

State of Utah
Administrative Rule Analysis
 Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment _x_; Repeal ___; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-160	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N. State St.	
City, state:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Adjudicative Proceedings
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
The rule is being amended to remove unnecessary provisions; remove legalese, plural, and passive language; streamline processes, and add a provision for dismissing an adjudicative proceeding.
4. Summary of the new rule or change:
Most of the changes are not substantive; they remove legalese, plural, passive, and unclear language. Remove provisions that duplicate UAPA provisions. Eliminate "removing an existing disability" from the list of proceedings designated as informal adjudicative proceedings. Eliminate pro hac vice requirement; a lawyer in good standing with a state bar association may represent a party. Authorize service on the department by certified mail. Adopt Utah R. Civ. P. 41 standards for dismissing an adjudicative proceeding. Adopt single rule for service of pleadings and eliminate separate provisions for electronic and non-electronic service. Specify requirements for challenging a finding of fact on agency review.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes merely streamline the code to make it easier to understand.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes merely streamline the code to make it easier to understand.
C) Small businesses ("small business" means a business employing 1-49 persons):

There is no anticipated cost or savings to small businesses. The changes merely streamline the code to make it easier to understand.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes merely streamline the code to make it easier to understand.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes merely streamline the code to make it easier to understand.

F) Compliance costs for affected persons:

There are no compliance costs for any affected persons. The changes merely streamline the code to make it easier to understand. There are no new regulations.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The head of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Tanji J. Northrup, Interim Insurance Commissioner

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 31A-2-201(3)(a)	Subsection 63G-4-102(6)	Subsection 63G-4-203(1)

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

First Incorporation	
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Second Incorporation	
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 01/14/2021

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

10. This rule change MAY become effective on (mm/dd/yyyy): 01/21/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy):	12/01/2020
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R590. Insurance, Administration.

R590-160. Adjudicative Proceedings.

R590-160-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3)(a), 63G-4-102(6), 63G-4-203(1), and applicable provisions of Title 63G, Chapter 4, Administrative Procedures Act.

R590-160-2. Purpose and Scope.

- (1) This rule establishes procedures governing the designation and conduct of an adjudicative proceeding before the presiding officer.
- (2) A public hearing pursuant to Section 63G-3-302 is not governed by this rule.
- (3) This rule shall be liberally construed to secure a just, speedy, and economical determination of each issue.
- (4) The presiding officer may permit a deviation from this rule for good cause.

R590-160-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 63G-4-103, the following definitions shall apply ~~for the purpose of~~ to this rule:

- (1) "Complainant" means the Department in any action against a licensee or other person alleged to have committed a violation of statute, rule, or order of the commissioner.
- (2) ~~"Department" means the Utah Insurance Department.~~
- (3) ~~"Existing disability" means:~~
 - (a) any suspension, revocation or limitation of a license or certificate of authority; or
 - (b) any limitation on a right to apply to the commissioner for a license or certificate of authority.
- (4) ~~"Intervenor" means any person, not a party, permitted to intervene in a proceeding pursuant to Section 63G-4-207.~~
- (5) ~~"Licensee" means any person who has been issued a license or certificate under pursuant to Title 31A, Insurance Code.~~
- (6) ~~"Petitioner" means any person, other than the department, who commences an adjudicative proceeding and seeks agency action.~~
- (7) ~~"Pleading" means any paper or document filed, in written or electronic form, in an adjudicative proceeding document authorized to be filed pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and this rule.~~
- (8) ~~"Presiding officer" means the commissioner or a presiding officer appointed by the commissioner.~~
- (9) ~~"Respondent" means any person against whom an adjudicative proceeding is initiated.~~

R590-160-4. Designations of Proceedings.

