

RULES AND REGULATIONS
OF
THE DEPARTMENT OF ADMINISTRATION
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATOR OF ADJUDICATION

PRACTICE AND PROCEDURES BEFORE THE
ADMINISTRATOR OF ADJUDICATION

UNDER CHAPTER 35 OF TITLE 42 OF THE
RHODE ISLAND GENERAL LAWS OF 1956, AS AMENDED

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF ADMINISTRATION

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**STATE OF RHODE ISLAND
ADMINISTRATOR OF ADJUDICATION**

**RULES AND REGULATIONS PROMULGATED
PURSUANT TO CHAPTER 42-35
OF THE RHODE ISLAND GENERAL LAWS ENTITLED
“ADMINISTRATIVE PROCEDURES ACT”**

SECTION 1 INTRODUCTION, SCOPE AND APPLICABILITY

These rules and regulations are promulgated pursuant to the authority set forth in Chapter 42-35 of the General Laws of Rhode Island of 1956, as amended, and establish uniform procedures and practices governing administrative hearings in the Office of Administrative Hearings within the Department of Administration.

These rules and regulations shall supercede any and all other rules and regulations pertaining to practice and procedures before the Department of Administration, Office of Administrative Hearings, the Administrator of Adjudication.

Hearings held for agencies with duly promulgated rules and regulations concerning administrative hearings will be held utilizing that agency's duly promulgated rules and regulations.

1.01 Duties – The Administrator of Adjudication shall perform such adjudication functions as may be delegated to him/her by the Director of the Department of Administration, as required by law, or as requested by other agencies. These functions shall specifically include administrative appellate review of determinations made by other state agencies, boards or commissions.

1.02 Location

The Office of the Administrator of Adjudication shall be located in the Department of Administration, One Capitol Hill, Providence, Rhode Island.

(a) Hearings may be held in any location deemed appropriate by the Administrator.

SECTION 2 DEFINITIONS

2.01 The term Administrator wherever used in these regulations shall be deemed to refer to the Administrator of Adjudication or his/her designee.

2.02 The term Director wherever used in these regulations shall be deemed to refer to the Director of the Department of Administration.

2.03 The term Hearing wherever used in these regulations shall be deemed to refer to any contested case before the Administrator of Adjudication.

2.04 The term Act whenever used in these regulations shall be deemed to refer to the Administrative Procedures Act (§ 42-35-1 et. seq.)

2.05 "Contested case" means an adjudicatory proceeding before a hearing officer of the Department of Administration, Office of Administrative Hearings, wherein the legal rights, duties or privileges of a party are determined.

2.06 "Hearing Officer" means the person authorized by law or duly designated by the Director or Administrator to hear, conduct and recommend decisions, or render final determinations in contested cases.

2.07 "Person" means any individual, partnership, corporation, limited liability company, association, governmental subdivision, public or private organization or any other entity however formed.

2.08 "Reasonable cause" means an apparent state of facts of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs which if found to exist upon reasonable inquiry would induce a reasonably intelligent and prudent person to believe that a cause of action existed.

2.09 "Regular business hours" means the regular business hours of the Department of Administration of 8:30 a.m. to 4:00 p.m. Monday through Friday.

SECTION 3 PRACTICE BEFORE THE ADMINISTRATOR

3.01 General - No person may appear in a representative capacity at a hearing other than attorneys at law duly qualified and entitled to practice before the Supreme Court of the State of Rhode Island and attorneys at law duly qualified and entitled to practice before the highest court of record of any other State, if the attorneys at law of the State of Rhode Island are permitted to appear in a representative capacity before administrative agencies of such other State, and if not otherwise prohibited by our State law. The Administrator may, in circumstances he/she deems appropriate, permit any properly designated individual to appear or allow persons to appear on their own behalf.

3.02 Ethical Conduct

All persons appearing in proceedings before the Administrator in a representative capacity shall conform to the standards of ethical conduct required

of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Administrator may decline to permit such person to appear in a representative capacity in any proceeding before the Administrator.

3.03 Oaths

All testimony shall be taken under oath, and all evidence submitted shall be in accordance with the Superior Court rules and/or the Administrative Procedures Act.

3.04 Ex-Parte Communications

No person who is a party to or a participant in any proceeding before the Department in question, or the party's counsel, employee, agent, or other individual acting on the party's or their own or another's behalf shall communicate ex-parte with the Hearing Officer about or in any way related to the proceeding. The prohibitions contained above do not apply to those communications which relate solely to general matters of procedure and/or scheduling.

