# **90-351 WORKERS’ COMPENSATION BOARD**

**Chapter 13:** **RULES OF APPELLATE DIVISION**

**§ 1. Scope of Rules**

This chapter governs the procedure of the Maine Workers’ Compensation Board Appellate Division (“the division”). It is promulgated pursuant to 39-A M.R.S.A. §321-A (3) and must be construed to secure the prompt and inexpensive review of board decisions.

**§ 1-A. Submissions to Appellate Division**

Submissions to the Appellate Division are filed when received at the Appellate Division or at any of the Board’s regional offices. A party filing a submission at a regional office is responsible for the cost of transferring the submission to the division.

**§ 2. Composition of Appellate Panels; Sessions**

1. **Composition of Panels**
2. Pursuant to 39-A M.R.S.A. §321-A, the Executive Director of the Workers’ Compensation Board or, upon designation by the Executive Director, the clerk of the division, shall appoint a panel of at least three full-time Administrative Law Judges from those then serving as Administrative Law Judges of the Workers’ Compensation Board. An Administrative Law Judge may not be a member of a panel that reviews that Administrative Law Judge’s decision. An Administrative Law Judge may be a member of more than one panel at the Executive Director’s discretion.
3. The Executive Director or, upon designation by the Executive Director, the clerk of the division, shall select a presiding judge for each panel.
4. The Executive Director may expand the panel if the Executive Director determines that the issue(s) presented on appeal warrant consideration by more than three Administrative Law Judges or by the division *en banc*.
5. **Sessions**

The Executive Director shall determine when and where the division holds sessions.

1. **Notice**

After an appeal is assigned to a panel and a session, the clerk of the division shall notify the parties of the composition of the panel and the date the session will occur.

**§ 3. Appeal to the Appellate Division**

1. **Time for Filing**

A party shall file a Notice of Intent to Appeal (WCB-240) an Administrative Law Judge’s decision with the clerk of the division within 20 days after the latest of:

1. Receipt of notice of the Administrative Law Judge decision;
2. If an Administrative Law Judge amends a decision and that amendment materially affects the issue(s) on appeal, receipt of notice of an amended Administrative Law Judge decision; or
3. If a motion for findings of fact and conclusions of law has been filed pursuant to 39-A M.R.S.A. §318, receipt of notice of the Administrative Law Judge’s ruling on the motion.

If, after a party files a Notice of Intent to Appeal under this section, a different party seeks review of a different issue than the issue(s) identified for appeal in the first notice, that party may file a Notice of Intent to Appeal within the 20-day period provided in paragraphs A-C, or within 14 days after the date the first notice was filed, whichever is later.

If both a Notice of Intent to Appeal and a motion for findings of fact and conclusions of law are filed within 20 days after receipt of notice of a decision by an Administrative Law Judge pursuant to 39-A M.R.S.A. §318, the division shall stay action on the Notice of Intent to Appeal until the Administrative Law Judge rules on the motion. The appellant shall notify the division no later than 10 days after receipt of notice of the ruling on the motion whether the appellant will pursue the appeal.

For purposes of this chapter, “decision” means a final decision issued by an Administrative Law Judge that fully disposes of the matters pending before the Administrative Law Judge. “Decision” does not include interlocutory or non-final decisions including, but not limited to, provisional orders.

1. **Filing**

A party shall file a Notice of Intent to Appeal with the division and identify the issue(s) being appealed. The filing date is the date the Notice of Intent to Appeal is received at the appellate division or at any of the Board’s Regional Offices. Receipt may include receipt by e-mail, provided the original is sent by U.S. mail or other carrier on or before the due date. The appealing party shall include a copy of the decision being appealed, and shall indicate on form WCB-240 that the transcript of the relevant hearing(s) will be ordered or has already been prepared.

1. **Service**

A party that files a Notice of Intent to Appeal shall serve a copy of the notice to the attorney or advocate of record of each party, or if a party is unrepresented, to the party at that party’s last known address.

1. **Multiple Appeals**

Unless otherwise agreed upon by the parties, when more than one party has appealed, the party who appeals first is deemed the appellant for the purposes of this chapter.

1. **Dismissal of Appeals**
2. **Withdrawal of appeal**

Upon receipt of a written stipulation of the parties withdrawing an appeal, the clerk of the division shall dismiss the appeal. If the parties do not agree to withdraw an appeal, an appeal may be withdrawn only by permission of thepanel acting through the presiding judge.

