

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

DIRECTOR'S OFFICE

PROCEDURAL RULES

(By authority conferred on the director of the department of consumer and industry services by Executive Reorganization Order No. 1996-2, MCL 445.2001)

PART 1. GENERAL PROVISIONS

R 451.2101 Definitions.

Rule 101. (1) As used in these rules:

(a) "Act" means Act No. 306 of the Public Acts of 1969, as amended, being SS24.201 to 24.315 of the Michigan Compiled Laws, and known as the administrative procedures act of 1969.

(b) "Administrator" means the person with final decision making authority who shall be the director of the corporation and securities bureau and the designees of the administrator.

(c) "Bureau" means the Michigan department of commerce, corporation and securities bureau.

(d) "Meeting" means a meeting of the administrator and a licensee held pursuant to a notice of opportunity to show compliance.

(e) "Petitioner" means a person or a party who initiates the commencement of a contested case.

(f) "Presiding officer" means presiding officer as referred to in sections 79 and 80 of the act.

(g) "Proposal for decision" means a report of the findings of fact and conclusions of law with recommendations for a decision prepared by the presiding officer and submitted to the administrator for consideration in the preparation of a final or interim decision.

(h) "Respondent" means a party against whom contested case proceedings are commenced.

(2) The terms defined in the act have the same meanings when used in these rules.

History: 1983 AACS.

R 451.2102 Applicability

Rule 102. These rules apply to the administrator and persons who are subject to the jurisdiction of the administrator, including jurisdiction under the following statutes:

(a) Act No. 265 of the Public Acts of 1964, as amended, being S451.501 et seq. of the Michigan Compiled Laws, and known as the uniform securities act.

(b) Act No. 269 of the Public Acts of 1974, being S445.1501 et seq. of the Michigan Compiled Laws, and known as the franchise investment law.

(c) Act No. 148 of the Public Acts of 1975, being S451.411 et seq. of the Michigan Compiled Laws, and known as the debt management act.

(d) Act No. 179 of the Public Acts of 1976, being S451.901 et seq. of the Michigan Compiled Laws, and known as the take-over offers act.

(e) Act No. 419 of the Public Acts of 1976, as amended, being S125.1101 et seq. of the Michigan Compiled Laws, and known as the mobile home commission act.

(f) Act No. 440 of the Public Acts of 1976, as amended, being S554.801 et seq. of the Michigan Compiled Laws, and known as the living care disclosure act.

(g) Act No. 59 of the Public Acts of 1978, as amended, being S559.101 et seq. of the Michigan Compiled Laws, and known as the condominium act.

(h) Act No. 327 of the Public Acts of 1931, as amended, being S450.1 et seq. of the Michigan Compiled Laws, and known as the general corporation act.

(i) Act No. 192 of the Public Acts of 1962, as amended, being S450.221 et seq. of the Michigan Compiled Laws, and known as the professional service corporation act.

(j) Act No. 284 of the Public Acts of 1972, as amended, being S450.1101 et seq. of the Michigan Compiled Laws, and known as the business corporation act.

History: 1983 AACS.

R 451.2103 Construction of rules

Rule 103. These rules shall be construed as secure fair and efficient determination of the issues presented.

History: 1983 AACS.

PART 2. BUREAU ORGANIZATION

R 451.2201 Appointment of director.

Rule 201. The appointing authority of the department of commerce appoints a director from appropriate civil service registers to serve in the capacity of the executive officer of the bureau.

History: 1983 AACS.

R 451.2202 Duties of bureau.

Rule 202. The bureau is responsible for protecting purchasers of securities condominiums, mobile homes, franchises, and living care interests and for ensuring fairness in debt management. The bureau registers companies and individuals and regulates their business activities in such a way as to help protect the public against unfair business practices while, at the same time, encouraging

competitive enterprises at all levels. In addition, all documents required by statute for incorporation within this state or to transact business as a corporation in this state are filed with the bureau.

History: 1983 AACCS.

R 451.2203 Subdivisions of bureau.

Rule 203. The subdivisions of the bureau are titled divisions or offices. Each division or office is generally related to the administration of a particular statute or statutes, with the exception of bureau enforcement activities. Enforcement of all statutes administered by the bureau is centralized in 1 unit.

History: 1983 AACCS.

PART 3. INTERPRETATIVE OPINIONS AND DECLARATORY RULINGS

R 451.2301 Interpretative opinions; nature; requests, failure to follow procedures and requirements.

