

Chapter 201: APPEALS OF DECISIONS OF THE EXECUTIVE DIRECTOR

Summary: This Chapter establishes the process for an appeal from a decision of the Executive Director to the Commissioners of the Commission on Indigent Legal Services ("Commission") pursuant to 4 M.R.S. §1804(3)(J). It provides for the appointment by the Commission Chair of a Presiding Officer to conduct an appeal process and to prepare a recommended decision for consideration and action by the Commission.

ENTIRE RULE REPEALED.

SECTION 1. DEFINITIONS

1. **Appellant.** "Appellant" means a person who has filed an appeal.
2. **Commission or MCILS.** "Commission" or "MCILS" means the Maine Commission on Indigent Legal Services.
3. **Executive Director.** "Executive Director" means the Executive Director of the Maine Commission on Indigent Legal Services or the Executive Director's decision-making designee.
4. **Filing.** "File" or "filed" means delivery of an original document to the MCILS Central Office. Delivery may be in-hand, by regular mail, by commercial delivery service or the like. Delivery may not be by electronic means such as email or facsimile.
5. **MCILS Advisor.** "MCILS Advisor" means a MCILS staff member designated by the Commission Chair to act as MCILS advisor with respect to an appeal.

Party. "Party" means the person bringing an appeal and the MCILS Executive Director.

7. **Presiding Officer.** "Presiding Officer" means the individual appointed by the Commission Chair to conduct the appeal proceedings under this Chapter and make a recommended decision to the Commission.
8. **Record.** "Record" means those materials required by 5 M.R.S. §9059.

SECTION 2. APPLICABILITY; WHO MAY APPEAL

1. **Application**

This rule applies to appeals to the Commission from decisions of the Executive Director on issues specifically set forth in 4 M.R.S. §1804(3)(J). A decision of the Executive Director concerning issues not specifically set forth in 4 M.R.S. §1804(3)(J) constitutes final agency action and is not subject to appeal under this Chapter.

- ~~2. **Who may Appeal.** A person who has been aggrieved by a decision of the Executive Director pertaining to the issues set forth in 4 M.R.S. §1804(3)(J) may appeal the decision to the Commission. An appellant may be represented by another person in accordance with 4 M.R.S. §807 or may proceed without representation.~~

~~SECTION 3. BRINGING AN APPEAL~~

~~**Decision, reconsideration.** Except as stated below, a decision of the Executive Director becomes final if no appeal is filed within the time limits set forth in this section. A person aggrieved by a decision of the Executive Director may, within 10 days after receipt of the decision of the Executive Director, request that the Executive Director reconsider that decision. Such a request must be accompanied by additional materials not previously submitted with respect to the original decision. If a request for reconsideration is filed in accordance with this subsection, the running of that period is tolled, and the time for filing a Statement of Appeal shall be 30 calendar days after receipt of the decision on reconsideration.~~

~~**Statement of Appeal.** An individual who wishes to appeal a decision must file a written Statement of Appeal with MCIS within 30 calendar days after receipt of the Executive Director's decision. For purposes of this section, a statement of appeal is "filed" on the date it is received at the MCILS Central Office during normal business hours.~~

- ~~3. **Contents of the Statement of Appeal.** The Statement of Appeal shall include, but is not limited to, a copy of the Executive Director's decision, the grounds for the appeal, and a statement of the appellant's position.~~
- ~~4. Only issues that have previously been decided by the Executive Director can be appealed.~~
- ~~5. **Assignment to Presiding Officer.** When a statement of appeal is received, the Commission Chair shall assign the appeal to a Presiding Officer, in accordance with Section 5. Upon assignment of a Presiding Officer, MCILS staff shall notify the appellant in writing of the Presiding Officer's name and contact information and provide the appellant with a copy of this Chapter.~~
- ~~6. **Assignment of the MCILS Advisor.** When the Commission Chair assigns a Presiding Officer to the appeal, the Commission Chair shall also designate the MCILS Advisor. No person authorized to make decisions subject to the appeal process may be designated as MCILS Advisor.~~

