. (1) The suspension of a license or registration shall continue until the expiration of the period of suspension set forth in the order or until the license or registration is reinstated pursuant to this rule, whichever is later. The period of suspension set forth in the order is a minimum period.

(2) A petition for reinstatement of a license or registration that has been suspended or revoked shall be made in accordance with this rule.

(3) If a license or registration has been suspended for 6 months or less, it will be presumed that the petitioner meets the requirements of section 7316, 16247(l), or 16248 of the code, MCL 333.7316, MCL 333.16247, or MCL 333.16248, unless 1 of the following applies:

(a) The order imposing the suspension provides otherwise.

(b) Another complaint has been filed and is pending at the end of the minimum suspension period.

(c) A subsequent disciplinary order has been entered.

(d) A petition with supporting affidavit has been filed by a complaining party alleging that the petitioner has failed to fulfill a term of the suspension order.

(4) The presumption described in subrule (3) of this rule is made solely for the issue of reinstatement and shall not be used in any subsequent or

collateral proceedings.

(5) If a license or registration has been suspended for more than 6 months, or if the petitioner is not entitled to a presumption pursuant to subrule (3) of this rule, the license or registration shall not be reinstated until the board or task force finds that the petitioner meets the requirements of section 7316, 16247, or 16248 of the code, as follows:

(a) The petitioner shall file a petition for reinstatement not sooner than 90 days before the end of the minimum suspension period. The petition shall be accompanied by supporting affidavits.

(b) Within 30 days after the petition has been filed, a complaining party may file a response to the petition. If the response opposes the reinstatement, a hearing shall be scheduled. If the petitioner fails to appear at the scheduled hearing, either in person or by counsel, the petitioner shall be deemed in default. If a response is not filed, or if the response does not oppose reinstatement, the board or task force shall review the petition with supporting affidavits and shall determine whether the requirements of section 7316, 16247, or 16248 of the code have been met. If it is found that the requirements have not been met, the petitioner shall be notified and, within 30 days after service of the notice, may request a hearing. The petition for reinstatement shall be deemed denied if the petitioner does not file a timely request for a hearing.

(6) A petition for reinstatement of a revoked license or registration shall be considered in accordance with the standards and procedures set forth in subrule (5) of this rule. The petition shall not be accepted sooner than 3 years after the effective date of the revocation, except that where the license or registration was revoked pursuant to section 16221(b)(vii) or (c)(iv) of the code, MCL 333.16221, for a felony conviction or was revoked for any other felony conviction involving controlled substances, the petition shall not be accepted sooner than 5 years after the effective date of the revocation. A period of summary suspension is not included in calculating the revocation period.

(7) Before reinstating a license or registration, the board or task force shall consider the following in assessing a petitioner's ability to practice and the public interest:

(a) The board or task force shall determine whether the petitioner has complied with the guidelines adopted by the department pursuant to section 16245(6) of the code, MCL 333.16245. If, in reinstating the license or registration, the board or task force deviates from the guidelines, it shall state in its order the reasons for the deviation.

(b) If the disciplinary subcommittee's final order included corrective measures, remedial education, or training as a condition of reinstatement, the board or task force shall consider the extent of the petitioner's compliance with the conditions set forth in the final order. In addition, the board or task force may impose other requirements for reinstatement as deemed appropriate, including additional training, education, or supervision.

(c) If the final order of the disciplinary subcommittee did not address corrective measures, remedial education, or training as a condition of reinstatement, the board or task force, in determining a petitioner's ability to practice safely and competently, may consider the need for additional training and education in determining if the petitioner has met the criteria established in section 16247(l) of the code, MCL 333.16247(1).

(8) After a hearing has been completed, the board or task force shall determine whether the petitioner has satisfied section 7316, 16247, or 16248 of the code MCL 333.7316, MCL 333.16247, or MCL 333.16248. The board or task force may deny the petition or grant the petition subject to terms and conditions that it deems appropriate.

(9) A subsequent petition for reinstatement may not be filed with the bureau for at least 1 year after the effective date of the order denying reinstatement.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10712 Limited license; reclassification; standards and procedures.

Rule 712. (1) The limitations on a license shall continue until the expiration of the period of limitation set forth in the order or until the license is reclassified pursuant to this rule, whichever is later. The period of limitation set forth in the order is a minimum period.

(2) A petition for reclassification of a license that has been limited shall be made in accordance with this rule.

(3) If a license is limited for 1 year or less, it is presumed that the petitioner meets the requirements of section 7316 or 16249 of the code, MCL 333.7316 or MCL 333.16249, unless 1 of the following provisions applies:

(a) The order imposing the limitations provides otherwise.

(b) Another complaint has been filed and is pending at the end of the period of limitation.

(c) A subsequent disciplinary order has been entered.

(d) A response in opposition to reclassification has been filed by a complaining party alleging that the petitioner has failed to fulfill a term of the order imposing the limitations.

(4) If a license is limited for an unspecified period of time or for more than 1 year, or if the petitioner is not entitled to a presumption pursuant to subrule (3) of this rule, then the license shall not be reclassified until the disciplinary subcommittee finds that the petitioner meets the requirements of section 7316 or 16249 of the code, MCL 333.7316 or MCL 333.16249.

(5) A petition, with supporting affidavits, shall not be filed for at least 1 year after the effective date of the order imposing the limitations, unless otherwise provided in the order.

(6) Within 30 days after the petition is filed, a complaining party may file a response to the petition. If the response opposes the reclassification, a hearing shall be scheduled. If the petitioner fails to appear at the scheduled hearing, either in person or by counsel, the petitioner shall be deemed in default. If a response is not filed or if the response does not oppose reclassification, the disciplinary subcommittee shall review the petition with supporting affidavits and shall determine whether the requirements of section 7316 or 16249 of the code have been met. If it is found that the requirements have not been met, the petitioner shall be notified and, within 30 days after service of the notice, may request a hearing. The petition for reclassification shall be deemed denied if the petitioner does not file a timely request for a hearing.

(7) After a hearing has been completed, the disciplinary subcommittee shall determine whether the petitioner has satisfied section 7316 or 16249 of the code. The disciplinary subcommittee may deny the petition or grant the petition subject to such terms and conditions as it may deem appropriate.

(8) A subsequent petition for reclassification shall not be filed with the department for at least 1 year after the effective date of the order denying reclassification, unless otherwise ordered by the disciplinary subcommittee.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10713 Relicensure.

Rule 713. Within 30 days after an application for relicensure or registration is filed, the complaining party may file a response to the application. If the response opposes relicensure or reregistration, a hearing shall be scheduled. If the petitioner fails to appear at the scheduled hearing, either in person or by counsel, the petitioner shall be deemed in default. If a response is not filed, the license or registration shall be issued.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10714 Affidavits.

Rule 714. (1) An affidavit in support of a petition for reinstatement or reclassification shall set forth the facts which would support a finding that the requirements and conditions have been satisfied and shall be executed by a person who is able to competently testify to the facts.

(2) Affidavits submitted in support of a petition for reinstatement or reclassification are not considered as evidence in an administrative hearing unless offered and accepted as evidence.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R792.10715 Reconsideration.

Rule 715. If a final order has not been issued, a party may file a written request with the administrative law judge for reconsideration on grounds of a material error pursuant to R 792.10136.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 8: DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

R 792.10801 Definitions.

Rule 801. (1) As used in these rules:

(a) “Administrator” means the bureau director or his or her designee.

(b) “Board” has the same meaning as defined in section 103 of the occupational code, 1980 PA 299, MCL 339.103.

(c)" Bureau" means the securities & commercial licensing bureau within the department of licensing and regulatory affairs.

(d) “Commission” has the same meaning as defined in section 10 of the unarmed combat regulatory act, 2004 PA 403, MCL 338.3610.

(e)"Compliance conference" means the conference provided for in accordance with section 92 of the act, MCL 24.292, and the licensing law.

(f) "Days" means calendar days.

(g) "Lapsed" license or registration means a license or registration a person did not renew on or before the expiration date.

(h) "Licensing law" means a law under which the bureau issues a license, registration, or other authorization to practice an occupation or profession or render other services.

(i) Licensing law, includes all the following:

(A)The occupational code, 1980 PA 299, MCL 339.101 to 339.2919.

(B)The unarmed combat regulatory act, 2004 PA 403, MCL 338.3610 to 338.3663.

(C)The professional employer organization regulatory act, 2010 PA 370, MCL 338.3721 to 338.3747.

(D)The security alarm systems act, 2012 PA 580, MCL 338.2181 to to 338.2187.

(E)The private security business and security alarm act, 1968 PA 330, MCL 338.1051 to 338.1092.

(F) The forensic polygraph examiners act, 1972 PA 295, MCL 338.1701 to 338.1729.

(G) The professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851.

(H) The proprietary schools act, 1943 PA 148, MCL 395.101 to 395.103.

(I) The prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

(J) The immigration clerical assistant act, 2004 PA 161, MCL 338.3451 to 338.3471.

(K) The vehicle protection product act, 2005 PA 263, MCL 257.1241 to 257.1263.

(L) The carnival-amusement safety act of 1966, 1966 PA 225, MCL 408.651 to 408.670.

(M) The ski area safety act of 1962, 1962 PA 199, MCL 408.321 to 408.344.

(ii) Licensing law does not include registrations issued under any of the following:

(A) The cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(B) The uniform securities act, 2008 PA 551, MCL 451.2101 to 451.2105.

(C) The living care disclosure act, 1976 PA 440, MCL 554.801 to 554.844.

(i) "Party" means a person, agency, or designated agent of the bureau named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case.

(j) “Person” means an individual, sole proprietorship, partnership, limited liability company, association, corporation, common law trust, or a combination of those legal entities. Person also includes a department, board, school, institution, establishment, or governmental entity.

(k) "Revoked license or registration" means that a person's authorization or privilege to engage in an occupation or profession regulated under the licensing law is terminated and shall not be restored, reinstated, or renewed, except that an application for a new license or reinstatement of a license may be considered by the bureau and relevant board or commission, if applicable, as permitted under the licensing law.

(l) "Suspended license or registration" means that a person's authorization or privilege to engage in an occupation or profession regulated under the licensing law is temporarily withdrawn and shall not be restored, reinstated, or renewed until a term, condition, or requirement imposed upon the person by the bureau or relevant board or commission, if applicable, has been met or until a specified period of time has elapsed.

(m) "Surrendered license or registration" means a license or registration that a person voluntarily agrees to give up and cease using a license or registration, regardless of whether the person returns the physical license or registration document to the department bureau, or a license or registration that was returned to the bureau before, during, or after an investigation or audit was conducted by the bureau.

(2) Except as provided in subrule (1) of this rule, a term defined in the act, MCL 24.201 to 24.328, or the licensing law shall have the same meaning when used in these rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10802 Issuance of license or registration and change in licensure or registration status not a bar to discipline.

Rule 802. (1) The relevant board or commission or the bureau may take disciplinary action based upon conduct which occurred before the issuance of a license or registration without regard to whether the bureau or a board or commission had notice of the alleged grounds for discipline at the time the license or registration was issued.

(2) The expiration, surrender, lapse, suspension, or revocation of a license or registration does not terminate the bureau's authority to proceed against a person under the licensing law or a board, commission, or the administrator's authority under articles 5 and 6 of the occupational code, 1980 PA 299, MCL 339.501 to 339.606 to impose sanctions on a person whose license or registration has expired, lapsed, or been surrendered, suspended, or revoked for the following, whichever occurs later:

(a) For a period of 7 years after the license or registration status change occurs.

(b) For a period of 3 years after all complaints against the license or registration filed with the bureau have been closed.

(c) Until the licensee or registrant is in full compliance with all final orders issued to the licensee or registrant.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10803 Determination of compliance with, or violation of, licensing law, rule, or order.

Rule 803. In determining a violation of, or compliance with, the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law, the determination shall be made on the basis of compliance or violation at the time of the alleged violation.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10804 Appearance by counsel and service.

Rule 804. The bureau may be represented by an assistant attorney general. The bureau may also be represented or by an authorized employee or agent of the bureau, if the licensing law so provides.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10805 Evidence; prior adjudication of misconduct.

Rule 805. Proof of adjudication of misconduct in a civil or disciplinary proceeding or of a judgment of guilt in a criminal proceeding may be used as evidence when relevant to establishing a violation of the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law, consistent with the occupational license for former offenders act, 1974 PA 381, MCL 338.41 to 338.47. A copy of the court or agency record that verifies the adjudication of misconduct or judgment of guilt shall be admitted as evidence where there is no objection to its accuracy or authenticity.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10806 Formal complaint allegations; burden of proof.

Rule 806. The complaining party shall have the burden of proving, by a preponderance of the evidence, the matters alleged in the formal complaint.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10807 Hearing reports under occupational code and unarmed combat regulatory act; submission; recommendations.

Rule 807. (1) Unless the parties have otherwise agreed to a disposition of the matter or as otherwise provided in the licensing law, the administrative law judge, at the close of the record on the matter, shall make findings of fact and conclusions of law as part of a hearing report. The administrative law judge shall submit the hearing report to the appropriate board or commission for the assessment of penalties if a violation of the occupational code, 1980 PA 229, MCL 339.101 to 339.2919, or the unarmed combat regulatory act, 2004 PA 403, MCL 338.3601 to 338.3663 is found.

(2) If the administrative law judge finds that the bureau has failed to meet its burden of proof or has otherwise not complied with the law or rules pertaining to the matter, he or she shall make findings of fact and conclusions of law to that effect.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10808 Proposals for decision.

Rule 808. At the close of the record in a contested case, unless the parties have otherwise agreed to a disposition of the matter, or as otherwise provided under a licensing law, an administrative law judge shall issue a proposal for decision pursuant to the general hearing system rules for proposals for decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10809 Accountancy standards violations.

Rule 809. Consistent with section 513 of the occupational code, 1980 PA 229, MCL 339.513, for a complaint involving professional standards of practice under article 7 of the occupational code concerning certified public accountants, a majority of the members of the accountancy board who have not participated in an investigation of the complaint or who have not attended a compliance conference related to the complaint shall sit to make findings of fact in relation to the complaint.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 9: DEPARTMENT OF COMMUNITY HEALTH PROVIDERS HEARING PROCEDURES
SUBPART A. EMERGENCY MEDICAL SERVICES PERSONNEL LICENSING

R 792.10901 Scope.

Rule 901. The procedures in this part apply to hearings involving advanced mobile emergency care services; limited, advanced mobile emergency care services; ambulances; and ambulance operations.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10902 Failure to participate.

Rule 902. Failure to raise a defense on or before the hearing or to appear at the hearing shall be deemed an admission of the matters asserted in the compliance order. If the respondent fails to make an appearance or to contest the notice, the compliance order shall be final without any further proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10903 Agreement before final order.

Rule 903. (1) At any time before a final order is issued, the parties may negotiate an agreement containing consent findings and an order disposing of the whole or a part of the case. This agreement shall be submitted to the administrative law judge who shall rule upon it after considering the nature of the proceeding, the representations of the parties, and the probability that the agreement will result in a just disposition of the issues involved.

