# **02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**032 OFFICE OF SECURITIES**

**Chapter 540: ADJUDICATORY PROCEEDINGS RULE**

**Summary:** This rule establishes procedures for the conduct of adjudicatory proceedings before the Office of Securities. The rule should be read in conjunction with the statutory provisions for adjudicatory proceedings in the Maine Administrative Procedure Act, 5 M.R.S.A. §§ 9051-9064. The rule provides guidance to all persons who are parties to or otherwise participating in administrative enforcement proceedings under the Maine Uniform Securities Act. The rule helps to ensure that such proceedings are handled in an expeditious and procedurally fair manner.

**Section 1. Scope.**

This rule governs procedure in adjudicatory proceedings before the Office of Securities, subject to and in accordance with the provisions of the Maine Administrative Procedure Act, 5 M.R.S.A. §§ 8001-11008, and the Maine Uniform Securities Act, 32 M.R.S.A. §§ 16101-16702. This rule does not apply to investigations, except where made specifically applicable. This rule does not apply until a hearing is requested by a party or set by the Administrator.

**Section 2. Definitions.**

Terms used in this rule shall be defined the same as they are defined in the Maine Administrative Procedure Act, 5 M.R.S.A. §8002, and the Maine Uniform Securities Act, 32 M.R.S.A. §16102. If a term is defined in both of those statutes in an inconsistent manner, the definition in the Maine Uniform Securities Act shall govern in this rule.

**Section 3. Service on Parties.**

1. General rule. In accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §9051(3), service of any paper on a party to an adjudicatory proceeding is complete upon mailing of the paper to the party or the party's attorney, upon in-hand delivery to the recipient, or upon delivery to the recipient's office. This rule does not apply to service of process under 5 M.R.S.A. §10704(4).

2. Represented parties. Unless the Administrator or presiding officer orders otherwise, where a party is represented by an attorney, service of papers shall be made upon the attorney. Service upon an attorney of record for a party remains sufficient and adequate service until the attorney has been allowed to withdraw pursuant to these rules.

3. Service by mail. The mailing of a paper to a party may be made to the party's last known business or residential address. The mailing of a paper to a party's attorney may be made to the attorney's last known business address.

4. Delivery. Delivery of a paper to a recipient's office may be made by leaving the paper at the recipient's office.

5. When the party to be served is the Office of Securities, service shall be made upon the staff member(s) participating in the proceeding in an advocate capacity.

**Section 4. Filing with the Administrator or Presiding Officer.**

1. General rule. In accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §9051(3), the filing of any papers required or permitted to be filed under this rule is complete when the Administrator or presiding officer receives the paper by mail, in-hand delivery, or any other means specified by the Administrator or presiding officer.

2. Filing by mail. Papers required or permitted to be filed under this rule by mail shall be mailed to the Office of Securities, 121 State House Station, Augusta, ME 04333-0121, or such other places as the Administrator may designate.

3. Hand delivery. Hand-delivery at times other than during regular business hours shall be deemed filed on the next regular business day.

4. Filing by facsimile. Parties may file by facsimile but the filing shall be deemed effective only if the paper is simultaneously mailed to the Administrator or Presiding Officer.

5. Statement of service. For any paper filed under this rule, the filing party shall file the original with the Administrator or presiding officer along with a statement that copies have been served on every other party (or the party's attorney of record) and specifying for each (A) the name and address of the party or attorney and (B) the date and manner of service.

6. Non-compliance. If a party fails to comply with this section, the Administrator or presiding officer may refuse to accept or consider the filing.

**Section 5. Computation of Time.**

1. General rule. In computing any period of time that is either prescribed or allowed by this rule, or is ordered by the Administrator or presiding officer, the day of the act or event 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, Sunday, State holiday, or any other day on which the Office is closed, in which event the period runs until the end of the next business day.

2. Modification. When by this rule or by order of the Administrator or presiding officer an act is required or allowed to be done at or within a specified time, the Administrator or presiding officer for good cause shown may in his/her discretion order the period extended or shortened, except as precluded by statute. When the Administrator or presiding officer modifies a period of time for the simultaneous exchange of documents, the period is equally modified for all parties, unless the Administrator or presiding officer orders otherwise.

