# 02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

031 BUREAU OF INSURANCE

Chapter 350 RULES OF PRACTICE AND PROCEDURE GOVERNING ADJUDICATORY PROCEEDINGS

1. Definitions

A. Superintendent. "Superintendent" means the Superintendent of the Bureau of Insurance.

B. Bureau. "Bureau" means the Bureau of Insurance.

C. Person. "Person" means any individual, partnership, corporation, governmental entity, association, or public or private organization of any character.

D. Party. "Party" means:

(1) The specific person or persons whose legal rights, duties or privileges are being determined in the proceeding; and

(2) Any person participating in the adjudicatory proceeding as an intervenor pursuant to these rules and applicable statute.

E. Intervenor; Proposed Intervenor. "Intervenor" means a person permitted to intervene in a proceeding as provided by these rules pursuant to 5 M.R.S.A. Section 9054 and Title 24-A M.R.S.A. Section 231(3). "Proposed intervenor" means a person who has moved to intervene and whose motion is currently pending but has not been ruled on.

F. Staff. "Staff" means the employees of the Bureau and any consultants and other contractors retained for the purpose of assisting the Superintendent and/or Bureau employees in carrying out their duties and responsibilities.

2 Scope and construction of rules

A. Scope.

(1) Proceedings Governed. These rules shall govern all adjudicatory proceedings before the Superintendent under applicable laws of the State of Maine, except as otherwise provided by statute or rule. When the circumstances of a particular proceeding require more detailed procedures than those set forth in this Chapter, additional procedures may be specified by the Superintendent, by order applicable to that particular proceeding.

(2) Exceptions. These rules shall not apply to proceedings governed by the Automobile Insurance Cancellation Control Act, Title 24-A, Chapter 39, Subchapter II, or to proceedings governed by the Property Insurance Cancellation Control Act, Title 24-A, Chapter 41, Subchapter V.

B. Liberal Construction. These rules shall be liberally construed to secure just, speedy and economic determination of all matters pending before the Superintendent or his staff.

3. Deviation from rules

A. Variation from this Chapter. In special cases, where good cause appears, the Superintendent may permit deviation from these rules or may deviate from them on his own motion, insofar as he may find compliance therewith to be impracticable, inexpedient or unnecessary.

B. Limitation. Nothing in this section shall permit the Superintendent to modify or deviate from any procedural requirement or deadline that is expressly set forth in a statute without provision for waiver or modification.

C. Request. Except under extraordinary circumstances, all requests for deviation from procedural rules shall be in writing. The Superintendent reserves the right to summarily reject oral requests made under this section.

4 Communications

A. Filings. In filing papers with the Superintendent as required or permitted by applicable statute, these rules, or an order of the Superintendent they shall be deemed to be officially filed or received only when received at the Bureau during the hours that it is open. All written communications or documents related to an application or other proceeding pending before the Superintendent shall be addressed to the Superintendent, except where submitted in response to a request from a member of the Bureau staff or as otherwise requested by the Superintendent. The acceptance of any document for filing does not constitute a determination that the contents of the document are sufficient for the purpose for which it is filed.

B. Service. Unless otherwise ordered whenever a document is filed with the Superintendent which relates to an application or other proceeding pending before the Superintendent, it shall at the same time be served on all parties and proposed intervenors in the matter, except that a petition to intervene need be served only on the parties.

5. Time

A. Time Calculations. In computing any period of time prescribed or allowed by these rules or by order of the Superintendent, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. Where the time period within which an action must be taken is specified by statute, the terms of the statute control and the provisions of this paragraph shall not apply.

B. Enlargement of Time. When by these rules or by a notice or order issued by the Superintendent, an act is required or allowed to be done at, before, or within a specified time, the Superintendent for cause shown may at any time, in his discretion, with or without request, motion or notice, order the period enlarged before the expiration of the period originally prescribed or as extended by a previous order, provided that time limits or periods that apply to other persons affected by the resulting change or delay are also adjusted appropriately. Requests for enlargement of time which are filed after expiration of the period originally prescribed or as extended by previous order will be granted only in exceptional circumstances.

6. Defective filings

A. Applicability. The procedure specified in this Section shall apply to: (1) statements required to be filed by 24-A M.R.S.A. Sections 222(4) and 3476; and (2) any worker's compensation rate filing subject to 39 M.R.S.A. Section 22-C.