3.05 Representation by present or former employees of the state

(a) In accordance with Chapter 36-14 of the R.I.G.L. entitled "Code of Ethics", no person who is currently an employee of a department may appear personally, or on behalf of, or represent any other person, or act as an expert witness at a hearing, except in the performance of his/her official duties.

(b) Also in accordance with Section 36-14, no person having been employed by the state may, within one (1) year after employment has ceased, appear personally, or on behalf of any other person, or act as an expert witness at a hearing.

SECTION 4 REQUEST FOR HEARING

4.01 Request for Hearing Procedure – The request for hearing shall contain in substance the following:

(a) A clear and concise statement of the nature of the matter which is disputed, objected to, or otherwise sought to be contested and of the facts on which the appellant relies.

(b) A clear and concise statement of the objection to the action of the Personnel Administrator (or other agency action) with which he or she is

aggrieved, and contention of law, if any, which the appellant desires to raise, including the application of any agency rule or regulation which may be involved.

(c) A prayer setting forth the relief sought.

(d) The name and address of the appellant, as well as the name and address of his or her attorney, if any.

4.02 Filing of Request for Hearing

The request for hearing shall be filed with the Administrator and be signed by the appellant or by his or her attorney. Such filing shall be made within the statutory time limit, either by making delivery by hand, or by regular mail, postage prepaid, addressed to the Administrator of Adjudication, One Capitol Hill, Providence, Rhode Island, 02908.

Failure to conform to the requirements of this rule or of the preceding rule shall constitute sufficient grounds, (at the discretion of the Administrator of Adjudication), for dismissal of the request for hearing.

4.03 Pre-hearing Conferences

It is the policy of the Administrator of Adjudication to encourage the use of pre-hearing conferences as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof.

The Hearing Officer may, with reasonable written notice, require that all parties attend a pre-hearing conference to consider the following:

(a) the simplification or clarification of the issues;

(b) the possibility of obtaining stipulations, admissions, agreements, documents or similar agreements which will avoid unnecessary proof;

(c) the identification of witnesses and the limitation of the number of witnesses;

(d) the possibility of agreement disposing of all or any of the issues in dispute;

(e) the consideration of outstanding motions;

(f) the status of settlement negotiations, if any;

(g) the use of pre-filed testimony, where appropriate;

(h) any matters of discovery, including limitation of data requests, document requests, or other discovery, or resolving disputes as to the scope of discovery;

(i) schedule of hearings;

(j) such other matters as may aid in the disposition of the proceeding.

All parties shall attend the pre-hearing conference fully prepared to discuss all matters involved in the proceedings. Failure of any party to attend the pre-hearing conference may constitute a waiver of all objections to any order or ruling issued as a result of the pre-hearing conference unless good cause is shown.

SECTION 5 HEARINGS – NOTICE

5.01 General - All hearings required by law or the Director (or requested by an agency) shall be conducted in accordance with these rules and regulations unless the requesting agency has duly promulgated hearing procedures. Where no hearing is required by law, the Administrator may nevertheless in his/her discretion conduct informal hearings or investigations in such manner and according to such procedures as established by the Administrative Procedures Act.

5.02 Contested Cases

In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters to be heard shall be inserted. If the Administrator or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a more definite and detailed statement shall be furnished.

(e) Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

(f) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(g) The record in a contested case shall include:

- (1) all pleading, motions, intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof and ruling thereon;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing.

(h) All staff memoranda or data submitted to the hearing officer in connection with his/her consideration of the case.

(i) Oral proceedings or any part thereof shall be transcribed on request of any party.

(j) The cost of the such transcription is to be borne by the Appellant pursuant to procedures adopted by the Administrator in conjunction with the public transcription company currently under contract with the state.

5.04 Hearings – Open to Public – Hearings shall be open to the public unless the Administrator shall declare the hearing closed pursuant to Sections 42-46-4, 42-46-5, or 44-19-30 of the Rhode Island General Laws.

SECTION 6 MOTIONS

6.01 General - Any party may request of the Hearing Officer any order or action not inconsistent with law or these rules. The types of motions made shall be those which are permissible under these rules and the Rhode Island Rules of Civil Procedure.

