DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARING RULES

Filed with the secretary of state on September 29, 2023

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

PART 1: GENERAL

R 792.10101 Scope.

Rule 101. (1) These rules govern practice and procedure in administrative hearings conducted by the Michigan office of administrative hearings and rules under Executive Reorganization Order Nos. 2005-1, 2011-4, 2011-6, 2019-1, and 2019-3, MCL 445.2021, 445.2032, 324.99923, and 125.1998.

(2) 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 these rules, the rules in this part apply to all administrative hearings conducted by the hearing system, except hearings specifically exempted under Executive Reorganization Order Nos. 2005-1, 2011-4, and 2011-6, MCL 445.2021, 445.2030, and 445.2032.

(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, and R 792.10121, provisions for telephone and electronic hearings.

(4) The rules in this part do not govern proceedings before the employment relations commission, except R 792.10106(2), (3), (4), (5), (6), and (7), provisions for disqualification and recusal of administrative law judges, and R 792.10121, provisions for telephone and electronic hearings.

R 792.10103 Definitions.

Rule 103. As used in these rules:

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

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

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

(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 an individual, other than an attorney, who has been given legal authority to represent 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 department of licensing and regulatory affairs, unless otherwise specified as a separate constitutionally created state department.

(k) "Electronic signature" means an electronic symbol attached to or logically associated with a document or pleading and executed or adopted by a person with the intent to sign the document or pleading. This may be a graphic image of the signature or text designated as a signature, such as "/s/ John Smith," "/s/ John Smith, Attorney," or "/s/ John Smith, Authorized Representative".

(l) "Hearing system" means the Michigan office of administrative hearings and rules created under the authority of Executive Reorganization Order Nos. 2005-1 and 2019-1, MCL 445.2021 and 324.99923.

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

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

(o) "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.

(p) "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 contemplated by these rules, the time in which an act is to be done is computed by excluding the first day, and including the last day, 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 is 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.

(4) Unless otherwise specified by the administrative law judge, rule, or statute, the date on which a document is considered filed is governed by R 792.10109(3).

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

Rule 106. (1) The administrative law judge shall exercise the following authority 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.

(j) Fix the time for the filing and service of briefs and other documents to the hearing system and the other parties.

(k) 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.

(l) Require the parties to submit filings, including, but not limited to, proposed prehearing orders and legal memoranda.

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

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

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

(p) 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 shall disclose to the parties any known conditions listed in subdivisions (a) to (e) of this subrule and may be recused or disqualified from 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.

(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 the administrative law judge's 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 must be incorporated into the hearing record.

(5) Any party seeking to disqualify an administrative law judge shall promptly move for the disqualification after receiving notice indicating that the administrative law judge will preside or upon discovering facts establishing grounds for disqualification, whichever is later. A motion under this section must be made in writing and accompanied by an affidavit setting forth specific allegations that demonstrate the facts upon which the motion 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, or unable to continue a hearing or to issue a proposal for decision or final order as assigned, another administrative law judge must be assigned to continue the case by the hearing system director or the hearing system director's 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 subrule 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 may 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 sections 71 to 87 of the act, 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.

(10) The most current publication entitled "American Bar Association, A Model Code of Judicial Conduct for State Administrative Law Judges" may be referenced, as applicable, in proceedings conducted under these rules.

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

Rule 107. (1) A party may appear in person, by an attorney, or by an authorized representative where permitted by law. To appear on behalf of a party, an attorney or authorized representative must file a notice of appearance, unless the first appearance is made on the record in a proceeding. A pleading, motion, or other document signed and filed by an attorney or authorized representative on behalf of a party is a notice of appearance by the attorney or authorized representative. After a notice of appearance has been filed or made on the record, all papers in a proceeding must be served on the person who appeared or on the person whose name appears on the notice of appearance or filing, at the address identified by the person or on the appearance or filing, and is service on the represented party. Parties must notify the hearing system of any changes in address and phone number within 7 days of the change.

(2) Upon notice, an attorney or authorized representative who has entered an appearance may withdraw from the case. Timely notice of withdrawal or substitution must be provided to all parties, their attorneys or authorized representatives, and the administrative law judge.

