

**R151. Commerce, Administration.**

**R151-4. Department of Commerce Administrative Procedures Act Rule.**

**R151-4-101. Title and Organization.**

This rule is:

- (1) known as the "Department of Commerce Administrative Procedures Act Rule;" and
- (2) organized into the following Parts:
  - (a) Part 1, General Provisions, including Sections R151-4-101 through R151-4-114;
  - (b) Part 2, Pleadings, including Sections R151-4-201 through R151-4-205;
  - (c) Part 3, Motions, including Sections R151-4-301 through R151-4-305;
  - (d) Part 4, Filing and Service, including Sections R151-4-401 through R151-4-402;
  - (e) Part 5, Discovery - Formal Proceedings, including Sections R151-4-501 through R151-4-516;
  - (f) Part 6, Depositions - Formal Proceedings, including Sections R151-4-601 through R151-4-611;
  - (g) Part 7, Hearings, including Sections R151-4-701 through R151-4-712;
  - (h) Part 8, Orders, including Sections R151-4-801 through R151-4-803; and
  - (i) Part 9, Agency Review and Judicial Review, including Sections R151-4-901 through R151-4-907.

**R151-4-102. Definitions.**

In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, as used in this rule:

- (1) "Agency head" means the executive director of the department or the director of a division.
- (2) "Applicant" means a person who submits an application.
- (3) "Application" means a request for:
  - (a) licensure;
  - (b) certification;
  - (c) registration;
  - (d) permit; or
  - (e) other right or authority granted by the department.
- (4) "Department" means:
  - (a) the Utah Department of Commerce; or
  - (b) a division of the department.
- (5) "Division" means a division of the department.
- (6) "Electronic" means a:
  - (a) facsimile transmission; or
  - (b) PDF file attached to an email.
- (7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.
- (8) "Motion" means a request for any action or relief in an adjudicative proceeding.
- (9)(a) "Party in interest" means:
  - (i) a party;
  - (ii) a relative of a party; or
  - (iii) an individual with a financial interest in the outcome of the proceeding; and
  - (b) does not include:
    - (i) a party's counsel; or
    - (ii) an employee of a party's counsel.
- (10) "Petition" means the charging document setting forth:
  - (a) statement of jurisdiction;
  - (b) statement of one or more allegations;
  - (c) statement of legal authority; and
  - (d) request for relief.
- (11) "Pleading" means the following:
  - (a) a notice of agency action or request for agency action;
  - (b) a request for agency review or agency reconsideration; and
  - (c) a response or reply submitted to a pleading.

**R151-4-103. Authority.**

This rule is adopted in accordance with Subsection 63G-4-102(6) and Section 13-1-6 to govern adjudicative proceedings before the department.

**R151-4-104. Supplementing Provisions.**

Any provision of this rule may be supplemented by a division rule unless expressly prohibited by this rule.

**R151-4-105. Purpose and Scope.**

- (1) This rule is intended to secure the just, speedy, and economical determination of issues presented in adjudicative proceedings before the department.
- (2) In the event of a conflict between this rule and a statute, the statute governs.

**R151-4-106. Utah Rules of Civil Procedure.**

The Utah Rules of Civil Procedure and related case law are persuasive authority in this rule but may not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act or by this rule, be considered controlling authority.

**R151-4-107. Computation of Time.**

- (1) Periods of time in department proceedings shall:
  - (a) exclude the first day of the act, event, or default from which the time begins to run; and
  - (b) include the last day unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (2) When a period of time is less than seven days, Saturdays, Sundays, and legal holidays are excluded.
- (3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.
  - (ii) Except as provided in Subsection R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.
- (b) No additional time is provided if service is accomplished by electronic means.
- (4) Subsection (3) does not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1).

**R151-4-108. Timeliness of Administrative Proceedings.**

In both informal and formal proceedings, the hearing date shall be scheduled to provide for the hearing to be concluded not more than 180 calendar days after the day:

- (1) the notice of agency action is issued; or
- (2) the initial decision with respect to a request for agency action is issued.

**R151-4-109. Extension of Time and Continuance of Hearing.**

- (1) When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:
    - (a) whether there is good cause for granting the extension or continuance;
    - (b) the number of extensions or continuances the requesting party has already received;
    - (c) whether the extension or continuance will work a significant hardship upon the other party;
    - (d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and
    - (e) whether the other party objects to the extension or continuance.
  - (2)(a) Except as provided in Subsection R151-4-109(2)(b), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day:
    - (i) the notice of agency action was issued; or
    - (ii) the initial decision with respect to a request for agency action was issued.
  - (b) An extension of a time period or a continuance may exceed the time restriction in Subsection R151-4-109(2)(a) only if:
    - (i)(A) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;
    - (B) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds the withdrawal was for the purpose of delaying the hearing, in which case the hearing will go forward with or without counsel;
    - (C) a parallel criminal proceeding or investigation exists based on facts at issue in the administrative proceeding, in which case the continuance must address the expiration of the continuance upon the conclusion of the criminal proceeding; or
    - (D) the board or commission designated to act as the fact-finder at hearing is unavailable to meet on a date that:
      - (I) allows the parties a reasonable period of time for discovery, motion practice, or hearing preparation; and
      - (II) falls within the 240-day deadline for resolution; and
  - (ii) the presiding officer finds that injustice would result from failing to grant the extension or continuance.
- (c)(i) If the presiding officer considers that extenuating circumstances not contemplated in Subsection R151-4-109(2)(b) justify a continuance beyond the 240-day deadline, the presiding officer shall file a written request for continuance with the Executive Director.
  - (ii) A party may not directly petition the Executive Director for a continuance.
  - (iii) The Executive Director's decision on the presiding officer's request for continuance shall be issued on an interlocutory basis, not subject to a request for reconsideration or judicial review until after a final order on the merits is issued.
- (d) The failure to conclude a hearing within the required time period is not a basis for dismissal.
- (3) The presiding officer may not grant an extension of time or continuance that is not authorized by statute or rule.
- (4) The factors in Subsection (1) do not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1)(a). A request for an extension to file a request for agency review is governed by Subsection R151-4-901(1)(c).

**R151-4-110. Representation of Parties.**

- (1) A party may:
  - (a) be represented by counsel who is an active member of a state bar if counsel submits a written notice of appearance;
  - (b) represent oneself individually; or
  - (c) if not an individual, represent itself through an officer or employee.
- (2) Counsel licensed by the bar of a state other than Utah shall submit a certificate of good standing from the relevant state bar.