B. Inspection; Filing Date. Upon the receipt of any filing subject to this Section, the document and any material accompanying it will be inspected by the Superintendent or his staff. If the document is found by the Superintendent to be defective or insufficient, the Superintendent shall inform the person filing it of the defect or omission within 35 days from his receipt of the filing, and the defective or insufficient document will not be deemed to be filed. The defective or insufficient document will be retained by the Bureau, marked to indicate that it is not deemed filed. Within 10 days of submission of additional material by the filing party in response to the notice of defects, the Superintendent shall determine whether the defects on omissions have been corrected and notify the filing party of his determination. The filing date for such a document shall be deemed to be the date on which the last document that removed any defect or made the filing complete was received by the Superintendent, except that the Superintendent may treat the date that the insufficient document was filed as the filing date, if the deficiencies are found to be immaterial or not to have delayed, impeded, or interfered with the ability of the Bureau or any party to respond to, investigate, or process the filing. For the purposes of this subsection, an application or form is defective or insufficient if it fails to include all the information required by statute or by applicable rule.

C. Effect of Failure to Note Defects. The absence of action by the Superintendent noting defects or insufficiencies and adjusting the filing date accordingly shall not constitute a substantive finding that the information contained in the document is sufficient to establish that any relief or action requested in the document should be granted or that any facts asserted in the document have been proven, nor shall it be construed to limit in any way the Superintendent's authority to request further data or information from the filing party during the course of a proceeding.

7. Motions and requests

A. General Requirements. Every motion or request for an order or ruling of any kind by the Superintendent shall be in writing, unless made on the record during a hearing to which the request or motion is related. Every request or motion should include or be accompanied by a clear and detailed statement of the facts that support the order or other action sought. The statement supporting the request or motion should also include any arguments with respect to policy or law that have a bearing on the request.

B. Form. Requests or motions and their supporting papers should be clearly labeled on the first page with a title that includes "motion" or "request," a short description of the action or order requested, and a caption sufficient to identify the matter to which the request or motion relates. If legal arguments are advanced, the supporting statement accompanying the motion shall include citations to all supporting authorities relied upon by the moving party.

C. Statements in Opposition. Any party opposing a motion shall file a statement in opposition to the motion or request within seven (7) days after service of the motion, unless some other period is established by the Superintendent.

8. Notice

A. Notice of Hearing. The provisions of 5 M.R.S.A. Section 9052 and Title 24-A M.R.S.A. Section 230 govern the content and manner of notice of any adjudicatory hearing scheduled to be held by the Superintendent.

B. Preliminary Notice of Filing. The Superintendent may in his discretion give notice of the filing of an application in cases where (1) no hearing is required, (2) a decision as to whether to hold a hearing has not yet been made, or (3) a hearing has not yet been scheduled. This notice may be given for purposes of advising persons of their rights to intervene in a pending matter, scheduling a prehearing conference or for any other purpose he deems appropriate, and may contain such information as he deems relevant to its purpose. In cases where a preliminary notice is issued and a hearing is subsequently scheduled, a formal notice of hearing will also be issued in accordance with the terms of paragraph A of this section.

9. Public participation

A. Intervenors. The provisions of 5 M.R.S.A. Section 9054 and 24-A M.R.S.A. Section 231(3) govern the admission and participation of intervenors in any adjudicatory proceeding before the Superintendent.

(1) Form of application. An application for intervenor status shall be made to the Superintendent in writing. An application for intervention as of right pursuant to 5 M.R.S.A. Section 9054(1) shall contain a statement explaining how the applicant is or may be, or is a member or class which is or may be, substantially and directly affected by the proceeding, or identifying the applicant's status as an agency of federal, state or local government. An application for permissive intervention pursuant to 5 M.R.S.A. Section 9054(2) shall contain a statement explaining the applicant's interest in the proceeding.

(2) Time for filing. An application for intervenor status may be filed at any time after the proceeding to which it relates is initiated, whether the proceeding is initiated by filing of an application with the Superintendent, by issuance of a notice of hearing or otherwise, but shall be filed within the time permitted for intervenor applications by an order of the Superintendent which is publicly noticed. Any person who applies for intervenor status after the deadline set by the Superintendent shall be permitted to intervene only upon a compelling demonstration of good cause.

