

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

INSURANCE BUREAU

HEARING PROCEDURES

(By authority conferred on the commissioner of insurance by section 210 of Act No. 218 of the Public Acts of 1956, as amended, and by section 33 of Act No. 306 of the Public Acts of 1969, as amended, being SS500.210 and 24.233 of the Michigan Compiled Laws)

R 500.2101 Definitions.

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

(a) "Act" means Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws, and known as the administrative procedures act of 1969.

(b) "Bureau" means the Michigan insurance bureau.

(c) "Code" means Act No. 218 of the Public Acts of 1956, as amended, being S500.100 et seq. of the Michigan Compiled Laws.

(d) "Commissioner" means the Michigan commissioner of insurance and the designees of the commissioner.

(e) "Petitioner" means a person or a party who initiates the commencement of a contested case.

(f) "Presiding officer" means presiding officer as referred to in sections 79 and 80 of the act.

(g) "Respondent" means a party against whom contested case proceedings are commenced.

(2) Terms defined in the act have the same meanings when used in these rules.

History: 1983 AACCS.

R 500.2102 Interpretation of rules.

Rule 2. These rules shall be construed to secure a just, speedy, efficient, and fair determination of the issues presented, consistent with due process and the safeguarding of the rights of the parties.

History: 1983 AACCS.

R 500.2103 Petition for a contested case; required information.

Rule 3. Except as otherwise provided by the commissioner, a person who seeks to have the commissioner commence a contested case shall submit a written petition for a contested case to the commissioner. The petition shall set forth all of the following:

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

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

(c) The remedies sought.

(d) The identity of the persons involved. This rule does not affect the commissioner's authority to commence a contested case on the commissioner's own motion.

History: 1983 AACCS.

R 500.2104 Petition for a contested case; determination of commissioner; notice to petitioner.

Rule 4. (1) Within 30 days after receipt of a petition for a contested case, the commissioner shall, in conformity with any applicable statute or rule, determine whether to take any of the following actions:

(a) Request the petitioner to amend the petition.

(b) Demand an answer to the petition.

(c) Investigate the allegations set forth in the petition.

(d) Issue a notice of opportunity to show compliance.

(e) Issue a notice of hearing.

(f) Order a public hearing.

(g) Decline to take further action against the petition.

(h) Take over appropriate action within the commissioner's authority.

(2) The commissioner shall notify the petitioner of the decision and shall provide the petitioner with a brief written explanation of the reasons for the decision.

History: 1983 AACCS.

R 500.2105 Commencement of proceedings; notice of hearing.

Rule 5. A contested case shall be commenced by the issuance of a notice of hearing.

History: 1983 AACCS.

R 500.2106 Assignment of docket number.

Rule 6. Upon commencement of a contested case, the commissioner shall assign a docket number to the proceeding. Parties shall include the docket number on the first page of pleadings filed in the proceeding.

History: 1983 AACCS.

R 500.2107 Service by commissioner; service by party; service on attorney; manner of service; date of service; proof of service.

Rule 7. (1) Except as otherwise provided by law, the commissioner shall serve a notice of hearing in person or by certified mail, return receipt requested.

(2) A party shall serve all papers filed in a contested case by that party on all other parties. Service shall be made in person or by first-class mail as specified in subrules (3) and (4) of this rule. Service of papers in a proceeding, except the notice of hearing, shall be

made on a party's attorney who has filed an appearance, if any, and shall be effective as service on the party.

(3) Personal service is an effective method of service if service by mail is required. Personal service may be made on a person by leaving orders, notices, and other papers with the person.

(4) Except as otherwise provided by law, service by mail shall be accomplished by complying with both of the following requirements:

(a) Enclosing a copy of the paper in a sealed envelope with postage fully prepaid and addressed to the person to be served at that person's last known address. The envelope shall list the return address of the sender. When the last known address is not the current address, the sender shall make diligent efforts to find the current address. Those efforts shall include checking for a telephone listing and, if the person is a licensee, checking with any employer, principal, or agency with which the person is associated as evidenced by the commissioner's license records.

(b) Depositing the envelope and contents in the United States mail.

(5) The date of service, whether of pleadings or papers served by a party or orders issued by the commissioner or presiding officer, shall be the date of personal service or the date 3 business days after the paper to be served is mailed.

(6) A person who has served a notice of hearing, petition, or motion in a contested case shall file a proof of service within a reasonable time of the filing of the original. Proof of service shall be made as follows:

(a) If service is made by mail, proof of service shall be made by filing an affidavit of service with the commissioner which certifies compliance with subrule (4) of this rule and which specifies all of the following:

- (i) The method of service.
- (ii) The identity of the server.
- (iii) The date and place of mailing.
- (iv) The address to which the materials were mailed.