1. **Failure to perfect appeal**

Dismissals for failure to perfect appeal are as follows:

1. Upon a motion of a party and a showing of substantial prejudice, the panel acting through the presiding judge may dismiss a timely filed appeal if the appellant fails to:
   1. Provide a copy of the decision; or
   2. Serve the parties as provided in §3.3;
2. Upon a motion of a party or at the initiative of the panel acting through the presiding judge, the division may dismiss an appeal if an appellant fails to comply with §4.1; or
3. Upon a motion of a party or at the initiative of the panel acting through the presiding judge, the division may dismiss an appeal if an appellant fails to comply with §5.
4. **Settlement**

If the parties agree to settle a case pending before the division, the appellant shall notify the division, which shall stay action on the appeal. The appellant shall notify the division within 10 days after the board approves the settlement and the clerk of the division shall dismiss the appeal.

1. **Failure to guarantee payment**

If, after 60 days’ notice to the appellant that a guarantee of payment for preparation of the transcript is required, the appellant fails to guarantee payment or request a waiver of payment of costs pursuant to §4(1-A), the panel acting through the presiding judge may dismiss the appeal.

**§ 4. The Record on Appeal**

1. **Preparation**

The appellant shall prepare the record on appeal. Upon filing the Notice of Intent to Appeal, the appellant shall request the appropriate regional office to order necessary transcripts for the appeal. The appellant shall pay the cost of producing the record, including the transcript(s). Within 45 days after the filing date of the Notice of Intent to Appeal, the appellant shall deliver one copy of the record to the clerk of the division and one copy of the record to each party involved in the appeal. The clerk may grant an extension of time if there is a delay in the preparation of the transcript.

1-A. **Waiver of Payment of Costs**

An appellant seeking to appeal to the division may file an application for leave to proceed without payment of costs. The application should be filed within ten days of the Notice of Intent to Appeal, and in no event later than the date the record is due.

The application shall be accompanied by an affidavit of the appellant stating (i) the person’s monthly income and necessary monthly expenses; (ii) whether the person is receiving public assistance income and, if so, identifying the government program and the nature and the duration of the assistance; (iii) that the appeal is filed in good faith; and (iv) the appellant agrees to repay the Board for any costs that have been waived or paid, if at any time during the pendency of the appeal, the appellant becomes or is discovered to be financially able to repay those costs.

The affidavit shall be kept separate from the other papers in the case and kept confidential.

The panel acting through the presiding judge may enter such orders, including but not limited to limiting the record on appeal, as it deems appropriate.

1. **Contents**

The record on appeal consists of copies of the pleadings; transcripts of proceedings; exhibits; exhibit list; position papers; the Administrative Law Judge decision(s) being appealed; the Notice of Intent to Appeal; proposed findings submitted to the board; further findings of fact and conclusions of law issued by the Administrative Law Judge; and petitions, decisions or other matters of which the Administrative Law Judge took administrative notice. The parties may agree to exclude from the record any items that are unnecessary for deciding the appeal.

1. **Format**

The pages of the record must be clearly numbered and be printed on both sides. Each volume of the record on appeal may contain no more than 150 double-sided sheets of paper and must be securely bound. The cover of the record on appeal must be of heavy grade paper and indicate the case name, the date of injury/injuries, the board file number, the Appellate Division case number, and names of the attorneys or advocates representing each of the parties and the names of the parties they represent. The panel may request an electronic copy of the record, but the parties may not otherwise submit an electronic copy without the panel’s permission.

1. **Correction or Modification of the Record**

If a party claims that the transcript does not accurately reflect what occurred before the board or that something material is missing from the record on appeal, the party may file a motion to modify the record with the appellate division. The clerk of the appellate division may refer the motion to the Administrative Law Judge who issued the decision. The Administrative Law Judge may, in response to that motion, or by request of the panel acting through the presiding judge, order preparation of a supplemental record to be filed with the clerk of the division and made part of the record on appeal.

**§ 5. Time for Briefs**

1. **Time for Filing Briefs**

When the record on appeal has been prepared pursuant to §4 and filed with the clerk of the division, the clerk of the division shall notify each party in writing of the briefing schedule. The appellant has 30 days after the date the record is filed to file a brief. The appellee has until the date designated by the division in the briefing schedule, or 20 days after receipt of the appellant’s brief, whichever is later, to file a brief. The appellant has 15 days after the due date for the appellee’s brief to file a reply brief. A brief is considered filed when received by the division. Receipt may include receipt by e-mail, provided the original and all required copies are sent by U.S. mail or other carrier on or before the due date.

1-A. **Cross-Appeals**

When a cross-appeal has been filed, the briefing schedule is as follows:

The appellant has 30 days after the record is filed to file a brief. The appellee/cross-appellant shall consolidate the appellee’s brief and the cross-appellant’s brief in a single brief to be filed on or before the date designated by the division in the briefing schedule, or 20 days after receipt of the appellant’s brief, whichever is later. The cross-appellee has 20 days after the due date of the appellee/cross/appellant’s brief to file a response. The appellant/cross-appellee shall consolidate the reply brief and response to the cross-appellant’s brief in a single brief. The appellee/cross-appellant has 15 days after the due date for the cross-appellee’s brief to file a reply brief. A brief is considered filed when received by the division.