(2) The agreement containing consent findings and an order disposing of a proceeding shall contain all of the following provisions:

(a) The consent finding and order shall have the same force and effect as if made after a full hearing.

(b) The record on which an order may be based shall consist solely of the pleadings and the agreement.

(c) A waiver of any further proceedings before the hearing officer and the director.

(d) A waiver of any right to challenge or contest, in any forum, the validity of the consent findings and order made in accordance with the agreement.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B.MEDICAL SERVICES ADMINISTRATION
MSA PROVIDER HEARINGS

R 792.10904 Definitions.

Rule 904. (1) "Adverse action" includes, but is not limited to, all of the following:

(a) A suspension or termination of provider participation in the medical assistance program.

(b) A denial of an applicant's request for participation in the medical assistance program.

(c) A denial, revocation, or suspension of a license or certification issued by the agency to allow a facility to operate.

(d) The reduction, suspension, or adjustment of provider payments.

(e) Retroactive adjustments following the audit or review and determination of the daily reimbursement rates for institutional providers.

(2) "Applicant" means an individual, firm, corporation, association, agency, institution, or other legal entity that has made formal application to participate in the medical assistance program as a provider.

(3) "Delegate" means a person who is authorized to act on behalf of the medical services administration.

(4) "Department" means the Michigan department of community health, its officials, or agents.

(5) "Director" means the director of the Michigan department of community health.

(6) "Final determination notice" means a notice of an adverse action that includes the action to be taken; the date of the proposed action; the reason for the action; the statute, rule, or guideline under which the action is taken; and the right to a hearing.

(7) "Hearing authority" means the person appointed by the director to decide appeals from decisions of an administrative law judge.

(8) "Medical assistance program" means the department's program to provide for medical assistance established by section 105 of 1939 PA 280, MCL 400.105, and title XIX of the federal Social Security Act, 42 U.S.C. section 1396, et seq.

(9)“Medical services administration” means the unit within the department of community health created by section 105 of 1939 PA 28, MCL 400.105, and title XIX of the federal social security act, 42 U.S.C. §1396.

(10)“Medical services administration representative” means a person, agency, or entity authorized to review the patient care rendered by a provider or applicant or that is authorized to make audits and reviews of the records, procedures, reports, accounting methods, and billing practices of the provider or applicant, as well as the propriety of these documents or actions.

(11) "Notice," when notification by the department is indicated or required, means notice that meets the requirements of section 71(2) of the act, MCL 24.271(2). Notification shall be by certified or registered mail, with return receipt requested, to the last address of the provider or other party on file with the department.

(12) "Provider" means an individual, firm, corporation, association, agency, institution, or other legal entity which is providing, or has been approved to provide, medical assistance to a recipient pursuant to the medical assistance program.

(13) "Recipient" means an individual receiving medical assistance through the department.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10905 Filing final determination notice with the hearing system.

Rule 905. Within 30 days after receipt by the department of a hearing request, the medical services administration shall file a copy of the final determination notice and supporting documents with the hearing system.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10906 Confidentiality.

Rule 906. At all times during the procedures outlined in these rules, measures shall be taken to ensure the confidentiality of all privileged medical information and to safeguard the disclosure and use of information regarding recipients of medical assistance.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. LEGISLATION AND POLICY CERTIFICATE OF NEED

R 792.10907 Hearing request; eligibility; effect.

Rule 907. (1) An applicant that receives either a proposed decision of the medical services administration that disapproves 1 or more certificates of need or a notice of reversal by the director of the department a proposed decision that is an approval may request a hearing to demonstrate that the completed application filed by the applicant meets the requirements for approval under part 222 of of the public health code 1978 PA 368, MCL 333.22201 to 333.22260.

(2) The filing of a request for hearing shall stay issuance of a final decision during the pendency of the hearing before the hearing system.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10908 Hearing procedure.

Rule 908. (1) A request for a hearing is commenced by filing a request for hearing with the director of the department.

(2) A request for hearing shall be filed within 15 days of the applicant's receipt of the bureau's proposed decision or receipt of notice of reversal by the director of a proposed decision that is an approval.

(3) A request for hearing shall be made in writing and shall include a statement of the grounds for a hearing and a clear and concise statement of the facts, law relied on, and the relief sought.

(4) A copy of the request for hearing shall be served upon the appropriate regional certificate of need review agency. In addition, if the request for hearing is filed by an applicant in a comparative review, a copy of the request for hearing shall be served by the applicant upon all other applicants in the comparative group.

(5) The hearing shall commence within 90 days from the date that the department receives the request for hearing, unless waived in writing by the parties. Not less than 10 days before the date set in the notice, the department shall serve a notice of hearing by placing a copy of the notice in the mail to each, person who filed the request for a hearing, the assistant attorney general assigned to represent the department, and all other persons on whom the request for hearing is required to be served. The first hearing day shall be used as a prehearing conference and may be used for hearing preliminary motions.

(6) If more than 1 request for hearing is filed with respect to the same bureau decision, the hearings shall be consolidated and heard and decided as a single hearing. A party shall not be severed from a hearing on a comparative review.

(7) In all hearings by aggrieved applicants, the necessary parties are the department and any aggrieved applicant that perfected its request for a hearing in a timely manner. The bureau shall not be required to file a response to a request for hearing. In comparative reviews, approved applicants are necessary parties to any hearing.

(8) In all hearings by aggrieved applicants, the necessary parties are the department and any aggrieved applicant that has filed a timely request for hearing. The department shall not be

required to file a response to a request for hearing. In comparative reviews, approved applicants are necessary parties to any hearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10909 Scope of hearing.

Rule 909. Unless the bureau determines that the applicant demonstrated a need for the proposed project pursuant to section 22225(1) of the public health code, 1978 PA 368, MCL 333.22225, the scope of the hearing shall be limited to demonstrating compliance with MCL 333.2225(1). If the applicant has demonstrated compliance withMCL 333.225(1), then the scope of the hearing may involve demonstrating compliance with MCL 333.2225(2).

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10910 Interrogatories; depositions.

Rule 910. (1) Upon stipulation of all of the parties to a case, written interrogatories or requests for admissions may be served on a party in the same manner as in a nonjury civil case in circuit court.

(2) Depositions shall only be taken for the purposes of obtaining testimony at a hearing. Before taking a deposition, the hearing officer shall find that it is impractical or impossible to have a witness testify at the hearing. When depositions are permitted, they shall be taken in the same manner as in a nonjury civil case in circuit court.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10911 Testimony.

Rule 911. Upon the request of a party and for good cause shown, the administrative law judge may allow the direct testimony of a witness being presented on behalf of the requesting party to be submitted in written form, together with any exhibits to be sponsored by the witness, before hearing all of the following apply:

(a) Such direct testimony shall be sworn and notarized, be submitted in typewritten form on 8½ inch by 11 inch paper, and be in question and answer form.

(b) The direct testimony of each witness so submitted shall be made a separate exhibit, and the name and address of the witness, together with the caption of the case, shall appear on the cover sheet.

(c) The exhibit shall be served on all parties on a date set by the administrative law judge, but not less than 5 days before its introduction at the hearing.

(d) Each witness is required to be present at the hearing to introduce his or her written testimony as an exhibit and for cross-examination at such date, time, and place as directed by the administrative law judge.

(e) In any case, and upon request, a party shall have the right, notwithstanding any provision of this rule, to have any witness on the party's behalf present the party's direct testimony orally before the administrative law judge.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.10912 Discovery.

Rule 912. (1) The same rights to discovery and depositions provided in the Michigan court rules applicable to civil cases shall apply to all hearings commenced and conducted pursuant to section 22201 to 22260 of the public health code, 1978 PA 368, MCL 333.22201 to 333.22260, and these rules.

(2) The administrative law judge shall rule on all motions relative to depositions and discovery.

(3) Discovery depositions and motions for discovery shall not be allowed by the administrative law judge if they are likely to interfere with the efficient conduct of the hearing, unless serious prejudice would result therefrom.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 10: DEPARTMENT OF HUMAN SERVICES & DEPARTMENT OF COMMUNITY HEALTH
SUBPART A. PUBLIC BENEFITS

R 792.11001 Scope.

Rule 1001. (1) The rules in this part apply to administrative hearings conducted by the hearing system for the department of human services and the department of community health, pursuant to the social welfare act, 1939 PA 280, MCL 400.1 to 400.122.

(2) In addition to specific agency policy concerning the conduct of hearings under the Code of Federal Regulations Titles 7, 42, and 45, authority for the promulgation of these rules is found in the social welfare act 1939 PA 280, MCL 400.1 to 400.122 and the act.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11002 Right to hearing.

Rule 1002. (1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

(2) A hearing shall not be granted when either state or federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

(3) A complaint as to alleged misconduct or mistreatment by a state employee shall not be considered through the administrative hearing process, but shall be referred to the agency customer service unit.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11003 Notice of hearing.

Rule 1003. (1) Notice of the time, date, and place of hearing shall be mailed to the claimant and his representative of record, and shall be sent electronically to the county department or local agency office at least 10 days before the date of hearing except when otherwise required by law. At the election of the claimant or his or her representative of record, service may be made electronically.

(2) A notice shall contain the section of the law and rule involved.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11004 Group hearings.

Rule 1004. The agency may respond to a series of individual requests for a hearing by conducting a single group hearing where the sole issue is one of state or federal law or policy or

change in federal or state law. An individual claimant shall be permitted to present his or her own case or be represented by his or her authorized representative.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11005 Denial or dismissal of request for hearing.

Rule 1005. (1) The hearing system shall deny or dismiss the request for a hearing under any of the following:

(a)A request is withdrawn by a claimant, counsel, or petitioner, or a claimant's authorized representative in writing prior to the signing of the final decision and order.

(b)The issue is one of state or federal law, requiring automatic grant adjustments for classes of recipients.

(c)A claimant abandons the hearing.

(d)The administrative law judge has no jurisdiction over the matter.

(e) An issue is not appealable as authorized by R 400.903.

(2) Abandonment occurs if a claimant, without good cause, fails to appear by himself or herself, or by his or her authorized representative at the scheduled hearing or obstructs the hearing process such that the administrative law judge is unable to make a clear and accurate record of the proceedings or otherwise conduct the hearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11006 Location of hearing; hearing conducted with communication equipment.

Rule 1006. (1) A hearing shall be conducted at a reasonable time, date, and place. Unless prohibited by federal regulation, a hearing shall be conducted with communication equipment. For the purposes of this rule, a hearing conducted with communication equipment shall mean a hearing held by telephone, video conferencing, or by other electronic media.

(2) For a hearing conducted with communication equipment, both the claimant and the department of human services shall submit all documentary evidence to be considered by an administrative law judge to the Lansing office of the hearing system no later than 7 days before the scheduled hearing date. For good cause shown, an administrative law judge may permit additional evidence to be submitted, but may decline to accept addition evidence at or following the hearing.

(3) A party may request an in-person hearing in writing at least 7 days before the scheduled hearing. If approved by a managerial-level administrative law judge, the hearing shall be converted into an in-person hearing and scheduled for a reasonable time, date, and place.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11007 Considerations.

Rule 1007. A hearing shall include consideration of all of the following:

(a) An agency action, or failure to act with reasonable promptness, on a claim for financial or medical assistance, that includes undue delay in reaching a decision on eligibility or in making

a payment, refusal to consider a request for or undue delay in making an adjustment in payment, or discontinuance, termination, or reduction of such assistance.

(b) An agency decision regarding any of the following:

(i) Eligibility for financial or medical assistance in both initial and subsequent determinations.

(ii) Amount of financial or medical assistance or change in payments.

(iii) The manner or form of payment.

(iv) The denial, limitation, or revocation of a license.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11008 Rights of parties.

Rule 1008. A claimant or his or her authorized representative has the right to all the following:

(a) To examine the contents of his or her file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

(b) To present a case with the aid of an authorized representative. A local agency office or county agency office or a state agency division involved in a hearing has the right to be represented by legal counsel and other representatives, including the county director or division head, and staff or former staff members directly involved in the issue presented. The regional office staff shall be available to assist the claimant or authorized representative.

(c) To be represented by legal counsel, or other person of choice, at the claimant's expense.

(d) To receive the assistance of interpreters.

(e) To barrier-free access to the hearing site.

(f) To bring witnesses.

(g) To establish all pertinent facts and circumstances.

(h) To advance any relevant arguments without undue interference.

(i) To question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11009 Conducting the hearing.

Rule 1009. The administrative law judge must ensure that the record is complete, and may do any of the following:

(a) Take an active role in questioning witnesses and parties so that all necessary information is presented on the record.

(c) Be more lenient than a circuit judge in deciding what evidence may be presented.

(d) Refuse to accept evidence that the administrative law judge believes is:

(i) Unduly repetitious.

(ii) Immaterial.

(iii) Irrelevant.

(iv) Incompetent.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11010 Subpoena.

Rule 1010. (1) Upon a showing of good cause, the administrative law judge shall provide a standard subpoena form at the request of a party and shall issue the subpoena authorized by law unless the requester is a licensed attorney, in which case the attorney will be responsible for issuing his or her own subpoena. A request for a subpoena shall include the following:

(a) The name and address of the person whose testimony is required.

(b) If a document is sought (and so long as the identifiable records are not exempt from disclosure by law), what document is to be subpoenaed.

(c) Why the person's presence and document or only the document is needed at the hearing.

(d) How the document or the person's testimony relates to the hearing issue.

(2) The party requesting the subpoena is responsible for serving the subpoena and must pay the attending witness the appropriate fee per day or per half day pursuant to the administrative handbook manual legal plus the state travel rate per mile from and to the person's residence in Michigan.

(3) Agency employees shall participate in hearings without a subpoena when their testimony is required. Requests for subpoenas for agency employees will be denied; however, if participation of an identified agency employee cannot be arranged. The hearing system will decide whether to require the employee's participation after receiving the following information:

(a) The name and location of the employee.

(b) The reasons the employee's participation is needed.

(c) How the employee's testimony relates to the hearing issue.

(4) If a subpoena is not obeyed, appearance of the subpoenaed individual or production of the subpoenaed records, documents, or books may be enforced as provided by law.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11011 Withdrawals; adjournments; continuances.

Rule 1011. (1) A request for an adjournment, continuance, or withdrawal may be granted by an administrative law judge for good cause all of the following apply:

(a) Good cause includes the absence of material witnesses or relevant and necessary evidence.

(b) Withdrawals may not be granted on the basis of unwritten proposed departmental action.

(c) Requests for withdrawal shall be in writing and signed by the claimant or authorized representative.

(d) Upon review of the withdrawal, the administrative law judge shall generate an appropriate order denying or granting the request and the basis for the decision to deny, if so denied, along with notice that the hearing will be rescheduled.

(2) A request for an adjournment, continuance, or withdrawal must be submitted to the hearing system in writing and received by the hearing system prior to the date and time of the scheduled hearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11012 Administrative law judges' opinions; exceptions and recommended decisions.

Rule 1012. (1) An administrative law judge's hearing decision and order shall be prepared subsequent to a hearing and shall contain findings of fact, conclusions of law, and, if the administrative law judge has not been delegated final decision-making authority, a recommendation as to the proper decision based exclusively on the testimony and evidence admitted at the hearing.