Rule 301. (1) An interpretative opinion may be issued concerning any of the statutes over which the bureau has jurisdiction. However, the bureau may refuse to issue an interpretative opinion.

(2) An interpretative opinion issued by the bureau is an informal position and is not a declaratory ruling or a formal order. An interpretative opinion does not have quasi-judicial force or effect and is not subject to judicial review.

(3) An interested person submitting an interpretative opinion request shall observe the following procedure.

(a) An original and 1 copy of each request shall be submitted to either the director of the division or office administering the statute or statutes involved or to the director of the bureau. Such written request shall be submitted to the bureau's current Lansing office. Two copies of all relevant documents, including offering materials, contracts, and agreements, shall be submitted as attachments to the request.

(b) Immediately below the inside address of the letter of request the specific section or sections of the particular statute or statutes to which the request relates shall be stated. If the request involves more

than 1 section or subsection of a statute, or sections or more than 1 statute, each section shall be specifically indicated and explained to permit the bureau to reasonably ascertain the nature of the request.

(c) The fact situation underlying the request shall be stated completely and accurately. A concise statement of the issues presented shall be included in the request.

(d) The request shall contain an analysis by the requestor's legal counsel of the issues presented and legal counsel's conclusion.

(e) As an alternative to subrule (d), if private legal counsel has not stated an opinion, the request shall contain the requestor's analysis of the issues presented and

the requestor's conclusion. The requestor shall state why a problem exists, the requestor's opinion on the matter, and the basis for the requestor's opinion.

(4) A request shall state the names of all persons involved in the request and shall not relate to hypothetical fact situations. A request shall be confined to the particular fact situation at hand and shall not attempt to include every possible type of situation which may arise in the future.

(5) Failure to follow the procedure and requirements of this rule may result in the return of the request for compliance or in a denial of the request.

History: 1983 AACS.

R 451.2302 Interpretative opinions; response to requests.

Rule 302. (1) The bureau's response to requests for interpretative opinions may be in any of the following forms:

(a) A letter wherein the bureau states its opinion as to the applicability of a statute to a particular fact situation.

(b) A letter wherein the bureau states that it will take no enforcement action against the parties involved if all facts presented are true and complete.

(c) A denial of the request.

(2) The bureau's response is applicable only to the specific situation presented to the bureau. Different facts or conditions might require a different response. A response shall not be considered a basis for reliance by persons other than the requesting parties or by the requesting parties in circumstances beyond those described to the bureau.

History: 1983 AACS.

R 451.2303 Rescinded.

History: 1983 AACS; 2001 AACS.

R 451.2304 Rescinded.

History: 1983 AACS; 2001 AACS.

PART 4. OPPORTUNITY TO SHOW COMPLIANCE

R 451.2401 Opportunity to show compliance.

Rule 401. When required by law, a licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license held by the licensee. The administrator may also offer an opportunity to show compliance in

such other appropriate circumstances as will promote efficient administration of a statute.

History: 1983 AACCS.

R 451.2402 Notice of opportunity to show compliance; contents; service.

Rule 402. (1) The notice of an opportunity to show compliance meeting shall be by personal service, by mail as specified in R 451.2507, or as provided by statute; shall include the information required in a notice of hearing under section 41 of the act; and shall include all of the following:

(a) The date by which a showing of compliance shall be made. This date shall be not less than 15 days after the date of personal service, mailing, or service as provided by statute, unless an earlier date is agreed upon by the administrator and the licensee. The administrator may extend the time in which a licensee may show compliance to avoid undue hardships.

(b) A statement that a showing of compliance may be made in writing or by a personal appearance at the scheduled meeting. The notice shall set forth the due date and address for a written response and the date, time, and location for the meeting.

(c) A statement that the licensee has the right, at the licensee's own expense, to have the assistance of an attorney in preparing a written response or to have an attorney present at the meeting.

(d) A statement that any statements made either in the written response or at the meeting may be used as evidence against the licensee at any later proceedings.

(e) A statement that the procedures in the case shall be governed by the act, these rules, and any other applicable laws.

(2) The administrator may meet the requirement of providing an opportunity to show compliance by serving a notice of opportunity to show compliance on the licensee in conformity with the standards established for service in R 451.2507, and by acting in accordance with the notice.

History: 1983 AACCS.

R 451.2403 Appointment of attorney or other authorized representative; notice to administrator; service of papers.