**R151-4-111. Review of Emergency Orders.**

Unless otherwise provided by statute or rule:

- (1)(a) A division shall schedule a hearing to determine whether an emergency order should be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if:
  - (i) the division has previously:
    - (A) commenced an emergency adjudicative proceeding in the matter; and
    - (B) issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and
  - (ii) the affected party timely submits a written request for a hearing.
- (b) A hearing under this section shall be conducted in conformity with the procedures of Section 63G-4-206.
- (2)(a) Upon request for a hearing under this section, the Division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

(b) The Division has the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3)(a) Except as otherwise provided by statute, the division director or designee shall select an individual or body of individuals to act as presiding officer at the hearing.

(b) An individual who directly participated in issuing the emergency order may not act as the presiding officer.

(4)(a) Within 15 calendar days after the day the hearing to consider the emergency order concludes, the presiding officer shall issue an order in accordance with Section 63G-4-208.

(b) The order of the presiding officer is subject to agency review.

**R151-4-112. Declaratory Orders.**

(1)(a) A petition for the issuance of a declaratory order under Section 63G-4-503 shall be filed with the agency head who has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought.

(b) The petition shall:

(i) set forth:

(A) the question to be answered;

(B) the facts and circumstances related to the question;

(C) the statute, rule, or order to be applied to the question; and

(D) whether oral argument is sought in conjunction with the petition; and

(ii) comply with Part 2, Pleadings.

(2)(a) If the agency head issues a declaratory order without setting the matter for an adjudicative proceeding, the order shall be based on:

(i) a review of the petition;

(ii) oral argument, if any;

(iii) laws and rules applicable to the petition;

(iv) applicable records maintained by the department; and

(v) other relevant information reasonably available to the department.

(b) If the agency head sets the matter for an adjudicative proceeding, the department shall issue a notice of adjudicative proceeding under Subsection 63G-4-201(2)(a).

(3) The department may not issue a declaratory order in any of the following classes of circumstances:

(a) questions involving circumstances set forth in Subsections 63G-4-503(3)(a)(ii) or (3)(b);

(b) questions that are not within the jurisdiction of the department;

(c) questions that have been addressed by the department in an order, rule, or policy;

(d) questions that can be addressed by informal advice;

(e) questions that are addressed by statute;

(f) questions that would be more properly addressed by statute or rule;

(g) questions that arise out of pending or anticipated litigation in a civil, criminal, or administrative forum; or

(h) questions that are irrelevant, insignificant, meaningless, or spurious.

(4) The recipient of a declaratory order may request agency review.

**R151-4-113. Record of an Adjudicative Proceeding.**

The record of an adjudicative proceeding includes:

(1) each pleading, motion, brief, exhibit, and any other document filed by a party;

(2) the recording of a hearing;

(3) a transcript of a hearing; and

(4) orders or other documents issued:

(a) by a presiding officer; or

(b) on agency review or reconsideration.

**R151-4-114. Informal Adjudicative Proceedings in General and Prohibition of Discovery.**

(1) Any provision of this rule that is specific to a formal adjudicative proceeding is not mandatory for an informal adjudicative proceeding.

(2) By rule or order a division may apply a provision applicable to a formal adjudicative proceeding to an informal adjudicative proceeding, except that a provision relating to discovery, including depositions, may not be applied to an informal adjudicative proceeding.

(3) Discovery is prohibited in informal adjudicative proceedings, but the department or a division may issue subpoenas or other orders to compel production of evidence in accordance with Subsection 63G-4-203(1)(e).

**R151-4-201. Docket Number and Title.**

(1) The department shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action.

(2) At a minimum the docket number shall consist of:

(a) a letter code identifying where the matter originated, as follows:

(i) CORP-Corporations;

(ii) CP-Consumer Protection;

(iii) DOPL-Occupational and Professional Licensing, including additional designations that division may implement for diversion, lien recovery fund, or other programs;

(iv) NAFA-New Automobile Franchise Act;

(v) PVFA-Powersport Vehicle Franchise Act;

(vi) RE-Real Estate;

(vii) AP-Real Estate Appraisers;

(viii) MG-Mortgage; and

(ix) SD-Securities;

(b) a numerical code indicating the calendar year the matter arises; and

- (c) another number indicating chronological position among notices of agency action or requests for agency action filed during the year.  
(3) The department shall give each adjudicative proceeding a title in substantially the following form:

TABLE 1

BEFORE THE (DIVISION)  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

In the Matter of (Notice of Agency Action)  
(the application, (Request for Agency Action)  
petition or license  
of John Doe) No. AA-2000-001

**R151-4-202. Content and Size of Pleadings and Motions and Limitation of Number of Pages.**

- (1) A pleading or motion shall be double-spaced, typewritten, presented on standard 8 1/2 x 11 inch white paper, and contain:
- (a) a clear and concise statement of the allegations or facts relied upon as the basis for the pleading or motion; and
  - (b) an appropriate request for relief when relief is sought.
- (2) A motion to dismiss or motion for summary judgment may not exceed 25 pages, not counting any attachment, unless a longer motion is permitted by the presiding officer. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the presiding officer.
- (3) If the motion is a motion to dismiss or motion for summary judgment, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer. Other opposing memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer.
- (4) If the motion is a motion to dismiss or motion for summary judgment, the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer.
- (5) A memorandum supporting agency review in accordance with Section R151-4-904 may not exceed 30 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.
- (6) A response to a request for agency review and the memorandum supporting that response may not exceed 30 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.
- (7) A reply memorandum filed in an agency review may not exceed 15 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.
- (8) The presiding officer may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum must include a table of contents and a table of authorities with page references. The presiding officer may rule on a motion for overlength motion or memorandum without waiting for a response. No statement of facts and legal authorities beyond a concise statement of the relief requested is required in a motion for overlength motion or memorandum.

**R151-4-203. Signing of Pleadings and Motions.**

- (1) Any pleading or motion shall be signed by the party or the party's representative and shall show the signer's address.
- (2) The signature is a certification that:
- (a) the signer has read the pleading or motion; and
  - (b) to the best of the signer's knowledge and belief, there is good ground to support the pleading or motion.

**R151-4-204. Amendments to Pleadings.**

- (1)(a) A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.
- (b) A party that does not qualify to amend a pleading under (1)(a) may amend a pleading only by leave of the presiding officer or by written consent of the adverse party.
- (2) A party shall respond to an amended pleading within the later of:
- (a) the time remaining for response to the original pleading; or
  - (b) ten days after service of the amended pleading.
- (3) Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

**R151-4-205. Response to a Notice of Agency Action.**

- (1) A respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.
- (2)(a) A respondent in an informal adjudicative proceeding may file a response to a notice of agency action.
- (b) The presiding officer may, by a written order, require a respondent in an informal adjudicative proceeding to submit a response.
- (3) Unless a different date is established by law or rule the following shall be filed within 30 days after the mailing date of the notice:
- (a) a response to a notice of agency action; or
  - (b) a notice of receipt of request for agency action.