(b) If the service is made by personal service, proof of service shall be made by filing an affidavit of service with the commissioner which certifies all of the following:

- (i) The method of service.
- (ii) The identity of the server.
- (iii) The person served.
- (iv) The date and place of service.

History: 1983 AACS.

R 500.2108 Appearance by attorney.

Rule 8. An attorney who represents a party in a contested case shall promptly file an appearance with the commissioner.

History: 1983 AACS.

R 500.2109 Pleadings and other papers; form; statements of facts; answer; certification; manner of filing; time limits.

Rule 9. (1) Pleadings and other papers, including, but not limited to, all of the following, shall be permitted in a contested case:

- (a) A notice of hearing.
- (b) An answer to the notice of hearing.
- (c) Memoranda.
- (d) Motions.
- (e) Briefs.

(2) A pleading or other paper shall set forth the title and docket number of the proceeding and shall be submitted on 8 1/2-inch by 11-inch paper.

(3) Statements of fact in a notice of hearing shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances.

(4) The paragraphs of an answer or a reply shall be numbered to correspond to those of the notice of hearing.

(5) The original of each petition for hearing, pleading, or other paper shall be signed by the party in interest or by the party's authorized representative. The signature of an attorney constitutes a certification by the attorney that the attorney has read the petition for hearing or pleading; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for unwarranted delay.

(6) Pleadings and other papers shall be filed by sending or delivering them to the commissioner at the Lansing office of the commissioner, unless otherwise directed. The date of receipt at the Lansing office of the commissioner shall be the date used to determine whether a pleading or other paper has been timely filed, unless the presiding officer or commissioner shall order otherwise.

(7) If a pleading or other paper is not filed in accordance with applicable time limits, a party may move that it be stricken from the record. The motion shall be granted if the moving party proves substantial prejudice resulting from the late filing and the party making the late filing does not show good cause.

History: 1983 AACCS.

R 500.2110 Computation of a period of days, days included and excluded.

Rule 10. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday, or legal holiday, the period or day is extended to include the next day that is not a Saturday, Sunday, or legal holiday. Except where otherwise specified, a period of days in these rules means calendar days, not business days.

History: 1983 AACCS.

R 500.2111 Summary decision.

Rule 11. A party may move for a summary decision in the party's favor upon any 1 of the following grounds:

- (a) The commissioner lacks jurisdiction over the person or the subject matter.
- (b) The opposing party has failed to state a claim upon which relief can be granted.

(c) There is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law.

History: 1983 AACCS.

R 500.2112 Application for order in pending action; motion; form; service.

Rule 12. An application for an order in a pending action shall be made by a motion that states with particularity the factual and legal grounds and the relief or order sought. Unless made during a prehearing conference or hearing, a motion shall be made in writing. The moving party shall promptly serve copies of a written motion on all other parties.

History: 1983 AACCS.

R 500.2113 Reply to motion; oral argument.

Rule 13. A party may file a written reply to a written motion. A party shall have 7 days from the date of service of a motion to file a reply, unless a shorter or longer response period is specified by the presiding officer for good cause. The presiding officer may order oral argument on any motion.

History: 1983 AACCS.

R 500.2114 Motion to correct or strike pleadings.

Rule 14. (1) If a pleading is so vague or ambiguous that it cannot be understood or answered, an opposing party may move for a more definite statement of the issues before filing a responsive pleading. The motion shall identify the defects and shall request the desired details. If the motion is granted and is not obeyed within 10 days after notice of the order, the presiding officer may strike the pleading to which the motion was directed or may make any other order that is just. If the motion is denied, the moving party shall file, within 10 days thereafter, the responsive pleading that was delayed by the motion.

(2) Upon motion by a party or upon the presiding officer's own motion, the presiding officer may order stricken from any pleading any redundant, immaterial, impertinent, scandalous, or indecent matter or may order stricken any pleading or any part of a pleading not drawn in conformity with these rules.

History: 1983 AACCS.

R 500.2115 Hearing; adjournment; motion.

Rule 15. A hearing may be adjourned only upon an order of the presiding officer. The presiding officer may order an adjournment on the presiding officer's own motion or upon the motion of one of the parties. The presiding officer 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 particularity the reasons why an adjournment is necessary. The written motion shall not be considered unless served not less than 5 days before the time

specified for hearing, except upon order of the presiding officer. An exception shall be granted only upon a showing that the interests of justice require the exception or upon a showing that, for reasons not within the control of the person or party making the motion, the motion could not be served within the time limit.