**Section 6. Form of Papers and Submissions.**

1. Captions. All papers and submissions filed in connection with adjudicatory proceedings shall contain a caption setting forth (A) the name of the first listed respondent, (B) the file number assigned to the case by the Office, and (C) a brief descriptive title of the paper or submission.

2. Form. All papers and submissions filed in connection with adjudicatory proceedings, excluding exhibits, shall be typed or otherwise printed on one side of the page of 8.5 x 11 inch paper. The typed matter must be double spaced in at least 12-point type, except that footnotes and indented quotations may be single spaced and in 11-point type, and margins should be at least one inch on all sides. All pages shall be numbered.

3. Signatures. Every paper filed by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign the paper and state the party's address and telephone number. The signature of an attorney or party constitutes a representation by the signer that the signer has read the paper being submitted; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

4. Non-compliance. If a party fails to comply with this section, the Administrator or presiding officer may refuse to accept or consider the filing.

**Section 7. Motions.**

1. Form. All motions should be written and in accordance with Section 6 above, except that motions may be made orally during a hearing at the discretion of the Administrator or presiding officer.

2. Content. All motions must state concisely the question to be determined and the factual and legal grounds for the desired order or action and be accompanied by any necessary supporting documentation.

3. Timing. No motion pertaining to an upcoming scheduled hearing may be filed less than 28 days before the hearing without a showing of good cause and the prior approval of the Administrator or presiding officer. The filing or pendency of a motion does not alter or extend any time limit.

4. Opposition. Any opposition to a motion must be filed within 14 days after receipt of the motion. A party failing to file such timely opposition shall be deemed to have waived all objections to the motion.

5. Length. No brief or motion or opposition thereto shall exceed 20 pages without a showing of good cause and the prior approval of the Administrator or presiding officer.

6. Briefs and oral argument. The Administrator or presiding officer may in his/her discretion order that briefs be filed on any issue and may allow oral argument on any motion.

7. Non-compliance. If a party fails to comply with this section, the Administrator or presiding officer may refuse to accept or consider the filing.

**Section 8. Timing and Manner of Intervention.**

1. Timing. Persons who seek to intervene in a proceeding pursuant to 5 M.R.S.A. §9054 must do so by motion for leave to intervene which must be filed and served on all parties no later than 28 days before the hearing, unless the Administrator or presiding officer orders otherwise for good cause shown.

2. Manner. Motions for leave to intervene shall (A) conform to the requirements of Sections 6 and 7 above, (B) state the grounds for the proposed intervention, and (C) list the name, address, and telephone number of the interested person and that person's attorney, if any.

3. Non-compliance. If a proposed intervenor fails to comply with this section, the Administrator or presiding officer may refuse to accept or consider the motion.

**Section 9. Addition, Deletion, and Substitution of Parties.**

The Administrator or presiding officer may, in his/her own discretion or upon motion of a party, order the addition, deletion, or substitution of parties.

**Section 10. Consolidation and Severance.**

1. Consolidation. The Administrator or presiding officer may consolidate two or more proceedings where the proceedings involve a common question of law or fact or where such consolidation otherwise may expedite the orderly conduct and disposition of the proceedings or settlements thereof.

2. Severance. The Administrator or presiding officer may, for good cause shown, order any proceeding or portion thereof severed.

**Section 11. Continuances.**

Continuances or adjournments of conferences or hearings may be granted at the Administrator's or presiding officer's discretion.

**Section 12. Discovery.**

In accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §9060(2), the Administrator or presiding officer may in his/her discretion and for good cause shown allow parties to obtain discovery via deposition, written interrogatory, or other method and may issue subpoenas pursuant to 5 M.R.S.A. § 9060(1) in aid of any discovery allowed.

**Section 13. Pre-Hearing Conferences.**

1. Agenda. The Administrator or presiding officer may in his/her discretion direct that one or more pre-hearing conferences be held, upon reasonable notice, for any purpose including but not limited to: (A) formulating or simplifying issues; (B) obtaining admissions or stipulations regarding facts and documents; (C) deciding requests for official notice; (D) addressing discovery disputes and motions; (E) determining the admissibility of evidence; (F) deciding the order of presentation; (G) arranging for exchange of proposed exhibits, testimony, and evidence; (H) limiting the number of witnesses and extent of witness examinations; (I) determining scheduling and procedures for the hearing; and (J) discussing such other matters that may expedite the orderly conduct and disposition of proceedings or settlements thereof.