- (1) ~~[Any of the following proceedings may be commenced.]~~The department designates each of the following as an informal adjudicative proceeding:
 - (a) ~~[the Department's initial decision on]denial of an application for a license or a certificate of authority;~~
 - (b) ~~[the Department's decision on a petition to remove an existing disability;~~
 - (c) ~~the Department's decision to disapprove]disapproval of a rate or form filing[;~~
 - (d) ~~the Department's decision to disapprove a form];~~
 - (e) ~~[when it appears to the Department that the matter may have no issues]a matter having no factual or legal issue in dispute;~~
 - (f) ~~[when it appears to the Department that the matter involves technical or minor violations of law]a matter involving a technical or minor violation of law; or~~
 - (g) ~~[a proceeding for the purpose of entering stipulated findings of fact, conclusions of law and orders]the entry of a stipulated pleading.~~
- (2) ~~[A complainant.]~~The department may commence an informal or formal adjudicative proceeding pursuant to this rule.
- (3) A ~~[ny]~~ petitioner may commence a formal adjudicative proceeding pursuant to this rule.
- (4) The presiding officer shall conduct an ~~[y]~~ informal or formal adjudicative proceeding[.];
- (5) ~~Any time before a final order is issued, the presiding officer may, sua sponte or upon motion of any party, convert any adjudicative proceeding from a formal to an informal adjudicative proceeding or from an informal to a formal adjudicative proceeding, provided the conversion is in the public interest and does not unfairly prejudice the rights of any party.~~

R590-160-5. Rules Applicable to ~~Each~~ Any Adjudicative Proceeding.

The following rules apply to any adjudicative proceeding:

- (1) ~~[Liberal Construction. These rules shall be liberally construed to secure just, speedy, and economical determination of any issue.~~
- (2) ~~Deviation from Rules. The presiding officer may permit a deviation from these rules if strict compliance is found to be impracticable or unnecessary or for other good cause.~~
- (3) ~~Computation of Time.]~~The time within which any act shall be completed shall be computed by excluding the first day and including the last day unless the last day is a Saturday, Sunday, or a legal holiday, and then the last day is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.
- (4) ~~Parties.~~
 - (a) ~~A party to a proceeding is:~~
 - (i) any person authorized by statute or agency rule to participate in the adjudicative proceeding pursuant to Subsections 63G-4-201(1)(a) or (b);
 - (ii) a complainant;
 - (iii) a petitioner;
 - (iv) a respondent; or
 - (v) an intervenor.
 - (b) ~~2] A [ny participant in] party to a proceeding shall be named in the caption as Petitioner, Complainant, Respondent, or Intervenor.~~
- (5) ~~3] [Appearances, Representation, and Pro Hac Vice]Representation of a Party and Entering an Appearance.~~
 - (a) Representation of a Party.
 - (i) An attorney who is an active member, in good standing, of the Utah State Bar or an attorney with an active license from another jurisdiction may represent a party.
 - (ii) An individual who is a party to an adjudicative proceeding may self represent.

~~(iii) An officer duly authorized by corporate resolution may represent a corporation that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code.~~

~~(iv) A general partner may represent a partnership.~~

~~(v) An authorized member or manager may represent a limited liability company that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code.~~

~~(vi) The legal, registered owner of a business conducted under an assumed name shall be considered the legal party in interest and that business may not be represented except through the legal party in interest or an attorney.~~

~~(b) [Making-]Entering an Appearance. A[ny] party's attorney or representative enters an appearance by filing a[n-initial] written response to a notice of agency action[-at the beginning of the adjudicative proceeding, providing the party's-] by filing a notice of appearance or by orally stating an appearance at a hearing. The appearance shall include the attorney's or representative's name, address, email, telephone number, and the party's position or interest in the proceeding.~~

~~(b) Representation of Parties.~~

~~(i) An attorney who is an active member of the Utah State Bar may represent any party.~~

~~(ii) An individual who is a party to an adjudicative proceeding may represent himself or herself.~~

~~(iii) An officer duly authorized by corporate resolution may represent a corporation that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.~~

~~(iv) A general partner may represent a partnership.~~

~~(v) An authorized member or manager may represent a limited liability company that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.~~

~~(vi) The legal, registered owner of a business conducted under an assumed name, dba, shall be considered the legal party in interest and that business may not be represented except through the legal party in interest.~~

~~(e) Pro Hac Vice.~~

~~(i) An attorney licensed to practice in a jurisdiction outside of Utah may represent any party in a particular matter before the presiding officer without being admitted pro hac vice in Utah.~~

~~(ii)(A) An attorney, pro hac vice attorney, or other authorized representative pursuant to Subsection R590-160-5(5)(b), if previous appearance has not been entered, shall file a Notice of Appearance with the presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.~~

~~(B) The Notice of Appearance shall contain:~~

~~(I) the name, address, telephone number, fax number, email address, each bar identification number, and each state of admission of the pro hac vice attorney, if applicable;~~