(2) If a final decision is to be made by the agency director, any party may, within 10 days of the administrative law judge's proposed decision, file exceptions for the consideration of the director. The exceptions shall be mailed to all parties and to the administrative law judge within the allotted time and shall be made a part of the record.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11013 Hearing decisions.

Rule 1013. (1) The agency shall have discretion to delegate final decision-making authority to the administrative law judge who hears the case or to supervisory administrative law judges in certain cases. Such delegation shall be in writing, shall be dated, and shall clearly specify the scope of the final decision-making authority to be conferred.

(2) A decision of an administrative law judge shall include the following:

(a) Findings of fact based only on evidence admitted at the hearing.

(b) Conclusions of law.

(c) Whether agency policy was appropriately applied.

(d) Whether a finding of disability is appropriate based upon applicable statutes, case law and policy.

(3) The administrative law judge shall make a recommended decision if he or she determines any of the following:

(a) The applicable law does not support agency policy.

(b) Agency policy is silent on the issue being considered.

(c) The issue is of the type enumerated in agency policy calling for a recommended decision with the department director maintaining final decision authority.

(4) The hearing record shall consist of the transcript or recording of testimony and exhibits, or an official report that contains the substance of what transpired at the hearing, together with all exhibits and requests filed in the proceeding and the recommendation of the administrative law judge.

(5) All parties and their representatives shall receive a copy of the administrative law judge's hearing decision or, where appropriate, recommendations along with the director's decision and order.

(6) Prompt, definitive, and final administrative action shall be taken within 90 days of the filing of a request for hearing with the agency, unless otherwise provided by governing state or federal law or rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11014 Retroactivity.

Rule 1014. When a hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to a hearing, the agency shall make retroactive payments promptly pursuant to applicable law and policy.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11015 Rehearing or reconsideration.

Rule 1015. (1) A party who has received an adverse hearing decision shall file a request for rehearing or reconsideration with the hearing system in writing within 30 days after the decision has been mailed.

(2) A rehearing is a full de novo hearing which may be granted when either of the following occurs:

(a) There is newly discovered evidence that existed at the time of the original hearing and that could affect the outcome of the original hearing decision.

(b) The original hearing record is inadequate for purposes of judicial review.

(3) If a rehearing is granted, the order granting rehearing shall vacate the hearing decision and order, and order that a de novo hearing be scheduled by the hearing system. (4) A reconsideration is a paper review of the facts, law, and any new evidence or legal arguments and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, however, or more of the following exists:

(a) Misapplication of manual policy or law in the hearing decision, which led to the wrong conclusion.

(b) Typographical, mathematical, or other obvious error in the hearing decision that affects the substantial rights of the claimant or petitioner.

(c) The failure of the administrative law judge to address in the hearing decision relevant issues raised in the request for hearing.

(5) A request for rehearing or reconsideration must be submitted directly to the hearing system pursuant to the instructions provided at the conclusion of all hearing decision.

(6) The party requesting the rehearing or reconsideration must specify all reasons for the request.

(7) If reconsideration is granted, the decision may be modified without further proceedings. If a rehearing is granted, the hearing shall be noticed and conducted in the same manner as an original hearing.

(8) A party is provided the opportunity for request for rehearing or reconsideration of the hearing decision of the administrative law judge. Recourse for subsequent review shall be to the appropriate court as identified at the end of the hearing decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11016 Public access.

Rule 1016. Copies of all decisions of the director shall be accessible to the public at the state office of the agency in a form that shall not reveal the identity of any non-agency party or protected informant or of any of the parties or witnesses.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11017 Judicial review.

Rule 1017. Decisions are appealable to the circuit court in the following manner:

(a) Public assistance decisions are appealable to the circuit court within 30 days of receipt of the decision as to matters of law pursuant to the social welfare act, 1939 PA 280, 400.1 to 400.122.

(b) Other decisions are appealable as provided by applicable governing statute.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11018 Child care and transportation.

Rule 1018. Reimbursement of child care and transportation costs may be available from the hearing system as necessary to ensure that full participation in the hearing process is possible.

(a) Clients may request reimbursement of transportation and reasonable and necessary child care costs, not to exceed the rates established under the child care program, and transportation for the petitioner to and from the hearing at the standard travel rates shall be reimbursed wherever the total combined cost exceeds $3.00.

(b) The presiding administrative law judge shall certify the need for the costs.

(c) Clients must make the request on the hearing record and provide the administrative law judge the following information:

(i) Their name and address.

(ii) For transportation expense reimbursement, the number of miles traveled round trip for the hearing.

(iii) For child care expense reimbursement, the provider type and a signed and dated receipt from the provider showing the full names and ages of all children for whom care was provided.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. DEBT ESTABLISHMENT

R 792.11019 Scope.

Rule 1019. Administrative hearings related to the establishment of an over issuance and recoupment of benefits shall be conducted pursuant to the act, MCL 24.201 to 24.328, 7 CFR 273.16(e), R 400.3130(5), and R 400.3187(5), in addition to specific agency policy set forth concerning the conducting of hearings under the delegation of authority. Additional jurisdictional authority is found in the social welfare act 1939 PA 280, MCL 400.1 to R 400.21, and R 400.903 to R 400.951.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11020 Debt establishment.

Rule 1020. (1) When the agency has determined that an over issuance of benefits has occurred, the agency may elect to establish the existence and amount of the debt through an administrative hearing.

(2) The agency may request hearings for debt establishment and collection purposes.

(3) The hearing decision determines the existence and collectability of a debt to the agency.

(4) The establishment of a debt to the agency by an administrative law judge shall be enforceable in any manner provided by the administrative rule or law in addition to collection action in a court of appropriate jurisdiction.

(5) Notice of the administrative hearing shall be made upon the affected individual by regular mail, personal service, or by publication only if the individual's address is unknown.

(6) Evidence of any over issuance shall include 1 or both of the following:

(a)Written acknowledgment by the individual of an over issuance.

(b)Documentation showing when the over issuance occurred and the amount of over issuance.

(7) For allegations of intentional program violation, the standard of proof is clear and convincing evidence.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. ADOPTION SUBSIDY

792.11021 Scope.

Rule 1021. Administrative hearings related to adoption subsidy issues shall be conducted pursuant to the section of the social welfare act, 1939 PA 289, MCL 400.115f and specific written policies for the conduct of adoption subsidy hearings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11022 Expedited hearings.

Rule 1022. An expedited hearing may be requested when unusual circumstances exist. Circumstances that may qualify for an expedited hearing include, but are not limited to, medical subsidy denials for out-of-home placement funding or denial of eligibility or services for a child with a serious medical condition.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11023 Hearings for post-finalization applications.

Rule 1023. (1) For hearings concerning adoption support subsidy or nonrecurring adoption expenses eligibility requests after the finalization of the adoption, there are certain limited circumstances in which an administrative law judge may grant approval of support subsidy or nonrecurring adoption expenses through the administrative hearing process. An approval may be granted only in cases in which there has been a determination of both of the following:

(a) A specific error was made.

(b) The child's pre-adoptive circumstances met the adoption support subsidy or nonrecurring adoption expenses eligibility requirements at the time of the adoption finalization.

(2) If the child's circumstances did not meet adoption support subsidy or non-recurring adoption expenses eligibility requirements prior to the date of the finalization of the adoption, the presence of an error is not relevant.

(3) If it is determined that a specific error occured in a case, the administrative law judge will review the child's circumstances to determine whether the child would have been eligible for an adoption support subsidy or nonrecurring adoption expenses at the time of, or prior to, the adoption finalization. The eligibility policy in the adoption subsidy manual in effect at the time of the child's adoption finalization shall be used to determine eligibility.

(4) If a child's circumstances did not meet eligibility criteria for adoption support subsidy or nonrecurring adoption expenses prior to the date of the court order finalizing the adoption but there is evidence of an error as provided in this rule, eligibility cannot be granted.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11024 Hearing decisions.

Rule 1024. (1) For adoption support subsidy requests received after adoption finalization, the administrative law judge shall issue a proposal for decision to the agency director and, for all other adoption subsidy matters, shall issue a decision and order.

(2) Copies of the recommended decision and order are sent to the adoption subsidy office and the claimant. In most cases, the claimant has the right to appeal the final decision to probate court within 60 calendar days after the final decision is received. The agency director has 60 calendar days to issue a final decision and order or return the recommended decision to the hearing system for rehearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART D. ADULT FOSTER CARE FACILITY LICENSING AND CHILD CARE ORGANIZATION

R 792.11025 Scope.

Rule 1025. Administrative hearings related to adult foster care facility licensing and child care organization issues shall be conducted by authority conferred on the director of the agency by section 2 of 1973 PA 116, MCL 722.112, 1979 PA 218, MCL 400.710 to 400.737, and Executive Reorganization Order No. 1996-1, MCL 330.3101.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11026 Right to hearing.

Rule 1026. (1) An applicant for, or holder of, a license issued by the agency is entitled to a hearing based upon the denial, limitation, refusal to renew, or revocation of a license.

(2) A licensing case may be heard in Lansing, Detroit, or in a county where the petitioner maintains a place of business.

(3) A hearing shall include consideration of an agency decision regarding the denial, limitation, or revocation of a license.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART E. EXPUNCTION HEARINGS

R 792.11027 Scope.

Rule 1027. Administrative hearings related to expunction hearings shall be conducted by authority as found in the child protection law, 1975 PA 238, MCL 722.621 to 722.638.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 11. OCCUPATIONAL SAFETY AND HEALTH

SUBPART A. GENERAL PROVISIONS

R 792.11101 Scope.

Rule 1101. These rules govern contested case proceedings before an administrative law judge under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11102 Definitions.

Rule 1102. (1) "Act"as used in this part means the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(2) "Board" means the board of health and safety compliance and appeals within the department of licensing and regulatory affairs.

(3) "Citation" means a written communication issued by the department to an employer under section 33 of the act, MCL 408.1033.

(4) "Day" means a calendar day.

(5) "Department" means the department of licensing and regulatory affairs.

(6) "Director" means the director of the department of licensing and regulatory affairs or the director's authorized representative.

(7) "Executive secretary" means secretary to the board.

(8) "Party" means an applicant for relief, an employer cited or seeking a variance, an affected employee or employees, or their authorized representative, a person allowed to intervene, or department.

(9) "Permanent variance" means a written order issued by a department authorizing an employer to deviate from the requirements of an occupational safety or health standard when protection is provided to employees equal to that which would be provided by compliance with the requirements of the standard.

(10) "Temporary variance" means a written order issued by a department authorizing an employer to deviate from the requirements of an occupational safety or health standard prior to the effective date of the standard for the specific period of time necessary for the employer to achieve compliance with the standard.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11103 Representative of parties.

Rule 1103. (1) A party may appear in person or by a representative.

(2) A representative need not be an attorney at law.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11104 Inspection and reproduction of documents.

Rule 1104. (1) Subject to the provision of law restricting public disclosures of information, a person may inspect and copy a document filed in a proceeding.

(2) Actual costs of reproduction shall be borne by the person seeking the document.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11105 Protection of trade secrets.

Rule 1105. Upon application of a party, an administrative law judge shall issue such orders as may be appropriate to protect the confidentiality of trade secrets obtained in connection with an inspection, investigation, or proceedings conducted under the act.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11106 Failure to appear.

Rule 1106. (1) If a party fails to appear in a contested case after proper notice, the hearing may proceed in the absence of the party.

(2) The administrative law judge, upon request filed within 10 days after the scheduled hearing date and upon a showing of good cause, may excuse the failure to appear. In that event, the hearing shall be rescheduled.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. CITATION & MODIFICATION OF ABATEMENT HEARINGS

R 792.11107 Scope.

Rule 1107. This subpart applies to citation hearings and petition for modification of abatement hearings under section 42 of the act, MCL 408.1042.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11108 Modification of abatement period; hearing; processing; petition.

Rule 1108. Where a petition is objected to by the department or affected employees, the petition shall be processed as follows:

(a) The hearing on the petition shall be handled in an expeditious fashion.

(b) An employer petitioning for a modification of an abatement period shall have the burden of proving by a preponderance of the evidence that he or she has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond his or her control.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11109 Parties and representatives.

Rule 1109. (1) Employees may elect to participate as parties at any time before the commencement of a hearing, unless, for good cause shown, the board allows an election at a later time.

(2) Where an employee appeal is filed with respect to the reasonableness of a period of abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing, unless, for good cause shown, the board allows an election at a later time.

(3) An authorized employee representative who files an appeal shall be responsible for serving a copy of the appeal with an authorized employee representative whose members are affected.

(4) The department shall be a party to all proceedings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11110 Intervention.

Rule 1110. The petition for intervention shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner shall assist in the determination of the issues in question, and that the intervention shall not unnecessarily delay the proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11111 Statement of position and oral participation.

Rule 1111. At any time before the commencement of a hearing, a person entitled to appear as a party or an intervenor may file a statement of position with respect to any issue to be heard.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11112 Settlement.

Rule 1112. (1) Settlement is encouraged at any stage of the proceedings where the settlement is consistent with the provisions and objectives of the act.

(2) A settlement agreement submitted by the parties shall be accompanied by an appropriate proposed order.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11113 Restriction by investigative or prosecuting officers.

Rule 1113. In a proceeding noticed pursuant to the rules, the director shall not participate or advise, except as a party to the proceeding, with respect to the report of the administrative law judge or the board decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11114 Restriction with respect to former employee.

Rule 1114. (1) A former employee of the board or of the director, including a former member of the board or the director, shall not appear before the board as an attorney or other representative for a party in a contested case in which that person participated personally and substantially during the period of that person's employment.

(2) A former employee of the board or of the director, including a former member of the board or the director, shall not appear before the board as an attorney or other representative for a party in a proceeding or other matter, formal or informal, for which that person was personally responsible during the period of that person's employment, unless 1 year has elapsed since the termination of the employment.

(3) The prohibition against participation as an attorney or other representative as specified in subrules (1) and (2) of this rule applies to the attorney general and the assistants of the attorney general who serve the department.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11115 Report of administrative law judge.

Rule 1115. (1) After the conclusion of a hearing, the administrative law judge shall issue a report that includes findings of fact, conclusions of law, and a determination.

(2) The administrative law judge shall file the report with the executive secretary and the parties. Upon filing the report with the executive secretary, jurisdiction shall rest solely with the

board. All motions and petitioner and other pleadings filed subsequent to the filing of the report shall be addressed to the executive secretary.

(3) The report of the administrative law judge shall become the final order of the board 30 days after filing with the board and parties, unless a board member directs that the report be reviewed and acted upon by the board.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. VARIANCE HEARINGS

R 792.11116 Scope.

Rule 1116. This subpart applies to variance hearings under section 27, of the act, MCL 408.1027.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11117 Consent findings and orders.

Rule 1117. (1) At any time before the hearing or before the reception of evidence in a hearing, or during a hearing, the administrative law judge may afford a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and an order disposing of the whole or a part of the proceeding. The allowance of this opportunity and its duration shall be in the discretion of the administrative law judge, after considering the nature of the proceeding, the representations of the parties, and the probability of an agreement which would result in a just disposition of the issues involved.