2. Telephone or video conference. The Administrator or presiding officer may conduct a pre-hearing conference by telephone, video, or other electronic means. Upon notice to the participants, all or part of the pre-hearing conference may be recorded.

3. Record. Actions taken and agreements made at such conferences shall be made part of the record and such actions and agreements will control the course of the proceedings unless modified in the discretion of the Administrator or presiding officer.

4. Discretion. The Administrator or presiding officer may, in lieu of holding a pre-hearing conference, elect to communicate in writing with parties about some or all of the same subjects as would be discussed at such a conference. This section shall not be construed as creating a right to a pre-hearing conference.

**Section 14. Pre-Hearing Exchange.**

The Administrator or presiding officer may order or direct parties to take any required action before the hearing, including but not limited to filing and serving lists of witnesses and exhibits, copies of pre-marked exhibits, and other documents by a certain date or dates before a scheduled hearing. If a party fails to comply with such an order or direction, the Administrator or presiding officer in his/her discretion may at the hearing refuse to admit certain exhibits into evidence, refuse to allow certain witnesses to testify, default the party (provided notice has been given pursuant to 5 M.R.S.A. §9053(3)), or take other appropriate action.

**Section 15. Mediation.**

At the request of any party and with the consent of all parties, the Administrator or presiding officer may, in his/her discretion, appoint a mediator to facilitate settlement of a proceeding. The appointment of a mediator shall be on such terms and conditions as the Administrator or presiding officer directs. The mediator shall not be the Administrator, the presiding officer, or any Office of Securities staff who have participated or will participate in the proceeding in an advocate capacity. Settlement of a proceeding through mediation is in all cases subject to the Administrator's approval.

**Section 16. Witnesses.**

1. Examination

A. After a witness is sworn, the parties may conduct direct examination, cross-examination, re-direct examination, and re-cross examination. Further examination by the parties is permissible only if the Administrator or presiding officer so directs in the exercise of his/her discretion.

B. The Administrator or presiding officer may conduct his/her own examination of a witness at any time during the testimony of that witness.

2. Limitations. The Administrator or presiding officer may limit the number of witnesses and/or the extent of witness testimony.

3. Fifth Amendment. A witness' invocation of the Fifth Amendment privilege against self-incrimination must be stated by the witness on the record and not by the attorney for the witness. The Administrator or presiding officer may take any adverse inference from a witness' invocation of that privilege as warranted by law.

4. Immunity. The Administrator or presiding officer does not grant any kind of immunity to any witness in connection with any of that witness' proposed testimony.

5. Sequestration

A. Upon request by any party, or on his/her own initiative, the Administrator or presiding officer may in his/her discretion exclude witnesses other than parties from the hearing room when those witnesses are not testifying.

B. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though that individual may also be a witness.

C. The Administrator or presiding officer may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the witness' absence.

**Section 17. Conduct of Hearing.**

1. Presentation. The Administrator or presiding officer shall determine the order in which the parties shall present their case and evidence. Unless otherwise ordered, the presentation will be agency staff followed by the respondent(s), followed by any intervenors, followed by the agency staff's rebuttal witnesses, if any.

2. Openings and closings. Opening and closing statements may be made, either orally or in writing, at the discretion of the Administrator or presiding officer.

3. Stipulations. With the approval of the Administrator or presiding officer, the parties may stipulate to facts at issue, on the record either orally or in writing, and shall be bound thereby, though the Administrator or presiding officer may still require proof of stipulated facts.

4. Evidence. The Administrator or presiding officer shall take evidence in accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §9057.

5. Objections. Objections shall be timely made and the basis of each objection shall be stated briefly on the record. The Administrator or presiding officer may rule on the objection at the time it is made or may reserve a ruling until later as appropriate.

6. Close of evidence. Once a party has rested its case, it may introduce no further evidence without the Administrator's or presiding officer's consent.

7. Conduct of Persons Appearing at Hearings

A. All persons appearing at a hearing before the Administrator or presiding officer shall conform to the conduct expected in the Superior Court of the State of Maine.

B. Contemptuous, disorderly, or improper conduct by any person appearing at a hearing shall be grounds for the Administrator or presiding officer to exclude or expel that person from the hearing or to take other appropriate action.