1. **Extensions**

A party may file a written motion to extend the time to file a brief before the date the brief is due. The clerk shall grant motions for extensions of 14 or fewer days if the moving party represents that there is no objection to the motion. Additional unopposed requests for extensions may be granted for good cause. The panel acting through the presiding judge may grant motions for extensions to which a party objects, after reviewing the circumstances of the appeal. The clerk or the panel acting through the presiding judge may not grant a motion to extend filed after the due date of the brief for which the motion is filed.

1. **Number of Copies to be Filed and Served**

Unless otherwise ordered by thepanel acting through the presiding judge, five copies of each brief must be filed with the clerk of the division and one copy of each brief must be served on the counsel or advocate for each of the other parties separately represented. If a party is unrepresented, a copy of each brief must be sent to that party at the party’s last-known address. The panel acting through the presiding judge may reject a brief that is not accompanied by acknowledgement or certificate of service that shows compliance with this subsection.

1. **Failure to File Briefs**

If an appellant fails to comply with this rule, the appeal may be dismissed under §3.5. If an appellee fails to comply with this rule, the panel may decide the appeal without considering submissions of the appellee, including oral argument in an appeal in which oral argument is otherwise allowed.

**§ 6. Contents of Briefs**

1. **Appellant’s Brief**

The appellant’s brief must include the following, under appropriate headings and in the order provided:

1. A table of contents with page references;
2. A table of cases, statutes, and other authorities cited;
3. A statement of the facts of the case;
4. A statement of the issues presented for review; and
5. The appellant’s argument(s), which may include a summary. This section must include the appellant’s contentions regarding the issue(s) presented and the legal analysis of those issue(s), with citations to authorities and page references from the appendix or the record, only if the referenced document is not in the appendix. Except for good reason, all documents referenced in the briefs should be included in the appendix.
6. **Appellee’s Brief**

The appellee shall comply with the requirements of subsection 1, except that the appellee may exclude a statement of the facts or the issues if the appellee is satisfied with the appellant’s statements.

1. **Reply Brief**

The appellant/cross-appellee may file a reply brief only on new matters raised in the appellee/cross-appellant’s brief. If a cross-appeal is filed, the appellant/cross-appellee shall include the appellant/cross-appellee’s answer to the cross-appellant’s issues within any reply brief that is filed. The cross-appellant may file a reply to the cross-appellee’s brief. Further briefs may only be filed with the permission of the panel acting through the presiding judge.

1. **Cross-appellant’s Briefs**

If a cross-appeal is filed, the cross-appellant shall include the cross-appellant’s issues and arguments within the appellee’s brief.

1. **Amicus Curiae’s Brief**

An amicus curiae may file a brief only with the written consent of all parties or with the permission of the panel acting through the presiding judge. A motion for permission to file must identify the interest of the applicant and state the reasons an amicus curiae brief is warranted. Except by agreement of the parties, any amicus curiae proceeding under this subsection shall file its brief no later than 14 days after the date the appellee’s brief is filed, unless the panel acting through the presiding judge allows later filing for good cause shown. A party may file a brief in reply to the amicus brief only with the permission of the panel acting through the presiding judge.

1. **Brief Format**

Without prior approval of thepanel acting through the presiding judge, briefs may not exceed 20 single-sided printed pages. Briefs may be reproduced by standard printing or by any duplicating process capable of producing a clear black image on white paper. All printed material must appear in at least 12 point font on white, opaque, unglazed paper. The cover of the appellant’s brief must be blue; the appellee’s, red; an amicus curiae’s, green; and any reply brief, gray.

Briefs must be bound in volumes with pages 8½ x 11 inches and type matter not exceeding 6½ x 9½ inches, double-spaced, except quotations. The front cover of the brief must include:

1. The name of the Workers’ Compensation Board Appellate Division;
2. The Appellate Division case docket number;
3. The title of the case;
4. The nature of the proceeding before the division (e.g., Appeal);
5. The title of the document (e.g. Brief for Appellant); and
6. The name and address of the attorney or advocate filing the document and the name of the party on whose behalf the document is filed; or if a party is unrepresented, the name and address of the party.

The panel or the clerk may request electronic copies of briefs.

1. **Historical Appendices**

If the appeal involves provisions of the current or former Act or rules no longer in effect, the parties shall include copies of applicable statutory sections or rules as an appendix to their briefs.

**§ 7. Appendices to Briefs**

1. **Filing**

The appellant shall file five copies of an appendix to the appellant’s brief with the clerk of the division no later than the date the appellant’s brief is due. The panel acting through the presiding judge may require the appellant to file additional copies as needed. The appellant shall serve a copy of the appendix on each party on the same date the appellant files the appendix with the division.