**R151-4-301. General Provisions.**

- (1) A party may file a motion that is relevant and timely.
- (2) Each motion shall be filed in writing unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing.
- (3) Subsection 63G-4-102(4)(b) may not be construed to prohibit a presiding officer from granting a timely motion to dismiss for
- (a) failure to prosecute;
  - (b) failure to comply with this rule, except where this rule expressly provides that a matter is not a basis for dismissal;
  - (c) failure to establish a claim upon which relief may be granted; or
  - (d) other good cause basis.

**R151-4-302. Motion to Dismiss.**

- (1) A motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading.
- (2) In a case that is under agency review:
  - (a) a motion to dismiss may be brought for:
    - (i) failure to comply with a jurisdictional deadline;
    - (ii) failure to file a hearing transcript; or
    - (iii) failure to file a required memorandum.
  - (b) A motion to dismiss may not be brought on an allegation or argument as to:
    - (i) the sufficiency of a pleading or a memorandum in support thereof;
    - (ii) the sufficiency of the evidence; or
    - (iii) any other issue that requires substantive analysis.

**R151-4-303. Memoranda and Affidavits.**

- (1) The presiding officer shall permit and may require memoranda and affidavits in support of, or in response to, a motion.
- (2) Unless otherwise governed by a scheduling order issued by the presiding officer:
  - (a) memoranda or affidavits in support of a motion shall be filed concurrently with the motion;
  - (b) memoranda or affidavits in response to a motion shall be filed no later than 14 days after service of the motion; and
  - (c) a final reply shall be filed no later than seven days after service of the response.

**R151-4-304. Oral Argument.**

- (1) The presiding officer may permit or require oral argument on a motion.
- (2) Oral argument on a motion shall be scheduled to take place no more than 10 days after the last day the party:
  - (a) who did not make the motion could have filed a response if that party does not file a response; or
  - (b) the party who made the motion:
    - (i) replies to the opposing party's response to the motion; or
    - (ii) could have replied to the opposing party's response to the motion.

**R151-4-305. Ruling on a Motion.**

- (1) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.
- (2) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day the presiding officer makes the verbal ruling.
- (3) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:
  - (a) oral argument; or
  - (b) if there is no oral argument, the final submission on the motion as outlined in Subsection R151-4-304(2).
- (4) The failure of the presiding officer to comply with the requirements of Section R151-4-305:
  - (a) is not a basis for dismissal of the matter; and
  - (b) may not be considered an automatic denial or grant of the motion.

**R151-4-306. Recusal or Motion to Disqualify a Board or Commission Member.**

- (1) A board or commission member may recuse him or herself at any time from participation in an action before the board or commission, even if a party to the action has not requested the member's recusal or filed a motion to disqualify the member.
- (2)(a) A party to an action before a board or commission may file a motion to disqualify a board or commission Member. The motion must be accompanied by a certificate that the motion is filed in good faith and must be supported by an affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient to show bias, prejudice, or conflict of interest.
- (2)(b) The motion must be filed after commencement of the action, but no later than 21 days after the last of the following:
  - (i) the date of service of the action or hearing on the Respondent; or
  - (ii) the date the moving party knew or should have known of the grounds upon which the motion is based.If the last event occurs fewer than 21 days before a hearing, the motion must be filed as soon as practicable.
- (2)(c) No party may file more than one motion to disqualify in an action, unless the second or substitute motion is based on grounds that the party did not know of and could not have known at the time of the earlier motion.
- (2)(d) If timeliness of the motion is determined under Subsection (2)(b)(ii) or (2)(c), the affidavit or declaration supporting the motion must state when and how the party came to know of the reason for disqualification.
- (3) Within 7 days of receipt of the motion by the presiding officer, the presiding officer shall provide a copy of the motion to the board or commission member who is the subject of the motion.
- (4)(a) The decision on a motion to disqualify a Board or Commission member shall be made by the presiding officer. A written decision is not necessary.
- (b) The Division or moving party may not subject the Board or Commission member to questioning or examination on the motion, but the presiding officer or the board or commission may question the member verbally or in writing prior to issuing a decision on the motion.
- (5) A recused or disqualified board or commission member may not participate with fellow board or commission members in the action and is prohibited from voting on the action.
- (6) A decision on a motion to disqualify a Board or Commission member is not subject to an interlocutory appeal or agency review.
- (7) This section does not apply to any adjudicative proceedings under Title 13, Chapter 14, New Automobile Franchise Act, or Title 13, Chapter 35, Powersport Vehicle Franchise Act.

**R151-4-401. Filing.**

- (1)(a) Any pleading or motion shall be filed with the department or division in which the adjudicative proceeding is being conducted, which maintains the official file.

(b) The filing of discovery documents is governed by R151-4-512.

(2)(a) A filing may be accomplished by:

- (i) hand delivery of a paper copy, pursuant to Subsection (2)(b)(i);
- (ii) first class or certified mail, postage prepaid, of a paper copy, pursuant to Subsection (2)(b)(i);
- (iii) fax, pursuant to Subsection (2)(b)(ii); or
- (iv) attachment to electronic mail, pursuant to Subsection (2)(b)(iii).

(b)(i) A filing by hand delivery or first class or certified mail is complete when it is received and date stamped by the department or division, as applicable.

(ii) A filing by fax or electronic mail is complete upon transmission, if:

(A) compliant with Subsection (1);

(B) completed and received during the department's operating hours, 8 a.m. to 5 p.m. Mountain Time, on days other than Saturdays, Sundays, or state or federal holidays;

(C) the recipient receives the complete document; and,

(D) the party filing the document:

(I) also mails the document to the department or division the same day, as evidenced by a postmark; or

(II) prior to any applicable filing deadline, is expressly excused by the presiding officer from mailing the document.

(c) The burden is on the party filing the document to ensure that a filing is properly completed.

#### **R151-4-402. Service.**

(1)(a) leading or motions filed by the parties shall be concurrently served on each party and any administrative law judge who is assigned to the case. Documents issued by the presiding officer shall be concurrently served on each party.

(b) The party who files a pleading or motion is responsible for service of the pleading or motion.

(c) The presiding officer who issues a document is responsible for service of the document.