Rule 403. (1) If the licensee engages an attorney or otherwise appoints an authorized representative, the licensee, attorney or authorized representative shall notify the administrator of the appointment. The notice of appointment shall contain all of the following:

(a) The attorney's or authorized representative's name, address, telephone number, and, if applicable, bar number.

(b) The firm name, address, and telephone number if the attorney or authorized representative is a member of a firm.

(c) The name, address, and telephone number of the person represented.

(2) After a notice of appointment has been filed, service of all papers in an opportunity to show compliance proceeding may be made upon the attorney,

authorized representative, or firm of record and shall be effective as service upon the person represented.

(3) This rule applies only to opportunity to show compliance proceedings and not to commencement of proceedings in contested cases

History: 1983 AACCS.

R 451.2404 Change of address and telephone number.

Rule 404. A licensee shall keep the administrator informed of the current mailing address and telephone number of the licensee and the licensee's attorney or authorized representative.

History: 1983 AACCS.

R 451.2405 Failure to show compliance; waiver; extension.

Rule 405. If the licensee fails to submit in writing a showing of compliance by the due date and does not appear at the scheduled meeting, the licensee's right to an opportunity to show compliance is waived, unless an extension is granted by the administrator.

History: 1983 AACCS.

R 451.2406 Conduct of the meeting; stipulation to facts.

Rule 406. The administrator shall conduct the meeting in a manner that allows the licensee a reasonable opportunity to show compliance. The persons involved may stipulate to as many facts as possible.

History: 1983 AACCS.

R 451.2407 Information used in showing compliance.

Rule 407. In making a show of compliance, the licensee may present the relevant facts, records, dates, times, and names necessary to substantiate the licensee's position.

History: 1983 AACCS.

R 451.2408 Certification of opportunity to show compliance; inclusion in record.

Rule 408. At the end of the time period in which a licensee may make a showing of compliance, the administrator shall certify that the licensee was provided the opportunity to show compliance. A completed form showing that the licensee was provided an opportunity to show compliance shall be made part of the record if a contested case is commenced against the licensee.

History: 1983 AACCS.

PART 5. COMMENCEMENT OF PROCEEDINGS AND CONTESTED CASES

R 451.2501 Commencement of contested case.

Rule 501. (1) The administrator shall commence a contested case in the manner prescribed by statute.

(2) In the alternative to subrule (1), the administrator shall commence a contested case by issuing a notice of hearing and preliminary order.

History: 1983 AACCS.

R 451.2502 Petition for a contested case; action; notice; burden of proof.

Rule 502. (1) A person who seeks to have the administrator commence a contested case shall submit to the administrator a written petition for a contested case. The petition shall set forth all of the following:

- (a) Facts or conduct that warrant a contested case.
- (b) Specific sections of applicable rules and statutes in question.
- (c) The particular interest of the petitioner.
- (d) Remedies sought.
- (e) The identities of all parties involved.

(2) Within 60 days after receipt of a petition for a contested case, the administrator shall determine whether to take any of the following actions:

- (a) Request the petitioner to amend the petition.
- (b) Demand an answer to the petition.
- (c) Investigate the allegations set forth in the petition.
- (d) Issue a notice of opportunity to show compliance.
- (e) Commence a contested case.
- (f) Order a public hearing.
- (g) Decline to take further action upon the petition.
- (h) Take other appropriate action within the administrator's authority.

(3) The administrator shall notify the petitioner of the administrator's decision pursuant to subrule (2) and provide the petitioner a brief written explanation of the reason for the decision.

(4) Unless otherwise specified by the administrator, the burden of proof at a hearing or opportunity to show compliance meeting initiated pursuant to this rule shall be upon the petitioner.

(5) This rule shall not affect the administrator's authority to commence a contested case on the administrator's own initiative.

History: 1983 AACCS.

R 451.2503 Notice of hearing; service.

Rule 503. Except as otherwise provided or required by law, an initial notice of hearing in a contested case shall be served not less than 30 days prior to the date of hearing unless the parties consent to a lesser time period.

History: 1983 AACCS.

R 451.2504 Assignment of docket number.

Rule 504. Upon commencement of a contested case, the administrator shall assign a docket number to the proceeding. Parties shall include the docket number on the first page of pleadings filed in the proceeding.

History: 1983 AACCS.

R 451.2505 Notice of hearing; service by administrator.

Rule 505. Except as otherwise provided by law, the administrator shall serve a notice of hearing and any amendments to a notice of hearing in person or by certified mail, return receipt requested.