(2) An agreement containing consent findings and an order disposing of a proceeding shall provide all of the following:

(a) The consent finding and order shall have the same force and effect as if made after a full hearing.

(b) The record on which an order may be based shall consist solely of the application and the agreement.

(c) A waiver of any further procedural steps before the administrative law judge and the director.

(d) A waiver of any right to challenge or contest the validity of the consent findings and order made pursuant to the agreement.

(3) On or before the expiration of the time granted for negotiations, the parties or their counsel may do either the following:

(a) Submit the proposed agreement to the administrative law judge for his or her consideration.

(b) Inform the administrative law judge that an agreement cannot be reached.

(4) In the event of an agreement containing consent findings and an order is submitted within the time allowed, the administrative law judge shall accept the agreement by issuing his or her decisions based upon the agreed findings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11118 Proposed decision of administrative law judge; service; contents; exception; inoperative while on referral; filing proposed order.

Rule 1118. (1) Within 10 days of the conclusion of a hearing or within 5 days of the receipt of the transcript, if any, or such additional time as allowed by the administrative law judge, each party may file with the administrative law judge a proposed order, including proposed

findings of fact and conclusions of law, with such supporting argument and reasoning as are necessary to support the proposed order.

(2) Within 30 days of the conclusion of a hearing or receipt of the transcript, if any, the administrative law judge shall serve upon parties a proposed decision that includes both of the following:

(a) A statement of the reasons for the proposed decision.

(b) Issues of fact and law necessary for the proposed decision.

(3) The decision of the administrative law judge shall be based upon consideration of the whole record and shall be made on the basis of a preponderance of reliable and probative evidence.

(4) Unless a party, within 21 days of the receipt of the proposed decision, files exceptions thereto with supporting reasons, the proposed decision shall become a final decision of the director. Exceptions shall refer to the specific issues of fact and law, or terms of the proposed decision. If the testimony was transcribed, reference shall be made to specific pages of the transcript, and shall suggest modified issues of fact and law, and terms of the proposed decision.

(5) An administrative law judge's proposed decision under this rule shall not be operative while that decision is being referred to the director.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 12: WAGE AND FRINGE BENEFIT HEARINGS

R 792.11201 Scope.

Rule 1201. The rules in this part govern proceedings before an administrative law judge under the act governing the payment of wages and fringe benefits, 1978 PA 390, MCL 408.471 to 408.490.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11202 Definitions.

Rule 1202. As used in these rules:

(a) "Appeal" means request for review.

(b) "Appellant" means a party who files an appeal.

(c) "Department" means the Michigan department of licensing and regulatory affairs.

(d) "Determination order" means the written determination of the merits of a complaint, including violation citations, penalty assessments, and exemplary damage assessments, if any, issued by the department to an employee or employer pursuant to a complaint.

(e) "Director" means the director of the department.

(f) "Party" means a person admitted to participate in the hearing conducted pursuant to these rules. The employee, employer, and the department shall be parties to a proceeding before an administrative law judge brought under the payment of wage & fringe benefit act, 1978 PA 390, MCL 408.471 to 408.490.

(g) "Representative" means a person authorized by a party to represent that party in a proceeding.

(h) "Wage and hour program" means the agency within the department that is delegated the responsibility of investigating claims, issuing determination orders, and representing the department in hearings held under the, 1978 PA 390, MCL 408.471 to 408.490.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11203 Settlement agreements.

Rule 1203. (1) Settlement agreements are encouraged at any stage of the proceedings.

(2) A settlement agreement shall be submitted by the parties in writing or orally on the record and it shall be followed by an order from the administrative law judge acknowledging the settlement and closing the case.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11204 Filing of documents.

Rule 1204. (1) The filing of a document, with the exception of an appeal, is deemed effective at the time of mailing. The mailing date is presumed to be the postmark date appearing on the envelope if postage was prepaid and the envelope was properly addressed.

(2) An appeal from a determination order shall be filed with the wage hour program and shall be received within 14 days from the date of mailing of the determination.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11205 Late appeal; showing of good cause; hearing; determination order final.

Rule 1205. (1) Any appeal received by the department more than 14 days after the determination order is issued shall be immediately transmitted, along with the employee wage claim and the determination order, to the hearing system.

(2) Upon receipt of a late appeal under this rule, the administrative law judge shall issue an order which directs the appealing party to show good cause why the late appeal should not be dismissed and the determination order made final. If the administrative law judge finds good cause for the late appeal, the case shall proceed to hearing. Absent such a finding, the determination order shall be held final.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11206 Notice of prehearing conference or hearing.

Rule 1206. Notice of prehearing conference or hearing shall be given to the parties in writing not less than 14 days in advance of the scheduled date, except under exceptional circumstances or by agreement of the parties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11207 Burden of proof.

Rule 1207. An appellant shall have the burden of proving those matters upon which the appeal is based.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11208 Decision or order.

Rule 1208. An administrative law judge shall issue a written decision or order within 30 days after the closing of the record of the proceedings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 13: WORKERS' COMPENSATION HEARINGS AND APPEALS

SUBPART A. WORKERS' COMPENSATION BOARD OF MAGISTRATES

R 792.11301 Scope.

Rule 1301. (1) These rules apply to practice and procedures before the workers' compensation board of magistrates under the workers' disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

(2) In the absence of an applicable rule, at the discretion of the magistrate, the Michigan court rules may be considered in proceedings under the workers' disability compensation act.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11302 Hearing district explained.

Rule 1302. A hearing district is an area of the state served by 1 or more magistrates as designated by the chairperson of the board of magistrates.

(2) The basis for assignment of magistrates, establishing disposition deadline dates, and implementing alternative hearings procedures shall be as required by caseload designated by the chairperson of the board of magistrates and the demands of the docket.

(3) The magistrate in any hearing district shall enforce rules of procedure in the hearing district where he or she is assigned.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11303 Appearances.

Rule 1303. (1) Unless otherwise indicated by the magistrate, the parties or their attorneys shall personally appear at all pretrials or hearings as may be scheduled. The parties and their attorneys shall appear at a hearing date as may be scheduled and shall be ready to proceed as directed by the magistrate. Failure of the petitioner or the petitioner's attorney to appear in a timely manner and participate in a pretrial or hearing may subject the application for hearing to dismissal. If the respondent or the respondent's attorney fails to appear in a timely manner for a pretrial or hearing, then the magistrate may proceed in the absence of the respondent or the respondent's attorney.

(2) The board of magistrates may require such information from the parties as may be necessary to monitor the progress of the case, assist in the voluntary exchange of information between parties, and assist in the scheduling of cases.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11304 Case resolution by order and opinion; attorney briefs; correction of mistakes in order or opinion.

Rule 1304. (1) A case that is assigned to a magistrate shall be resolved by an order and, when applicable, an opinion. A magistrate may direct the attorneys to furnish briefs. The order and, when applicable, the opinion shall be written within 42 days of the closing of the record, except under extenuating circumstances as determined by the chairperson.

(2) Within the appeal period provided, a magistrate may correct a mistake in the order or opinion if the parties stipulate to the corrections pursuant to section 851 of 1969 PA 317, MCL 418.851. Any corrections shall require a corrected order or opinion, or both, and shall specify the correction made.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11305 Admission of records, reports, memorandum, and data compilation.

Rule 1305. (1) Not less than 42 days before a hearing, the party intending to introduce a record, memorandum, report, or data compilation shall furnish copies and a notice of intent to all parties, for which a proof of service shall be completed and retained by the noticing party.

(2) Any party objecting to an exhibit under this rule shall provide written objection to all parties not more than 21 days after receipt of the notice of intent, for which a proof of service shall be completed and retained by the objecting party. An objecting party may schedule cross-examination in response to the record, memorandum, report, or data compilation sought to be admitted under this rule.

(3) This rule shall not affect the magistrate's discretion to rule on newly discovered evidence.

(4) The notice of intent, objection, and proof of service shall not be sent to the workers' compensation agency. Only those records admitted into evidence by a magistrate shall be placed in the hearing system file or maintained by the hearing system.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11306 Subpoena; provision to opposing party; submittal of subpoenaed records; disputes.

Rule 1306. (1) A subpoena shall be on a hearing system approved form and include all of the following:

(a)The party requesting a subpoena shall certify that the matter about which the subpoena is requested is pending before the hearing system.

(b) Magistrate signatures are not necessary for subpoenas. Magistrates may sign subpoenas. A subpoena shall be fully completed before submission to a magistrate for signing.

(c)The return date indicated on the subpoena shall provide a reasonable time for compliance.

(d)Magistrates may sign a subpoena for a case that is assigned to another magistrate.

(2) A copy of a subpoena issued by a magistrate or attorney pursuant to section 853 of 1969 PA 317, MCL 418.853 shall be provided to all parties, or their legal counsel, at the time of issuance.

(3) The party for whom a subpoena is issued shall immediately do either of the following:

(a) Provide a complete copy of the records to all parties when received.

(b) Make the records reasonably available for copying when received.

(4) All subpoenaed records shall be returned directly to the party requesting the records. The charges for copying records shall be limited to the charges permitted by the workers' compensation agency health care services in R 418.10118(1).

(5) Only those records admitted into evidence by a magistrate at a hearing shall be placed in the agency file or maintained by the agency.

(6) Any dispute arising under this rule shall be brought by motion before the assigned magistrate and shall have a copy of the subpoena attached. A copy of the motion and the subpoena shall be served on all parties, or their counsel, and proof of service filed with the agency.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11307 Scheduling.

Rule 1307. (1) Within 90 days of the pretrial conference the magistrate shall set a scheduling conference that must be attended by all parties or their attorneys.

(2) At the scheduling conference the magistrate shall determine, in consultation with the parties, appropriate deadlines for completion of activities to further the progression of the claim to hearing or other resolution.

(3) Within 180 days of the scheduling conference the magistrate will schedule a status conference, at which time the parties will advise the magistrate as to the status of the claim. A facilitation date and hearing date may be assigned at the status conference. To the extent he or she deems necessary to the orderly processing of the claim, a magistrate may issue a scheduling order.

(4) This rule shall not apply to cases involving a carrier terminating the voluntary payment of benefits and cases involving a petition to stop or reduce compensation. In the event that a moving party is not ready to proceed to trial on the first scheduled hearing date, the magistrate may waive 60 day status.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11309 Hearing procedures.

Rule 1309. (1) The magistrate may require all parties to present an opening statement that identifies issues in dispute.

(2) The party filing the application for benefits must first present evidence in support of the application.

(3) Unless the magistrate orders otherwise, only one attorney for a party may examine or cross-examine a witness.

(4) The magistrate may require a final argument after the close of proofs.

(5) The magistrate may require prehearing or post-hearing briefs to address all issues in dispute.

(6) Any issue not raised in a pre-hearing brief, opening statement, final argument, or the closing of the record following lay testimony shall be deemed waived.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11310 Hearing completion times.

Rule 1310. The hearing completion time shall be at the discretion of the magistrate, but it shall not be more than 30 days after the date the hearing commenced. The magistrate may allow an extension beyond this time for good cause shown. At the hearing, the magistrate may call witnesses, issue subpoenas, and order the production of books, records, including hospital records, accounts, and papers that are necessary for the purpose of making a decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11311 Final disposition of cases.

Rule 1311. (1) Except under extenuating circumstances as determined by the chairperson of the board of magistrates, all cases assigned to a magistrate that proceed to hearing shall be resolved by opinion written within 42 days of hearing completion and shall be prepared by the agency for mailing.

(2) All redemption hearings agreements shall be either approved or denied by the issuance of a redemption order.

(3) All lump sum advance hearings shall be either approved or denied by the issuance of a lump sum application order.

(4) In cases that are resolved by voluntary payment there shall be a written voluntary pay agreement.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11312 Disqualification of magistrate.

Rule 1312. (1) A party may motion to disqualify a magistrate or a magistrate may raise the issue on his or her own initiative.

(2) A magistrate is disqualified if the magistrate cannot impartially hear a case. Circumstances that may raise issues of inability to impartially hear a case include when a magistrate exhibits any of the following:

(a) Is an interested party.

(b) Is personally biased or prejudiced for or against a party or attorney.

(c) Has been consulted or employed as counsel.

(d) Was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding 2 years.

(e) Is within the third degree, civil law, of consanguinity or affinity to a person acting as an attorney or within the sixth degree, civil law, to a party.

(f) Owns, or his or her spouse or minor child owns, a stock, bond, security, or other legal or equitable interest of a corporation that is a party. This subdivision does not apply to any of the following:

(i) Investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, 15 U.S.C. §78 et seq.

(ii) Shares in an investment company registered under the Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq.

(iii) Securities of a public utility holding company registered under the Public Utility Holding Company Act of 1934, 15 U.S.C. §79 et seq.

(g) Is disqualified for any other reason of law.

(3) A motion to disqualify shall be filed within 30 days after the case has been assigned to a magistrate or within 10 days after the party discovers, or with reasonable diligence could have discovered, the information that is the basis of the motion, whichever is later.

(4) The motion of disqualification shall be stated positively and shall set forth with particularity the factors that would be admissible as evidence to establish the grounds stated in the motion. An affidavit shall accompany a motion.

(5) The challenged magistrate shall decide the motion. If the challenged magistrate denies the motion, then the challenging party may ask that the motion be referred for decision to another magistrate assigned by the chairperson, except as provided in subrule (6) of this rule.

(6) If the motion is made after the trial has commenced, then the challenged magistrate shall rule upon the motion. If the motion is denied, then the trial shall be continued by the trial magistrate.

(7) When a magistrate is disqualified, the chairperson shall assign another magistrate to hear the case.

(8) The parties may waive actual, potential, or purported conflicts with a magistrate, and that magistrate may then process the claim as he or she deems fit.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11313 Discovery.

Rule 1313. Discovery provided in 1969 PA 317, MCL 418.301 and MCL 418.401, and applicable case law, shall be equally available to all parties at the discretion and under the supervision of the magistrate.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. MICHIGAN COMPENSATION APPELLATE COMMISSION

R 792.11314 Scope.

Rule 1314. The rules in this subpart apply to practice and procedure before the Michigan compensation appellate commission in appeals under the workers' disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941 and are governed by R 792.11301 to R 792.11321.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11315 Filings generally.

Rule 1315. (1) All pleadings, transcripts, briefs, and other documents necessary for an appeal shall be filed with the Michigan compensation appellate commission. Each document shall be labeled with the claimant's social security number and a docket number, if assigned.

(2) Filing may be accomplished by hand delivery, by mailing, by facsimile transmission, or by other electronic means as prescribed by the Michigan compensation appellate commission followed by the original document. A facsimile transmission is deemed to have been received on time if it is received by the Michigan compensation appellate commission not later than the last minute of the day of the applicable deadline, as provided in these rules under prevailing Michigan time.

(3) The Michigan compensation appellate commission shall recognize one attorney of record for the purpose of receiving correspondence from the Michigan compensation appellate commission. The attorney of record for the appellant shall be the person signing the claim for review. The attorney of record for the appellee shall be the person filing an appearance for the appellee. Either party may change the attorney of record by filing a stipulation between the current and the new attorney of record or by filing a motion.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11316 Filing of claim for review.