History: 1983 AACCS.

R 500.2116 Motion for extension of time.

Rule 16. Except as otherwise provided by law or by agreement of the parties and except for oral motions made during a prehearing conference or a hearing, requests for extensions of time in which to perform any act required or allowed to be done at or within a specific time by these rules shall be made by motion in writing. When practicable, this motion shall be filed with the presiding officer before the expiration of the period originally prescribed or previously extended. If there is good cause for the extension of time, the motion shall be granted. The presiding officer may rule on such motions after hearing only the moving party.

History: 1983 AACCS.

R 500.2117 Accompaniment of written motion by proposed order.

Rule 17. A written motion may be accompanied by a proposed order.

History: 1983 AACCS.

R 500.2118 Application for intervention; filing.

Rule 18. 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 presiding officer 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: 1983 AACCS.

R 500.2119 Application for intervention; answers; date of filing.

Rule 19. 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 presiding officer. If either the person seeking to intervene or a party files a motion for oral argument on the application, the presiding officer 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 presiding officer shall rule on the application.

History: 1983 AACCS.

R 500.2120 Joint hearing; consolidation of proceedings; other orders.

Rule 20. When contested cases involving a substantial and controlling common question of fact or law are pending before the commissioner, the commissioner may, on the commissioner's own motion or on motion by a party, take any of the following actions, provided that the interests of the parties are not prejudiced by such actions:

- (a) Order a joint hearing on any or all of the matters in issue.
- (b) Order the proceedings consolidated.
- (c) Make other orders concerning the proceedings to avoid unnecessary costs or delay.

History: 1983 AACCS.

R 500.2121 Notice of intent to issue order; filing; hearing.

Rule 21. Before issuing an order pursuant to R 500.2120, the commissioner shall serve a notice of intent to issue the order on the parties. The parties shall have 10 days from the service of notice to file objections to the order.

History: 1983 AACCS.

R 500.2122 Depositions; interrogatories; discovery.

Rule 22. 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 presiding officer may, consistent with the provisions of the Michigan general court rules and other applicable law, issue an order to effect this rule.

History: 1983 AACCS.

R 500.2123 Refusal to make discovery; order directing compliance; effect of refusal to obey order.

Rule 23. If a party refuses to obey an order made under R 500.2122, the presiding officer may, on the motion of a party or on the presiding officer's own motion, make orders in regard to the refusal as are just, including, but not limited to, any of the following:

- (a) An order that the facts sought by the discovery shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.
- (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing in evidence designated documents, things, or testimony.

(c) An order striking pleadings or parts thereof, staying further proceedings until the order is obeyed, recommending dismissal of the proceeding or any part thereof, or recommending a decision by default against the disobedient party.

History: 1983 AACCS.

R 500.2124 Prehearing conference; purpose.

Rule 24. The presiding officer may direct the parties to appear before the presiding officer for 1 or more prehearing conferences for any of the following purposes:

- (a) To simplify and clarify factual and legal issues.
- (b) To consider amendments to pleadings.
- (c) To obtain admissions and stipulations of facts or the authenticity of evidence.
- (d) To expedite the discovery and presentation of evidence.
- (e) To produce all proposed exhibits in the possession of a party.
- (f) To identify witnesses and generally describe the issues on which they will testify.
- (g) To set a time for the exchange of any written testimony.
- (h) To estimate the time required for the hearing.
- (i) To discuss settlement or other disposition of the case.
- (j) To set time limits for discovery, motions, and other matters.
- (k) To determine the parties to the case.
- (l) To consider other matters that may aid in the disposition of the proceedings.

History: 1983 AACCS.

R 500.2125 Prehearing conference; failure to appear; binding nature of conference; memorandum on witnesses and exhibits.

Rule 25. (1) If a party fails to appear at a prehearing conference after proper service of notice, the presiding officer, if adjournment is not granted, may proceed with the conference. A party that fails to attend the conference without good cause shall be subject to any procedural agreements reached and any procedural order or procedural ruling made with respect to matters covered by the notice of the conference.

(2) The presiding officer may order each party to prepare a memorandum listing witnesses the party plans to call and exhibits the party plans to introduce during the party's direct case. The presiding officer shall not require the submission of this memorandum more than 10 days before the party is scheduled to present its direct case. Unless good cause is shown or the parties otherwise agree, a party shall not be entitled to call a witness whose name has not been listed in an ordered memorandum or to enter into evidence any exhibit that has not been listed in an ordered memorandum, other than those prepared for the purpose of rebutting the exhibits or evidence of another party.