History: 1983 AACCS.

R 451.2506 Filed papers; service of party.

Rule 506. A party shall serve all papers filed in a contested case by that party upon all other parties. Service shall be made in person or by first class mail.

History: 1983 AACCS.

R 451.2507 Personal service; service by mail.

Rule 507. (1) Personal service is an effective method of service whenever service by mail is required. Personal service may be made upon a person by leaving orders, notices, and other papers with the person.

(2) Except as otherwise provided by law, service by mail shall be accomplished by complying with the following requirements:

(a) Enclosing a copy of the paper in a sealed envelope with first class postage fully prepaid and addressed to the person to be served at that person's last known address. The envelope shall list the return address of the sender. When the last known address is not the current address, the

sender shall make diligent efforts to find the current address.

(b) Depositing the envelope and contents in the United States postal system.

History: 1983 AACCS.

R 451.2508 Date of service.

Rule 508. The date of service shall be the date of the second day after the date on which the paper served is mailed or shall be the date of personal delivery.

History: 1983 AACCS.

R 451.2509 Proof of service.

Rule 509. A person who has served a paper shall attach proof of service to the original that is filed in accordance with these rules. Proof of service shall be made as follows:

(a) If service is made by mail, proof of service shall be made by filing an affidavit of service with the administrator that certifies compliance with subrule (2) of R 451.2507 and specifies the method of service, the identity of the server, the date and place of service, and the address to which the materials were mailed. If the service is made by certified or registered mail, the mailing receipt shall be attached to the affidavit of service.

(b) If the service is made by personal service, proof of service shall be made by filing an affidavit of service with the administrator that certifies the method of service, the identity of the server, the person served, and the date and place of service.

History: 1983 AACCS.

R 451.2510 Notice of appearance by attorney; service on attorney.

Rule 510. (1) An attorney representing a person in a contested case shall promptly file a notice of appearance with the administrator. The notice of appearance shall contain all of the following:

(a) The attorney's name, address, telephone number, and bar number.

(b) The firm name, address, and telephone number if the attorney is a member of a firm.

(c) The name, address, and telephone number of the person represented.

(2) The attorney shall promptly notify the administrator of any changes in the information contained within a notice of appearance which has been filed with the administrator.

(3) After a notice of appearance has been filed, service of all papers in a contested case may be made upon the attorney or firm of record and shall be effective as service upon the person represented.

History: 1983 AACCS.

R 451.2511 Mailing address and telephone number of parties.

Rule 511. All parties to a contested case shall keep the administrator informed of their current mailing addresses and telephone numbers.

History: 1983 AACS.

PART 6. PLEADINGS, MOTION PRACTICE, AND INTERVENTION

R 451.2601 Pleadings allowed; time limits.

Rule 601. Pleadings and other papers allowed shall include, but are not limited to, preliminary order, answer to preliminary order, notice of hearing, answer to notice of hearing, motions, briefs and memoranda. If a pleading or other paper is not filed in accordance with applicable time limits, the right of a party to make that filing is waived. The administrator in its discretion may, upon a showing of good cause for the late filing, permit the late filing of a pleading or other paper.

History: 1983 AACS.

R 451.2602 Pleadings; form; statement of fact; signatures; certification.

Rule 602. (1) A pleading or other paper shall set forth the title and docket number of the proceeding and shall be submitted on 8 1/2-inch by 11-inch paper.

(2) Statements of fact in a preliminary order or notice of hearing shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances.

(3) The paragraphs of an answer or a reply shall be numbered to correspond to those of the preliminary order or notice of hearing.

(4) The original of each pleading or other paper shall be signed by the party in interest or by the party's authorized representative. Each pleading or other paper shall contain the following certification: "I have read this document and, to the best of my knowledge, information, and belief, there is good ground to support it and it is not interposed for unwarranted delay."

History: 1983 AACS.

R 451.2603 Pleadings and other papers; filing.

Rule 603. (1) Pleadings and other papers shall be filed, unless otherwise directed by the administrator, by sending or delivering them to the hearing coordinator for the bureau at the bureau's current Lansing office. Pleadings and other papers are filed when received by the bureau at its Lansing office.

(2) An original and 9 copies of each pleading or other paper shall be filed.

History: 1983 AACS.

R 451.2604 Computation of period of days.

Rule 604. (1) In computing a period of days, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday, or legal holiday, or day upon which the bureau does not transact business, the period is extended to include the next day that is not a Saturday, Sunday, legal holiday, or day upon which the bureau does not transact business.