2. **Contents**

The appendix must contain those documents from the record necessary for the review of the issue(s) on appeal, and must contain a table of contents. The parties shall confer and attempt to agree on the contents of the appendix. If the parties do not agree, no later than 14 days before the appendix is due under §7.1, the appellant shall provide the appellee with a list of the documents the appellant proposes to include in the appendix. If the appellee wishes to add documents to the appendix, within seven days the appellee shall designate the additional documents to include, and the appellant shall include those documents unless otherwise ordered by thepanel acting through the presiding judge. The appendix may not include any documents that are not part of the board file or the record on appeal other than a supplement of legal authorities. The parties shall not include a document in the appendix more than once. Except for good reason, all documents referenced in the briefs should be included in the appendix.

3. **Cost**

Unless the parties otherwise agree or leave to proceed without payment of costs has been granted pursuant to §4(1-A) of this rule, the appellant shall pay the costs of producing the appendix. If the appellee includes documents the appellant believes are unnecessary for the review of the issue(s) on appeal, the appellee shall advance the additional cost of producing the documents. At the conclusion of proceedings, the panel’s presiding judge may assign responsibility for disputed costs to either or both parties.

4. **Format**

Without prior approval of the clerk, the appendix may not exceed 150 double-sided sheets of paper that are clearly paginated. The appendix must be reproduced by standard printing or by a duplicating process capable of producing a clear black image on white paper. To the extent possible, pages must be printed on both sides, on 8 1/2” x 11” white, opaque, unglazed paper. The appendix must have a white cover that conforms with cover requirements for a brief as provided in §6.6(A)-(F).

**§ 8. Decision on Record**

The division shall decide appeals based exclusively on the written submissions of the parties as provided in this chapter, except as provided in §9.

**§ 9. Oral Argument**

1. **Request for Oral Argument**

A panel may schedule a case for oral argument or a party may request in writing the opportunity to present oral argument. The writing must be under separate cover from any other board filing. The requesting party shall indicate the reason oral argument is necessary for the understanding and disposition of the appeal. The panel acting through the presiding judge may grant a motion of an amicus curiae to participate in an oral argument only for extraordinary reasons. If a party fails to request oral argument within 7 days after the later of the due date of the appellant’s reply brief or the cross-appellant’s reply brief, if a cross appeal is filed, oral argument is waived.

1. **Scheduling**

If the panel schedules oral argument, the clerk of the division shall notify the parties in writing at least 21 days in advance of the time and place the oral argument will be held.

1. **Postponement**

A written motion for postponement of oral argument must be filed with the clerk of the division at least 14 days before the scheduled hearing date. The panel acting through the presiding judge may allow shorter notice for emergencies or other exceptional circumstances, but the motion for postponement must be made as soon as reasonably possible.

1. **Time Allowed for Argument**

The appellant and appellee have 20 minutes each for presentation of oral argument. If an employee and one or more employers/insurers are appellees, the employee shall have 20 minutes for presentation or oral argument and the employers/insurers may allocate a total of 20 minutes for oral argument. The panel may allow additional time for oral argument if a party files a motion showing good cause on or before the date appellant’s reply brief is due under §5.1.

1. **Order of Argument**

The appellant may open and conclude the argument. The panel may allow the appellant to reserve up to five minutes for concluding remarks and rebuttal if the appellant requests the reservation before beginning the appellant’s presentation.

1. **Cross and Separate Appeals**

A cross or related separate appeal must be argued with the initial appeal at a single hearing unless the division directs otherwise. If separate parties support the same argument, the parties shall avoid duplication of argument.

1. **Failure to Appear**

If the attorney or advocate for a party, or an unrepresented party, fails to appear to present argument, the panel may hear argument from any attorney, advocate, or unrepresented party present, and the panel shall decide the case on the record of appeal, the briefs, and the argument. If no one appears to present argument, the panel shall decide the case on the record of appeal and briefs, unless the panel directs otherwise.

**§ 10. Action**

Pursuant to 39-A M.R.S.A. §321-B(3), the panel, after due consideration, shall issue a written decision affirming, modifying, vacating, or remanding an Administrative Law Judge’s decision. The written decision of the panel must be filed with the board and mailed to the attorney or advocate for each party, or if a party is unrepresented, to that party at the party’s last known address.

**§ 11. Disposition of Evidence**

1. **Disposition of Evidence**

Workers’ Compensation Board Rule Chapter 12, §19 applies to the disposition of evidence when no party appeals from a division decision to the Supreme Judicial Court.

1. **Recordings**

The board shall preserve recordings of division oral arguments for six years from the date of the argument.

**§ 12. Application**

This chapter applies to all appeals filed on or after the original effective date of this chapter.

STATUTORY AUTHORITY:

39-A MRS §§ 101 *et seq.*

EFFECTIVE DATE:

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