

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 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) "Intervenor" means any person, not a party, permitted to intervene in a proceeding pursuant to Section 63G-4-207.
- (3) "Licensee" means any person who has been issued a license or certificate pursuant to Title 31A, Insurance Code.
- (4) "Petitioner" means any person, other than the department, who commences an adjudicative proceeding.
- (5) "Pleading" means any document authorized to be filed pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and this rule.

R590-160-4. Designations of Proceedings.

- (1) The department designates each of the following as an informal adjudicative proceeding:
 - (a) denial of an application for a license or a certificate of authority;
 - (b) disapproval of a rate or form filing;
 - (c) a matter having no factual or legal issue in dispute;
 - (d) a matter involving a technical or minor violation of law; or
 - (e) the entry of a stipulated pleading.
- (2) The department may commence an informal or formal adjudicative proceeding pursuant to this rule.
- (3) A petitioner may commence a formal adjudicative proceeding pursuant to this rule.
- (4) The presiding officer shall conduct an informal or formal adjudicative proceeding.

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

The following rules apply to any adjudicative proceeding:

- (1) 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.
- (2) A party to a proceeding shall be named in the caption as Petitioner, Complainant, Respondent, or Intervenor.
- (3) 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) Entering an Appearance. A party's attorney or representative enters an appearance by filing a written response to a notice of agency action 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.
- (4) A Pleading.
 - (a) A pleading shall be in substantially the following form:
 - (i) centered heading, BEFORE THE UTAH INSURANCE COMMISSIONER;
 - (ii) left side, identification of parties;
 - (iii) right side, title of pleading; and
 - (iv) right side, docket number.
 - (b) A pleading shall clearly and concisely present a party's position or request and the grounds in support.
 - (c) A pleading may be amended in accordance with the Utah Rules of Civil Procedure, Rule 15.
 - (d) Signing of a Pleading.
 - (i) A pleading shall be signed and dated by the party, 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 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 grounds to support it.
 - (e) Motions.
 - (i) A motion, other than one made orally at a hearing, shall be in writing and shall 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 decide a motion with or without a hearing.
- (C) If either party desires a hearing on a motion, the party's pleading shall state the grounds for a hearing.
- (ii) A motion shall be filed and served at least ten days prior to the date set for the hearing.
- (5)(a) A pleading shall be filed with the presiding officer by mail or by submitting a PDF to uidadmincases@utah.gov.
- (b) A pleading is filed on the date received.
- (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.
 - (e) A pleading shall include a Certificate of Service in 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.
 - (f) When a party is represented by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.
- (7) Disqualification of a Presiding Officer.
 - (a) A party may move to disqualify the presiding officer by filing a motion with the commissioner alleging the basis for disqualification.
 - (b) The commissioner may request additional memoranda, evidence, or testimony as necessary to decide the motion.
 - (i) An adjudicative proceeding is stayed until the commissioner decides the motion.
 - (ii) 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 withdraw from deciding an adjudicative proceeding.
 - (d) If the presiding officer is disqualified, the commissioner shall appoint another presiding officer.
- (8) A presiding officer shall not have ex parte contact with a party or its representative.
- (9) An issue of fact in an adjudicative proceeding shall be decided by a preponderance of the evidence.
- (10) 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. Rules Applicable to a Formal Adjudicative Proceeding.

- (1) A hearing in a formal adjudicative proceeding shall comply with Section 63G-4-206.
- (2) The presiding officer may direct the parties to participate in a pre-hearing conference.
- (3) The presiding officer may grant a motion to continue any proceeding for good cause.
- (4) Unless ordered by the presiding officer for good cause, a hearing in a formal adjudicative proceeding shall be open to the public.
- (5) Telephonic Testimony.
 - (a) The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically.
 - (b) If telephonic testimony is taken, a party shall be permitted to hear the testimony and examine or cross-examine the witness.
 - (c) Telephonic testimony shall be given under oath.
- (6) Record of a Hearing.
 - (a) Recording.
 - (i) A record of a hearing shall be made by audio recording.
 - (ii) 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) On reasonable notice to and approval from the presiding officer, a party may employ a certified court reporter to record a hearing.
 - (ii) 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 party who wants a copy of the transcript may purchase it from the reporter.
- (7) Subpoenas.
 - (a) A subpoena shall be issued and served in accordance with the Utah Rules of Civil Procedure, Rule 45.
 - (b) A party that requests a subpoena shall pay the same fees and mileage allowed by law to witnesses in a district court.
- (8) Discovery may be conducted by the parties' agreement or pursuant to an order of the presiding officer.

R590-160-7. Rules Applicable to an Informal Adjudicative Proceeding.

- (1)(a) The department may commence an informal adjudicative proceeding by issuing a Notice of Agency Action and Order pursuant to Subsection R590-160-4(1).
- (b) The Order shall be based upon the information contained in affidavits, declarations, and the department's files.
- (c) The Order shall constitute a proposed order that shall become final 15 days after service on the respondent unless a written request for a hearing is received 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 notice of a prehearing 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 subpoenas requiring the attendance of any witness or the production of necessary evidence.

R590-160-8. 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 R590-160-7(1), shall be available to a party to a proceeding by filing a request for agency 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) Agency review shall comply with Sections 63G-4-301 and 63G-4-302.

(3)(a) The commissioner or the commissioner's designee shall conduct the review.

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

(c) If 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) A request for agency review shall comply with Subsection 63G-4-301(1)(b), and shall include the following:

(i) a copy of the order 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.

(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.

(7) The commissioner or the commissioner's designee may grant oral argument if requested in a party's initial pleading.

(8) Failure to comply with Section R590-160-9 may result in dismissal of the request for agency review.

R590-160-9. Sanctions.

(1)(a) The presiding officer may sanction a party, a party's representative, a witness, or a witness's representative for contemptuous or disobedient conduct, or for failure to comply with this rule or a lawful order.

(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.

R590-160-10. 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

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