(2) Unless otherwise specified by the administrator, the date of receipt at the Lansing office of the bureau shall be the date used to determine whether a pleading or other paper has been timely filed.

History: 1983 AACS.

R 451.2605 Summary decision.

Rule 605. A party may move for a summary decision in the party's favor upon any 1 of the following grounds:

(a) The opposing party has failed to state a claim upon which relief can be granted.

(b) The opposing party has failed to state a valid defense to the claim asserted against that party.

(c) There is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law.

History: 1983 AACS.

R 451.2606 Application for order or proposal for decision in pending action; motion; forms; service.

Rule 606. An application for an order or a proposal for decision in a pending action shall be made by a motion that states with particularity the factual and legal grounds and the relief sought. Unless made during a prehearing conference or hearing, a motion shall be made in writing. The moving party shall promptly serve copies of a written motion on all other parties.

History: 1983 AACS.

R 451.2607 Reply to motion; failure to file; oral argument.

Rule 607. A party may file a written reply to a written motion. A party shall have not less than 4 days from the date of service of a motion to file a reply unless a shorter response period is specified by the presiding officer for good cause. The presiding officer may order an opposing party to file a written reply to a written motion. Failure to file a reply as ordered shall constitute consent to the granting of a relief sought in the motion. The presiding officer may order oral argument on any motion.

History: 1983 AACS.

R 451.2608 Motion for more definite statement; motion to strike pleadings.

Rule 608. (1) If a pleading is so vague or ambiguous that it cannot be understood or answered, an opposing party may move for a more definite statement before filing a responsive pleading. The motion shall identify the defects and shall request the desired details. If the motion is granted and not obeyed within 10 days after notice of the order, the presiding officer may strike the pleading to which the motion was directed or make any other order that is deemed just. If the motion is denied, the moving party shall promptly file the responsive pleading that was delayed by the motion.

(2) Upon motion by a party or upon the presiding officer's own motion, the presiding officer may order stricken from any pleading any redundant, immaterial, impertinent, scandalous, or indecent matter, or may order stricken any pleading or any part of a pleading not drawn in conformity with these rules.

History: 1983 AACS.

R 451.2609 Hearing; adjournment; motion; order.

Rule 609. (1) A hearing may be adjourned only upon an order of the presiding officer or the administrator.

(2) Prior to a scheduled hearing date, motions or stipulations for adjournment filed by parties shall be in writing and shall be filed, with appropriate proof of service, at least 1 week prior to the date scheduled for hearing.

(3) The presiding officer may grant 1 adjournment of 15 days or less duration to each party. Additional adjournments requested by a party shall be granted only by the administrator.

(4) Adjournments for periods of longer than 15 days duration shall be granted only by the administrator.

(5) The presiding officer or the administrator may order an adjournment on the presiding officer's or administrator's own motion.

(6) The presiding officer or the administrator may grant adjournments, subject to subrules (3) and (4), in such other instances as the presiding officer or the administrator finds are in the interest of justice.

History: 1983 AACS.

R 451.2610 Motion for extension of time.

Rule 610. (1) Except as otherwise provided by law and except for oral motions made during a hearing, requests for extensions of time in which to perform any act required or allowed to be done at or within a specific time by these rules shall be made by motion in writing. This motion shall be filed before the expiration of the period originally prescribed or previously extended. If the presiding officer determines that there is good cause for extension of time, the motion may be granted. The presiding officer shall state with particularity the reasons for granting the extension.

(2) This rule shall not apply to motions for adjournment of a prehearing conference or a hearing.

History: 1983 AACS.

R 451.2611 Written motion; proposed order.

Rule 611. A written motion, other than a motion for adjournment, shall be accompanied by a proposed order.

History: 1983 AACS.

R 451.2612 Relief sought by motion.

Rule 612. Any relief sought by motion which has the result of substantially affecting a significant claim or interest of any party shall be disposed of by proposal for decision by the presiding officer.

History: 1983 AACS.

R 451.2613 Offer of settlement.

Rule 613. (1) A party may propose in writing an offer of settlement which shall be submitted to the interested division of the bureau for consideration. An offer may be made at any time during the course of the proceeding.

(2) If the offer of settlement is rejected, the party making the offer shall be notified of the action and the offer of settlement shall be deemed withdrawn. The offer and any documents relating thereto shall not constitute a part of the record.