~~SECTION 4. CHOICE OF APPEALS PROCESS~~

- ~~1. The Presiding Officer shall notify the appellant in writing of the option to choose one of two appeal processes:~~
- ~~A. **Expedited Appeal.** The appellant may choose to rely solely on the documentary evidence considered by the Executive Director and the Statement of Appeal. The decision to proceed under the Expedited Appeal process is irrevocable once the expedited process has commenced.~~

- ~~B. **Hearing on Appeal.** Alternatively, the appellant may request to have a hearing pursuant to 5 M.R.S. §9052.~~
- ~~2. The appellant must respond in writing to the Presiding Officer as to his or her selection of the type of appeal process within 15 calendar days after the written notice by the Presiding Officer. If the appellant does not respond within the timeframe prescribed herein, the Presiding Officer shall commence the Expedited Appeal process set forth in Section 4(1)(A).~~
- ~~3. If the appellant elects a hearing process, the Presiding Officer shall notify the appellant in writing of the hearing date and provide notice that if the appellant fails to appear at any hearing, the appeal may be deemed to have been abandoned in accordance with Section 7.~~

~~SECTION 5. PRESIDING OFFICER~~

- ~~1. **Appointment.** The Commission Chair shall appoint a Presiding Officer to perform the duties and exercise the powers set forth in this Chapter. The Presiding Officer must be fair, impartial, unbiased, and able to conduct a fair, efficient and effective appeal process.~~
- ~~2. **Who Can Serve.** The Commission Chair may appoint any Commissioner or other qualified person as the Presiding Officer. The fact that the Presiding Officer is a MCILS rostered attorney does not constitute, by itself, direct or indirect personal or financial interest in an appeal or its outcome.~~
- ~~3. **Assignment: Removal: Replacement**~~
- ~~A. An appeal will be assigned to a Presiding Officer who has no personal or financial interest, direct or indirect, in the appeal or its outcome, and who has not been involved directly or indirectly in the matter that is the subject of the appeal.~~
- ~~B. If a party files a timely charge of bias, prejudice or personal or financial interest, either direct or indirect, with the Presiding Officer, the Presiding Officer will promptly determine whether to recuse from the appeal and will include that determination in the record.~~
- ~~C. A Presiding Officer may also independently decide to recuse from the appeal if the Presiding Officer cannot be fair, impartial and unbiased.~~
- ~~D. When a Presiding Officer decides to recuse or cannot continue, the Commission Chair will assign the appeal to a new Presiding Officer pursuant to this Section. The Presiding Officer will continue the ongoing appeal process, unless the Presiding Officer determines that in order to avoid substantial prejudice to any party it is necessary to start the process anew.~~
- ~~3. **Duty and powers of the Presiding Officer.** The Presiding Officer has the duty to render a fair and impartial recommended decision to the Commission in accordance with Section 12 and has all the powers and duties as set forth in 5 M.R.S. §9062. In addition, it is the duty of the Presiding Officer to disclose, upon the request of any party, the substance of the Presiding Officer's communication with the MCILS Advisor.~~

~~4. Recommended Decision of Presiding Officer~~

- ~~a. A. If an appellant requests an Expedited Appeal pursuant to Section 4(1)(A), the Presiding Officer shall issue a recommended decision to the Commission, as set forth in Section 12, within a reasonable time period.~~
- ~~B. If an appellant requests a hearing pursuant to Section 4(1)(B), the Presiding Officer will conduct a hearing in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. §9051 et seq.~~

~~SECTION 6. MCILS ADVISOR~~

~~The MCILS Advisor shall:~~

- ~~1. Upon request of the Presiding Officer, provide information and documents to the Presiding Officer about the operations and administrative procedures of MCILS; and~~
- ~~2. Provide technical and administrative assistance to the Presiding Officer at any hearing.~~