6.02 Presentation/Objections to Motions

Motions may be made in writing at any time before or after the commencement of a pre-hearing conference or hearing, and/or they may be made orally during a pre-hearing conference or hearing. Each motion shall set

forth the grounds for the desire to order or action and state whether oral argument is requested. Within ten (10) days after a written motion is filed with the Hearing Officer, a party opposing said motion must file a written objection to the granting of the motion, and shall, if decided, request oral argument. All motions and objections shall be accompanied by a written memorandum specifying the legal and factual basis for the party's position.

6.03 Action on Motion

The Hearing Officer shall, if he/she determines oral argument on the motion is warranted, give notice of the time and place for such argument. The Hearing Officer may rule on a motion without argument if the motion involves a matter as to which the presentation of testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved, or if disposition without argument would best serve the public interest. The Hearing Officer may act on a motion when all parties have responded thereto, or the deadline for response has passed, whichever comes first.

SECTION 7 DISCOVERY

7.01 General - The Office of Administrative Hearings favors prompt and complete disclosure in exchange of information and encourages informal arrangements among the parties for this exchange. It is the office policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.

7.02 Procedure –

Any party by written request served upon all other parties may request the other party to produce for inspection, copying or photocopying a document, object or tangible thing which is relevant to the subject matter of the hearing. Any party wishing to object to a discovery request shall do so in as timely a manner as is possible prior the date of the hearing and only after discussing the matter with opposing party in an attempt to reach an agreement.

7.03 Hearing Delay

No hearing shall be continued to permit the completion of discovery unless due diligence is shown.

SECTION 8 EVIDENCE

8.01 Rules of Evidence – General - Subject to the provisions of law and to the other provisions of these rules, all relevant and material evidence is admissible which in the opinion of the Administrator is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.

(a) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Administrator may, in his/her discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

8.02 Submission of Documentary Evidence in Advance

Where practicable the Administrator may require:

(a) That all documentary evidence which is to be offered during the taking of evidence be submitted to the Administrator and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation or cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted in advance, as may be required by subdivision (a), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

8.03 Irrelevant, Immaterial or Unduly Repetitious Evidence

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the Superior Courts of this State shall be followed; but, when necessary to ascertain facts not reasonably susceptible or proof under those rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The Administrator shall give effect to the rules of privilege recognized by law.

Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) A party may conduct cross-examinations required for a full and true disclosure of the facts.

(d) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Administrator's specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Hearing Officer's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

8.04 Excerpts From Documentary Evidence

When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, together with a statement indicating the purpose for which such materials will be offered, to the Administrator and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

(a) No testimony shall be received into evidence concerning the information contained in any document at issue unless the document (or pertinent portions thereof) shall be duly received into evidence prior to such testimony.

(b) Evidence may be sealed to protect confidential agency documents, i.e., examination questions, evidence involving minors or tax matters. Written submissions in lieu of oral proceedings may be substituted when it is necessary to protect confidential matters. The transcribed hearing, if any, will be supplemented by copies of the sealed records in the event of an appeal.

8.05 Expert Evidence/Testimony

The agency shall provide such expert evidence and/or testimony as shall be required (by the Administrator) for a proper adjudication of the matter.

Failure to provide such experts and/or witnesses may result in dismissal of the matter at bar.

8.06 Department Employees, Agents and Consultants

The Hearing Officer may employ the use of department employees, agents and consultants to assist him/her in the evaluation of any evidence introduced at the hearing. In the Hearing Officer's discretion he/she may allow the presence of these persons at the hearing.

8.07 Order of Proceedings

Except as otherwise required by law it shall be the usual practice that the department shall open. Where evidence peculiarly within the knowledge of one party, or in cases in which contested cases have been consolidated or where there are multiple parties, the Hearing Officer may, in his/her discretion, direct who shall open and shall further designate the order of presentation.

SECTION 9 SCOPE OF HEARING

9.01 Scope of Hearing

The Administrator will not consider, unless equity and good conscience so require, any issue of fact or contention of law not specifically set out in the request for hearing.

9.02 Hearing Officers to Hear Case

Hearings shall be conducted by the Administrator or a hearing officer appointed by the Administrator who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence. He or she shall have the authority to continue or recess any hearing, to keep the record open for the submission of additional evidence, and the final decision. If, for any reason, a hearing officer cannot continue on a contested case, another hearing officer will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.