R 792.10109 Filings with the hearing system.

Rule 109. (1) Documents and pleadings may be filed in a hearing system proceeding by mail, personal delivery, facsimile, or electronically using a hearing system-approved electronic filing system, if available.

(2) Except as otherwise approved by the administrative law judge, all filings must be legible with a minimum 12-point font for body text and no less than 10-point font for footnote text and, unless filed electronically using a hearing system-approved electronic system, on 8-½ by 11-inch paper.

(3) Documents and pleadings filed by mail, personal delivery, or facsimile and received by the hearing system after 5 p.m. eastern standard time are considered filed on the next business day. Documents and pleadings submitted using a hearing system-approved electronic filing system, or by email when specifically authorized under subrule (6) of this rule, are considered filed on the same business day if filed at or before 11:59 p.m. eastern standard time.

(4) Submission by facsimile is allowed only if the following conditions are met:

(a) A cover sheet is included that contains the following:

(i) Case name.

(ii) Case number.

(iii) Document title.

(iv) The sender's name, telephone number, and facsimile number.

(v) The total number of pages contained in the submission, including the cover sheet.

(b) The facsimile consists of 20 pages or less.

(c) The party immediately sends a facsimile copy of the filing to all other parties when a facsimile number is available. If a facsimile number is not available, the party must serve the submission to all other known parties pursuant to the requirements of these rules.

(5) If a document or pleading must be signed, it must contain a handwritten signature or an electronic signature.

(6) Documents and pleadings will not be accepted by email unless specifically authorized by the administrative law judge, administrative law manager, or pursuant to an order issued by the executive director of the hearing system.

(7) The responsibility for excluding or redacting personal identifying information from all documents or physical evidence used at hearing, filed with or offered to the hearing system, rests solely with the parties and their attorneys. The hearing system is not responsible for or required to review, redact, or screen documents at the time of filing for personal identifying information, protected or otherwise, whether filed electronically or on paper. A party may request that the hearing system redact its personal identifying information contained in a previously filed document or physical evidence by submitting a written request stating with specificity the information in question.

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 must serve all documents and pleadings filed in a hearing system proceeding on all other parties. Unless otherwise directed by the administrative law judge, the 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 must be served on the attorney or authorized representative.

(2) Service between the parties may be completed electronically if the parties agree to service by email, subject to all of the following:

(a) The agreement for service by email must set forth the email addresses of the parties or attorneys that agree to email service.

(b) Parties and attorneys that have agreed to service by email must immediately notify all other parties if the party's or attorney's email address changes.

(c) Documents served by email must be in a file format that prevents alteration of the document contents.

(d) A document served by email sent on a business day is deemed served on a party on the same business day that the email is sent if sent at or before 11:59 p.m. eastern standard time. A document served by email sent on a non-business day is deemed served on the next business day.

(e) The parties need not file a copy of the email service agreement, as provided by rule 2.107 of the Michigan court rules, unless a dispute arises as to service by email.

(f) The party serving a document by email must maintain an archived record of all emails through which service was made.

(3) The hearing system may serve documents on the parties, the parties' attorney, or the parties' authorized representative by mailing a copy, as that term is defined in subrule (9) of this rule.

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

(5) When service of any document or pleading is completed by hand, facsimile, or a hearing system-approved electronic filing system, 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 must 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 must also state the email addresses of the sender and the recipient. Failure to file the statement of service does not affect the validity of service.

(7) If a question concerning proper service is raised, the person or party claiming to have effectuated proper service bears the burden of proof. When service is made by mail, a return post office receipt may be proof of service. When service is made by private delivery service, the receipt showing delivery is sufficient proof of service. When service is made in any other manner authorized by these rules, verified proof of service must be made by filing an affidavit of the person or party serving the documents. The administrative law judge assigned to the matter shall resolve disputes with respect to proper service.

(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) As used in this rule, "mailing a copy" means 1 or more of the following:

(a) Enclosing documents in a sealed envelope addressed to the person to be served and placing the envelope into an intra-departmental mail delivery system or depositing it with first-class postage fully prepaid in the United States mail or other commercial delivery service.

(b) Emailing the documents to the parties, parties' attorney, or the parties' authorized representative at the email address on file with the hearing system.

