**R455. Cultural and Community Engagement, History.**

**R455-1. Adjudicative Proceedings.**

**R455-1-1. Scope and Applicability.**

This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63G-4-102 et seq. and applies only to actions which are governed by the Act.

**R455-1-2. Definitions.**

A. Terms, used in this rule are defined in Section 63G-4-103.

B. In Addition:

1. "agency" means the Utah Historical Society;

2. "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts;

3. "director" means the director of the Utah Historical Society;

4. "board" means the Board of State History;

5. "presiding officer" means the Board or its designee, which may be a subcommittee of the Board; and

6. "petitioner" means any person aggrieved by a decision or determination of the Utah Historical Society.

**R455-1-3. Designation.**

The Agency designates all agency actions subject to the scope and applicability of the Utah Administrative Procedures Act, Section 63G-4-102 as formal proceedings.

**R455-1-4. Adjudicative Hearings.**

A. Any person aggrieved by a decision or determination of the Utah Historical Society may request a hearing before the Board. That person, known as "the petitioner," shall request the hearing by filing a request in writing with the Board Chair and providing a copy to the director of the Division. The petition shall set forth the reason for the request, including the following:

1. a description of the decision which the petitioner requests a hearing on;

2. the date of the decision, who made the decision, and, if in writing, attach a copy of the decision;

3. the relief sought by the petitioner; and

4. the reason the petitioner is entitled to the relief requested.

B. Upon receipt of the Request for Hearing, the Division shall file a written response within 21 days with the Board Chair and send a copy to the petitioner. The Division response shall include any facts or matters not included in the Request for Hearing that may be necessary for the determination, and set forth the reasons and basis for the decision for which the petitioner is seeking a hearing.

C. After the filing of the response, a meeting shall be scheduled with the petitioner, representative of the agency, and council for the Board as a pre-hearing conference. The purpose of the conference is to have the agency and the petitioner meet to determine what factual and legal matters are in dispute, what discovery may be needed by anyone to process the case, and the best manner for presentation or hearing for the Board. Counsel for the Board shall prepare a discovery and hearing schedule based upon the meeting, which shall govern the proceedings.

D. The Board may act as a presiding officer and conduct the hearing, may appoint a subcommittee of its Board or may appoint an individual or group of individuals to act as the presiding officer to conduct the hearing. If the presiding officer is other than the entire Board, the presiding officer shall make recommended findings of fact, conclusions of law, and proposed order on the petitioner's request for a hearing. That proposed order shall be placed upon and acted upon by the Board at its next scheduled meeting. The Board may adopt, reject or change the proposed order of the presiding officer.

**R455-1-5. Request for Declarative Orders.**

A. As required by Section 63G-4-503, this section provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

B. In order of importance, procedures governing declaratory orders are:

1. procedures specified in this rule pursuant to 63G-4-102;

2. the applicable procedures of 63G-4-102;

3. applicable procedures of other governing state and federal law; and

4. the Utah Rules of Civil Procedure.

C. The petition, or request for agency action, shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

1. The petition shall:

a. be clearly designated as a request for an agency declaratory order;

b. identify the statute, rule, or order to be reviewed;

c. describe in detail the situation or circumstances in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone where the petitioner can be contacted during regular work days;

f. declare whether the petitioner has participated in a completed or ongoing adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

D. The agency will not issue a declaratory order that deals with a question or request that the director determines is:

1. Not within the jurisdiction and competence of the agency;

2. Trivial, irrelevant, or immaterial;

3. Not one that is ripe or appropriate for determination;

4. Currently pending or will be determined in an ongoing judicial proceeding;

5. Not in the best interest of the Division or the public to consider; or

6. Prohibited by state or federal law.

E. A person may file a petition for intervention under Section 63G-4-207 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section R455-1-3.

F. Petitions shall be reviewed under the following procedure:

1. The director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General;

c. take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration; and

d. the Petitioner shall be advised as to the status or procedures to be used concerning the Petitioner's request.

2. The director may issue an order in accordance with Section 63G-4-503.

3. The director may order that an adjudicative proceeding be held in accordance with Section 63G-4-503 related to review of a petition.

G. A petitioner may seek administrative review or reconsideration of a declaratory order by petitioning the Board of State History or the agency under the procedures of Sections 63G-4-301 through 63G-4-302.

**KEY: administrative procedures, adjudicative proceedings**

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