# 18-185 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

**185 STATE CLAIMS COMMISSION**

**Chapter 110: RULES OF PRACTICE GOVERNING THE CONDUCT OF ADJUDICATORY PROCEEDINGS FOR REAL PROPERTY ACQUISITION CASES**

**SUMMARY**: These rules of practice prescribe the manner in which proceedings are to be held in and before the State Claims Commission in Real Property Acquisition cases, including but not limited to requirements for notice, conferences, and discovery.

**1. Scope and Applicability of Rules**

 These rules shall govern formal proceedings in and before the State Claims Commission as relates to real property acquisition cases, and, where so provided, informal proceedings, including conferences. “Real property acquisition cases” include, in addition to cases brought under Title 23 M.R.S. Section 154, cases brought pursuant to 23 M.R.S. Section 246(1) (relocation assistance) and cases brought pursuant to Title 23 M.R.S. Section 652. (change of grade and alleged damage to private water supplies.)

**2. Practice Before the State Claims Commission**

 Any person may appear before the Commission in his or her own behalf, or by an attorney authorized to practice law in this State. In unusual or extraordinary circumstances a person may designate by written authorization a disinterested representative to act on his or her behalf. Non-attorney representation may be permitted at the discretion of the Commission, providing that the rules and regulations and legal procedures are otherwise complied with. An attorney from another jurisdiction, in good standing there, may at the discretion of the Commission be permitted to participate in proceedings before the Commission. Nothing in this rule shall be interpreted in such a way as to permit the unauthorized practice of law; nor shall this rule in any way be construed to restrict or limit the right of any person to conduct his or her own business with or before the Commission.

**3. Place of Sessions**

 Hearings shall be conducted in the county in which the property interest that is the subject of the hearing is located, unless at the complete discretion of and in the best judgment of the Clerk of the Commission there are overriding issues related to the convenience of the parties or the efficiency in conducting the hearing that require the choice of a location outside of the county. The exact location of any hearing shall be suitable for a full presentation of all evidence. In choosing the exact location of the hearing, the Clerk may take into consideration factors including but not limited to the capacity of the proposed site to accommodate the anticipated number of persons attending the hearing, the needs of anyone attending the hearing who might have a disability, the degree to which the proposed site is perceived by the parties as being neutral to each party, and the degree to which the proposed site can meet the technological requirements of any party presenting evidence. Regardless of the selected hearing location, the county commissioner appointed for the hearing shall be a commissioner of the county in which the subject property is located.

**4. Hearings**

 All hearings shall be open to the public and a record of all hearings in a form susceptible to transcription shall be made.

**5. Transcription of Hearings**

 (A) The Clerk of the Commission may engage the services of a court reporter to create a verbatim record of the hearing whenever in the opinion of the Clerk it is desirable to do so.

 (B) A party may request that a verbatim record of the hearing be made of the hearing by a court reporter. The request must be submitted to the Clerk of the Commission with sufficient advance notice to arrange for the presence of the court reporter and to insure that space arrangements may be made to accommodate the court reporter at the site of the hearing.

 (C) In lieu of using a court reporter, the Clerk of the Commission may utilize voice recognition technology to create a record of the hearing.

 (D) In cases in which a recording is made but no transcription of the hearing has been made, a party may request a copy of the tape or other modality that contains the recorded version of the hearing. The State Claims Commission shall retain the original tape, disc, or other modality that contains the recorded version of the hearing.

**6. Payment for the Transcription or Recording of the Hearing**

 (A) When the Clerk of the Commission has engaged the services of a court reporter pursuant to paragraph 5(A) above, the direct cost of the court reporter shall be paid by the Commission. The cost for the transcription and preparation of the record shall be borne by the person or entity requesting the transcript.

 (B) When a party has requested a court reporter pursuant to paragraph 5(B) above, the cost of the court reporter, the transcription, and the preparation of the record shall be paid by the person or entity requesting the court reporter.

 (C) The cost of production of the voice recognition transcript pursuant to paragraph 5(C) above or the cost of reproducing the tape, disc, or other modality pursuant to paragraph 5(D) above shall be borne by the person or entity requesting the record.