~~(II) the name and docket number of the case in which the applicant is appearing as the attorney of record;~~

~~(III) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of any pending disciplinary proceeding; and~~

~~(IV) the name, address, bar identification number, telephone number, fax number, and email of a member of the Utah State Bar to serve as associate counsel.~~

~~(iii) The presiding officer may require Utah counsel to appear at any hearing.~~

~~(6)4 A Pleading.~~

~~(a) A[n-]Allowable Pleading. A pleading shall consist of any petition, complaint, request for hearing, responsive pleading, motion, stipulation, affidavit, memorandum, order, or document in a proceeding.~~

~~(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.~~

~~(c) Title. Each pleading shall be titled. Pleading shall be in substantially the following form:~~

~~(i) [C]entered heading[?], BEFORE THE UTAH INSURANCE COMMISSIONER[-OF THE STATE OF UTAH];~~

~~(ii) [L]left side, identification of parties;~~

~~(iii) [R]right side, [identification of type]title of pleading; and~~

~~(iv) [R]right side, docket number.~~

~~(d)b [Content of a Pleading. Any]A pleading shall [identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought]clearly and concisely present a party's position or request and the grounds in support.~~

~~(e)c [Amendment to a Pleading.~~

~~(i) The presiding officer may allow any pleading to be amended or corrected.~~

~~(ii) Any amendment to any pleading shall be consistent. A pleading may be amended in accordance with the Utah Rules of Civil Procedure, Rule 15.~~

~~(f)d Signing of a Pleading.~~

~~(i) A[ny] pleading shall be signed and dated by the party, [or by]the party's attorney, or other authorized representative and shall show the signer's address, telephone number, and email.~~

~~(ii) The signature in Subsection (4)(d)(i) shall be[is] a certification by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are [good]grounds to support it.~~

~~(g)c Motions.~~

~~(i) A [proceeding seeking an order to secure compliance may not be initiated by motion except for a Motion for Order to Show Cause.~~

~~(ii)(A) Any]motion, other than one made orally at a hearing, shall be in writing and shall [be filed and served on each party as provided in this rule]state the basis for relief.~~

~~(A) An affidavit, declaration, or other document may be submitted in support of a motion.~~

~~(B) The presiding officer may [use discretion to-]decide a[ny] motion with or without a hearing.~~

~~(C) If either party desires a hearing on [its]a motion, [any pleading in support or in opposition shall state that a hearing is requested and shall provide the reasons therefor.~~

~~(D) The filing of an affidavit or declaration in support of a motion or in opposition thereto may be permitted or required by the presiding officer.~~

~~(E) An oral motion may be allowed at a hearing at the discretion of the presiding officer[the party's pleading shall state the grounds for a hearing.~~

~~(i)ii A[ny] motion shall be filed and served at least ten days prior to the date set for the hearing.~~