Rule 1316. (1) An appeal to the Michigan compensation appellate commission shall be commenced when a party files a timely claim for review. An appellant shall provide copies of the filing to all other parties at the time of filing with the Michigan compensation appellate commission.

(2) Unless otherwise provided by the provisions of 1969 PA 317, MCL 418.101 to 418.941, a claim for review from any party shall be received by the Michigan compensation appellate commission not later than 30 days after the mailing date stamped by the workers' compensation agency on the appealed decision or order.

(3) A party does not become an appellant or a cross appellant by the party's own labeling of its filings. The Michigan compensation appellate commission will determine the status of an appeal in question.

(4) Further time in which to file a claim for review may be granted by the Michigan compensation appellate commission for sufficient cause shown.

(5) A request for further time in which to file a claim for review shall be submitted, in writing, and entitled "Motion for Delayed Appeal."

(6) A motion for delayed appeal shall specify the reasons why the claim for review is late.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11317 Cross appeals.

Rule 1317. (1) A cross appeal shall be received by the Michigan compensation appellate commission not later than 30 days after the cross appellant has received a copy of the appellant's brief. The cross appellant shall provide all other parties with copies of the cross appeal at the time of filing with the Michigan compensation appellate commission. There shall be a rebuttable presumption that "receipt of appellant's brief" by all other parties occurred on the date of service or mailing indicated in the proof of service filed by the appellant with the Michigan compensation appellate commission.

(2) A cross appeal shall not be filed before the cross appellant receives a copy of the appellant's brief.

(3) There shall not be delayed cross appeals. An extension of time to file a reply brief does not extend the time to file a cross appeal.

(4) If the appellant's appeal is withdrawn or dismissed, the cross appeal shall be extinguished.

(5) A cross appeal shall be filed on the claim for review form specifically identifying that the party cross appeals the magistrate's decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11318 Briefing deadlines without filing transcript; time transcript considered filed.

Rule 1318. For purposes of briefing deadlines, if a stenographic record was not made at hearing, or if the Michigan compensation appellate commission has accepted the stipulation of the parties to proceed without the filing of a transcript, a transcript shall be considered to have been filed on the same day the filing of the claim for review.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11319 Briefs; titles; filing.

Rule 1319. (1) A brief shall be entitled "appellant's brief," "appellee's brief," "cross appellant's brief," or "cross appellee's brief," or shall be otherwise appropriately designated.

(2) An appellant's brief shall be filed with the Michigan compensation appellate commission not more than 30 days after a transcript is filed. Where there are multiple transcripts, the 30-day period begins to run when the last transcript is received by the Michigan compensation appellate commission.

(3) A cross appellant's brief shall be filed with the Michigan compensation appellate commission not more than 30 days after the cross appellant receives a copy of an appellant's brief.

(4) An appellee or a cross appellee need not file a brief. If the appellee or cross appellee wishes to file a brief, the appellee shall submit the brief to the Michigan comopensation appellate commission within 30 days after the appellee receives a copy of the appellant's brief. If the cross appellee wishes to file a brief, the cross appellee shall submit a brief to the commission within 30 days after the cross appellee receives the cross appellant's brief. There shall be a rebuttable presumption that "receipt of appellant's or cross appellant's brief" occurred by all other parties on the same date of service or mailing indicated in the proof of service filed by the appellant or cross appellant with the Michigan compensation appellate commission.

(5) A proof of service shall be filed with the Michigan compensation appellate commission with each brief and served upon all parties or their counsel.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11320 Motion practice.

Rule 1320. (1) All motions shall be in writing.

(2) A party who files a motion shall provide all other parties with copies of the motion at the time of filing with the Michigan compensation appellate commission and file a proof of service with the Michigan compensation appellate commission.

(3) A party has 14 days from the date the motion was filed with the Michigan compensation appellate commission to respond to the motion.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11321 Extensions of time to comply with rules.

Rule 1321. The Michigan compensation appellate commission may grant extensions of time to a party to comply with any of these rules for sufficient cause shown, except as otherwise provided in these rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 14: EMPLOYMENT SECURITY HEARINGS AND APPEALS

SUBPART A. GENERAL PROVISIONS

R 792.11401 Scope.

Rule 1401. The rules in this part govern proceedings before administrative law judges and the Michigan compensation appellate commission under the Michigan employment security act, 1936 PA 1, MCL 421.1 to 421.75.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11402 Definitions.

Rule 1402. (1) As used in these rules:

(a)"Act" as used in this part means the Michigan employment security act, 1936 PA 1, MCL 421.1 to 421.75.

(b)"Agency" means the unemployment insurance agency as created in Executive Reorganization Order No. 2003-1, MCL 445.2011.

(c)"Agent office" means an unemployment insurance office outside the state of Michigan serving as agent of the agency.

(d) "Good cause" includes, but is not limited to, any of the following:

(i) Newly discovered material evidence that, through no fault of the party, had not previously been available to the party.

(ii) A legitimate inability to act sooner.

(iii) A failure to receive a reasonable and timely notice, order, or decision through no fault of the party.

(iv)Untimely delivery of a protest, appeal, or an agency document by a business or governmental agency entrusted with delivery of mail.

(v) Relying on incorrect information from the agency, administrative law judge, the hearing system or the Michigan compensation appellate commission.

(e)"Michigan compensation appellate commission" means the commission created by Executive Order 2011-6 to hear appeals under 1936 PA 1, MCL 421.1 to 421.75.

(f) Unless the context otherwise requires, the word "party" means the agency, the employing unit, and the claimant, and includes an agent or attorney of the agency, the employing unit, or the claimant.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11403 Adjournments; taking testimony of witness unable to appear and testify at scheduled hearing; deposition.

Rule 1403. (1) Adjournments of hearings may be granted by the administrative law judge or the Michigan compensation appellate commission panel before whom the appeal is pending. Adjourned hearings shall be rescheduled to a time and place that the administrative law judge or

the Michigan compensation appellate commission deems most convenient for all interested parties.

(2) The administrative law judge or the Michigan compensation appellate commission panel may schedule an adjourned hearing at a place convenient to the residence of a witness to take his or her testimony, if he or she is unable to appear and testify at a regularly scheduled hearing.

(3) The testimony may be taken by any administrative law judge of this state or of any agent state, or may be taken by deposition pursuant to the provisions of law applicable to depositions in civil actions pending in the circuit courts of this state.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11404 Witness fee vouchers; processing.

Rule 1404. At the conclusion of a hearing by the administrative law judge or the Michigan compensation appellate commission, the agency shall process witness fee vouchers for payment for those witnesses who satisfy all of the following conditions:

(a) Were duly subpoenaed.

(b) Appeared in person at the hearing.

(c) Verified their mileage and proper mailing addresses.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. APPEALS TO ADMINISTRATIVE LAW JUDGES

R 792.11405 Appeal; form.

Rule 1405. (1) An appeal to an administrative law judge shall be filed pursuant to 1936 PA 1, MCL 421.1 to 421.75.

(2) Appeal forms for administrative law judge hearings and rehearings shall be available at all agency offices.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11406 Appeal; deadline; statements on redetermination; procedure on appeal of denial of redetermination.

Rule 1406. (1) An appeal to an administrative law judge shall be received by the principal office of the agency, or by any other office of the agency, or by any agent office of the agency outside the state of Michigan, within 30 days after the date of mailing or personal service of the agency's redetermination.

(2) A party who receives a denial of redetermination because his or her request for review was not filed with the agency within 30 days after the date of mailing or personal service of the underlying determination or redetermination may appeal the denial of redetermination to an administrative law judge. The administrative law judge shall take evidence on whether there was good cause for issuing a redetermination. If the administrative law judge finds good cause, the administrative law judge shall inform the parties of that fact and shall then proceed to take testimony on, and decide, the underlying issue or issues, pursuant to R 792.11424.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11407 Notice of hearing.

Rule 1407. (1) Except as required by subrule (3) of this rule, notice of the time and place of the initial hearing before an administrative law judge, and a short and plain statement of the issues involved, shall be served upon the parties not less than 10 days before the date of the hearing.

(2) When an administrative law judge adjourns or continues a hearing for which notice has been given, notice to the parties of the new hearing date may be given orally if the new hearing date is within 7 days of the old hearing date. Otherwise, the new notice shall be served at least 7 days before the date of the new hearing.

(3) When a hearing involves employer or claimant fraud under section 54, 54a, 54b, 54c, or 62(b), (c), or (d) of the act, MCL 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), the notice of hearing shall be served upon the parties not less than 20 days before the date of the hearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11408 Employer or claimant fraud; hearing procedure.

Rule 1408. (1) When a hearing involves allegations of employer or claimant fraud under section 54, 54a, 54b, 54c, or 62 (b), (c), or (d) of the act, 1936 PA 1, MCL 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), the notice of hearing shall be mailed to, or personally served upon, the parties at least 20 days before the hearing.

(2) Where one party, including the agency, has documentary evidence or witnesses concerning another party's alleged fraud, the party shall provide a witness list and copies of the documentary evidence to the other parties and to the administrative law judge not less than 10 days before a fraud hearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11409 Subpoenas.

Rule 1409. (1) A party may request subpoenas to compel witnesses to testify at an administrative law judge hearing or to compel persons to produce books, records, and papers at an administrative law judge hearing.

(2) Requests for subpoenas shall be made to an administrative law judge.

(3) The subpoenas shall be issued promptly, unless the administrative law judge decides that the request is unreasonable.

(4) A party denied a subpoena may apply to the Michigan compensation appellate commission for issuance of the subpoena, and the proceedings before the administrative law judge shall be stayed until the Michigan compensation appellate commission decides whether the subpoena should be issued.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11410 Readiness of parties after notice of hearing; adjournment; issues before an administrative law judge.

Rule 1410. (1) A party appearing at a hearing before an administrative law judge after notice shall have his or her evidence and witnesses present and be ready to proceed on the statement of the issues contained in the notice of hearing.

(2) If an issue or time period beyond that specified in the determination or redetermination is raised at administrative law judge hearing without having been included in the notice of hearing, the hearing shall be adjourned for a reasonable time if requested by either party or if the administrative law judge deems adjournment appropriate. Evidence shall not be taken on the issue or time period that is not included in the notice of hearing, and a decision shall not be issued on such an issue or time period, unless a knowing and informed waiver of notice or adjournment is obtained from the parties. The purpose of the adjournment is to give the parties the opportunity to prepare to meet the newly identified issue.

(3) To secure a knowing and informed waiver on the record, an administrative law judge shall do all of the following:

(a) Advise the parties that an issue or issues or a period of time not specified in the hearing notice has been or is about to be raised.

(b) Advise the parties of the nature of such issue and the consequences of his or her ruling on such issue.

(c) Advise the parties of the right to request an adjournment or stipulate to continue with the hearing.

(4) With regard to that part of an administrative law judge decision which rules on an issue or a period of time not specified in the notice of hearing and where a waiver of adjournment has not been obtained, as required under subrules (2) and (3) of this rule, the Michigan compensation appellate commission may remand, set aside, modify, reverse, or affirm on appeal.

(5) If the agency, a party, or the administrative law judge discovers new, additional, or corrected information or administrative clerical error before or during the course of a hearing, which could affect the agency's position on a case, the administrative law judge may return the matter to the agency for reconsideration or redetermination.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11411 Conduct of hearing.

Rule 1411. (1) The administrative law judge shall conduct and control the hearing to develop the rights of the parties.

(2) At the beginning of the hearing, the administrative law judge shall identify all parties, representatives, and witnesses present and shall outline briefly the issues involved.

(3) Oral evidence at a hearing before an administrative law judge shall be taken only on oath or affirmation.

(4) Each party shall have all of the following rights:

(a) To call and examine witnesses.

(b) To introduce exhibits.

(c) To cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination.

(d) To impeach any witness, regardless of which party first called the witness to testify.

(e) To rebut the evidence against him or her.

(5) A party may be called and examined as if under cross-examination.

(6) Oral arguments may be presented at the conclusion of the hearing.

(7) The administrative law judge may allow a reasonable time after conclusion of the hearing for the filing of written argument.

(8) To secure the competent relevant and material evidence necessary to arrive at a fair decision, an administrative law judge may do any of the following:

(a) Adjourn the hearing.

(b) Direct the parties to present required evidence.

(c) Cause subpoenas to be issued.

(d) Examine any party or witness.

(9) If the claimant or employer is represented by legal counsel or an authorized agent, the administrative law judge shall allow legal counsel or the authorized agent to first conduct the direct examination of his or her witness before the administrative law judge further examines any party or witness.

(10) When an interested party is not represented by legal counsel or an authorized agent, the administrative law judge before whom the hearing is taking place shall advise the party of his or her rights, aid him or her in examining and cross-examining witnesses, and give every assistance to the party compatible with an impartial discharge of the administrative law judge's official duties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11412 Hearing location; telephone hearing.

Rule 1412. (1) Hearings held to resolve disputes of determinations made under sections 13 to 25 and sections 54, 54a, 54b, 54c or 62(b), (c), or (d) of the act, MCL 421.13 to 421.25, MCL 421.54, 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), shall be scheduled as in-person hearings at a location determined by the hearing system. At the discretion of the administrative law judge, the testimony of parties or witnesses may be taken by telephone or video.

(2) With the exception of a hearing scheduled under subrule (1) of this rule, all hearings held before an administrative law judge shall be conducted by telephone, unless otherwise directed by the executive director of the Michigan administrative hearing system or his or her designee or designees.

(3) A party to the hearing shall submit any documents he or she intends to introduce at the hearing to the other parties and to the administrative law judge in time to ensure the documents are received before the date of the scheduled hearing. All documents submitted to the administrative law judge shall be identified on the record. The documents shall not be considered evidence on the record unless offered and admitted during the course of the hearing.

(4) If a hearing is conducted by telephone, the administrative law judge shall, on the record, make inquiries that the administrative law judge considers appropriate to ascertain the identity of the individuals participating by telephone. Absent approval of the executive director of the Michigan administrative hearing system or his or her designee, an administrative law judge shall not require a party to submit an affidavit to attest to his or her identity.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11413 Further hearing prior to decision.

Rule 1413. (1) At any time between the hearing and the issuance of the administrative law judge's decision, the administrative law judge may direct a further hearing on his or her own initiative or the motion of a party.

(2) A further hearing is within the discretion of the administrative law judge.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11414 Rehearing of administrative law judge's decision.

Rule 1414. (1) A request for a rehearing of an administrative law judge's previous decision shall be received by the administrative law judge or by an office or agent office of the agency

within 30 days after the date of mailing of the decision. A party requesting rehearing must serve their request on the opposing party.

(2) Reasons for requesting a rehearing include, but are not limited to, good cause for not appearing at a hearing or the discovery of material evidence after the date of the hearing.

(3) A rehearing may also be granted on the administrative law judge's own motion.

(4) Granting a rehearing is within the discretion of the administrative law judge. An order or decision allowing rehearing shall state the reasons for granting the rehearing.