(2)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(3)(a) Service may be accomplished by hand delivery of a paper copy, by mail of a paper copy to the last known address of the intended recipient, or by attachment to electronic mail.

(b) Service by hand delivery is complete upon delivery to:

(i) the person who is required to be served;

(ii) any individual who is employed by, and physically present at, the business office of the person who is required to be served; or

(iii) a mailbox or dropbox that is:

(A) assigned to the person who is required to be served; and

(B) physically located at the person's place of business.

(c) Service by mail is complete upon mailing, as evidenced by a postmark.

(d) Service by attachment to electronic mail is complete on transmission if transmission is completed during normal business hours, 8 a.m. to 5 p.m. on days other than Saturdays, Sundays, and state and federal holidays, at the place receiving the service; otherwise, service is complete on the next business day.

(4) There shall appear on each document required to be served a certificate of service in substantially the following form:

TABLE 2

#### CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to) (by electronic means to):

(Name(s) of parties of record)

(Address(es))

Dated this (day) day of (month), (year).

(Signature)

(Name and Title)

#### **R151-4-501. Applicability.**

(1) This part, Sections R151-4-501 through R151-4-516, applies only to formal adjudicative proceedings.

#### **R151-4-502. Scope of Discovery.**

(1) Parties may obtain discovery regarding a matter that:

(a) is not privileged;

(b) is relevant to the subject matter involved in the proceeding; and

(c) relates to a claim or defense:

(i)(A) of the party seeking discovery; or

(B) of another party;

(ii) that is set forth in a pleading; and

(iii) that is brought pursuant to a statement of fact, information, or belief.

(2)(a) Subject to Subsection R151-4-502(3) and Section R151-4-504, a party may obtain discovery of documents and tangible things otherwise discoverable under Subsection R151-4-502(1) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:

- (i) has substantial need of the materials in the preparation of the case; and
- (ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(b) In ordering discovery of materials described in Subsection R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.

(3) Discovery of facts known and opinions held by experts, otherwise discoverable under Subsection R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Section R151-4-504.

#### **R151-4-503. Disclosures Required by Prehearing Order.**

(1) In the prehearing order the presiding officer may require each party to disclose in writing:

(a)(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and

(ii) identification of the topic(s) addressed in the information maintained by each individual; and

(b)(i) a copy of each discoverable document, data compilation, and tangible thing that:

(A) is in the party's possession, custody, or control; and

(B) supports the party's claims or defenses; or

(ii)(A) a description, by category and location, of the tangible things identified in Subsection R151-4-503(1)(b)(i); and

(B) reasonable access.

(2)(a) The order may not require disclosure of expert testimony, which is governed by Section R151-4-504.

(b) The order shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(3)(a) Each party shall make the disclosures required by Subsection R151-4-503(1) within 14 days after the prehearing order is issued.

(b) A party joined after the prehearing conference shall make these disclosures within 30 days after being served.

(c) A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because:

(i) the party has not fully completed the investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made disclosures.

(4) Disclosures required under Section R151-4-503 shall be made in writing, signed, and served.

#### **R151-4-504. Disclosures Otherwise Required.**

(1)(a) A party shall:

(i) disclose in writing the name, address and telephone number of any person who might be called as an expert witness at the hearing; and

(ii) provide a written report signed by the expert that contains a complete statement of each opinion the expert will offer at the hearing and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.

(b) Unless otherwise stipulated in writing by the parties or ordered in writing by the presiding officer, the disclosures required by Subsection R151-4-504(1) shall be made:

(i) within 30 days after the deadline for completion of discovery; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Subsection R151-4-504(1)(a), within 60 days after the disclosure made by the other party.

(c) If either party fails to file its disclosure within the time frames in Subsection R151-4-504(1), the presiding officer:

(i) shall exclude the expert testimony from the proceeding; and

(ii) may not continue the hearing to allow additional time for the disclosures.

(2)(a) In addition to the disclosures required by Subsection R151-4-504(1), a party shall disclose information regarding evidence the party may present at hearing other than solely for impeachment purposes pursuant to the pretrial disclosures provisions of Utah Rules of Civil Procedure, Rule 26.

(b)(i) The disclosures required by Subsection R151-4-504(2) shall be made at least 45 days before the hearing.

(ii) Within 14 days after service of the disclosures a party may serve and file an objection to the:

(A) use of a deposition designated by another party; and

(B) admissibility of materials identified under Subsection R151-4-504(2)(a).

(iii) An objection not timely made is waived.

#### **R151-4-505. Other Discovery Methods.**

Parties may obtain discovery by one or more of the following methods:

(1) depositions upon oral examination;

(2) production of documents or things;

(3) permission to enter upon land or other property for inspection and other purposes; and

(4) physical and mental examinations.

#### **R151-4-506. Limits on Use of Discovery.**

The frequency and extent of discovery shall be limited by the presiding officer regardless of whether either party files a motion to limit discovery if:

(1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:

(a) more convenient;

(b) less burdensome; or

(c) less expensive;

(2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

- (3) the discovery is unduly burdensome or expensive, taking into account:
  - (a) the needs of the case;
  - (b) the amount in controversy;
  - (c) limitations on the parties' resources; and
  - (d) the importance of the issues at stake in the litigation.

**R151-4-507. Protective Orders.**

(1) Upon motion by a party or by the person from whom discovery is sought the presiding officer may make an order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the discovery not be had;
- (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (e) that discovery be conducted with no one present except persons designated by the presiding officer;
- (f) that a deposition after being sealed be opened only by order of the presiding officer;
- (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

**R151-4-508. Timing, Completion, and Sequence of Discovery.**

(1) Parties are encouraged to initiate appropriate discovery procedures in advance of the prehearing conference so that discovery disputes can be addressed at that conference to the extent possible.

(2)(a) Discovery, except for prehearing disclosures governed by Section R151-4-504, shall be completed within 120 calendar days after the day:

- (i) the notice of agency action was issued; or
- (ii) the initial decision with respect to a request for agency action was issued.
- (b) Factors the presiding officer shall consider in determining whether to shorten this time period include:
  - (i) whether a party's interests will be prejudiced if the time period is not shortened;
  - (ii) whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time; and
  - (iii) whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened.
- (c) Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-4-109:

(i) whether the complexity of the case warrants additional discovery time; and

(ii) whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(d) The presiding officer may not extend discovery in a way that prevents the hearing from taking place within the time frames established in Section R151-4-108.

(3)(a) Unless the presiding officer orders otherwise for the convenience of parties and witnesses, and except as otherwise provided by this rule, discovery methods may be used in any sequence.

(b) The fact that a party is conducting discovery shall not operate to delay another party's discovery.