~~(7)5(a) [Filing and Service.~~

- ~~(a) Any~~ A pleading shall be ~~considered~~ filed with the presiding officer by mail or by submitting a PDF to uidadminecases@utah.gov.
- ~~(b) A pleading is filed on the date [it is] received [by the Department].~~
- ~~(6) Service of a Pleading.~~
- ~~(a) A copy of a pleading filed with the presiding officer shall be served on each party to the proceeding.~~
- ~~(b) The department may be served with a summons, complaint, petition, or other pleading that commences a proceeding by sending a copy of the document by certified mail to the commissioner.~~
- ~~(c) The department may be served with any other pleading by ordinary mail or by sending a PDF to the email address of the attorney who represents the department in the proceeding.~~
- ~~(d) A licensee or a certificate holder may be served by:~~
- ~~(i) ordinary mail;~~
- ~~(ii) sending a PDF to the current email address provided to the department by the licensee or certificate holder pursuant to R590-258; or~~
- ~~(iii) sending a PDF to the current email address set forth in the pleading last filed by or on behalf of the licensee or certificate holder~~ ~~(b) Unless filed and served electronically pursuant to Section R590-160-6, a pleading shall be filed with the Department and a copy served upon each other party to the proceeding.~~
- ~~(e) The presiding officer may direct that a copy of any pleading be made available by the filer to any person requesting copies thereof who the presiding officer determines may be affected by the proceeding.~~
- ~~(d) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner.~~
- ~~(e) Service upon a licensee, if by mail, shall be to the mailing address or other address on file with the Department].~~
- ~~(f) A pleading required to be served by these rules~~ A pleading shall include a Certificate of Service in ~~substantially the following form:~~ "The undersigned hereby certifies that on this date, a true and correct copy of the (Pleading title) was served, emailed, or mailed, postage prepaid, to the following: name, street, city, state, zip code, and email address. Dated this (blank) day of (month), (year). (signed)." ~~which the signer certifies the date and method of service, the person on whom the pleading was served, and the service email address or mailing address.~~
- ~~(g) When a party is represented by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.~~
- ~~(8) Disqualification of a Presiding Officer.~~
- ~~(a) Any party to an adjudicative proceeding may move for the disqualification of an assigned~~ A party may move to disqualify the presiding officer by filing a motion with the commissioner ~~[an affidavit] alleging [facts sufficient to support] the basis for disqualification.~~
- ~~(b) The commissioner [shall determine the issue of disqualification as a part of the record of the case and] may request [and receive any] additional memoranda, evidence, or testimony as ~~considered~~ necessary to ~~make this determination] decide the motion.~~~~
- ~~(i) The adjudicative proceeding may not proceed until the commissioner makes this determination] An adjudicative proceeding is stayed until the commissioner decides the motion.~~
- ~~(ii) No appeal shall be taken from the commissioner's order on the determination of disqualification except as part of an appeal of a final agency action.~~
- ~~(iii) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized by statute or this rule] A party may not appeal the commissioner's decision until a final order is entered in the proceeding.~~
- ~~(c) A presiding officer may at any time voluntarily [disqualify himself or herself] withdraw from deciding an adjudicative proceeding.~~
- ~~(d) [When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue] If the presiding officer is disqualified, the commissioner shall appoint another presiding officer.~~
- ~~(9) Ex Parte Contact Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the] A presiding officer shall not have ex parte contact with a party or its representative, directly or indirectly involved in any matter that is the subject of a pending adjudicative proceeding unless each party is given notice and an opportunity to participate].~~
- ~~(10) Standard of Proof. Any] An issue of fact in an adjudicative proceeding [before the presiding officer] shall be decided [upon the basis of] by a preponderance of the evidence ~~standard].~~~~
- ~~(11) Burden of Proof.~~
- ~~(a) A party who commences an adjudicative proceeding has the burden to prove entitlement to the relief sought.~~
- ~~(b) A party who asserts an affirmative defense to a request for relief has the burden to prove entitlement to that defense.~~
- ~~(11) Dismissal of an Adjudicative Proceeding.~~
- ~~(a) A complainant or a petitioner may dismiss an adjudicative proceeding by filing:~~
- ~~(i) a notice of dismissal before the respondent serves a response to the initial pleading; or~~
- ~~(ii) a stipulation of dismissal signed by each party who has appeared.~~
- ~~(b) Except as provided in Subsection (11)(a), an adjudicative proceeding may be dismissed at a party's request by order of the presiding officer only on terms the presiding officer considers proper.~~
- ~~(c) If a complainant or a petitioner fails to prosecute, the presiding officer may dismiss the proceeding after applying the standard for dismissal for failure to prosecute under Utah Rules of Civil Procedure, Rule 41.~~

R590-160-6. [Electronic Filing and Service of Pleadings in Formal and Informal Proceedings.

- ~~(1) Filing with or service on the presiding officer may be accomplished by sending a copy of the pleading in PDF to uidadminecases@utah.gov.~~
- ~~(2) Filing with or service on the Department may be accomplished by sending a copy of the pleading in PDF to the Department's current email as provided in the subject proceeding.~~
- ~~(3) Filing with or service on:~~
- ~~(a) a licensee may be accomplished by sending a copy of the pleading in PDF to the current email provided by the licensee pursuant to Subsection 31A-23a-412(1); or~~
- ~~(b) a party's representative may be accomplished by sending a copy of the pleading in PDF to the representative's current email set forth in the representative's filed pleading.~~
- ~~(4)(a) Any pleading electronically filed or served shall be signed by a party or its representative and shall contain a signed certificate stating the date of electronic filing or service.~~
- ~~(b) An electronically filed or served pleading may be signed using any lawfully recognized signature, including an electronic signature.~~