8. Telephone or video hearing. The Administrator or presiding officer in his/her discretion may conduct all or part of a hearing by telephone, video, or other electronic means.

9. Submissions. The Administrator or presiding officer in his/her discretion may order parties to file pre-hearing and post-hearing briefs and proposed findings of fact and conclusions of law.

10. Adjudication on documentary record. The Administrator or presiding officer may elect in his/her discretion not to hold a hearing, or a part thereof, if all parties waive their right to the hearing and agree to submit to adjudication based on the documentary record.

**Section 18. Representation.**

1. Pro se representation. An individual may appear on the individual's own behalf.

2. Attorneys. A party may be represented by an attorney authorized to practice law in Maine.

3. Notice of appearance. An attorney who appears in a representative capacity shall enter an appearance by filing a written notice of appearance setting forth: (A) the attorney's name, business address, telephone number, fax number, and e-mail address; and (B) the name and address of the party represented.

4. Change of address. Each party and any representative of a party shall promptly notify the Office of any change of address, telephone number, fax number, or e-mail address.

5. Withdrawal. An attorney who is the sole representative of a party may withdraw from representation only by serving a notice of withdrawal on the client and all other parties and filing the notice with the Office, provided that (A) such notice is accompanied by notice of the appearance of another attorney and (B) no hearing date has been set. Unless these conditions are met, the attorney may withdraw only upon motion to the Administrator or presiding officer for leave to withdraw. Such motion shall state the last known address of the client and shall be served on the client in accordance with these rules. The Administrator or presiding officer may grant the motion upon good cause shown and under such terms, conditions, and notices to the client and other parties as he/she may direct.

6. Application to government attorneys. Subsections 3 and 5 of this section do not apply to government attorneys representing the Office of Securities.

**Section 19. Failures to Appear; Grounds for Default.**

1. General rule. In accordance with 5 M.R.S.A. §9053(3), the Administrator or presiding officer may dispose of an adjudicatory proceeding by default against any party that fails to timely request a hearing, appear at a scheduled hearing or conference, participate in the proceeding, take any required action, or comply with the agency's orders, rules, or directions in connection with that proceeding. In the alternative, where a party fails to appear for a scheduled hearing or conference, the Administrator may proceed to hold the hearing or conference and render decisions in that party's absence.

2. Party's appearance. Where a party is represented by an attorney, the party is not excused from appearing at a scheduled hearing unless the Administrator or presiding officer, in his/her discretion and for good cause shown, orders that the party may be so excused.

3. Telephone or video appearance. When a party has been allowed to appear at a hearing or conference by telephone, video, or other electronic means, the party fails to appear within the meaning of this section if, for more than 10 minutes after the scheduled time of the hearing or conference, the party fails to (A) answer or free the telephone, (B) appear at the videotaping site, or (C) otherwise be prepared to proceed with the hearing or conference as scheduled.

**Section 20. *Ex Parte* Communications.**

In accordance with the Maine Administrative Procedure Act, 5 M.R.S.A. §9055, parties may not communicate directly or indirectly, in connection with any issue of fact, law or procedure, with the Administrator or presiding officer, except upon notice and opportunity for all parties to participate. This section does not prohibit parties from communicating with other staff members of the Office of Securities.

**Section 21. Effective Date.**

1. General rule. This rule governs those adjudicatory proceedings pending on or commenced after the effective date, except to the extent that in the opinion of the Administrator or presiding officer the application of one or more provisions of this rule in a particular proceeding pending when the rule took effect would not be feasible or would work injustice, in which event the Administrator or presiding officer need not abide by those provisions.

2. Amendments. Amendments to this rule will govern those adjudicatory proceedings pending on or commenced after the effective date, except to the extent that in the opinion of the Administrator or presiding officer the application of one or more of the amendments in a particular proceeding pending when the amendment took effect would not be feasible or would work injustice, in which event the Administrator or presiding officer need not abide by those amendments.

STATUTORY AUTHORITY:

5 M.R.S.A. §8051 and 32 M.R.S.A. §16605

EFFECTIVE DATE:

October 27, 2003 - filing 2003-367

AMENDED:

December 31, 2005 – filing 2005-522

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 18, 2025