B. Public Participation at Hearings. In addition to the participation of persons granted intervenor status, the Superintendent may provide a reasonable period of time for public comment during the course of a hearing which he deems to involve the determination of issues of substantial public interest. Persons making statements during the public comment portion of such a hearing who have not applied for and been granted intervenor status shall not have rights as a party to the proceeding. Such persons may either make an unsworn statement or testify under oath. Persons who present testimony under oath are subject to cross-examination by the parties. Only evidence presented during sworn testimony may be relied upon by the Superintendent.

10. Discovery

A. Superintendent and Bureau Staff. The Superintendent and Bureau staff shall have all authority granted to them by statute to obtain information in any proceeding, and the provisions of this section shall not be construed to limit that authority in any way.

B. Informational Request by Parties. All parties shall have the right to serve informational requests upon any party, subject to the following terms and procedures.

(1) Form. Informational requests shall be in writing, unless made on the record in a hearing, and specifically directed to a party or parties. A copy of each request shall be provided to the Superintendent and each party.

(2) Scope. Informational requests shall be relevant to the issues involved in the pending proceeding, and shall not be unduly burdensome or repetitious.

(3) Objections. Objections to an informational request shall be filed with the Superintendent no later than five (5) working days after it is received, unless some other period is prescribed by order.

(4) Response to informational request. Each informational request shall be answered within fourteen (14) days after its receipt or such other period as may be ordered by the Superintendent, except as to any part of a request to which specific and timely objection is made. In cases where timely objection has been made and the objection is subsequently overruled, the requested information shall be provided within fourteen (14) days of receipt of the Superintendent's ruling on the objection or such other period as may be provided in that ruling. A copy of the responsive material shall be provided to the Superintendent and to each party. Responsive material does not become part of the record of hearing unless offered and admitted.

11. Prehearing conferences

A. General. The Superintendent may hold a prehearing conference for any purpose that may expedite the orderly conduct and disposition of a proceeding, including but not limited to formulating or simplifying the issues, considering motions, establishing discovery schedules, resolving discovery disputes, arranging for exchange of proposed exhibits or prefiled testimony, identifying witnesses or providing for procedures to be followed at the hearing. In cases where he deems it advisable, the Superintendent may hold more than one prehearing conference with respect to a proceeding.

B. Notice. Notice of a prehearing conference shall be given either in the notice of hearing or pursuant to Section 8B of these rules.

C. Prehearing Memoranda. The Superintendent may require the filing of prehearing memoranda before or after a prehearing conference, or both, as he deems appropriate. The contents and order of filing of these memoranda shall be specified in an order issued by the Superintendent.

D. Prehearing Order. The Superintendent may issue an order based upon a prehearing conference or prehearing memoranda which will control the course of subsequent proceedings. Modification of such order may be allowed at the hearing by the Superintendent but only for good cause shown or to prevent manifest injustice.

12. Subpoenas

A. Authority. In any adjudicatory proceeding, any party upon application shall be entitled as of right to the issuance of subpoenas in the name of the Superintendent to require the attendance and testimony of witnesses and the production of any evidence relating to any issue of fact in the proceeding, subject to the provisions of 5 M.R.S.A. Section 9060(1) and 24-A M.R.S.A. Sections 232 and 233.

B. Form. Each request for issuance of a subpoena shall be accompanied by a proposed subpoena which shall, to the extent practicable, adhere to the form used in civil actions.

C. Service. The party requesting the subpoena shall be responsible for service. A subpoena may be served by the sheriff, his deputy, a constable or any other person who is not a party and not less than eighteen (18) years of age, by delivering a copy of the subpoena to the person named in it. The party requesting the subpoena shall also be responsible for the tender of witness fees to the extent required by Title 24-A M.R.S.A. Section 232(3).

D. Timing of Requests of Subpoenas. Requests for subpoenas will be processed as expeditiously as is reasonably possible; however, the requesting party should not anticipate immediate issuance of a subpoena upon filing of the request. Requests for subpoenas requiring attendance or production of documents at a scheduled hearing should be filed no later than 5 working days prior to the hearing date, unless some other deadline is provided by order of the Superintendent, in order to provide the witness subpoenaed a reasonable opportunity to exercise his rights under 5 M.R.S.A. Section 9060(1)(C) to petition the Superintendent to vacate or modify the subpoena. Requests for subpoenas filed less than the prescribed number of working days before a scheduled hearing will be granted only upon a showing of good cause.