(3) Acceptance by the division shall be communicated in writing to the requesting party and to the presiding officer who shall take appropriate action to amend the preliminary order, notice of hearing, or other document, or terminate the proceedings.

History: 1983 AACS.

R 451.2614 Intervention in contested case.

Rule 614. (1) A person shall be permitted to intervene in a contested case if any of the following occurs:

(a) The applicant has an unconditional right to intervene conferred by law.

(b) An interest of the applicant that may be directly affected is not adequately represented by the existing parties and the applicant may be bound by a decision in the proceeding.

(2) A person may be permitted to intervene in a contested case if any of the following occurs:

(a) A statute of this state confers a conditional right to intervene.

(b) The applicant's claim or defense and the contested case proceeding have a question of law or fact in common.

(c) The parties to the proceeding stipulate to the intervention.

(3) In evaluating an application for intervention pursuant to subrule (2) of this rule, the presiding officer shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

History: 1983 AACS.

R 451.2615 Application for intervention; filing; late filing.

Rule 615. (1) Any person claiming a right to intervene or an interest of such a nature that intervention may be appropriate may file an application to intervene. An application for intervention shall state the grounds for intervention and the supporting facts in a manner that fully advises the parties and the presiding officer of the specific issues of fact or law contained in the preliminary order or notice of hearing with which the applicant is concerned.

(2) A person shall file an application for intervention not less than 14 days before the date set for the hearing. The person who files the application shall attach copies of all the proofs of service for papers served upon parties to the proceeding. The presiding officer shall not grant an application for intervention that is filed late unless the person who files the application shows good cause for the delay and shows that a denial of the application is detrimental to the public interest.

History: 1983 AACS.

R 451.2616 Application for intervention; answers; waiver; date of filing.

Rule 616. A party to a proceeding may file an answer to an application for intervention. An application shall not be granted until all parties have had an opportunity to answer the application. Failure of a party to file an answer waives the party's right to object to the intervention. An answer shall be filed within 10 days after the date of service of the application, but no later than 4 days prior to the date of the hearing. The presiding officer may set other dates for filing an answer where an application has been filed late.

History: 1983 AACS.

R 451.2617 Application for intervention; grant or denial; limitations on participation.

Rule 617. (1) As soon as practicable for expiration of the time for filing an answer to an application for intervention, the presiding officer shall grant or deny the application in whole or in part and may, if appropriate, authorize limited participation. The presiding officer shall indicate in an order granting intervention any limits on participation. The presiding officer shall not authorize intervention beyond that for which the intervenor applied.

(2) Where intervenors have substantially like interests and positions, the presiding officer may, in order to expedite the proceedings, limit the number of attorneys that will be permitted to take part in the proceedings and limit the extent to which the intervenors may engage in the following activities:

- (a) Filing of pleadings, briefs, motions, and other papers.
- (b) Presenting opening and closing statements, oral arguments, and motions.
- (c) Calling and cross-examining witnesses.
- (d) Introducing evidence.

History: 1983 AACCS.

R 451.2618 Limited intervention without party status.

Rule 618. (1) Upon order of the presiding officer, a person may testify or make a statement at a contested case hearing if all of the following actions occur:

(a) The person files a statement with the administrator not less than 5 days before the date of hearing in which the person discloses the person's identity, states the person's interest in the proceeding and the position the person intends to take, establishes that the person's contentions are relevant to an issue in the case, and disclaims any right to broaden the issues in the case.

(b) The person serves copies of the statement described in subdivision (a) of this subrule upon all the parties to the case before the hearing.

(c) The presiding officer decides that the person has served the parties and that the person's contentions are relevant to an issue in the case.

(2) The presiding officer may limit the testimony or statement to expedite the proceedings.

(3) A person does not become a party to the proceeding due to the person's testifying or making a statement pursuant to this rule.

History: 1983 AACCS.

PART 7. JOINT AND CONSOLIDATED PROCEEDINGS

R 451.2701 Joint hearing; consolidation of proceedings; other orders.

Rule 701. When proceedings involving a substantial and controlling common question of fact or law are pending before the administrator, the administrator or presiding officer may, on the administrator's or presiding officer's own motion or on motion by a party, take any of the following actions:

(a) Order a joint hearing on any or all of the matters in issue.

(b) Order the proceedings consolidated.

(c) Make other orders concerning the proceedings to avoid unnecessary costs or delay.

History: 1983 AACCS.

R 451.2702 Notice of intent to issue order; filing; hearing.