~~SECTION 7. DEFAULT~~

- ~~1. **Failure to appear.** If an appellant fails to appear at a hearing, the appellant may be deemed by the Presiding Officer to have abandoned the appeal. The Presiding Officer shall immediately notify the appellant in writing of the finding of default. If within 15 calendar days after the issuance of the notice of default the appellant submits information that demonstrates, in the judgment of the Presiding Officer, that the appellant had good cause for failing to appear, the appeal will be reinstated. If the appellant does not submit such information to the Presiding Officer within the timeframe herein, the decision of the Executive Director will become final.~~
- ~~2. **Hearing in the absence of the appellant.** A hearing may be held in the absence of the appellant when the Presiding Officer chooses to proceed with the hearing as an alternative to a default.~~

~~SECTION 8. EVIDENCE~~

- ~~1. **Admissibility.** Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.~~
- ~~2. **Testimony.** Witnesses may provide testimony orally before the Presiding Officer or in person by deposition, by video, or by a sworn written statement. Parties must ensure that witnesses who provide sworn written statements or testimony are available for cross-examination at the hearing, although the cross-examination of a witnesses may, at the request of a party, take place at a later date.~~
- ~~3. **Irrelevant or repetitious evidence.** Evidence that is irrelevant or unduly repetitive may be excluded.~~

4. ~~**Weight of evidence.** The fact that evidence is admitted shall not limit the authority of the Presiding Officer to determine the weight to be given the evidence.~~
5. ~~**Hearsay.** Hearsay evidence shall not be excluded simply because of its hearsay nature. The Presiding Officer will, in accordance with law, determine the weight to be given to hearsay evidence.~~
6. ~~**Rules of privilege.** Rules of privilege as provided in the Maine Rules of Evidence, Article 5, shall be observed.~~
7. ~~**Stipulation of facts.** When all parties stipulate to a fact, the Presiding Officer may make a finding of fact on the basis of the stipulation. Signed statements or on the record oral statements by parties are sufficient as stipulations.~~
8. ~~**Official notice of facts.** The Presiding Officer may take official notice of a fact upon his or her own initiative or at the request of a party. Official notice may be taken of any fact of which judicial notice could be taken, and in addition, of any general or technical matter within the specialized experience or knowledge of the Presiding Officer, and of any statutes, rules and non-confidential public records. The Presiding Officer will notify the parties when official notice is taken and shall afford the parties an opportunity to contest the substance or materiality of the material noticed.~~

~~SECTION 9. SUBPOENAS~~

1. ~~**Request for subpoenas.** Any party may request the issuance of a subpoena by presenting the request to the Presiding Officer. The request must contain:
 - A. ~~The name and address of the party requesting the subpoena; and~~
 - B. ~~The name and address of the person to be subpoenaed, or other place where the person to be subpoenaed may be found; and~~
 - C. ~~A brief statement why the testimony or evidence of the person to be subpoenaed is relevant to an issue of fact in the appeal.~~~~
2. ~~**Issuance on approval.** If the Presiding Officer determines that the request pertains to testimony or evidence relevant to an issue of fact in the appeal, the Presiding Officer must submit the subpoena for approval by the Attorney General or a Deputy Attorney General who is not involved in the appeal.~~

~~**Requirements.** A subpoena shall comply with the requirements of 5 M.R.S. §9060.~~

~~SECTION 10. HEARINGS RECORDED~~

1. ~~All hearings will be recorded in a form susceptible for transcription.~~

SECTION 11. DISMISSAL OF APPEAL

- ~~1. At any time before receipt of notice of the Presiding Officer's recommended decision, the parties may enter into an agreement as to resolution of the issues subject to the appeal. If they reach such an agreement, they shall file with the Presiding Officer a stipulation of dismissal that outlines the agreement reached. Upon receipt, the Presiding Officer shall recommend dismissal to the Commission.~~
- ~~2. At any time before receipt of notice of the Presiding Officer's recommended decision, the appellant may withdraw the appeal by written notice to the Presiding Officer. Upon receipt of notice withdrawal of the appeal, the Presiding Officer shall recommend dismissal of the appeal.~~
- ~~3. The Commission must dismiss the appeal if the Presiding Officer recommends dismissal on the grounds set forth in subsection 1 or 2.~~