13. Hearings: general provisions

A. When Held. Hearings will be held whenever required by statute, when requested in accordance with 24-A M.R.S.A. Section 229, and otherwise as the Superintendent may determine in specific cases.

B. Fairness. Hearings shall be conducted in an impartial manner.

C. Rights of the Parties. Unless limited by stipulation or order in accordance with this chapter, or unless limited by the Superintendent to prevent repetition or unreasonable delay in proceedings, every party shall have the right to present evidence and argument on all relevant issues, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.

D. Bureau Participation. Hearings will be held before the Superintendent or such presiding officer as he may designate. The Bureau staff may appear at any hearing and shall have all rights of participation in any proceeding as the parties have.

E. Sworn Testimony. All witnesses shall swear that their testimony is wholly truthful or shall make a solemn affirmation to that effect in lieu thereof.

F. Presiding Officer.

(1) Authority. The Superintendent may designate a presiding officer for any hearing pursuant to 5 M.R.S.A. Section 9062. A presiding officer shall have all powers enumerated in Section 9062(3) and in these rules, and, in addition may exercise such powers of the Superintendent under these rules as he may designate.

(2) Reports.

a. Any proposed findings of fact, or any proposed decision prepared by the presiding officer shall be made only in the form of a written report. A copy of the report shall be provided to each party, and an opportunity shall be provided for response or exceptions to be filed by each party. The presiding officer shall set the time within which exceptions may be filed.

b. The presiding officer may orally recount the evidence and may orally provide the Superintendent with advice in the course of his deliberations, whether or not a report has been prepared. When a report has been prepared and the time for filing has elapsed, the presiding officer may, upon request of the Superintendent, comment upon the proceeding, his report, and the exceptions thereto.

G. Continuances. Changes in the time and place of the first session of a hearing may be requested in writing, reasonably in advance of the time scheduled. The Superintendent or presiding officer may, in his discretion, grant or deny the request. Changes in the schedule of subsequent sessions of a hearing may be announced to the parties on the record during the hearing. It shall be the responsibility of any party not in attendance to inquire whether any such changes have been announced. Motions for continuances shall be made no less than (4) days before the date set for the beginning of a hearing.

14. Exhibits

A. Technical Matter. When evidence to be presented consist of technical matter or figures so numerous to make oral presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained by oral testimony.

B. Withdrawal of Exhibits. No exhibit received in evidence may be withdrawn except with the approval of the presiding officer at the hearing.

C. Late-Filed Exhibits.

(1) The presiding officer may, in his discretion, allow documentary evidence that is unavailable at the time of hearing to be marked as a late-filed exhibit and offered as evidence after the close of hearing if (a) the evidence proposed to be submitted is described at the hearing with sufficient particularity to apprise all parties of its content and purpose; and (b) the parties agree that the evidence may be offered as a late-filed exhibit, or the presiding officer so orders.

(2) Unless another date or dates are specified by the presiding officer, late-filed exhibits may be offered no later than ten (10) days after the last day upon which a hearing is held or five (5) days before the first date on which briefs must be submitted, whichever is earlier. A copy of each late-filed exhibit must be provided to each party at the same time that it is offered. (3) The agreement of the parties or the order of the presiding officer to allow the offering of such an exhibit shall not constitute admission of that document into evidence. Any party may, within five (5) days after an offer of any late-filed exhibit, object to its admission and/or request an opportunity to conduct cross-examination or to present rebuttal evidence in connection with the exhibit, unless that party has plainly and specifically waived its rights to do so on the record of the hearing at which leave to offer the exhibit was granted.

(4) No less than five (5) days after the offer the presiding officer shall rule on the admissibility of each late-filed exhibit and include his ruling in the record of the proceeding. If a timely and valid objection or request for opportunity to cross-examine or to offer rebuttal has been made, the presiding officer may, in his discretion, either (a) exclude the exhibit; or (b) schedule a supplementary hearing to receive further evidence and rule on admissibility of the exhibit. In no event shall a supplemental hearing be scheduled if such would result in extending the time reasonably necessary for decision on the merits of the proceeding beyond the end of a period, fixed by statute or rule, within which the Superintendent is required to render his final order.