(c) Sending the documents by facsimile to a facsimile number on file with the hearing system.

(d) Leaving a copy of the document at the residence, principal office, or place of business of the person or agency.

R 792.10111 Notice of hearing.

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

(a) The address and phone number, if available, of the hearing location, or other information, such as remote access codes, necessary to participate in the hearing.

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

(c) A statement that all hearings will be conducted in a barrier-free location and in compliance with the Americans with disabilities act, 42 USC 12101 to 12213, provisions. The notice must inform the parties that if accessibility is requested, such as braille, large print, electronic or audio reader, information that 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 before the date of the hearing, an adjournment must be granted. If a party fails to provide information for conversion pursuant to this rule, the administrative law judge may 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 these rules.

R 792.10114 Prehearing conferences.

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

(2) A prehearing conference may 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 may issue a prehearing order that 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, must be made in writing. Written requests for action must state specific grounds and describe the action or order sought. A copy of all written motions or requests for action must be served pursuant to these rules.

(2) Except as otherwise approved by the administrative law judge, all motions must be filed at least 14 days before the date set for hearing unless other scheduling provisions prevent compliance with this timeline or the need for the motion was not reasonably foreseeable 14 days before the 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 must include citations to supporting authority and, if germane, supporting affidavits or citations to evidentiary materials of record.

(5) The administrative law judge may 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 must be made in writing.

(7) Notice of oral argument on a motion must be given before 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 or other electronic means. The administrative law judge must rule upon motions within a reasonable time or hold the motion in abeyance.

(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 must be incorporated in a written order, the proposal for decision, or the final order.

R 792.10119 Location.

Rule 119. (1) The hearing system may schedule a hearing at any location or by remote means, including telephone, teleconference, or other platform, unless location is dictated by statute or controlling rules.

(2) A party may request a change of venue or means of access, including, but not limited to, in person, telephonic, or video. For good cause shown, the request may be granted at the discretion of the administrative law judge.

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.

(3) Except as otherwise provided for by statute or rule, the complaining party has the burden of proving, by a preponderance of the evidence, the basis for the requested relief or action.

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

Rule 126. (1) Evidence in a proceeding must be offered and made a part of the record if admitted by the administrative law judge. Other factual information must 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. Unless otherwise allowed by the administrative law judge, a party offering documentary evidence must ensure that it is received by the administrative law judge, with a copy sent to each opposing party, not less than 7 days before the hearing except where the notice of hearing is issued less than 30 days before the hearing. If the notice of hearing is issued less than 30 days before the hearing, documentary evidence must be received by the administrative law judge and a copy provided to each opposing party no later than 1 business day before the scheduled hearing, unless the administrative law judge allows otherwise for good cause shown. Upon timely request, a party must 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 must 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, must be returned to the party offering the exhibits, and must not be included in the record on appeal.

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

R 792.10129 Summary disposition.

Rule 129. (1) A party may move for dismissal of or judgment. The motion may be based on 1 or more of the following grounds:

(a) No genuine issue of material fact.

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

(c) A lack of jurisdiction or standing.

(2) If the administrative law judge has final decision authority, the motion may be determined without first issuing a proposal for decision.

(3) If an administrative law judge does not have final decision authority, the judge may issue an order denying the motion without first issuing a proposal for decision or may issue a proposal for decision granting the motion.

(4) 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 must proceed to hearing.

(5) In hearings held under the occupational code, 1980 PA 299, MCL 339.101 to 339.2677, the administrative law judge may not issue an order of summary disposition.

R 792.10131 Proposals for decision.

Rule 131. (1) In the absence of authority conferred by statute, administrative rule, or delegation to issue a final decision, the administrative law judge who conducted the hearing or who has read the complete record shall issue a proposal for decision.

(2) 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 that it would have if it had presided at the hearing.

(3) The proposal for decision shall be issued by the administrative law judge who conducted the hearing or who has read the complete record and shall contain findings of fact and conclusions of law, including rationale for conclusions reached.

(4) A proposal for decision becomes a final decision in the absence of the timely filing of exceptions or review by an agency with final decision authority.

R 792.10134 Default judgments.

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