(5) If a timely request for rehearing is denied, both the denial and the administrative law judge's previous decision may be appealed to the Michigan compensation appellate commission.

(6) A rehearing request received more than 30 days after the decision is mailed shall be treated as a request for reopening under R 792.11416.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11415 Reopening and review of administrative law judge's decision.

Rule 1415. (1) A request for reopening and review of an administrative law judge's decision shall be received by the administrative law judge or by an office or agent office of the agency within 1 year after the date of mailing of the decision. A party requesting reopening shall serve his or her request on the opposing party.

(2) The administrative law judge may reopen and review a matter on his or her own initiative, within 1 year after the date of mailing of the previous decision, after providing notice to the interested parties.

(3) A reopening may be granted on the administrative law judge's own motion if the review is initiated by the administrative law judge, with notice to the interested parties, within 1 year after the date of mailing of the previous decision.

(4) Granting reopening is within the discretion of the administrative law judge. If reopening is granted, the administrative law judge shall decide the underlying issues of the case based on the evidence already submitted and any additional evidence the administrative law judge may enter into the record.

(5) If the administrative law judge denies a request for reopening, the Michigan compensation appellate commission shall not review the administrative law judge's previous decision unless it first decides that there was good cause for a reopening.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11416 Notice of rights of appeal.

Rule 1416. Each decision or final order issued by an administrative law judge shall notify the parties of all of the following:

(a) A party has the right to have a decision or a denial of a motion for rehearing or reopening reviewed by the Michigan compensation appellate commission by making a timely appeal. The appealing party shall serve a copy of his or her appeal on the opposing party.

(b) A party may make a timely request to the Michigan compensation appellate commission for an oral argument or to present additional evidence in connection with his or her appeal.

(c) Absent oral argument before it, the Michigan compensation appellate commission shall consider a party's written argument to the commission only if all parties are represented or by agreement of the parties.

(d) A party may appeal a decision or final order of an administrative law judge directly to a circuit court if the claimant and the employer or their respective authorized agents or attorneys sign a written stipulation and file it with the administrative law judge in a timely manner.

(e) A party may make a timely request to an administrative law judge to rehear a previous decision.

(f) A party may make a timely request to an administrative law judge, for good cause only, to reopen and review a previous decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. MICHIGAN COMPENSATION APPELLATE COMMISSION APPEALS UNEMPLOYMENT CASES

R 792.11417 Scope; appeal; form.

Rule 1417. (1) These rules apply to practice and procedure before the Michigan compensation appellate commission in appeals under the act, MCL 421.1 to 421.75, and are governed by R 792.11401 to R 792.11433.

(2) An appeal to the Michigan compensation appellate commission shall be in writing and shall be signed by the party appealing or his agent.

(3) Forms for appeals to the Michigan compensation appellate commission and for rehearing by the Michigan compensation appellate commission shall be available at the office of the Michigan compensation appellate commission and all agency offices that are open to the public.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11418 Appeal; deadline; procedure for late appeal.

Rule 1418. (1) An appeal to the Michigan compensation appellate commission shall be received at the office of the Michigan compensation appellate commission.

(2) To be received on time, an appeal to the Michigan compensation appellate commission must be received within 30 days after the mailed date the administrative law judge's decision, order denying rehearing or reopening.

(3) The Michigan compensation appellate commission is without jurisdiction to consider the merits of any appeal received after the 30-day appeal period. A party whose appeal is received by the Michigan compensation appellate commission after the 30-day appeal period may request a reopening by the administrative law judge under R 792.11405, assuming the request is received within 1 year of the date of mailing of the administrative law judge's decision. The administrative law judge's decision or order on the reopening request may then be appealed to the Michigan compensation appellate commission.

(4) An appeal or request for rehearing or reopening to the Michigan compensation appellate commission may be made by personal service, postal delivery, facsimile transmission, or other electronic means as prescribed by the Michigan compensation appellate commission. If an appeal or request is made by facsimile transmission, the following will be presumed:

(a) That the facsimile transmission was received on time if it was received by the Michigan compensation appellate commission not later than the last minute of the day of the applicable deadline as provided in these rules under prevailing Michigan time.

(b) That the facsimile transmission was received on the date and at the time electronically entered or printed on the face of the document, subject to verification by the Michigan compensation appellate commission at its discretion.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11419 Commission; decision based on record; notice.

Rule 1419. (1) The Michigan compensation appellate commission may decide cases on the record made by the administrative law judge, without any of the following:

(a) Oral argument before it.

(b) Additional evidence.

(c) Consideration of written argument.

(2) The record made by the administrative law judge includes the transcript or recording of the hearing, accurate copies of exhibits clearly marked and received at the administrative law judge hearing, and written argument submitted to the administrative law judge if the other parties present at the hearing have been served a copy of the argument and have been given an adequate opportunity to respond to it.

(3) The Michigan compensation appellate commission shall serve a notice of receipt of appeal on all parties. The notice of receipt of appeal shall inform parties of the right to request all of the following:

(a) Oral argument.

(b) Opportunity to submit additional evidence.

(c) Opportunity to submit written argument.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11420 Oral argument; application.

Rule 1420. (1) Oral argument to the Michigan compensation appellate commission shall be by written application and must be received within 14 days after the mailed date of the notice of receipt of appeal.

(2) A written application shall set forth the reasons for requesting oral argument. The application shall be served on all other parties at the time of filing with the Michigan compensation appellate commission.

(3) The application shall be granted or denied by at least 2 members of the Michigan compensation appellate commission panel assigned to review the appeal.

(4) On the motion of at least 2 members of the Michigan compensation appellate commission panel assigned to review a pending appeal, oral argument may be ordered.

(5) The Michigan compensation appellate commission may at its discretion consider oral argument presented in person by conference telephone or other electronic means.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11421 Presentation of additional evidence; application.

Rule 1421. (1) Presentation of additional evidence to the Michigan compensation appellate commission shall be by order of the Michigan compensation appellate commission.

(2) If a party applies to the Michigan compensation appellate commission for permission to present additional evidence, the application shall be in writing and shall set forth the reasons why the additional evidence should be received. The application must be served on all other parties at the time of filing with the Michigan compensation appellate commission. The granting or denial

of additional evidence is within the discretion of the Michigan compensation appellate commission.

(3) To be granted, the application shall be approved by 2 members of the Michigan compensation appellate commission panel assigned to review the appeal.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11422 Additional evidence; order.

Rule 1422. (1) When the Michigan compensation appellate commission orders additional evidence, it may do any of the following:

(a) Conduct a hearing pursuant to the act for the purpose of taking and receiving such evidence as it deems necessary.

(b) Remand the matter to an administrative law judge for the purpose of taking and receiving such evidence and submitting the evidence so received to the Michigan compensation appellate commission for decision.

(c) Set aside the administrative law judge's decision and remand the matter to the administrative law judge for the purpose of receiving such additional evidence and issuing a new decision based upon the entire record.

(2) Absent an evidentiary hearing, the Michigan compensation appellate commission shall mail a copy of any evidence it intends to introduce into the record to each party. The parties shall have 14 days thereafter to object to or refute such evidence.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11423 Written argument; reply; deadlines; consideration; agreement; application for oral argument or additional evidence not deemed written argument; amicus briefs.

Rule 11423. (1) A party may apply to the Michigan compensation appellate commission for permission to submit written argument. The application shall be in writing and shall set forth the reasons for requesting written argument.

(2) The application must be received by the Michigan compensation appellate commission within 14 days after the mailed date of the notice of the receipt of appeal. The application must be served on all other parties at the time the application is filed with the Michigan compensation appellate commission.

(3) The application for written argument shall be granted or denied, subject to subrule (4) of this rule. To be granted, the application shall be approved by 2 members of the Michigan compensation appellate commission panel assigned to review the application.

(4) The Michigan compensation appellate commission may consider a party's written argument only if any of the following conditions exist:

(a) All parties are represented by an attorney or other agent of record.

(b) All parties agree that the Michigan compensation appellate commission may consider written argument. The agreement must be in writing, signed by each party, and received by the Michigan compensation appellate commission not later than 14 days after the mailed date of the notice of receipt of appeal.

(c) The Michigan compensation appellate commission orders oral argument before it.

(d) The Michigan compensation appellate commission orders evidence produced before it.

(5) A reply, if any, to another party's timely written argument, together with a statement of service of a copy on each other party, shall be received by the Michigan compensation appellate commission not later than14 days after the mailed date of the other party's written argument.

(6) An extension of time for the filing of written argument may be permitted by the Michigan compensation appellate commission at its discretion and of warranted by the circumstances.

(7) A party's application to the Michigan compensation appellate commission for either oral argument or additional evidence shall not be deemed a written argument within the meaning of this rule.

(8) When the parties are permitted to submit written argument pursuant to this rule and section 34 of the act, MCL 421.34, the Michigan compensation appellate commission may consider requests for permission to submit an amicus brief from persons or organizations that are not parties to the matter before the ~~board~~ Michigan compensation appellate commission. If the Michigan compensation appellate commission, in its discretion, grants such a request, all parties shall be notified and the brief shall be submitted to the Michigan compensation appellate commission, together with a statement of service of a copy of the brief on each of the parties.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11424 Record of proceedings; transmittal to the Michigan compensation appellate commission following notification of appeal.

Rule 1424. The director of the hearing system or his or her designate shall promptly transmit the record of proceedings before the administrative law judge, including the supporting accurate copies of exhibits clearly marked, to the Michigan compensation appellate commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11425 Transfer of proceeding pending before administrative law judge.

Rule 1425. (1) A party to a proceeding pending before an administrative law judge may file a regular application to the Michigan compensation appellate commission for either of the following:

(a) Transfer of the proceeding to the Michigan compensation appellate commission.

(b) Transfer of the proceeding to another administrative law judge.

(2) A party may file 2 regular applications for transfer. A regular application shall be filed at least 3 business days before the pending scheduled hearing. An application received after business hours shall be considered filed the next business day.

(3) A party may file a delayed application for transfer. A delayed application ~~be~~ is one filed less than 3 business days before the pending scheduled hearing. The Michigan compensation appellate commission may grant a delayed application for sufficient cause shown, that establishes both of the following:

(a) That circumstances leading to the delay were beyond the control of the applicant.

(b) That to hold the hearing would violate due process.

(4) A party may file an extenuating circumstances application for transfer. An extenuating circumstances application may be filed after a party has filed 2 or more applications, in any combinations of subrule (2), (3), or (4) of this rule. The Michigan compensation appellate commission may grant the application for sufficient cause shown that establishes both of the following:

(a) That suspending the proceeding will not create undue hardship for the opposing party.

(b) That holding the hearing would violate due process.

(5) As soon as practicable, the Michigan compensation appellate commission shall notify the administrative law judge of 1 of the following:

(a) That a regular application for transfer is pending.

(b) That an application for delayed transfer is granted.

(c) That an application for extenuating circumstances transfer is granted.

(6) Upon notification under subrule (5) of this rule, the administrative law judge shall immediately issue an order suspending any further proceedings before him or her that involve the pending or granted application.

(7) Upon its own motion, or in response to an application under subrules (2), (3), or (4) of this rule, the Michigan compensation appellate commission shall determine whether sufficient cause exists to transfer the proceeding.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11426 Subpoenas.

Rule 1426. If the Michigan compensation appellate commission orders additional evidence to be taken before it, a party may ask the Michigan compensation appellate commission for subpoenas to compel witnesses to testify or to compel the production of books, records, and papers. The Michigan compensation appellate commission, or a panel of the commission, may issue a subpoena on its own initiative.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11427 Proceedings before Michigan compensation appellate commission panels.

Rule 1427. (1) A matter to be heard by the Michigan compensation appellate commission shall be assigned to a 3-member panel of the Michigan compensation appellate commission for disposition.

(2) A decision reached by the majority of the panel or of the entire commission sitting en banc shall be the decision of the Michigan compensation appellate commission.

(3) The entire Michigan compensation appellate commission shall conduct a full review of any appeal not yet decided and mailed if full commission review is requested by 6 commissioners.

(4) A decision of the full Michigan compensation appellate commission that is equally divided shall constitute an affirmance of the decision initially appealed to the Michigan compensation appellate commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11428 Michigan compensation appellate commission; communications.

Rule 1428. The members of the Michigan compensation appellate commission may communicate with employers, employees, and their agents and with representatives of the public interest about issues of unemployment insurance and matters affecting the administration of the act.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11429 Michigan compensation appellate commission; decision or order; copies; notice of rights of appeal.

Rule 1429. (1) The Michigan compensation appellate commission shall issue written decisions or orders that are signed and dated. The Michigan compensation appellate commission need not provide any explanation or reasons for its decision or order when it affirms an administrative law judge's decision without substantive alteration or modification.

(2) Decisions of the Michigan compensation appellate commission shall contain the rights of appeal pursuant to R 792.1442.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11430 Rehearing of Michigan compensation appellate commission's decision.

Rule 1430. (1) A request for a rehearing of a Michigan compensation appellate commission decision shall be received by the Michigan compensation appellate commission within 30 days after the mailed date of the decision. A party requesting a rehearing shall serve the request on all other parties at the time of filing with the Michigan compensation appellate commission.

(2) The Michigan compensation appellate commission may grant rehearing on its own motion.

(3) Granting a rehearing is within the discretion of the Michigan compensation appellate commission.

(4) If a request for rehearing is denied, both the denial and the Michigan compensation appellate commission's decision may be appealed to the appropriate circuit court pursuant to section 38 of the act, MCL 421.38.

(5) A rehearing request received more than 30 days after the mailed date of the decision shall be treated as a request for reopening.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11431 Reopening and review of Michigan compensation appellate commission's decision.

Rule 1431. (1) A request for a reopening and review of the Michigan Compensation appellate commission's decision shall be received by the Michigan compensation appellate commission within 1 year, but moe than 30 days after the mailed date of decision.

(2) Reopening will be granted only if good cause is established. If the Michigan compensation appellate commission grants reopening, the order or decision allowing reopening shall contain a statement of the basis of the good cause finding. If the Michigan compensation appellate commission denies reopening, the order denying reopening shall contain a statement of the basis for the denial.

(3) The Michigan compensation appellate commission may grant reopening its own motion, with notice to the parties, within 1 year after the mailed date of the decision.

(4) If the Michigan compensation appellate commission grants a request for reopening, it shall decide the underlying issues of the case based on the record already made and any additional evidence the Michigan compensation appellate commission may enter in the record.

(5) If the Michigan compensation appellate commission denies a request for reopening, both the denial of reopening and the initial decision may be appealed to the appropriate circuit court under section 38 of the act, MCL 421.38.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11432 Notice of rights of appeal.

Rule 1432. (1) Each Michigan compensation appellate commission decision or final order shall notify the parties of all of the following:

(a) A party has the right to make a timely appeal of a decision or final order of the Michigan compensation appellate commission to a circuit court.

(b) A party may make a timely request to the Michigan compensation appellate commission to rehear a decision.

(c) A party may make a timely request to the Michigan compensation appellate commission, subject to a showing of good cause, to reopen and review a decision.