**R151-4-509. Supplemented Disclosures and Amended Responses.**

(1) A party who has made a disclosure or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include subsequent information if:

- (a) ordered by the presiding officer; or
- (b) a circumstance described in Subsections(2) or (3) exists.

(2)(a) A party shall supplement disclosures if:

- (i) the party learns that in some material respect the information disclosed is incomplete or incorrect; and
- (ii) the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) With respect to testimony of an expert from whom a report is required under Section R151-4-504:

- (i) the duty extends to information contained in the report; and
- (ii) additions or other changes to this information shall be disclosed by the time the party's disclosures under Section R151-4-504 are due.

(3) A party shall amend a prior response to a request for production:

- (a) within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect; and
- (b) if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

**R151-4-510. Prehearing Conference - Scheduling the Hearing Date.**

(1) Each notice of agency action or initial decision with respect to a request for agency action:

(a) shall contain the time, date, and location of a prehearing conference, which shall be at least 45 calendar days but not more than 60 calendar days after the date of the notice of agency action or initial decision with respect to a request for agency action;

(b) shall contain a clear notice that failure to respond within 30 calendar days may result in:

- (i) cancellation of the prehearing conference; and
- (ii) a default order; and
- (c) may contain the date, consistent with Section R151-4-108, of the scheduled hearing.



- (2)(a) The prehearing conference may be in person or telephonic.
- (b) Each Party, or their counsel, shall participate in the conference.
- (c) The conference shall include discussion and scheduling of discovery, prehearing motions, and other necessary matters.
- (3) During the prehearing conference, the presiding officer shall issue a verbal order, and shall issue a written order to the same effect within 2 business days after the conference is concluded, which shall address each of the following:
  - (a) if necessary, scheduling an additional prehearing conference;
  - (b) setting a deadline for the filing of prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for motions to be submitted and ruled on prior to the hearing date;
  - (c) modifying, if appropriate, a deadline for disclosures;
  - (d) resolving discovery issues;
  - (e) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and other necessary or appropriate prehearing matters;
  - (f) if not already scheduled, scheduling a hearing date in compliance with Section R151-4-108; and
  - (g) dealing with other necessary matters.
- (4) A party joined after the prehearing conference is bound by the order issued as a result of that conference unless the order is modified in writing pursuant to a stipulation or motion.
- (5)(a) The presiding officer shall schedule prehearing matters consistent with Section R151-4-108.
- (b) The presiding officer may:
  - (i) adjust time frames as necessary to accommodate Section R151-4-108; and
  - (ii) schedule appropriate prehearing matters to occur concurrently.

**R151-4-511. Signing of Disclosures, Discovery Requests, Responses, and Objections.**

- (1)(a) Each disclosure shall:
  - (i) be signed by:
    - (A) at least one attorney of record; or
    - (B) the party if not represented by an attorney; and
  - (ii) include the mailing address of the signer.
- (b) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.
- (2)(a) Each request for discovery or response or objection to discovery shall:
  - (i) be signed by:
    - (A) at least one attorney of record; or
    - (B) the party if not represented by an attorney; and
  - (ii) include the mailing address of the signer.
- (b) The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:
  - (i) consistent with this rule and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
  - (ii) not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
  - (iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.
- (3)(a) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection.
- (b) A party is not obligated to take an action with respect to a request, response, or objection until it is signed.

**R151-4-512. Filing of Discovery Requests or Disclosures.**

- (1) Unless otherwise ordered by the presiding officer:
  - (a) a party may not file a request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service;
  - (b) except as described in Subsection R151-4-512(1)(c), a party may not file any of the disclosures required by the prehearing order, but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service; and
  - (c) a party shall file the disclosures required by Section R151-4-504.
- (2) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request or response at issue.

**R151-4-513. Subpoenas.**

- (1) Each subpoena:
  - (a) shall be issued and signed by the presiding officer;
  - (b) shall state the title of the action;
  - (c) shall command each person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place specified;
  - (d) may command the person to whom it is directed to produce designated books, papers, or tangible things, and in the case of a subpoena for a deposition, may permit inspection and copying of the items; and
  - (e) shall limit its designation of books, papers, or tangible things to matters properly within the scope of discoverable information.
- (2) A subpoenaed individual shall receive the fee for attendance and mileage reimbursement required by law.
- (3)(a) A subpoena commanding a person to appear at a hearing or a deposition in Utah may be served at any place in Utah.
- (b) A person who resides in Utah may be required to appear at a deposition:
  - (i) in the county where the person resides, is employed, or transacts business in person; or
  - (ii) at any reasonable location as the presiding officer may order.
- (c) A person who does not reside in this state may be required to appear at a deposition:

(i) in the county in Utah where the person is served with a subpoena; or  
(ii) at any reasonable location as the presiding officer may order.  
(4) A subpoena shall be served in accordance with the requirements of the jurisdiction in which service is made.  
(5) Upon a motion made promptly to quash or modify a subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:

(a) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or  
(b) conditionally deny the motion with the denial conditioned on the payment of the reasonable cost of producing the requested materials by the person on whose behalf the subpoena is issued.

(6)(a) In the case of a subpoena requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after service or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, serve on the attorney designated in the subpoena a written objection to production, inspection, or copying of any of the designated materials.

(b) If this objection is made, the party serving the subpoena is not entitled to production, inspection, or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

#### **R151-4-514. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.**

(1) Upon approval by the presiding officer, a party may serve on another party a request:

(a) to produce and permit the party making the request to:

(i) inspect and copy a data compilation from which information can be obtained and translated into a reasonably usable form; or

(ii) inspect and copy, test, or sample a document or tangible thing that:

(A) constitutes or contains matters within the scope of Subsection R151-4-502(1); and

(B) are in the possession, custody or control of the party upon whom the request is served; or

(b) to permit, within the scope of Subsection R151-4-502(1), entry on designated land, property, object, or operation in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling.

(2)(a) Before permitting a party to serve a request for production of documents, the presiding officer must first find that the requesting party has demonstrated the records have not already been provided.

(b) After approval by the presiding officer, the request may be served on a party.

(c) The request shall:

(i) set forth the items to be inspected either by individual item or by category;

(ii) describe each item and category with particularity; and

(iii) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d)(i) The party upon whom the request is served shall serve a written response within 20 days after service of the request unless the presiding officer allows a shorter or longer time in a written order.

(ii) The response shall state, with respect to each specific item or category:

(A) that inspection and related activities will be permitted as requested; or

(B) an objection.