R590-160-7. ~~Rules Applicable to a Formal Adjudicative Proceeding[s].~~

- (1) ~~Conduct of Hearing. Any~~ A hearing in a formal adjudicative proceeding shall ~~be conducted pursuant to~~ comply with Section 63G-4-206.
- (2) ~~The presiding officer may direct the parties to participate in a pre-hearing conference.~~
- (3) ~~Continuance.~~
- (a) ~~If application is made within a reasonable time prior to the date of hearing, upon proper notice to each other party, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown.~~
- (b) ~~The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.~~ The presiding officer may grant a motion to continue any proceeding for good cause.
- (~~3~~4) ~~Public Hearing.~~ Unless ordered by the presiding officer for good cause, a ~~ny~~ hearing in a formal adjudicative proceeding shall be open to the public.
- (~~4~~5) Telephonic Testimony.
- (a) ~~The presiding officer has discretion whether telephonic testimony may be allowed.~~
- (b) ~~The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically.~~
- (~~e~~b) If telephonic testimony is taken, a ~~ny~~ party shall be permitted to hear the testimony and examine or cross-examine the witness.
- (~~d~~c) ~~Any~~ Telephonic testimony shall be given under oath.
- (~~5~~6) Record of a Hearing.
- (a) Recording.
- (i) ~~The~~ A record of ~~the proceeding~~ a hearing shall be made by ~~an~~ audio recording.
- (ii) ~~A duplicate copy of the recording, or any portion thereof, shall be provided by the presiding officer at the request and expense of any party, and at no cost to the commissioner.~~ The presiding officer shall provide a copy of the recording at the request and expense of a party other than the department.
- (b) Transcript of a Hearing.
- (i) ~~Upon reasonable notice and at the party's own expense, any party may request that a certified shorthand reporter be present to record the proceeding.~~ On reasonable notice and approval from the presiding officer, a party may employ a certified court reporter to record a hearing.
- (ii) ~~If a transcript is made, the original transcript of the proceeding shall be filed.~~ The party seeking approval shall pay for the reporter and file the original transcript with the presiding officer at no cost to the commissioner.
- (iii) A ~~ny~~ party who wants a copy of the transcript may purchase it from the ~~certified shorthand~~ reporter ~~at the party's own expense~~.
- (~~6~~7) Subpoenas ~~, Witness Fees, and Payment~~.
- (a) ~~Subpoenas.~~
- (i) ~~On the presiding officer's command, or at the request of any party, the presiding officer may issue a subpoena to:~~
- (A) obtain or inspect documents;
- (B) inspect premises or tangible things; or
- (C) secure the attendance of a witness at a hearing or deposition in a formal adjudicative proceeding.
- (ii) ~~Any~~ A subpoena shall be issued and served in accordance with the Utah Rules of Civil Procedure, Rule 45 ~~, Subpoena~~.
- (b) ~~Witness Fees. Each subpoenaed witness, other than Department staff, who appears before the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party who requests the subpoena.~~
- (c) ~~Payment.~~
- (i) Any witness appearing at the request of the presiding officer shall be entitled to payment from the funds appropriated for the use of the Department.
- (ii) Any witness subpoenaed at the request of a party other than the presiding officer may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear. A party that requests a subpoena shall pay the same fees and mileage allowed by law to witnesses in a district court.
- (~~7~~8) ~~Discovery.~~ Discovery may be conducted by the parties' agreement or pursuant to an order of the presiding officer.
- (8) ~~Order. The presiding officer shall issue a written, signed order based upon evidence presented in the hearing.~~

R590-160-~~8~~7. Rules Applicable to an Informal Adjudicative Proceeding[s].