(2) Each Michigan compensation appellate commission decision or final order shall state the deadlines and places of receipt of the alternatives in subrule (1) of this rule. It shall also state in boldface type: "TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME."

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11433 Stipulations.

Rule 1433. (1) The parties to an appeal before the Michigan compensation appellate commission may stipulate to facts at issue.

(2) Stipulations shall not be in any sense in derogation of the act and shall not involve an interpretation of the act.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 15. EMPLOYMENT RELATIONS COMMISSION. GENERAL RULES

SUBPART A. GENERAL PROVISIONS

R 792.11501 Definitions; A to C.

Rule 1501. As used in these rules:

(1) "Administrative law judge" means a designee authorized by the commission to perform hearing functions and duties under LMA and PERA in the commission's labor relations division.

(2) "Applicant" means a person or duly authorized agent thereof who files an application for fact finding under LMA and PERA.

(3) "Charge" means the document containing the information specified in R 423.151.

(4) "Charging party" means a person, or duly authorized agent thereof, who files a charge alleging an unfair labor practice under LMA or PERA.

(5) "Commission" means the employment relations commission as established in section 3 of LMA 423.3

R 792.11502 Definitions; L to P.

Rule 1502. As used in these rules:

(1) "LMA" means 1939 PA 176, MCL 423.1 to 423.30.

(2) "PERA" means 1947 PA 336, MCL 423.201 to 423.217.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11503 Definitions; R.

Rule 1503. As used in this subpart, "respondent" means a person charged with having engaged in or engaging in unfair labor practices under LMA or PERA as set forth in a complaint issued by the commission.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART B. UNFAIR LABOR PRACTICE PROCEEDINGS

R 792.11504 General provisions.

Rule 1504. (1) The filing, service, processing, and withdrawal of an unfair labor practice charge prior to referral to an administrative law judge is governed by R 423.151, R 423.154, R 423.181, and R 423.182.

(2) The filing and service of an answer to an unfair labor practice charge prior to referral to an administrative law judge is governed by R 423.155, R 423.181, and R 423.182.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11505 Complaint.

Rule 1505. (1) After a charge is filed, the administrative law judge may serve upon each named respondent a complaint, a copy of the charge upon which the complaint is based, and a notice of hearing, or, at the discretion of the commission or administrative law judge, a complaint, a copy of the charge upon which the complaint is based, and a notice of prehearing conference, or other order.

(2) The notice of hearing shall fix the place of hearing at a time not less than 5 days from service. The notice of prehearing conference shall fix the time, date, and place of prehearing conference at a time not less than 5 days from service. The administrative law judge may effectuate service of these documents by facsimile transmission with the permission of the person receiving the documents.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11506 Amendments to charges.

Rule 1506. (1) The charging party may file an amended charge before, during, or after the conclusion of the hearing. All amendments made before or after hearing shall be in writing and shall, except for good cause shown, be prepared on a form furnished by the commission. An original and 4 copies of the amended charge shall be filed with the administrative law judge and a copy served on each party. Amendments made at hearing shall be made in writing to the administrative law judge or stated orally on the record.

(2) Where an amendment is made in writing, each party respondent opposing the amendment shall may file with the administrative law judge a signed original and 4 copies of its objection to the amendment charge within 10 days after receipt of the amendment, and at the same time shall serve a copy of the objection on each party.

(3) If objection to the amended charge is not filed or stated orally on the record, then the administrative law judge designated by the commission may permit or deny the amendment upon such terms as are just and consistent with due process.

(4) Amendments to a charge submitted in writing shall clearly indicate any deletions or additions from the original charge.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11507 Withdrawal of charge.

Rule 1507. The charge may be withdrawn by the charging party at any time before the issuance of a proposed decision and recommended order upon approval by the administrative law judge, subject to review by the commission. Any party seeking commission review of an order granting withdrawal must file an objection within 10 days after the issuance of the order granting withdrawal.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11508 Answers and position statements.

Rule. 1508 (1) Each respondent may file a signed original and 4 copies of an answer to the complaint and attached charge within 10 days after receipt, and at the same time shall serve a copy of the answer on each party. Upon good cause shown, the administrative law judge may grant an extension of time in which to file the answer. Failure to file an answer shall not constitute an admission of any fact alleged in the charge, nor shall it constitute a waiver of the right to assert any defense.

(2) The answer shall include a specific admission, denial, or explanation of each allegation of the complaint and attached charge, or if the respondent is without knowledge thereof, the answer shall so state and the statement shall operate as a denial. An admission or denial may be to all or any part of any allegation, but shall fairly meet the substance of the allegation. The answer shall include a specific, detailed statement of each affirmative defense.

(3) The administrative law judge designated may require a party to file a position statement or a response thereto before or during the hearing, or at any time prior to the issuance of the administrative law judge's recommended order, within a period of time fixed by the administrative law judge.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11509 Amendments to answers.

Rule 1509. (1) The administrative law judge may permit or require a respondent to amend the answer before or during the hearing, or at any time prior to issuance of the administrative law judge's recommended order, within a period of time fixed by the administrative law judge.

(2) An original and 4 copies of the amended answer shall be filed and a copy served on each party.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11510 Joinder of parties.

Rule 1510. Persons having such an interest in the subject of the action that their presence in the action is essential to permit the commission to render complete relief shall be made parties and aligned as charging parties or respondents in accordance with their respective interests. If the persons have not been made parties, then the administrative law judge shall, on motion of either party, may order them to appear in the action, and may prescribe the time and order of pleading.

R 792.11511 Severance.

Rule 1511. The administrative law judge may, on his or her own motion or on a motion by any party, order that a charge and any proceeding which may have been initiated with respect to that charge, be severed from any other proceeding with which it may have been consolidated pursuant to R 792.10118. The administrative law judge shall grant such motion if the severance will promote the just, economical, and expeditious determination of the issues presented.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART C. MOTION PRACTICE

R 792.11512 General provisions.

Rule 1512. Rulings by an administrative law judge on any motion, except a motion resulting in a ruling dismissing or sustaining the unfair labor practice charge in its entirety, shall not be appealed directly to the commission, but shall be considered by the commission only if raised in exceptions or cross exceptions to the proposed decision and recommended order filed under R 423.176.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11513 Motion for summary disposition.

Rule 1513. (1) The administrative law judge may, on his or her own initiative or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party. Such a motion, or order to show cause, may be made at any time before or during the hearing.

(2) A motion for summary disposition made under this rule may be based upon 1 or more of the following reasons and may require a supporting affidavit:

(a) The commission lacks jurisdiction over a party.

(b) The commission lacks jurisdiction over the subject matter of the charge.

(c) The charge is barred because of the expiration of the applicable period of limitations.

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

(e) The respondent has filed a pleading that demonstrates it does not have a valid defense to the charge.

(f) Except as to the relief sought, there is no genuine issue of material fact.

(g) A charge or defense to a charge has been abandoned for failure to appear for hearing or pre-hearing conference.

(h) A party fails to timely respond to a dispositive motion or a show cause order or other order, including an order requiring the filing of a position statement or a post-hearing brief.

(3) If the motion for summary disposition is filed before the hearing, then the administrative law judge designated by the commission may issue an order to the nonmoving party to show cause why summary disposition should not be granted. If a response to the order is not filed in a timely manner, then the motion shall be considered and decided without oral argument.

(4) If the administrative law judge denies the motion for summary disposition, or if the proposed decision and order does not dispose of the entire action or grant all of the relief demanded, then the action shall proceed to hearing according to subpart D of these rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11514 Motion for a more definite statement.

Rule 1514. If an unfair labor practice charge fails to comply with R 423151(2)(c), the administrative law judge may, by his or her own motion, or on the motion of the respondent, order the filing of a more definite statement of the charge or an amended charge. The respondent

must certify that it has already sought a more definite statement of the charge from the charging party prior to bringing its motion.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11515 Motion to strike.

Rule 1515. The commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order stricken from the pleadings redundant, immaterial, impertinent, scandalous, or indecent matter or may strike all or part of a pleading not drawn in conformity with these rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

SUBPART D. HEARINGS

R 792.11516 Unfair labor practice case recommended decisions and orders.

Rule 1516. (1) In an unfair labor practice case, the administrative law judge shall prepare a recommended decision and order setting forth findings of fact, conclusions of law, and the reasons for his or her determination on all material issues.

(2) The administrative law judge may recommend dismissal or sustain the complaint and attached charge, in whole or in part, and recommend that respondent cease and desist from the unlawful acts found and take action to remedy their effects, including reinstatement of employees with or without back pay, as appropriate.

(3) In the interests of judicial economy, the administrative law judge may issue a decision from the bench following the conclusion of oral argument or an evidentiary hearing. The bench decision does not constitute a decision and recommended order until it is incorporated into a written order.

(4) The filing of exceptions to the decision and recommended order of the administrative law judge, cross exceptions, briefs in support of the decision and recommended order of the administrative law judge and amicus curiae briefs are governed by R 423.176.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11517 Transcripts

Rule 1517. If the administrative law judge orders that a hearing, oral argument, or prehearing conference be transcribed by a court reporter, only official court reporters certified in accordance with the state court administrative office may record or prepare transcripts of proceedings held pursuant to these rules. Official reporters must, at a minimum, be designated as a certified shorthand reporter or certified steno mask reporter as defined by state court administrative office.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 16: OFFICE OF RETIREMENT SERVICES

SUBPART A. GENERAL HEARING RULES

R 792.11601 Scope; definitions.

Rule 1601. (1) These rules apply to hearings held under the jurisdiction of the state employees' retirement board, the judges' retirement board, the state police retirement board, and the public school employees' retirement board.

(2) As used in these rules:

(a) " Retirment act" means the state employees' retirement act, 1943 PA 240, MCL 38.1 to 38.69, the judges' retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2111; the state police retirement act of 1986, 1986 PA 182, MCL 38.1601 to 38.1648; or the school employees' retirement act of 1980, 1980 PA 300, MCL 38.1301 to 38.1309, as applicable.

(b) "Application" means a request for a benefit provided by an applicable retirement act, including a request to reopen a closed application and a reapplication.

(c) "Board" means the retirement board as defined in the applicable act.

(d) "Closed application" means a request by an individual for a benefit provided by the act that was withdrawn by the individual or otherwise never decided by the retirement system or the board.

(e) "Good cause," as used in this part, means the legitimate failure to file a document or a witness list in a timely manner and does not include a person's own careless neglect or inattention to the requirements of these rules.

(f) "Reapplication" means a request by an individual for a benefit provided by the applicable retirment act, that was previously decided by the staff of the retirement system or the board.

(3) The terms defined in 1943 PA 240, MCL 38.1 to 38.69, 1992 PA 234, MCL 38.2101 to 38.2111, 1986 PA 182, MCL 38.1601 to 38.1648, and 1980 PA 300, MCL 38.1301 to 38.1309, have the same meaning when used in these rules.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11602 Duty disability.

Rule 1602. An application for duty disability filed under section 21 of 1943 PA 240, MCL 38.21 shall be denied if the personal injury or disease that is the basis for the application was any of the following:

(a) A personal injury or illness, which existed before becoming a member of the retirement system.

(b) The aggravation of a personal injury or illness, which existed before becoming a member.

(c) A personal injury or illness, which arose while the applicant was a member but was not proximately caused by the member's employment.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11603 Disability retirement.

Rule 1603. (1) To receive a disability retirement under section 21 of 1943 PA 240, MCL 38.21, the retirement system member shall prove by a preponderance of the evidence that on or before the termination of his or her employment, he or she was totally incapacitated and that such incapacity was probably permanent.

(2) To receive a disability retirement under section 24 of 1943 PA 240, MCL 38.24, the member shall prove by a preponderance of the evidence that on or before the termination of his or her employment, he or she was totally incapacitated and that such incapacity was likely to be permanent.

(3) For purposes of sections 21 and 24 of 1943 PA 240, MCL 38.21 and 38.24, the board shall not retire a member if the member can perform any job for which the member has experience, training, or education. If the board determines that a member is not mentally or physically totally incapacitated for further performance of duty or that a member's total incapacity is not probably permanent, the retirement system does not have the obligation to find employment for a member.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11604 Discovery.

Rule 1604. (1) Discovery shall not be allowed in any contested case hearing conducted under the retirement 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. If the petitioner wishes to testify, he or she shall be included in the witness list. 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 administrative law judge finds that the party has established good cause as to why the person was not included on the party's witness list.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11605 Considerations of documents.

Rule 1605. (1) All documents intended to be used or offered at the contested case hearing must be submitted prior to the hearing. A document submitted by an applicant more than 30 days after the date a notice of hearing is issued by the hearing system shall not be considered unless good cause for a late submission is shown.

(2) The administrative law judge shall admit the administrative record if offered into evidence at the hearing.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11606 Testimony; telephone and other electronic means.

Rule 1606. An administrative law judge shall not take the testimony by electronic means unless both of the following occur:

(a)The party who seeks telephone testimony of a witness has submitted and properly served a motion at least 10 days before the date of hearing.

(b)The administrative law judge determines that it is impractical or impossible to otherwise obtain the testimony.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11607 Medical advisor's opinion.

Rule 1607. The opinion of an individual's treating physician shall not be given more weight than the opinion of the medical advisor with regard to an application for a disability retirement under sections 21 and 24 of 1943 PA 240, MCL 38.21 and 38.24, solely based on the relative length of time these physicians have spent examining an individual or because the medical advisor's review was based on an examination of the individual's medical records.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11608 Reasonable medical treatment.

Rule 1608. An individual shall pursue all reasonable medical treatment for the injury or disease that is the basis for his or her application for duty or non-duty disability as provided by sections 21 and 24 of 1943 PA 240, MCL 38.21 and 38.24.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11609 Medical examination.

Rule 1609. (1) For purposes of deciding eligibility for disability retirement under sections 21 and 24 of 1943 PA 240, MCL 38.21 and 38.24, a medical examination conducted by 1 or more medical advisors means either a personal medical examination of the retirment system member or a review of the application and medical records of the member.

(2) If an applicant for a disability retirement under section 21 or 24 of 1943 PA 240, MCL 38.21 and 38.24, of the retirement act fails to submit to a reasonable medical examination requested by the system, the application shall be denied.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11610 Motion for summary disposition.

Rule 1610. (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) An administrative law judge shall rule on a motion for summary disposition in a proposal for decision.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11611 Other decisions not binding.

Rule 1611. The board is not bound by a determination of disability issued by any other state or federal agency or private entity when the board is determining whether a retirement system member is entitled to a disability retirement provided section 21 or 24 of 1943 PA 240, MCL 38.21 and 38.24.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 17: TEACHER CERTIFICATION

R 792.11701 Scope.

Rule 1701. The rules in this part govern proceedings before an administrative law judge under the act governing professional preparation and services pursuant to the revised school code, 1976 PA 451, MCL 380.1 to 380.1853.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11702 Contested case; grounds.

Rule 1702. A contested case may be instituted pursuant to the act, MCL 24.201 to 24.328 in the event of a refusal to grant or renew a teacher's certificate, or in the event of a suspension or revocation of a teacher's certificate.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11703 Answer to formal charges.