(iii) The party submitting the request may move for an order under Section R151-4-516 with respect to any:

(A) objection;

(B) failure to respond to any part of the request; or

(C) failure to permit inspection as requested.

(e) A party who produces documents for inspection shall:

(i) produce them as they are kept in the usual course of business; or

(ii) organize and label them to correspond with the categories in the request.

#### **R151-4-515. Physical and Mental Examination of Persons.**

(1)(a) When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party or person to:

(i) submit to a physical or mental examination by a physician; or

(ii) produce for examination the person in the party's custody or legal control.

(b) The order:

(i) may be made only on motion for good cause shown and upon notice to the person to be examined and to each party; and

(ii) shall specify:

(A) the time, place, manner, conditions, and scope of the examination; and

(B) the person or persons by whom it is to be made.

(2)(a)(i) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to the requester a copy of a detailed written report of the examining physician including findings, diagnoses, conclusions, test results, and reports of any earlier examination of the same condition.

(ii)(A) After delivery, the party causing the examination is entitled, on request, to receive from the party against whom the order is made a like report of an examination, previously or thereafter made, of the same condition unless, in the case of an examination of a person not a party, the party shows that the party is unable to obtain it.

(B) The presiding officer on motion may order a party to deliver a report, and if a physician fails or refuses to make a report, the presiding officer may exclude the physician's testimony at the hearing.

(b) By requesting and obtaining an examination report or by taking the deposition of the examiner, the party examined waives any privilege regarding the testimony of any other person who has examined or may thereafter examine the party for the same mental or physical condition.

(c) Subsection R151-4-515(2):

(i) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise; and

(ii) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

#### **R151-4-516. Motion to Compel Discovery - Sanctions.**

(1)(a) The discovering party may move for an order compelling discovery if:  
(i) a party fails to make disclosures required by a prehearing order;  
(ii) a party fails to make the disclosures required by R151-4-504;  
(iii) a deponent fails to answer a question;  
(iv) a corporation or other entity named as a deponent fails to designate an individual to testify pursuant to Utah Rules of Civil Procedure, Rule 30; or  
(v) a party, in response to a request for inspection under Section R151-4-514, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

(b) When taking a deposition, the proponent of the question may complete or adjourn the examination before applying for an order.  
(c) If the presiding officer denies the motion in whole or in part, the presiding officer may make a protective order that otherwise would be authorized by Section R151-4-507.

(d) An evasive or incomplete answer is treated as a failure to answer.

(2)(a) If a party or other person fails to comply with an order compelling discovery:

- (i) the department may seek civil enforcement in the district court under Section 63G-4-501; or
- (ii) the presiding officer may, for good cause, issue an order:
  - (A) that the related matters and facts shall be taken to be established;
  - (B) refusing to allow the disobedient party to support or oppose designated claims or defenses; or
  - (C) prohibiting the disobedient party from introducing designated matters in evidence;
  - (D) striking out pleadings or motions, or portions of pleadings or motions;
  - (E) dismissing the proceeding or a portion of the proceeding; or
  - (F) rendering a judgment by default against the disobedient party.

#### **R151-4-601. Applicability - Scope.**

(1) This part, Section R151-4-601 through Section R151-4-611, applies only to formal adjudicative proceedings.

(2)(a) Only as provided in this part and with a written order of the presiding officer, a party may take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of a party in the proceeding.

- (b) The attendance of witnesses may be compelled by subpoena.
- (c) A party may not depose an expert witness.

#### **R151-4-602. General Provisions - Persons who may be Deposed.**

(1) Before a party may request leave to take a person's deposition, the party must first make efforts to obtain discovery from that person by means of an interview. For purposes of this section, "interview" means an unsworn, oral examination of a person with knowledge of facts relevant to the claims or defenses of a party in the proceeding, whether in-person or by remote means.

(2) A party may not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of a party in the proceeding and:

- (a) has refused a reasonable request by the moving party for an interview;
- (b) has failed to attend a scheduled interview;
- (c) has failed to provide reasonable availability for an interview;
- (d) has refused to answer reasonable questions propounded to the person by that party in an interview; or
- (e) will be unavailable to testify at the hearing.

(3) In deciding whether to grant the motion, the presiding officer shall consider the probative value the testimony is likely to have in the proceeding and the complexity of the proceeding.

(4) The moving party has the burden of proof in a motion for leave to take a deposition.

(5) Any participant in an interview conducted in accordance with this section may create an audio recording of the interview as long as the person recording the interview gives verbal notice to the other participants that the interview is being recorded. Any participant that creates an audio recording of the interview shall provide a copy of the recording to each party to the proceeding within 10 days of the interview.

(6) The parties to a proceeding may stipulate to take a deposition rather than conduct an interview, even if the requirements of this section have not been met.

#### **R151-4-603. Notice of Deposition - Requirements.**

(1)(a) A party permitted to take a deposition shall give notice pursuant to the notice requirements of Utah Rules of Civil Procedure, Rule 30.

(2)(a) The parties may stipulate in writing or, upon motion, the presiding officer may order in writing that the testimony at a deposition be recorded by means other than stenographic means.

(b) The stipulation or order:

- (i) shall designate the person before whom the deposition shall be taken;
- (ii) shall designate the manner of recording, preserving and filing the deposition; and
- (iii) may include other provisions to assure the recorded testimony will be accurate and trustworthy.

(c) A party may arrange to have a transcript made at the party's own expense.

(d) A deposition recorded by means other than stenographic means shall set forth in writing:

- (i) any objections;
- (ii) any changes made by the witness;
- (iii) the signature of the witness identifying the deposition as the witness's own or the statement of the court reporter required if the witness does not sign; and

(iv) any certification required by Utah Rules of Civil Procedure, Rule 30.

(3) The notice to a party deponent may be accompanied by a request in compliance with R151-4-514 for the production of documents and tangible things at the deposition.

(4) Utah Rules of Civil Procedure, Rule 30(b)(6), shall apply where a deponent is:

- (a) a public or private corporation;
- (b) a partnership;

- (c) an association; or
- (d) a government agency.
- (5) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

**R151-4-604. Examination and Cross-Examination.**

(1) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the Utah Administrative Procedures Act and Utah Rules of Civil Procedure, Rule 30.

**R151-4-605. Motion to Terminate or Limit Examination.**

(1) The presiding officer may order the court reporter conducting the examination to end the deposition or may limit the scope and manner of taking the deposition pursuant to Utah Rules of Civil Procedure, Rule 30.

**R151-4-606. Submission to Witness - Changes - Signing.**

A deposition shall be submitted to the witness, changed, and signed pursuant to Utah Rules of Civil Procedure, Rule 30.