- (1)(a) ~~An informal adjudicative proceeding may be commenced by the Department.~~ The department may commence an informal adjudicative proceeding by issuing a Notice of ~~Informal Adjudicative Proceeding~~ Agency Action and Order pursuant to Subsection R590-160-4(1).
- (b) The ~~Notice of Informal Adjudicative Proceeding and~~ Order shall be based upon the information contained in ~~the files of the Department, any declarant's testimony, and information known to the presiding officer~~ affidavits, declarations, and the department's files.
- (c) The ~~Notice of Informal Adjudicative Proceeding and~~ Order shall constitute a proposed order that shall become final 15 days after service ~~or mailing to the party~~ on the respondent unless a written request for a hearing is received ~~by the Department prior to~~ before the expiration of 15 days.
- (2) A respondent's failure to timely request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.
- (3) When a hearing is requested in an informal adjudicative proceeding, a ~~N~~ notice of a ~~P~~ prehearing ~~C~~ conference shall be issued stating the matters to be decided and giving notice of the date, time, and place of the prehearing scheduling conference to be held.
- (4) A hearing in an informal adjudicative proceeding may be of record.
- (5) At a hearing in an informal adjudicative proceeding, the presiding officer may receive any testimony, proffer of evidence, affidavit, declaration, and argument relating to the issues to be decided and may issue a subpoena requiring the attendance of any witness or the production of necessary evidence.
- (6) ~~At the close of the informal adjudicative proceeding, the presiding officer shall issue a written, signed order based upon evidence in the Department's files and the evidence or proffers of evidence received at the proceeding. The order shall be final on the date of the order.~~

R590-160-~~9~~8. Agency Review.

- (1)(a) Agency review of an adjudicative proceeding, except an informal adjudicative proceeding that becomes final without a request for a hearing pursuant to Subsection R590-160-~~8~~7(1), shall be available to a ~~ny~~ party to ~~the~~ a proceeding by filing a ~~R~~ request for ~~A~~ agency ~~R~~ review with the commissioner within 30 days of the date of the order.
- (b) Failure to seek agency review shall be considered a failure to exhaust administrative remedies.
- (2) ~~A request for a~~ Agency review shall ~~be filed pursuant to~~ comply with Sections 63G-4-301 and 63G-4-302.
- (3)(a) The ~~review shall be conducted by the~~ commissioner or the commissioner's designee shall conduct the review.

(b) ~~[The]~~A designee shall not be the presiding officer who issued the decision under review.

(c) If ~~[the review is conducted by]~~a designee conducts a review, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) ~~[The content of a]~~A request for agency review shall ~~[be in accordance]~~comply with Subsection 63G-4-301(1)(b), and shall include the following:

(i) a copy of the order~~[-which] that is the subject of the request~~[-];

(ii) the factual basis for the request, including:

(A) citation to the record of the formal adjudicative proceeding; and

(B) clear reference to evidence or a proffer of evidence in an informal adjudicative proceeding;

(iii) the legal basis for the request, including citation to supporting authority;

(iv) for a challenge to a finding of fact in a formal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the entire record; and

(v) for a challenge to a finding of fact in an informal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the evidence received or proffered.

(b) A party challenging a finding of fact in a formal adjudicative proceeding shall:

(i) order a transcript of the recording relevant to the finding;

(ii) certify that a transcript has been ordered;

(iii) file the transcript with the commissioner or the commissioner's designee and serve a copy on each party; and

(iv) bear the cost of preparing the transcript.

(c) The commissioner or commissioner's designee may waive the transcript requirement on motion for good cause shown.

~~[(b) A party requesting agency review shall set forth any factual or legal basis in support of that request.~~

(e) The request for agency review may include:

(i) supporting argument;

(ii) citation to appropriate legal authority;

(iii) any reference to the relevant portion of the record developed during the formal adjudicative proceeding under review; or

(iv) reference to the relevant portion of the Department's files, and any other evidence or proffer of evidence received during the informal adjudicative proceeding under review.

(d) If a party challenges a finding of fact in the order subject to review, the party shall demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence in the formal adjudicative proceeding under review; or

(ii) based on the Department's files and declarant's testimony, that the finding is not supported by substantial evidence in the informal adjudicative proceeding under review.

(e) If a party challenges a legal conclusion in the order subject to review, the party shall support its argument with citation to any relevant authority and also:

(i) cite the portion of the record that is relevant to that issue in the formal adjudicative proceeding under review; or

(ii) cite the portion of the record that is relevant to the issue based upon any evidence in the Department's files, any fact appearing in the Department's files and verified by a declarant testimony, and any fact presented in evidence or proffer of evidence received in the informal adjudicative proceeding under review.

(f)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the recording relevant to such finding or conclusion to be prepared in the formal adjudicative proceeding under review, in accordance with Subsections R590-160-7(5)(a) and (b); or

(B) provide a statement in its request for agency review that no transcript or recording is available in the informal adjudicative proceeding under review.