 (D) A person or entity requesting a transcript or record pursuant to paragraphs (A), (B), or (C) of this section may share with other persons or entities the costs of transcription, or preparation of the transcript or record equally or in whatever proportion of payment that the parties or entities requesting the transcript or record may agree upon. In cases in which the parties or entities are sharing costs, a written request signed by each person or entity sharing the cost incurred or to be incurred by the State Claims Commission must be submitted to the Clerk of the State Claims Commission stating the proportional payments to be borne by each party or entity. In any case, a copy of the transcript shall be provided to the State Claims Commission at no cost.

**7. Order of Procedure for the Hearing**

The Department of Transportation and other parties who initiate condemnation proceedings involving the acquisition of land or any interest therein and which are statutorily referred to the Commission for the determination of just compensation, shall ordinarily be required to present their evidence and witnesses first and they will testify, under oath, as to the basis of their determination of just compensation. At the conclusion thereof, the property owner or other claimants shall present their evidence supporting the property owner’s opinion regarding just compensation. Notwithstanding the above, the Clerk of the Commission and the Attorney member of the hearing commission shall have the discretion to decide jointly which party shall present first.

**8. Conferences**

 A person desiring a conference with the Commission with respect to any matter which is, or which may come, before the Commission shall direct his or her request for such a conference in writing to the Clerk, stating the subject desired to be considered, and shall give notice of such request to all parties of record in such matter, or known or reasonably believed to have a direct interest therein.

**9. Copies of Communications**

 Whenever any proceeding shall have been commenced before the Commission, a party writing to, or forwarding written material to, the Commission with respect to such proceedings, shall at the same time forward a copy of such letter or material to every other party of record, and shall show compliance with this rule by statement or certificate attached to such letter or material.

**10. Views and Inspections**

 Except as provided in this section, the State Claims Commission shall view the property involved with or without the presence of the interested parties, but it shall first notify the interested parties of the time when it will view the property. Such view may be taken either before or after any hearing which may be held. A property owner may waive the right to a view of the property by the Commission. The Commission is not required to view a property prior to issuing a default judgment pursuant to Section 18 of these rules.

**11. Additional Parties**

 The Commission may, in any proceeding pending before it, order that any person whose interest will be affected by any orders made therein be made a party to the proceeding. A person thus made a party shall be governed by these rules.

**12. Appearances**

 At any hearing, any party of record shall be entitled to enter his or her appearance, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceeding. Appearances shall be entered either in writing or, at the discretion of the Commission, upon the record of the hearing. If appearance in writing is filed, a copy thereof shall be delivered, or mailed postage prepaid, to all other parties to the proceeding by the filing party.

**13. Pre-Hearing Conferences**

 Prior to any proceeding the Chairperson or his or her designee may upon the request of a party or upon his or her own motion hold a pre-hearing conference. The purpose of the conference may be but is not limited to the simplification of the issues in the case, the establishment of facts upon which the parties can agree, the identification of documents the parties intend to introduce into evidence, the identification of expert witnesses, the order, scope, and timing of discovery, the resolution of any questions of procedure, the fixing of the location and time of any hearing, and in general the consideration of such other subjects that may enhance the efficiency of the hearing process or aid in the disposition of the case. The Chairperson or his or her designee may establish a calendar that states the date by which actions identified in the pre-conference shall take place. For any pre-hearing conference that is held, the Chairperson or the designee shall make a written order which recites the action taken at the pre-hearing conference and that order, unless otherwise modified in writing at a later date by the Chairperson or the designee, shall control the subsequent course of the case. The Chairperson or the designee may impose sanctions upon a party or a party’s attorney which may include the imposition of costs, including attorney fees and travel costs, as appropriate, for the failure to comply with an order made pursuant to this section.

**14. Consolidation**

 The Commission may, after notice to all parties, upon its own motion or motion of any party, make such order for the consolidation of any cases pending before it as justice and convenience requires. Such proceedings may be consolidated in whole or in part as the Commission may determine.

**15. Notice of Hearing**

(A) The Commission shall give notice of the time and place for the hearing which shall be mailed registered or certified mail to all interested parties at least fourteen (14) days before the date of the hearing, or by personal service as required for service of a summons on a complaint in the Superior Court.