SECTION 12. RECOMMENDED DECISION OF THE PRESIDING OFFICER

Contents. Following the hearing or, if the appellant has chosen an Expedited Appeal following review of the documentary record, the Presiding Officer will prepare a recommended decision, which will include:

- ~~A. A clear statement of the subject(s) of the appeal and of the issue(s) that must be resolved to decide the appeal;~~
 - ~~B. A listing of the date of hearing, place of hearing, and participants at the hearing or, if no hearing was held, the written agreement from the appellant attorney to proceed without a hearing;~~
 - ~~C. A listing of all evidence admitted and upon which the recommended final decision is based;~~
 - ~~D. Findings of fact, which must be sufficient to apprise the parties of the basis for the recommended decision;~~
 - ~~E. A clear statement of result resolving all issues under consideration;~~
 - ~~F. A clear explanation of the reasoning underlying the result, including references to applicable law, procedures, and rules.~~
- ~~2. **Comments, modification, and delivery to the Commission**~~
 - ~~A. The Presiding Officer will send a copy of the recommended decision to each of the parties for comment. A may submit comments regarding the recommended decision, which must be in writing and must be filed with the Presiding Officer within 10 days of receipt of the Presiding Officer's recommended decision.~~

~~B. The Presiding Officer may, but is not required to, modify the recommended decision in response to the parties' comments. If in the judgment of the Presiding Officer the previously issued recommended decision should be substantially modified, the Presiding Officer will send the recommended decision as modified to the parties for further comment, as provided in subparagraph A.~~

~~C. The Presiding Officer will deliver copies of the recommended decision, as originally prepared and as modified, to the Commission. The Presiding Officer will deliver the written comments made by the parties with the recommended decision. When the recommended decision is not modified, the Presiding Officer will also deliver to the Commission its written response to the parties' written comments.~~

~~SECTION 13. ACTION BY THE COMMISSION~~

~~1. **Commission Consideration.** A quorum of the Commission will consider the Presiding Officer's recommended decision on a timely basis.~~

~~2. **Recommended decision and record.** In advance of consideration, a copy of the Presiding Officer's recommended decision must be sent to each Commissioner, with parties' comments as provided in Section 12.~~

~~3. **Presiding Officer.** If requested by the Commission, the Presiding Officer may be present to assist the Commission. If the Presiding Officer appointed by the Commission Chair is a Commissioner, that Commissioner shall recuse from consideration of or voting on Commission action on the recommended decision.~~

~~4. **Action after consideration.** After considering the recommended final decision, a quorum of the Commission shall:~~

~~A. Adopt the Presiding Officer's recommended decision as delivered;~~

~~B. Modify the Presiding Officer's recommended decision;~~

~~C. Send the matter back to the Presiding Officer for the taking of further evidence or for additional consideration of issues, as set forth by the Commission; or~~

~~D. Reject the Presiding Officer's recommended decision in whole or in part and decide the appeal itself on the basis of the existing record.~~

~~5. A decision as adopted by the Commission pursuant to this Section is the final administrative decision in the appeal.~~

~~6. If the vote of the Commission to accept or not accept the Presiding Officer's recommended decision is evenly divided, the decision of the Executive Director is affirmed.~~

~~STATUTORY AUTHORITY: 4 M.R.S. §§ 1804(3)(J) and (4)(D)~~

~~EFFECTIVE DATE:~~

~~August 21, 2011 filing 2011 282~~