History: 1983 AACCS.

R 500.2126 Prehearing conference; record of ruling; summary; copies.

Rule 26. After a prehearing conference and before the hearing, the presiding officer shall enter any rulings or orders and a summary of the conference in the record. The summary shall indicate the results of the conference with respect to each of the purposes listed in R 500.2124. The presiding officer shall distribute copies of summaries and orders or rulings to the parties. A party may object to a summary of a conference and may file a motion to seek the correction of the summary.

History: 1983 AACCS.

R 500.2127 Hearing; opening statements; closing arguments; presentation of evidence; regulation of order of presentation; interlocutory appeals; conference telephone calls.

Rule 27. (1) The presiding officer shall allow the parties to make opening statements or appropriate motions. A party may reserve or waive an opening statement. The presiding officer shall allow the parties to make closing arguments.

(2) The party having the burden of proof shall first present the evidence in support of that party's case. The presiding officer shall allow rebuttal and surrebuttal testimony.

(3) The presiding officer shall regulate the order of the hearing to promote the fair and efficient determination of the issues presented.

(4) A party may petition the commissioner to reverse an interlocutory order of the presiding officer. The petition shall state with particularity the factual and legal grounds for the appeal and why there is good cause for the commissioner 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 commissioner specifies a shorter or longer response period. If the commissioner finds there is good cause to rule immediately upon the matter, the commissioner shall issue an order affirming or reversing the interlocutory order or shall issue an order requiring additional argument on the matter.

(5) When the commissioner or presiding officer deems it appropriate, a conference may be conducted by a conference telephone call.

History: 1983 AACCS.

R 500.2128 Witnesses; oath or affirmation; examination.

Rule 28. A witness shall be administered an oath or affirmation before testifying. A witness shall be examined orally, unless the testimony is submitted in written form pursuant to these rules or section 75 of the act. When practicable, a motion to strike written testimony shall be filed in advance of the hearing.

History: 1983 AACCS.

R 500.2129 Evidence; distribution of written evidence; written testimony.

Rule 29. Evidence submitted in written form pursuant to these rules or section 75 of the act shall be distributed to the parties and the presiding officer not less than 5 days before any hearing scheduled in the matter.

History: 1983 AACCS.

R 500.2130 Proposal for decision; briefs.

Rule 30. Where required by section 81 of the act, a proposal for decision shall be prepared after a hearing. The presiding officer shall prepare the proposal for decision within a reasonable time after the hearing. Before preparing a proposal for decision, the presiding officer may require and shall permit the parties to submit briefs. Where briefs are to be submitted, the presiding officer shall specify a filing date. Except as otherwise agreed by the parties or required by law, the presiding officer shall not specify a date less than 15 days from the date the commissioner will receive the transcript. In referring to the transcript in a brief, a party shall include page and volume numbers.

History: 1983 AACCS.

R 500.2131 Proposal for decision; exceptions; written arguments.

Rule 31. The presiding officer shall specify in a proposal for the decision the date by which a party may file exceptions and present written arguments pursuant to section 81 of the act. Except as otherwise agreed by the parties or required by law, the presiding officer shall not specify a date less than 20 days from the date the commissioner will receive the transcript or, if the commissioner has received the transcript, the presiding officer shall not specify a date less than 20 days from the date the presiding officer issues the proposal for decision. 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: 1983 AACCS.

R 500.2132 Proposal for decision; motion for oral argument; opportunity for rebuttal; service of notice.

Rule 32. Upon filing exceptions to a proposal for decision, a party may make a motion for oral argument before the commissioner. Oral argument shall be by leave of the commissioner and may be limited in scope and duration. When oral argument is granted, notice shall be served on the parties. All parties shall be given an opportunity for rebuttal. The commissioner may limit the scope and duration of rebuttal.

History: 1983 AACCS.

R 500.2133 Final decisions and orders; date.

Rule 33. Except as otherwise provided by law, the commissioner shall issue a final decision or order not later than 30 days after the date for the filing of any exceptions or, if oral argument is permitted pursuant to section 81(1) of the act, not later than 30 days after oral argument.

History: 1983 AACCS.

R 500.2134 Request for rehearing; objections.

Rule 34. A request for rehearing pursuant to section 87 of the act 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: 1983 AACCS.

R 500.2135 Presiding officer; designation and authorization.

