

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



Department of Administration
PERSONNEL APPEAL BOARD
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RULES AND REGULATIONS

RULES AND REGULATIONS PURSUANT TO CHAPTER 42-35 OF THE GENERAL LAWS OF THE STATE OF RHODE ISLAND, AS AMENDED, AND TO OTHER PROVISIONS OF LAW.

RULE 1: ORGANIZATION

1.01 Personnel Appeal Board. The Personnel Appeal Board is constituted as set forth in §36-3-6 and §36-3-7. The Personnel Appeal Board exercises the powers and performs the duties conferred or imposed upon it by Chapters 36-3 and 36-4 of the General Laws and such other powers and duties as may from time to time be otherwise conferred or imposed upon it by law.

1.02 The Personnel Appeal Board shall maintain its office at the William E. Powers Administration Building, One Capitol Hill, 3rd Floor, Providence, Rhode Island 02908.

RULE 2: DEFINITION

The term “Board” wherever used in these regulations shall be deemed to refer to the Personnel Appeal Board.

RULE 3: PRACTICE BEFORE THE BOARD

3.01 No person may appeal in a representative capacity before the Board 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, but the Board may, in circumstances it deems appropriate, permit any properly designated individual to represent either party.

3.02 All persons appearing in proceedings before the Board 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 Board may decline to permit such person to appear in a representative capacity in any proceeding before the Board.

RULE 4: SUBPOENA POWER

POWERS OF SUBPOENA - The Appeal Board is hereby authorized to require the attendance of witnesses by subpoena and to acquire the production of books, papers and documents at any hearings pursuant to §36-3-10.

- 4.01 In accordance with authorization by G.L. 1956 (1969 Reenactment) (1975 Supp.) §36-10.1 the Board retains unto itself the sole power to authorize issuance of a subpoena.
- 4.02 Subpoenas issued by and in the name of the Board shall be signed by its Presiding Officer at time of issue after a majority vote thereon.
- 4.03 No subpoena shall by Motion of the Board be approved for issue unless the Board determines that the public interest or the interest of justice be served thereby.
- 4.04 The Board or any party to a proceeding before it may petition for the issuance of a subpoena for production as a subsequent hearing a witness, documents or materials related to the relevancy of the action before the Board. However, other than the Board, the party requesting such subpoena shall establish the reasonableness of such subpoena request by detailing the relevancy and necessity for its issuance and the materiality of the evidence being sought.

4.05 A subpoena under issue by the Board may be modified or quashed by the Board upon Motion of the moving party thereto upon proper showing to the Board of it being unreasonable or oppressive.

4.06 In subpoenas granted for issuance to any party to a proceeding before the Board, service of same shall be arranged by the moving party in accordance with the provisions contained in Kent, Rhode Island Practice, §45.2 (1969).

RULE 5: PUBLIC HEARINGS

5.01 Public Hearings and Reviews required by law shall be conducted in accordance with these rules and regulations. Where no hearing is required by law, the Board may nevertheless in its discretion conduct informal hearings or investigations in such manner and according to such procedures as established by the Administrative Procedures Act.

5.02 In any contested case, all parties shall be served with such notice as may be provided for by law, but in the absence of such provision, the Board may order such notice in accordance with the provisions of the Administrative Procedures Act.

5.03 Review Conference Rule

5.03.01 In any proceeding the Board upon its own Motion, or upon the Motion of one of the parties or their qualified representatives, may in its discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference with the Board or a designated member thereof to consider:

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of facts and documents;

- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the proceeding.

5.03.02 The Board or its designated member shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

5.04 Submission of Documentary Evidence in Advance.

Where practicable the Board may require:

- (1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the Board 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;
- (2) That documentary evidence not submitted in advance, as may be required by subdivision (1), 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;
- (3) 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.

- (4) (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 of 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 Board 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 Board'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 Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

5.05 Excerpts from Documentary Evidence

When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the Board 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.

5.06 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 Board in writing of said desire, stating in detail the reasons why such continuance is necessary. The Board, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the Board may grant such a continuance and may at any time order a continuance upon its 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 Board may in its 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.

5.07 Rules of Evidence

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 Board is the best

evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.

5.07.01 When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his 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.

RULE 6: PETITIONS FOR RULE MAKING, AMENDMENT OR REPEAL

6.01 Any interested person may petition the Board requesting the promulgation, amendment, or repeal of any rule.

6.02 Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form if any. The petition must include all reasons for the requested amendment or repeal of the rule.

6.03 Prior to the adoption, amendment, or repeal of any rule, the Appeal Board shall:

(1) Give at least twenty (20) days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects 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 Board 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.

- (2) 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 Board shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Board, 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.
- (3) If the Board 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 an 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.

6.04 Declaratory Rulings

As prescribed by Section 42-35-8, G.L. 1956, as amended, any interested person may petition the Board for a declaratory ruling. The Board shall consider the petition and within a reasonable time the Board shall:

- (1) Issue a non-binding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification to the person of the time and place for such hearing and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the Department shall within a reasonable time:

- (1) Issue a binding declaratory rule; or
- (2) Issue a non-binding declaratory ruling; or
- (3) Notify the person that no declaratory ruling is to be issued.

6.05 Forms

Any interested person petitioning the Board for a declaratory ruling pursuant to Section 42-35-8 shall generally adhere to the following form for such purpose:

At the top of the page shall appear the wording "Before the (name of Board)." On the left side of the page below the foregoing the following caption shall be set out: "In the Matter of the Petition of (name of petitioning party) for a Declaratory Ruling." Opposite the foregoing caption shall appear the word "Petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs

shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the Superior Courts of this State. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the Superior Courts of this State.

The original and four legible copies shall be filed with the Board. Petitions shall be on white paper, either 8½” x 11 or 8½” x 13” in size.

Any interested person petitioning the Board requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording “Before the (name of Board).” On the left side of the page below the foregoing the following caption shall be set out: “In the matter of the Petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of Rule (or Rules).” Opposite the foregoing caption shall appear the word “Petition.”

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by Board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall

contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and four legible copies of the petition shall be filed with the Board. Petitions shall be on white paper, either 8½" x 11" or 8½" x 13" in size.

RULE 7: PUBLIC INFORMATION

Members of the general public who may desire to secure information, make submissions or requests in accordance with the applicable statutes of the Board, register complaints, or to conduct business in any manner whatsoever with the Board, may do so in writing delivered to the Board in care of the Personnel Appeal Board, or may appear in person at the office of said Board, at the Administration Building, One Capitol Hill, 3rd Floor, Providence, Rhode Island, during the regular business hours.

RULE 8: CONTESTED CASES

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

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved;
- (4) A short and plain statement of the matters inserted. If the Board 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.

- (a) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.
- (b) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (c) The record in a contested case shall include:
 - (1) all pleadings, motions, intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof and rulings thereon;
 - (5) proposed findings and exceptions;
 - (6) any decision, opinion, or report by the officer presiding at the hearing.
- (d) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration of the case.
- (e) Oral proceedings or any part thereof shall be transcribed on request of any party.

RULE 9: DECISIONS AND ORDERS

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 states. 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 Board rules, submitted proposed findings of fact, the decision shall include ruling upon each proposed finding. Parties shall be notified either personally or 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 his attorney of record.

RULE 10: DECLARATORY JUDGMENT

The validity or applicability of any rule may be determined in an action for declaratory judgment in the Superior Court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the plaintiff. The Board shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the Board to pass upon the validity or applicability of the rule in question.