(ii) In a request for agency review pursuant to Subsection R590-160-9(4)(f)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the presiding officer when the transcript is available for filing.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The presiding officer may waive the requirement of preparation of a written transcript and permit citation to the recording of such adjudicative proceeding upon motion and a reasonable showing that such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

](5) Memoranda.

(a)(i) A party requesting agency review shall submit a supporting memorandum with the request.

(ii) If a transcript is necessary to conduct the agency review, the supporting memorandum shall be filed no later than 15 days after the service of the transcript on the opposing party.

(b) An opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(c) A reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(d) The commissioner or the commissioner's designee may order a party to submit additional memoranda to assist in conducting agency review.

(6) Request for a Stay.

(a) On motion by any party and for good cause, the commissioner or commissioner's designee may stay the presiding officer's order during the pendency of agency review.

(b) A motion for a stay shall be made in writing and may be made at any time during the pendency of agency review.

(c) An opposition to a motion for a stay shall be made in writing within 10 days from the date the stay is requested. [Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) An opposition to the request for a stay shall be made in writing within ten days from the date the stay is requested.

(e) In determining whether to grant a request for a stay, the presiding officer shall review the request, any opposing memorandum, the findings of fact, conclusions of law, and order and determine whether a stay is in the best interest of the public.

(d) If it is determined to be in the best interest of the public to issue a stay, the presiding officer may:

(i) issue a stay, staying any part of the order pending agency review, or

- ~~_____ (ii) issue a conditional stay by imposing any term, condition, or restriction on a party pending agency review.~~
- ~~_____ (e) The presiding officer may also enter an interim order granting a stay pending a final decision on the request for a stay.~~
- ~~_____ (6) Memoranda.~~
- ~~_____ (a) The presiding officer may order or permit any party to file any memorandum to assist in conducting an agency review.~~
- ~~_____ (b) Any memorandum shall be filed consistent with these rules or as otherwise governed by any scheduling order.~~
- ~~_____ (c)(i) If a transcript is necessary to conduct an agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the Department.~~
- ~~_____ (ii) If a transcript is unavailable or waived by the presiding officer pursuant to Subsection R590-160-9(4)(f)(iv), any supporting memorandum to the request for agency review shall be filed with the request.~~
- ~~_____ (d) Any opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.~~
- ~~_____ (e) After the filing of an opposing memorandum, a reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.]~~
- ~~_____ (7) [Oral Argument.~~
- ~~_____ (a) The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with the agency review.~~
- ~~_____ (b) The presiding officer may order or permit oral argument if determined to be warranted to assist in conducting an agency review.~~
- ~~_____ (8) Standard of Review. The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).~~
- ~~_____ (9) Order on Review.~~
- ~~_____ (a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).~~
- ~~_____ (b) An order on review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further adjudicative proceeding or hearing.]The commissioner or the commissioner's designee may grant oral argument if requested in a party's initial pleading.~~
- ~~_____ ([14]8) Failure to comply with Section R590-160-9 may result in dismissal of the request for agency review.~~

R590-160-[14]9. Sanctions.

~~(1)(a) [In any adjudicative proceeding, t]The presiding officer may[, by order, impose any appropriate] sanction [upon any] a party, a party's representative, a[ny] witness, or a witness's representative for contemptuous or disobedient conduct, or for failure to comply with this rule or a[ny] lawful order.~~

~~(2)(a) The presiding officer may take any reasonable step to control the conduct of an adjudicative proceeding and may impose any sanction against a party or a witness who fails to comply with an order or with a requirement of Rule R590-160.~~

~~_____](b) A sanction may include:~~

- ~~_____ (i) excluding evidence;~~
- ~~_____ (ii) dismissing one or more claims;~~
- ~~_____ (iii) striking any pleading or any portion of a pleading;~~
- ~~_____ (iv) entering a default judgment; or~~
- ~~_____ (v) ordering payment of any costs, expenses, and fees.~~

~~_____ (2) The presiding officer may take reasonable steps to control the conduct of an adjudicative proceeding.~~

R590-160-[14]10. Severability.

If any provision of this rule, R590-160, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance

Date of Enactment or Last Substantive Amendment: 2020

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Authorizing, and Implemented or Interpreted Law: 31A-2-201; 63G-4-102; 63G-4-203