Rule 35. The commissioner, a person designated by statute, or 1 or more hearing officers designated and authorized by the commissioner to conduct contested cases shall preside in a contested case. Upon commencement of a contested case, the commissioner shall designate the presiding officer in conformity with applicable law.

History: 1983 AACCS.

R 500.2136 Presiding officer; disqualification; ruling on motion to disqualify; determination by commissioner.

Rule 36. (1) When a presiding officer, on the presiding officer's own initiative, deems the presiding officer personally biased or disqualified to preside at a particular proceeding, the presiding officer shall withdraw from the proceeding. The withdrawal shall be noted on the record. The notice shall disclose the nature of the personal bias or disqualification. The presiding officer shall promptly send a copy of the notice to the commissioner.

(2) A party may file a motion to disqualify a presiding officer. The motion shall be filed within 10 days after discovery of the alleged grounds for disqualification and shall be supported by an affidavit which conforms to the standards of section 79 of the act. The presiding officer shall rule on the motion within 5 days of the date of filing. The presiding officer shall forward copies of the motion and ruling to the commissioner. If the presiding officer denies the motion and the party wants a determination on the motion by the commissioner, the party shall promptly file a written motion for disqualification to be determined by the commissioner. The commissioner shall promptly make a written determination on the motion for the record.

(3) A party may make a oral motion for disqualification of a presiding officer on the record during a hearing based upon conduct of the presiding officer at the hearing. The presiding officer shall rule on the motion. The ruling shall contain the supporting reasons and may be written or stated on the record. If the presiding officer denies the motion and the party wants a determination on the motion by the commissioner, the party shall promptly file a written motion for disqualification to be determined by the commissioner. The parties shall be given an opportunity to respond to the motion. The commissioner shall promptly make a written determination on the motion for the record.

History: 1983 AACCS.

R 500.2137 Presiding officer; order for rehearing.

Rule 37. A presiding officer assigned pursuant to section 79 of the act to continue with a contested case may order a rehearing of any part of the contested case to avoid substantial prejudice to a party or to enable the presiding officer to render a decision.

History: 1983 AACCS.

R 500.2138 Presiding officer; powers.

Rule 38. The presiding officer may exercise the powers specified in section 80 of the act. The powers of the presiding officer to regulate the course of a hearing include, but are not limited to, all of the following:

- (a) Compelling answers to interrogatories or responses to requests for admission.
- (b) Requiring parties to prepare prehearing memoranda and to appear at prehearing conferences.
- (c) Expelling disruptive persons or parties from hearings.
- (d) Questioning witnesses or counsel in an impartial manner and calling witnesses to clarify the issues and the record. A party may object to questions posed by the presiding officer. A party may cross-examine a witness called by the presiding officer.
- (e) Informing a party of applicable rights in the interest of justice.
- (f) Developing and implementing procedures necessary for complex cases in conformity with principles of law.
- (g) Ordering the preparation of proposed exhibits and written testimony when it will expedite the proceeding.
- (h) Performing responsibilities set forth in other sections of these rules.
- (i) Issuing orders on the presiding officer's own motion that are necessary for the fair and efficient determination of the issues presented.

History: 1983 AACCS.

R 500.2139 Public hearing.

Rule 39. The commissioner may order a public hearing for the purpose of obtaining information and providing the public with an opportunity to present data, views, and arguments on issues upon which the commissioner is authorized to make a determination.

History: 1983 AACCS.

R 500.2140 Public hearing; notice; advance notice request; publication.

Rule 40. (1) Notice of a public hearing shall be given not less than 10 days before the public hearing and shall include all of the following:

- (a) A reference to the statutory authority under which the determination is to be made.

(b) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the commissioner at other times by any person.

(c) A description of the subjects and issues involved.

(2) A person who makes a written request to the commissioner for advance notice of a proposed action that may affect that person shall receive copies of the notice.

(3) The notice shall be published as a display advertisement in not less than 3 newspapers of general circulation in different parts of the state. At least 1 of the newspapers shall be published in the Upper Peninsula.

History: 1983 AACCS.

R 500.2141 Public hearing; presentation of testimony.

Rule 41. The commissioner shall determine the order in which testimony is presented and may question those persons who present testimony. Subject to any limitation the commissioner may prescribe, the commissioner may permit persons to question other persons who present testimony. The commissioner may set time limits on testimony.

History: 1983 AACCS.

R 500.2142 Rescission.

Rule 42. R 501.301 to R 501.308 of the Michigan Administrative Code, appearing on pages 5053 to 5055 of the 1979 Michigan Administrative Code, are rescinded.

History: 1983 AACCS.