Rule 702. Before issuing an order pursuant to R 451.2702, the administrator or presiding officer shall serve a notice of intent to issue the order on the parties. The parties shall have 5 days from the receipt of the notice to file objections to the order.

History: 1983 AACCS.

PART 9. PREHEARING CONFERENCES

R 451.2901 Prehearing conference; purposes.

Rule 901. The presiding officer may direct the parties to appear before the presiding officer for 1 or more prehearing conferences for any of the following purposes:

- (a) Simplify and clarify factual and legal issues.
- (b) Consider amendments to pleadings.
- (c) Obtain admissions and stipulations of facts or the authenticity of evidence.
- (d) Expedite the discovery and presentation of evidence.
- (e) Produce all proposed exhibits in the possession of a party.
- (f) Identify witnesses, specify the issues on which they will testify, and summarize their testimony.
- (g) Set a time for the exchange of any written testimony.
- (h) Estimate the time required for the hearing.
- (i) Discuss settlement or other disposition of the case.
- (j) Consider other matters that may aid in the disposition of the proceedings.

History: 1983 AACCS.

R 451.2902 Prehearing conference; request; initiation of conference; discretion of presiding officer; notification of parties; record of conference.

Rule 902. (1) Any party to a proceeding may request a conference. The request shall be in writing and shall identify the proposed subjects of the conference. A presiding officer may grant such requests or initiate a conference whenever the presiding officer determines that it may be beneficial. The presiding officer shall notify the parties of the time and place of a conference. The initial notice shall direct the parties to appear and shall state the subjects to be discussed at the conference.

(2) The presiding officer shall have the conference recorded if any party requests that it be recorded not less than 2 days before the scheduled conference.

(3) The presiding officer may require that a conference, or any portion of a conference, be recorded.

History: 1983 AACCS.

R 451.2903 Prehearing conference; failure to appear; waiver of objections; binding nature of conference.

Rule 903. If a party fails to appear at a conference after proper service of notice, or if the notice required the party to file a request for a conference, after filing of a request for a conference, the presiding officer, if no adjournment is granted, may proceed with the conference. Failure of a party to attend the conference shall constitute a waiver of all objections to any agreements reached and any order or ruling with respect to matters covered by the notice of the conference.

History: 1983 AACCS.

R 451.2904 Prehearing conference; record of ruling; summary; copies; objection.

Rule 904. (1) After a prehearing conference and prior to the hearing, the presiding officer shall enter in the record any rulings or orders and may enter in the record a summary of the conference.

(2) The presiding officer shall distribute to the parties copies of rulings, orders, or summaries entered in the record.

(3) A party may object to a summary of a conference and file a motion to seek correction of the summary.

History: 1983 AACCS.

R 451.2905 Prehearing conference; adjournment; motion.

Rule 905. (1) A prehearing conference may be adjourned only upon an order of the presiding officer or the administrator.

(2) Prior to a scheduled prehearing conference date, motions or stipulations for adjournment filed by parties shall be in writing and shall be filed, with appropriate proof of service, at least 1 week prior to the date scheduled for the prehearing conference, unless a shorter period is allowed by order of the presiding officer or the administrator.

(3) The presiding officer may grant 1 adjournment of 15 days or less duration to each party. Additional adjournments requested by a party shall be granted only by the administrator.

(4) Adjournments for periods of longer than 15 days duration shall be granted only by the administrator.

(5) The presiding officer or the administrator may order an adjournment on the presiding officer's or administrator's own motion.

(6) The presiding officer or the administrator may grant adjournments, subject to subrules (3) and (4), in such other instances as the presiding officer or the administrator finds are in the interests of justice.

History: 1983 AACCS.

PART 10. CONDUCT OF HEARINGS

R 451.3001 Hearing; opening statement; presentation of evidence; regulation of order of presentation.

Rule 1001. (1) The presiding officer may allow the parties to make opening statements or appropriate motions.

(2) Unless otherwise directed by the presiding officer, the petitioner or other party having the burden of proof shall first present the evidence in support of that party's case.

(3) An intervenor shall follow the party in whose behalf the intervention is made, except where the intervention is not in support of any party.

(4) Except as otherwise provided by law, the presiding officer may regulate the order of the hearing to promote the fair and efficient determination of the issues presented.

History: 1983 AACCS.

R 451.3002 Witnesses; oath or affirmation; examination.