(B) The Clerk of the Commission or his or her designee may send a property owner a second copy of the notice of the hearing by regular mail. Such a notice may be mailed less than fourteen (14) days prior to the hearing.

(C) Any party or interested person may agree to accept a notice of hearing of less than fourteen (14) days.

(D) In the event a notice of hearing mailed pursuant to paragraphs (A) or (B) above is returned to the Commission marked “refused”, “returned to sender”, “unclaimed”, “unable to forward”, “addressee unknown” or any of the above, the Clerk of the Commission may reschedule the hearing to a later date but is not required to do so. The Clerk of the Commission or his or her designee shall notify the Maine Department of Transportation or other party of any notice of hearing that is refused, returned, unclaimed, or that the Postal Service is unable to forward.

(E) The Clerk of the Commission or his or her designee may receive additional information from the Department of Transportation or other party pertaining to the correct or most current address of the property owner. If such information is received from the Department of Transportation or from any other source deemed reliable by the Clerk of the Commission, the Clerk of the Commission or his or her designee shall record the most recent address of the property owner in the records of the State Claims Commission.

(F) Upon receipt of a written request from the Maine Department of Transportation or other interested person the Clerk of the State Claims Commission or his or her designee may order service by publication. In making the decision as to whether to utilize service by publication the Clerk of the Commission may take into account factors such as the anticipated expense of any notice of publication, and the likelihood that the published notice will accomplish the goal of giving actual notice to the property owner or other intended recipient of the published notice.

**16. Protection for Minors or Persons with a Disability**

 The Chairperson of the Commission may appoint a guardian ad litem to protect the interests of any minor or incompetent person who has an interest in a case before the State Claims Commission. Any guardian ad litem appointed under this section shall submit an itemized request for costs, expenses, and compensation to the State Claims Commission. The State Claims Commission shall determine the reasonable costs, expenses, and degree of compensation for the guardian ad litem. When the condemning authority is the Department of Transportation, such costs and expenses and compensation shall be borne by the Department of Transportation.

**17. Continuances**

(A) Requests for continuances must be submitted in writing to the Clerk of the Commission at least seven (7) days prior to the date of hearing. A request for a continuance may be submitted by letter, facsimile (“fax”) or by e-mail. Changes in the time and place of the hearing in any proceeding will be granted only for good cause shown. Continuances will not be granted if requested within seven (7) days prior to the date of the hearing except for compelling circumstances, and such requests shall contain a full statement of the reason for the need for the continuance. No continuance will be granted automatically. The Clerk will notify the parties in writing of any decision pertaining to the request for a continuance.

(B) The Commission may continue a hearing from time to time for cause shown or by agreement of parties. If the request for a continuance is made at the request of the property owner, the Commission shall require interest be waived for the period of the continuance.

**18. Default**

 When the Clerk of the Commission or his or her designee has attempted to notify a property owner of a hearing pursuant to Section 15 of these regulations, or when all interested parties have been notified of a hearing, and the property owner does not attend such hearing either in person or by an authorized representative and the property owner fails to obtain a continuance from the Commission prior to the scheduled time of the hearing, the Commission shall grant a judgment of default against the property owner. Such a judgment of default shall be valid once signed by at least one Commissioner, so long as any Commissioner signing the entry of default is present for the call of the docket on the day of the scheduled hearing and that Commissioner has been a witness to the failure of the property owner or someone representing the property owner to appear at the hearing. The docket may be called either by the Clerk of the Commission or by a Commissioner.

(A) **Notice of Default Judgment**: The Clerk of the Commission or his or her designee shall mail a copy of the default judgment by registered or certified mail to the property owner who is the subject of the default decision at the last current recorded address of the property owner known to the Commission. If the mailed default decision is returned to the Commission marked “refused”, “return to sender”, “unclaimed’, “unable to forward”, or any of the above, the Clerk of the Commission or his or her designee shall notify the Department of Transportation or other party that the default judgment has been returned. The Clerk of the Commission or his or her designee may receive information from the Department of Transportation or from any other reliable source deemed reliable by the Clerk pertaining to the most current address of the property owner. The Clerk of the Commission or his or her designee shall mail a second copy of the default judgment to the property owner by regular mail to the most current address known or made available to the Commission.