Rule 1703. A certified teacher or holder of a state board approval may file an answer to formal charges with the designee of the superintendent of public instruction. The answer shall be filed not less than 10 days before the hearing. The designee of the superintendent of public instruction shall file a copy of the answer upon receipt with the hearing system.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11704 Summary suspension.

Rule 1704. If a person who holds a Michigan teaching certificate or state board approval has been convicted of a crime described in MCL 380.1535a(2) and 380.1539b(2), under 1976 PA 451, MCL 380.1 to 380.1853, or if the superintendent of public instruction or his or her designee finds that the public health, safety, or welfare otherwise requires emergency action, the superintendent of public instruction or his or her designee shall order summary suspension of the person's teaching certificate or state board approval, pursuant to section 92 of the act, MCL 24.292. The person subsequently shall be provided a prompt opportunity for a hearing. The timeliness standards in R 792.1703 and R 792.1706 of this part do not apply to summary suspension proceedings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11705 Transcript.

Rule 1705. A verbatim record will be taken of the proceedings. A party may request a copy of the transcript at the party's expense.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11706 Exceptions; cross exceptions; briefs.

Rule 1706. (1) Within 20 days after service of the proposal for decision, a party may file a written statement with the superintendent of public instruction, setting forth exceptions to any other part of the record or proceeding, including rulings upon motions and objections. A brief in support of these exceptions may be filed with the superintendent of public instruction. A copy of the exceptions and any brief shall be served on each party to the proceedings.

(2) Within 10 days after service of an exception, a party may file a cross exception and a brief in support, or a brief in support of the proposal for decision. A copy of the cross exceptions and any brief shall be served on each party to the proceedings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11707 Oral arguments.

Rule 1707. If a party desires to present oral arguments to the superintendent of public instruction, a written request therefore shall be made to the superintendent of public instruction at the time an exception, cross exception, or brief is filed. The superintendent of public instruction on his or her own motion, may direct oral argument or grant or deny a request for oral argument.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11708 Proposal for decision; action by superintendent of public instruction.

Rule 1708. (1) The superintendent of public instruction may adopt, modify, or reverse the proposal for decision or remand the case to the hearing system for further findings of fact.

(2) A party shall not directly or indirectly communicate with the superintendent of public instruction or persons involved in the review of a proposal for decision, regarding issues of fact or law, except on notice and opportunity for all parties to participate, unless provided by law.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11709 Hearings for incarcerated teachers and school administrators.

Rule 1709. If the teacher or school administrator is incarcerated at the time of the hearing, then the hearing may be conducted by telephone, video conference, or other electronic media.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 18: SPECIAL EDUCATION HEARINGS

R 792.11801 Hearing functions; administration.

Rule 1801. (1) The hearing shall be conducted by an administrative law judge.

(2) The hearing system shall provide periodic training to administrative law judges conducting special education hearings, regarding all of the following:

(a) Administrative law and procedures.

(b) Special education law, rules, and regulations.

(c) Needs of students with disabilities.

(d) Diagnostic testing.

(e) Educational testing.

(f) School programming and operations.

(g) Educational accommodations.

(h) Presiding officer ethics, skills authority, and duties.

(3) The hearing system shall do all of the following as a part of its responsibility to provide hearings under R 340.1724f:

(a) Inform the parties to a special education hearing of the availability of mediation.

(b) Inform the parent of any free or low-cost legal and other relevant services available in the area.

(c) Provide the parent with a copy of the procedural safeguards.

(d) Make available to the public and to the parties in any special education hearing a statement of the participants' roles and responsibilities and a description of the hearing process.

(e) Make available to the public a statement of the ethical rules governing the conduct of administrative law judges.

(f) Develop and make available to the parties general statements of matters such as the burden of proof, legal standards or analyses, and the elements of proof necessary to support claims or defenses commonly raised in special education due process hearings.

(g) Assign administrative law judges to individual cases.

(h) Arrange for a location, transcription, and any other services required for a hearing.

(i) Transmit decisions to the state board of education’s special education advisory committee with personally identifiable information deleted.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11802 Administrative law judge; duties.

Rule 1802. Administrative law judges employed by the hearing system shall do all of the following:

(a) Manage, schedule, and control the hearing process and participants to resolve the dispute in a prompt, orderly, and fair manner.

(b) Conduct a prehearing conference unless the administrative law judge determines that a prehearing is unnecessary. A prehearing conference may be conducted in person, telephonically, or by other means consistent with the parties' needs. The administrative law judge may require the participants in the prehearing conference to do any of the following:

(i) Identify and simplify the issues.

(ii) Consider the need for disposition of any motions before the hearing, consider admissions of fact and authenticity of documents to avoid unnecessary proofs, limit the number of witnesses, and identify the nature and extent of the relief demanded.

(iii) Inform the parties of the availability, if any, of statements of the legal standards, elements of proof, and burden of proof relevant to the claims and defenses asserted.

(iv) Identify known documentary evidence and admit its authenticity, if possible.

(v) Prepare a list of witnesses to be called at the hearing.

(vi) Determine a schedule for the completion of any prehearing matters including disclosure of witness names and exhibit exchange, time limits, meetings, evaluations, and the hearing.

(vii) Make any disclosures of interest or relationships that may require a representative, a witness or the administrative law judge to withdraw, recuse, or be disqualified on ethical or conflict of interest grounds.

(viii) Discuss the possibility of settlement.

(ix) Consider all other matters that may aid the disposition of the disagreement.

(c) If a prehearing conference is held, prepare and provide to the parties a summary of the results of the prehearing conference within 5 days after the prehearing conference.

(d) Make an initial ruling on a party's request for disqualification of the administrative law judge. If the administrative law judge denies the request based on disputed factual assertions, the administrative law judge shall immediately refer the disqualification matter to the director of the hearing system for review and determination.

(e) Provide written notice of the time and location of the hearing.

(f) Direct that the hearing be public or private at the option of the parents.

(g) Administer oaths or affirmations.

(h) Preside at the hearing and actively participate to ensure a fair, orderly, and full development of the evidence relevant to the claims and defenses asserted.

(i) Rule on objections to the conduct of the hearing and to the introduction of evidence and give effect to the rules of privilege.

(j) Render a legally sufficient written decision supported by competent evidence meeting the legally appropriate standard of proof, in a format acceptable to the hearing system, resolving the matters in dispute within the time period required by the applicable law, regulation, or interagency agreement.

(k) Conduct and consider peer editorial review of draft decisions as required by the hearing system.

(l) Complete all reports, records, statements, and correspondence related to completion of a hearing or otherwise required by the hearing system.

(m) Develop, present, and participate in training for administrative law judges, advocates, parents, administrators, and service providers as assigned by the hearing system.

(n) Research matters that the administrative law judge finds necessary to resolve issues presented in a hearing or that have been assigned by the hearing system.

(o) Review, hear, and reach a written determination on any motion for disqualification that is referred to the administrative law judge for review pursuant to subrule (d) of this rule.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11803 Administrative law judge; power and authority.

Rule 1803. An administrative law judge may do any of the following:

(a) Sequester witnesses at any party's request.

(b) Sign and issue subpoenas compelling witness attendance and testimony or production of documentary or physical evidence on the administrative law judge's own initiative or at the request of a party.

(c) Determine the order of proofs.

(d) Accept stipulations of fact and base statements of fact on such stipulations.

(e) Order an evaluation at public expense of a person who is the subject of the hearing.

(f) Take official notice of judicially cognizable facts.

(g) Admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent people in the conduct of their affairs, and provide guidance regarding evidentiary questions.

(h) Exclude irrelevant, immaterial, or unduly repetitious evidence.

(i) Bar evidence or testimony, upon the request of the opposing party, that was not timely disclosed as required by applicable law or regulation or by the schedule determined at the prehearing conference.

(j) Question any sworn witness at the hearing before any party questions the witness, after the parties complete their initial examination of the witness or, to the extent necessary to clarify the administrative law judge's understanding of the witness' testimony, at any time during the hearing.

(k) Limit the number of lay or expert witnesses a party may call on an issue, as necessary, to avoid unnecessary or cumulative evidence.

(l) Require that conflicting experts address the issue or issues on the record.

(m) Visit and observe any relevant location, upon notice to the parties.

(n) Permit taking of evidence by deposition, by video conferencing, or by other similar mechanisms. All parties shall be given an opportunity to examine or cross examine the witness under oath.

(o) Grant a party's request for a specific extension of the time limit for completion of a hearing. The administrative law judge shall require the parties to establish good cause for the extension. The administrative law judge may require submission of documentation to establish the need for the extension and may require a party's representative to establish his or her client's knowledge of the request. The administrative law judge may provide written notice directly to the parties of any extension requested and the grounds for the request, as well as of the administrative law judge's written determination to grant or deny a request for an extension. The administrative law judge may condition the grant of an extension of the time limit on any other just terms.

(p) Require the parties to file 1 or more additional copies of all documents filed with the hearing system and may direct that 1 additional copy be filed with all personal identifiers deleted.

(q) Unless the affected party consents, require a representative seeking to withdraw from representation, to show, after notice to the party and opportunity to respond, good cause for the withdrawal.

(r) Impose, at the request of a party or on the administrative law judge's own initiative, sanctions on any party, or representative of a party who does any of the following:

(i) Fails to comply with these rules or any proper order or requirement specified by the administrative law judge.

(ii) Engages in ex parte communication.

(iii) Disrupts a hearing.

(s) Sanctions may include any of the following:

(i) Dismissal of an issue, claim, defense, or the hearing.

(ii) Order compensatory education

(iii) Any other sanction authorized by law.

History: 2015 MR 1, Eff. Jan. 15, 2015.

PART 19: CORRECTIONS

R 792.11901 Scope.

Rule 1901. (1) The rules in this part govern department of corrections hearings before an administrative law judge, pursuant to the authority of 1953 PA 232, MCL 791.251 to 791.256.

(2) The part 1 general rules for the hearing system do not apply to department of correction hearings.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11902 Administrative law judges; designation; powers.

Rule 1902. (1) Administrative law judges shall be responsible for all administrative hearings on the following matters:

(a) An infraction of a prison rule that may result in punitive segregation, loss of disciplinary credits, the loss of good time or the accumulation of disciplinary time, or the imposition of restitution.

(b) A security classification that may result in the placement of a prisoner in administrative segregation.

(c) A special designation that permanently excludes, by department policy or rule, a person under the jurisdiction of the department from community placement.

(d) Visitor restrictions.

(e) High or very high assaultive and high property risk classifications.

(2) An administrative law judge shall comply with all of the following provisions:

(a) Have no prior direct involvement in the matter which is at issue in a hearing.

(b) Verify that all parties are notified of the date and place of a hearing.

(c) Regulate the course of a hearing and the conduct of all those present at a hearing.

(d) Ensure that an adequate record or summary is made of the proceeding.

(e) Render a final decision or order in writing or stated in the record and shall include findings of fact based exclusively on the evidence and on matters officially noted.

(f) Impose disciplinary sanctions pursuant to R 791.5501 if the prisoner is found guilty of misconduct.

(g) Make a determination of allowable excess legal property.

(3) The administrative law judge has the authority to do any of the following:

(a) Conduct hearings in an impartial manner.

(b) Administer an oath or affirmation to a witness in a matter before him or her, certify to official acts, and take depositions.

(c) Admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(d) Exclude irrelevant, immaterial or unduly repetitious evidence, with the reason for exclusion entered into the record.

(e) Make a record of evidence offered.

(f) Deny a party access to evidence if the administrative law judge determines that access may be dangerous to a witness or disruptive of normal prison operations. The reason for the denial shall be entered into the record.

(g) Except as otherwise authorized in MCL 791.252, after notice of a hearing is given, shall not communicate, directly or indirectly, regarding an issue of fact, with a person or party, except on notice and opportunity for all parties to participate.

(h) Communicate with members of the department of corrections and may have the aid and advice of department employees other than department employees engaged in investigating or prosecuting a hearing or a factually related matter which may be the subject of a hearing.

(i) Issue a final decision or order, based on a preponderance of the evidence presented, within a reasonable period, in writing or stated in the record, which shall include findings of fact and sanctions to be imposed against a prisoner.

History: 2015 MR 1, Eff. Jan. 15, 2015.

R 792.11903 Hearing and decisions.

Rule 1903. (1) Not less than 24 hours before a formal hearing, a prisoner shall receive written notice of the hearing. The notice shall include all of the following:

(a) Any charges of alleged violations.

(b) A description of the circumstances giving rise to the hearing.

(c) Notice of the date of hearing.

(2) A prisoner shall set forth all of the following on the notice form:

(a) Necessary witnesses the prisoner wishes to have interviewed, if any.

(b) A request for documents specifically relevant to the issue before the administrative law judge, if any.

(c) A request for assistance of a staff investigator to gather evidence or speak for the prisoner, if desired.

(3) A prisoner may waive the 24-hour notice requirement if that waiver is in writing and signed by the prisoner.

(4) If a prisoner fails to appear for a hearing after proper notice has been given as set forth in subrule (1) of this rule, the administrative law judge may proceed with the hearing and make a decision in the absence of the prisoner.

(5) A prisoner shall have all of the following rights at a formal hearing:

(a) To be present and offer evidence, including relevant documents and oral and written arguments, on his or her own behalf.

(b) To compel disclosure of documents specifically relevant to the issue before the hearing officer, unless the administrative law judge determines that may be dangerous to a witness or disruptive of normal prison operations. The reason for the nondisclosure shall be entered into the record.

(c) To present evidence from necessary, relevant, and material witnesses, when to do so is not unduly hazardous to institutional or safety goals.

(d) To have presented to the administrative law judge the report of a staff investigator who interviewed and obtained statements from relevant witnesses, secured relevant documents, and gathered other evidence, if a staff investigator was requested when notice of the charges was

given, unless that request is denied as set forth in subrule (6) of this rule, and if the prisoner has reasonably cooperated with the staff investigator.

(e) To submit written questions to the hearing investigator to be asked of witnesses.

(f) If an administrative law judge denies a request made by a prisoner on the notice form provided under subrule (2) of this rule, specific reasons for the denial shall be placed in the record. The presence of a witness is not necessary if the witness's testimony is repetitious or if the witness is able to provide the administrative law judge or investigator with a complete written statement.

(6) A staff investigator shall be available, when necessary, to gather and present factual evidence orally or in writing at the request of either the prisoner or the administrative law judge. If the administrative law judge determines that a prisoner appears to be incapable of speaking effectively for himself or herself, the hearing officer shall request a staff investigator to appear and present arguments on the prisoner's behalf. The failure of a staff investigator to present requested documents or statements is justified if to do so would be unduly hazardous to institution or safety goals or if the information is irrelevant or unnecessary to the particular case. The specific reason for such failure shall be placed in the record.

(7) The administrative law judge shall render a written decision or recommendation in every case. The written decision or recommendation shall include all of the following:

(a) The reasons for the denial of a prisoner's requests, if any.

(b) A statement of the facts found.

(c) The evidence relied on in support of the decision or recommendation.

(d) Any sanctions or orders imposed by the administrative law judge. A copy of the decision shall be furnished to the prisoner.

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