15. Prefiled testimony and exhibits

The prefiling of each party's direct case, including testimony and exhibits, shall be required in any worker's compensation rate proceeding subject to 39 M.R.S.A. Section 22-C and in any other proceeding in which the Superintendent in his discretion may deem such a requirement to be appropriate. Prefiling shall be subject to a schedule established by the Superintendent by order issued following a prehearing conference or otherwise, and shall be subject to the following further provisions.

A. Parties to the case shall file with the Superintendent such number of copies as the Superintendent may order, of all testimony and exhibits of each witness whom they propose to present in support of their direct cases. Two (2) copies of such testimony and exhibits shall be served on each party at the time that such testimony and exhibits are filed with the Superintendent. If the pre-filed direct testimony described in this paragraph is filed prior to the decision by the Superintendent regarding petitions to intervene, additional copies of such testimony and exhibits shall be served on each proposed intervenor within two (2) days of the date that the party filing the testimony and exhibits receives notice of the petition to intervene.

B. Prefiled testimony shall be in writing and shall be presented in double-spaced print or typescript in the form of questions and answers that would render similar oral testimony admissible. Pre-filed exhibits may be attached to the testimony, provided that they are referred to, identified, and introduced in the pre-filed testimony. Pre-filed written testimony shall have numbered pages and include line numbers on each page, in the left hand margin, except as otherwise permitted by the Superintendent. Each party may file with its pre-filed testimony and exhibits an opening statement, containing a narrative summary of the testimony and exhibits and the fact(s) that they are intended to establish.

C. A witness while under oath, may supplement and explain his pre-filed testimony and exhibits by filing amendments thereto in writing or by oral testimony. Such supplementation and explanation shall not substantially alter the subject matter of the testimony, except to the extent that information which was not available and which could not have been obtained through the exercise of due diligence at the time of preparation of the testimony may affect the nature of the presentation. Pre-filed testimony shall be introduced into the record by the oral testimony of the witness under oath, after which it may be offered as an exhibit, with the same effect as if the testimony had been given orally in its entirety. Each witness sponsoring pre-filed direct testimony shall be subject to oral cross-examination. Re-direct examination will be conducted orally and will be limited to matters raised during cross-examination. Objection to pre-filed testimony or exhibits may be made at the time that testimony or exhibits are offered at the oral hearing.

16. Bifurcated hearing

In any proceeding initiated by the filing of an application which the Superintendent has authority to approve or disapprove, the Superintendent may order that any hearing be held in stages. In such cases, the Superintendent may schedule a hearing recess of such duration as he deems reasonable between hearings on each of (a) the direct case of the party making the application, (b) the direct case of any other parties and advocacy staff, if any, and (c) the filing party's rebuttal case.

17. Presentation of argument

The Superintendent or presiding officer may, in his sole discretion order or permit the filing of briefs and/or presentation of oral arguments prior to the Superintendent's rendering of a decision.

18. Two-part decision

In extraordinary circumstances, including those in which a time constraint imposed by rule or statute requires the issuance of a decision by a specific date, the Superintendent may issue his decision in two (2) parts. The first part shall plainly state the result of the decision, specify the orders made by the Superintendent and summarize the factual conclusions reached. The second part shall contain the full statement of findings of fact required by this section and made by the Superintendent as a basis for his decision. This second part shall be issued as soon after the issuance of the first part as possible, but in no case more than seven (7) days after such issuance. The time for taking an appeal from a decision issued in two parts begins to run from the issuance of the second part.

19. Rehearing and reforming

Motions for rehearing or reopening to change, modify, rescind or vacate a decision or order of the Superintendent must be filed with the Superintendent within twenty (20) days after service of the determination or order to which the request relates. Such motion or request shall conform to Section 7 of this Chapter.

A. Effect of Rehearing or Reopening. Unless otherwise specified by the Superintendent, a decision to grant a motion to rehear or reopen a case does not act to stay the effect of the Superintendent's order to which the rehearing or reopening applies. A timely motion under this subsection terminates the running of time for an appeal, which then begins to run after the motion is acted on or deemed denied under Paragraph (B).

B. Any motion for rehearing or reopening that is not granted within twenty (20) days from the date of filing shall be deemed to be denied.

C. The Superintendent, may, on his own motion, and after notice to all parties, rehear or reopen any matter at any time, to the extent permitted by law.

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History. -- Statutory Authority.--5 M.R.S.A.

§ 9060(1); 24-A M.R.S.A. §§ 232 and

233.

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