(B) **Relief From Default**: Upon written request and upon a showing of excusable neglect the Clerk of the Commission may relieve a property owner or other interested party from the default judgment provided that the written request is made within sixty (60) days from the date of the default judgment. The date of the default judgment may be later than the date of the hearing. A written request under this subsection may be submitted to the Commission by letter, by facsimile (“fax”), or by e-mail.

**19. Form**

 Documents constituting pleadings, motions and briefs shall be typewritten or printed, (or otherwise mechanically produced or reproduced) on white paper 8-1/2 x 11 inches in size. The initial sheet shall have across the top thereof the heading of the "State Claims Commission" and underneath thereof the words "Department of Administrative and Financial Services", and it shall set forth that the matter is before the State Claims Commission, it shall show the names of the parties, so far as known, the nature of the document and the Docket Number. Such documents shall be signed by the party, or by the party’s attorney, or by the party’s representative who has been duly authorized as required by Section 2 of these rules. Unless otherwise jointly agreed by the parties and the Commission or by order of the Commission, there shall be filed with the Commission an original and three (3) copies of all such documents. Where the Commission has prescribed forms for the types of such documents, such forms shall be used as provided therein. All such documents filed subsequent to the initial petition of the Department of Transportation or other parties shall bear a statement indicating that a copy thereof has been delivered or mailed to every other party of record.

**20. Amendments**

 The Commission may, in its discretion and upon such notice to other interested parties as it shall direct, permit the amendment of any document filed with the Commission.

**21. Briefs**

 Briefs as to facts and law will be received and may be required to be submitted in any proceeding. The day for filing briefs will be designated by special order of the Commission during or upon the conclusion of the hearing. Unless jointly agreed to by the parties and the Commission or by order of the Commission, an original and four (4) copies of each brief shall be filed with the Commission and a copy thereof, shall be delivered to or mailed to each party of record prior to or simultaneously with delivery or mailing to the Commission. Certification of such mailing or delivery shall be filed with the Commission.

**22. Evidence**

 Any oral or documentary evidence, which is relevant material, and not unduly repetitious or cumulative, may be admissible at any hearing before the Commission. While the Commission is not bound by the rules of procedure, it may apply such rules, or any of them, when, in its judgment, such application is necessary or appropriate to afford the parties a full and fair hearing and to bring about the production of needed and proper evidence speedily and definitely. The Chairperson shall resolve all questions of admissibility.

**23. Official Notice**

 A party desiring the Commission to take official notice of the Commission’s own records shall specify the portions of such records, by page number or other convenient reference, for which it is desired that official notice be taken.

**24. Incorporation by Reference**

 Documents and records, including the documents and records of the Commission, may, in the discretion of the Commission, be incorporated by reference into the record of a proceeding. Only such specific portions of the documents and records that are designated by page number or other convenient reference shall be so incorporated. The Commission will not ordinarily permit incorporation by reference of the entire record, or transcript of hearing, of a prior proceeding.

**25. Exhibits**

(A) Where evidence to be given consists of numerous figures, tabulations or technical data, it may be presented in written form as a visual aid or any exhibit provided the author is available for cross-examination.

(B) Space shall be provided in the upper right corner of each sheet of an exhibit for the insertion of the Docket Number, the name of the witness through whom it is presented, and the number of the exhibit.

(C) The party offering an exhibit shall provide four (4) copies to the Commission, unless the Commission otherwise directs.

**26. Stipulation of Facts**

 The parties to any proceeding before the Commission may, by stipulation in writing, filed with the Commission or entered in the record at the hearing, agree upon the facts or any portion thereof, involved in the hearing, which stipulation shall be regarded and used as evidence in the decision of the matter.

**27.** **Discontinuance of Proceeding**

 Except for agreements for settlement, a proceeding that has begun before the Commission shall not be discontinued or abandoned without the approval of the Commission nor, except with like approval, will any pleading or document filed with the Commission be withdrawn.