**R151-4-607. Certification - Delivery - Exhibits.**

- (1) The transcript or recording of a deposition shall be certified and delivered pursuant to Utah Rules of Civil Procedure, Rule 30.
- (2) Exhibits shall be marked for identification, inspected, copied, and delivered pursuant to Utah Rules of Civil Procedure, Rule 30.

**R151-4-608. Persons Before Whom Depositions May Be Taken.**

Depositions shall be taken before an individual certified court reporter as defined by Title 58, Chapter 74, State Certification of Court Reporters Act.

**R151-4-609. Use of Depositions.**

(1) Pursuant to the other provisions of Section R151-4-609, a part of a deposition, if admissible under the rules of evidence applied as though the witness were present and testifying, may be used against a party who:

- (a) was present or represented at the taking of the deposition; or
- (b) had reasonable notice of the deposition.

(2) A party may use a deposition:

- (a) to contradict or impeach the testimony of the deponent as a witness; or
- (b) for another purpose permitted by the Utah Rules of Evidence.

(3) An adverse party may use a deposition for any purpose.

(4) A party may use the deposition of a witness, whether or not a party, for any purpose if the presiding officer finds that:

(a) the witness is dead;

(b) the witness is more than 100 miles from the hearing, unless it appears the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(5) If part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part that ought, in fairness, to be considered with the part introduced.

(6) A deposition lawfully taken and filed in a court or another agency within Utah may be used as if originally taken in the pending proceeding.

(7) A deposition previously taken may otherwise be used as permitted by the Utah Rules of Evidence.

**R151-4-610. Objections to Admissibility.**

A party may object at a hearing to receiving in evidence any part of a deposition for a reason that would require the exclusion of the evidence if the witness were present and testifying.

**R151-4-611. Effect of Errors and Irregularities in Depositions.**

(1) An error or irregularity in the notice for taking a deposition is waived unless a party promptly serves a written objection on the party giving the notice.

(2) Objection to taking a deposition because of disqualification of the court reporter before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during the taking of the deposition, unless the basis of the objection is one that could have been obviated or removed if presented at that time.

(4) An error or irregularity occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and an error that might be obviated, removed, or cured if promptly presented, is waived unless an objection is made at the taking of the deposition.

(5) An error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with is waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence should have been, discovered.

**R151-4-701. Hearings Required or Permitted.**

A hearing shall be held in an adjudicative proceeding in which a hearing is:

- (1) required by statute or rule and not waived by the parties; or
- (2) permitted by statute or rule and timely requested.

**R151-4-702. Time to Request Permissive Hearing.**

A request for a hearing permitted by statute or rule must be received no later than:

- (1) the time period for filing a response to a notice of agency action if a response is required or permitted;
- (2) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or
- (3) the filing of the request for agency action.

**R151-4-703. Hearings Open to Public - Exceptions.**

- (1) A hearing in an adjudicative proceeding is open to the public unless closed by:
  - (a) the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, Administrative Procedures Act; or
  - (b) a presiding officer who is a public body, pursuant to Title 52, Chapter 4, Open and Public Meetings Act.
- (2)(a) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act.
- (b) Deliberations are closed to the public.

**R151-4-704. Bifurcation of Hearing.**

The presiding officer may, for good cause, order a hearing bifurcated into a findings phase and a sanctions phase.

**R151-4-705. Order of Presentation in Hearings.**

The order of presentation of evidence in hearings in formal adjudicative proceedings shall be as follows:

- (1) opening statement of the party with the burden of proof;
- (2) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;
- (3) case-in-chief of the party with the burden of proof and cross examination of witnesses by opposing party;
- (4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;
- (5) if the presiding officer finds it to be necessary, rebuttal evidence by the party that has the burden of proof;
- (6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;
- (7) closing argument by the party with the burden of proof;
- (8) closing argument by the opposing party; and
- (9) final argument by the party with the burden of proof.

**R151-4-706. Testimony Under Oath.**

Testimony presented at a hearing shall be given under oath administered by the presiding officer and under penalty of perjury.

**R151-4-707. Electronic Testimony.**

- (1) As used in this section, electronic testimony means testimony by contemporaneous transmission from a different location including by telephone, or by other audio or video conferencing technology.
- (2) For good cause and with appropriate safeguards, the presiding officer may permit electronic testimony in hearings in administrative proceedings.
- (3) With appropriate safeguards, electronic testimony is permissible in an informal proceeding on the request of a party.

**R151-4-708. Standard of Proof.**

Unless otherwise provided by statute or a rule applicable to a specific proceeding, the standard of proof in a proceeding under this rule, whether initiated by a notice of agency action or request for agency action, is a preponderance of the evidence.

**R151-4-709. Burden of Proof.**

Unless otherwise provided by statute:

- (1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and
- (2) the party who seeks action from the department has the burden of proof in a proceeding initiated by a request for agency action.

**R151-4-710. Default Orders.**

- (1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.
- (2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.
- (3) A default order is not required to be accompanied by a separate order.

**R151-4-711. Record of Hearing.**

- (1) The presiding officer shall make a record of prehearing conferences and hearings.
- (2)(a) The presiding officer shall make the record of a hearing in a formal proceeding by means of:
  - (i) a certified court reporter as defined by Title 58, Chapter 74, State Certification of Court Reporters Act; or
  - (ii) a digital audio or video recording in a commonly used file format.
- (b) The presiding officer shall make record of a hearing in an informal proceeding by:
  - (i) a method required for a formal proceeding; or
  - (ii) minutes or an order prepared or adopted by the presiding officer.
- (3) A hearing in an adjudicative proceeding shall be recorded at the expense of the department.
- (4)(a) If a party is required by Section R151-4-902 to obtain a transcript of a hearing for agency review, the party must ensure that the record is transcribed:
  - (i) in a formal adjudicative proceeding, by a certified court reporter; or
  - (ii) in an informal adjudicative proceeding, by:
    - (A) a certified court reporter; or
    - (B) a person who is not a party in interest.
- (b) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.
- (c) Pages and lines in a transcript shall be numbered for referencing purposes.

- (d) The party requesting the transcript shall bear the cost of the transcription.
- (5) The original transcript of a record of a hearing shall be filed with the presiding officer.

