DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARING RULES

Filed with the Secretary of State on January 15, 2015.

These rules become effective immediately upon filing with the Secretary of State.

(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.)

R 792.10101, R 792.10102, R 792.10103, R 792.10104, R 792.10105, R 792.10106, R 792.10107, R 792.10108, R 792.10109, R 792.10110, R 792.10111, R 792.10112, R 792.10113, R 792.10114, R 792.10115, R 792.10116, R 792.10117, R 792.10118, R 792.10119, R 792.10120, R 792.10121, R 792.10122, R 792.10123, R 792.10124, R 792.10125, R 792.10126, R 792.10127, R 792.10128, R 792.10129, R 792.10130, R 792.10131, R 792.10132, R 792.10133, R 792.10134, R 792.10135, R 792.10136, R 792.10137, R 792.10301, R 792.10302, R 792.10303, R 792.10304, R 792.10305, R 792.10306, R 792.10401, R 792.10402, R 792.10403, R 792.10404, R 792.10405, R 792.10406, R 792.1407, R 792.10408, R 792.10409, R 792.10410, R 792.10411, R 792.10412, R 792.10413, R 792.10414, R 792.10415, R 792.10416,

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PART 1: GENERAL

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.