**28.** **Certification of Official Acts**

(A) Each member of the Commission, for its official purposes, may administer oaths, certify to official acts and issue all process necessary to the performance of the duties of the Commission.

(B) The Clerk of the Commission shall also have authority to certify to all official acts of the Commission, administer oaths, issue subpoenas, and issue all processes, notices, orders or other documents necessary to the performance of the duties of the Commission.

**29. Award**

 As promptly as possible after the conclusion of the hearing, the Commission shall make an award in writing specifying the items as contained in Title 23 M.R.S., Section 156, as amended, or to make an award in accordance with Title 23 M.R.S., Section 246, Subsection 1 (Relocation Assistance) or Section 652, Subsection 1 (Change of Grade), or Subsection 2, Paragraph E (Private Water Supplies).

**30. Interest on Awards**

(A) Unless in the course of the proceedings the property owner has requested a continuance and that request for continuance has been granted, in which case no interest shall be paid during the duration of that continuance as required by Section 17(B) of these rules, simple interest from the date of taking until the date of the award shall be allowed at the one-year United States Treasury bill rate plus three (3) percent.

(B) For purposes of this section, “the one-year United States Treasury bill rate” means the average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last full week of the calendar year immediately prior to the calendar year in which the acquisition or “taking” by the condemning authority of the property interest that is the subject of the award occurred.

(C) If the Board of Governors of the Federal Reserve System ceases to publish the weekly average one-year constant maturity Treasury yield or if the rate defined in paragraph (B) above is otherwise unavailable, then the rate as established by the Maine Supreme Judicial Court pursuant to 14 M.R.S. Section 1602-B(3)(B), as amended, shall be the rate upon an award under this section is calculated.

**31. Recess and Adjournment**

 The Commission may from time to time, recess, adjourn and continue any hearings as may be necessary in its discretion.

**32. Waiver of rules**

 The Commission may waive the application of any rule, as justice may require.

**33. Motions**

 With respect to all motions, including motions for continuances, unless the opposing party requests a hearing upon any motion within ten (10) days after the filing thereof, the party shall be deemed to have waived hearing and the Commission may act thereon.

**34. Witnesses**

 Witnesses shall be sworn and every such witness shall be subject to oral cross-examination. No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

**35. Subpoenas and Discovery**

 (A) Any party shall be entitled to require the attendance and testimony of witnesses through the issuance of subpoenas in the name of the Commission. In addition any party shall be entitled upon request to the other party to the production of any evidence relating to any issue of fact in the proceeding to the extent that evidence is not privileged or protected by statute, rule or the United States or Maine Constitutions.

(B) The Commission may prescribe the form of subpoena, but it shall adhere, insofar as practical, to the form used in civil cases before the Courts. Witnesses shall be subpoenaed only within the territorial limits, and in the same manner as witnesses in civil cases before the Courts, unless another territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fees for attendance and travel as in civil cases before the Courts. Such fees shall be paid by the party requesting the subpoena.

(C) Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.

(D) Any witness subpoenaed may petition the Commission to vacate or modify a subpoena issued in the Commission’s name. The Commission shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Commission considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or that it has not been issued a reasonable period in advance of the time when the evidence is requested.

(E) Failure to comply with a subpoena lawfully issued in the name of the Commission and not revoked or modified by the Commission as provided in this section shall be punishable as for contempt of Court.

**36. The Commission’s Presiding Officer and His or Her Duties**

 One of the two attorney members of the Commission shall be the Chairperson of the Commission, as required by 22 M.R.S. Section 152, paragraph one. The Clerk of the Commission shall assign one of the two attorney members of the Commission to be the presiding officer in any case or proceeding before the Commission. Except where these rules specifically state that the Chairperson of the Commission alone is authorized to make a ruling or decision, the other attorney member of the Commission may act as the Chairperson’s designee and may act as the presiding officer of the Commission. The presiding officer may:

1. Administer oaths and affirmations;

(B) Rule on the admissibility of evidence;

(C) Regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing of evidence, briefs, and other written submissions;

(D) Take other action authorized by statute or Commission rules.

STATUTORY AUTHORITY: Title 23 M.R.S. Section 152

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