**R151-4-712. Fees.**

- (1)(a) Witnesses appearing on the demand or at the request of a party may receive payment from that party of:
  - (i) \$18.50 for each day in attendance; and
  - (ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents per mile for each mile actually and necessarily traveled.
- (b) A witness subpoenaed by a party other than the department may:
  - (i) demand one day's witness fee and mileage in advance; and
  - (ii) be excused from appearance unless the fee is provided.
- (2) Interpreters and translators may receive compensation for their services.
- (3) An officer or employee of the United States, the State of Utah, or a county, incorporated city, or town within the State of Utah, may not receive a witness fee unless the officer or employee is required to testify at a time other than during normal working hours.
- (4) A witness may not receive fees in more than one adjudicative proceeding on the same day.

**R151-4-801. Requirements and Timeliness.**

- (1) For default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e) through (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).
- (2) Except as provided in Sections 63G-4-502 and R151-4-111, the presiding officer shall issue an order within 45 calendar days after the day the hearing concludes.
- (3) If the presiding officer permits the filing of post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day the hearing concludes.
- (4) The failure of the presiding officer to comply with the requirements of this section:
  - (a) is not a basis for dismissal of the matter; and
  - (b) may not be considered an automatic denial or grant of a motion.

**R151-4-802. Effective Date.**

The effective date of an order is 30 calendar days after its issuance unless otherwise provided in the order.

**R151-4-803. Clerical Mistakes.**

- (1) The department may correct clerical mistakes in orders or other parts of the record and errors arising from oversight or omission on:
  - (a) its own initiative; or
  - (b) the motion of a party.
- (2) Mistakes described in this section may be corrected:
  - (a) at any time prior to the docketing of a petition for judicial review; or
  - (b) as governed by Utah Rules of Appellate Procedure, Rule 11(h).

**R151-4-901. Availability of Agency Review and Reconsideration.**

- (1)(a) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.
- (b) This 30-day deadline is jurisdictional. The three-day mailing rule in Subsection 151-4-107(3) does not apply and does not extend the jurisdictional deadline.
- (c) Pursuant to Subsection 63G-4-102(9), the Executive Director may extend the deadline only for good cause shown. For purposes of this section, good cause to justify an extension means special circumstances beyond the control of the person requesting agency review that prevents a timely filing of the request.
  - (2)(a) Agency review is not available for an order or decision entered by:
    - (i) the Utah Motor Vehicle Franchise Advisory Board;
    - (ii) the Utah Powersport Vehicle Franchise Advisory Board; or
    - (iii) the Utah Department of Commerce under Title 13, Chapter 55, Regulatory Sandbox Program.
  - (b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:
    - (i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;
    - (ii) a request for modification of a disciplinary order;
    - (iii) a request under Subsection 58-1-404(4) for entry into the Diversion Program; or
    - (iv) a determination made on an application for a division determination regarding criminal record in accordance with Section 58-1-310.
  - (c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:
    - (i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;
    - (ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;
    - (iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-3a-209; or
    - (iv) denial of reinstatement under the Uniform Limited Cooperative Association Act pursuant to Section 16-16-1213.
  - (d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under Subsections R151-4-901(2)(a), R151-4-901(2)(b)(ii), and R151-4-901(2)(c).
  - (ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under Subsections R151-4-901(2)(b)(i) and R151-4-901(2)(b)(iii).

**R151-4-902. Request for Agency Review - Transcript of Hearing - Service.**

- (1) A request for agency review shall:
  - (a) comply with Subsection 63G-4-301(1)(b) and this section; and
  - (b) include a copy of the order that is the subject of the request.

(2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:

- (a) appropriate legal authority; and
- (b) the relevant portions of the record.

(3)(a) If a party challenges a finding of fact, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence.

(b) A party challenging a finding of fact bears the burden to show that the finding is not supported by substantial evidence.

(c) A party challenging a legal conclusion must support the argument with citation to:

- (i) relevant authority; and
- (ii) the portions of the record relevant to the issue.

(4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.

(b) When a transcript is required, the party seeking review shall:

- (i) certify that the transcript has been ordered;
  - (ii) notify the department when the transcript will be available; and
  - (iii) file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript.
- (c) The party seeking agency review bears the cost of the transcript.

(5) Grounds for agency review that include any legal argument must be supported by specific citations to the transcript of the proceeding, indicating when the argument was raised and preserved in the proceeding. Examples of legal argument include but are not limited to:

- (a) an objection to a ruling of the presiding officer;
- (b) an argument regarding one or more procedures attendant to the proceeding; or
- (c) an argument as to the legal validity, including the constitutionality, of a statute or rule.

(6)(a) A party seeking agency review shall, in the manner described in Sections R151-4-401 and R151-4-402, file and serve on the parties copies of correspondence, pleadings, motions, and other submissions.

(b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.

#### **R151-4-903. Stay Pending Agency Review.**

(1) With a timely filing of a request for agency review of an order, the party seeking review may file a motion for a stay of the order pending the completion of agency review.

(b) If a motion to stay is not timely filed and subsequently granted, the order subject to review shall remain in effect according to its terms.

(2)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date the stay is requested.

(b) Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public.

(c) If a division opposes a motion for a stay, the department may permit a final response by the party requesting the stay.

(d) The department may enter an interim order granting a stay pending a decision on the motion for a stay.

(3)(a) In determining whether to grant a request for a stay, the department shall review the division's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare.

(b) The department may issue:

- (i) an order granting the motion for a stay;
- (ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;
- (iii) a partial stay; or
- (iv) an order denying the motion for a stay.

#### **R151-4-904. Agency Review - Memoranda.**

(1)(a) The department may order or permit the parties to file memoranda to assist in conducting agency review.

(b) Memoranda shall comply with:

- (i) this rule; and
- (ii) a scheduling order entered by the department.

(2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.

(b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.

(3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.

(b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.

(4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

#### **R151-4-905. Agency Review - Standards of Review.**

In both formal and informal adjudicative proceedings, the standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings under Subsection 63G-4-403(4).

#### **R151-4-906. Agency Review - Type of Relief - Order on Review.**

(1) The type of relief available on agency review shall be the same as the type of relief available on judicial review under Subsection 63G-4-404(1)(b).

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

**R151-4-907. Stay Pending Judicial Review.**

(1) A party seeking judicial review of an order may file with the executive director a motion for a stay of the order pending judicial review. The motion for a stay shall be filed with the executive director on the same date that a timely petition for judicial review is filed with the court.

(2) Unless otherwise provided by statute, a motion for a stay of an order pending judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(3)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date that the motion is filed.

(b) Failure to oppose a timely motion under this section, shall result in an order granting the stay unless the executive director determines that a stay would not be in the public interest.

(c) If a division opposes a motion for a stay, the executive director may permit a final response by the party filing the motion.

(4) The executive director may grant a motion for a stay of an order pending judicial review if the criteria in Section R151-4-907 are met.

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