9.03 Conduct of Hearing

The hearing shall be convened by the hearing officer, appearances shall be noted, any motions or preliminary matters shall be taken up, and then each party shall have opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing documentary evidence. Each party shall have opportunity to cross-examine opposing

witnesses on any matter relevant to the issue. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated. The hearing officer may question any party or any witness for the purpose of clarifying his or her understanding or to clarify the record.

9.04 Oral Evidence, Witnesses, and Penalty for False Statements

Any party may request a hearing officer to subpoena witnesses or the hearing officer may do so on his or her own motion. A hearing officer may require the parties in a case to indicate the persons they expect to call as witnesses. The testimony of witnesses shall be made under oath or affirmation and the making of false statements may subject a person to criminal prosecution under Chapter 33 of Title 11 of the General Laws, as amended.

9.05 Requests for Subpoena Duces Tecum

Any party may request a hearing officer to issue a subpoena duces tecum or the hearing officer may do so on his or her own motion. Said request shall set forth, in detail, the information sought, the relevance thereof, and the reasonableness of the scope of the subpoena. The party requesting the issuance of said subpoena shall have the burden of showing the relevance and reasonableness of the scope of the subpoena. A subpoena duces tecum may be quashed after its issuance if it is subsequently determined that the matters sought to be adduced are not relevant or the subpoena is not reasonable in scope.

9.06 Continuances

Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Administrator in writing of said desire, stating in detail the reasons why such continuance is necessary. The Administrator, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the Administrator may grant such a continuance and may at any time order a continuance upon his/her own Motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the Administrator may in his/her discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

SECTION 10 DECISIONS AND ORDERS

10.01 Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings

of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party, in accordance with rules, submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the attorney of record.

10.02 Reconsideration

At any time after the issuance of a final order of the Administrator of Adjudication or Director any party may, for good cause shown, by motion petition for a reconsideration of the final order. The petitioner shall file his/her motion within ten (10) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The motion for reconsideration may be granted if the circumstances are deemed appropriate.

10.03 Memorandum of Law

Any party may, after the close of the proceedings, request to file a memorandum of law. The Hearing Officer shall set an appropriate briefing schedule. Reply memoranda will be allowed if requested within ten (10) days of receipt of a memorandum of law from the other side.

SECTION 11 RULE MAKING, AMENDMENT OR REPEAL

11.01 Prior to the adoption, amendment, or repeal of any rule, the Administrator shall:

(a) Give at least twenty (20) days' notice of his/her intended action. The notice shall include a statement of either the terms or substance of the intended action or description of the subject and issues involved, and of the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who made timely request of the Administrator for advance notice of its rule-making proceedings, and published in a newspaper or newspapers having aggregate general circulation throughout the State, provided, however, that if said action is limited in its applicability to a particular area, then said publication may be in a newspaper having general circulation in said area.

(b) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by twenty-five (25) persons, or by a governmental subdivision or agency, or by an association having not less than twenty-five (25) members. The Administrator shall consider

fully any written and oral submissions requesting the proposed rule. Upon adoption of a rule, the Administrator, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(c) If the Administrator finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon less than twenty (20) days' notice, and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt any emergency rule. The rule so adopted may be effective for a period of not longer than one hundred twenty (120) days renewable once for a period not exceeding ninety (90) days.

SECTION 12 PUBLIC INFORMATION

12.01 Members of the general public who may desire to secure information, make submissions or requests in accordance with the applicable rules and regulations of the Administrator, register complaints, or to conduct business in any manner whatsoever with the Administrator, may do so in writing delivered to the Administrator, Department of Administration, One Capitol Hill, Providence, Rhode Island during the regular business hours.

REFERENCES

1. Chapter 35 of Title 42 of the Rhode Island General Laws, as amended.
2. Rules and Regulations Governing Practices and Procedures Before the Rhode Island Department of Health , R42-35-PP, May 1997.
3. Rhode Island Division of Taxation, Regulation Re: Administrative Hearing Procedures, July 1984.
4. Rhode Island Department of Administration, Administrator of Adjudication, Rules And Regulations Promulgated Pursuant To Chapter 42-35 of the Rhode Island General Laws Entitled "Administrative Procedures Act, September 1980.
5. Rhode Island Department of Business Regulation, Rules of Practice and Procedure in Administrative Hearings Before the Department of Business Regulation, 02 000 010, August 1997.