Rule 1002. A witness shall be administered an oath or affirmation before testifying. A witness shall be examined orally unless the testimony is submitted in written form pursuant to these rules or section 75 of the act. Where appropriate, the presiding officer may require a party submitting written testimony to make the witness available for cross-examination.

History: 1983 AACCS.

R 451.3003 Objections; notation on record; failure to object.

Rule 1003. An objection to an offer of evidence shall be made in a timely manner and shall state fully the grounds for objection. An objection to evidence shall be noted in the record, and failure to object in a timely manner constitutes a waiver of the right to object.

History: 1983 AACCS.

R 451.3004 Witnesses; limitation on the number.

Rule 1004. The presiding officer may limit the number of witnesses on an issue to prevent undue delay, waste of time, or the needless presentation of cumulative evidence.

History: 1983 AACCS.

R 451.3005 Additional evidence.

Rule 1005. The presiding officer may call for evidence upon a issue and require such evidence to be presented by a party or other person.

History: 1983 AACCS.

R 451.3006 Adverse witnesses; interrogation; impeachment.

Rule 1006. An adverse party or an officer, agent, or employee of an adverse party, or a witness who appears to be hostile, unwilling, or evasive, may be interrogated by leading questions and may be contradicted and impeached by the party calling the witness.

History: 1983 AACCS.

R 451.3007 Hearing by briefs.

Rule 1007. (1) When it appears to the presiding officer that a dispute of facts does not exist between the parties and that questions to be resolved are solely questions of law, and when the parties are in agreement that a dispute of facts does not exist, the presiding officer may direct that a hearing by briefs be held.

(2) The presiding officer shall, after consultation with the parties, prescribe the period within which briefs shall be filed and shall direct that the filings be either simultaneous or successive. The period within which the first filing is made shall not exceed 60 days after the date of order of a hearing by briefs, unless a longer time is allowed by the administrator.

History: 1983 AACCS.

R 451.3008 Amendments to issues of fact and law.

Rule 1008. In any proceeding, an amendment to the issues of fact and law under consideration may be authorized, for good cause shown, by the presiding officer at any time.

History: 1983 AACCS.

R 451.3009 Appearances generally; representation.

Rule 1009. (1) All representations and appearances on behalf of parties in proceedings under these rules shall be as provided by law. An individual may appear in the individual's own behalf, a member of a partnership may represent the partnership, an officer, director or other person designated by a corporation may represent the corporation, and an officer or employee of a federal agency or of a political subdivision of a state or the federal government may represent the federal agency or political subdivision of the state or federal government in a proceeding.

(2) A person may be represented in a proceeding by an attorney at law admitted to practice in this state or by a person receiving temporary permission who is

licensed to practice in the United States or Canada when associated with an active member of the state bar who appears of record in the proceeding. Temporary permission may be revoked summarily for misconduct.

(3) A person shall not be represented at a hearing before the bureau or a presiding officer except as stated in subrules (1) and (2).

History: 1983 AACS.

R 451.3010 Witness fees and mileage.

Rule 1010. A witness summoned before a hearing shall be paid the same fee and mileage expenses that are paid to witnesses in the district courts of the state. A witness whose deposition is taken and the person taking the deposition shall severally be entitled to the same fee as is paid for like services in the district courts of the state. Witness fees and mileage expenses shall be paid by the party at whose instance the witness appears.

History: 1983 AACS.

R 451.3011 Conference during hearings.

Rule 1011. (1) At the opening of a hearing, or at any other time during a hearing, the presiding officer may, at the request of a party or upon the presiding officer's own motion, hold a conference.

(2) A conference may be held for the purpose of clarifying or simplifying issues presented at the hearing, including the possibility of obtaining stipulations and admissions of fact and consideration of authenticity and contents of documents so as to avoid unnecessary proof.

(3) A conference may be held to expedite the presentation of evidence, the exchange of copies of proposed exhibits, and other matters as may promote a fair and expeditious hearing or aid in the disposition of the proceeding.

(4) At the conclusion of a conference, the presiding officer may enter in the record a ruling or order which states the matters agreed upon by the parties and any procedural determinations made by the presiding officer.

History: 1983 AACS.

PART 12. DECISIONS

R 451.3201 Proposal for decision; briefs.

Rule 1201. A presiding officer shall prepare a proposal for decision in conformity with section 81 of the act within a reasonable time after a hearing. Before preparing a proposal for decision, the presiding officer may require or permit the parties to submit briefs.

History: 1983 AACCS.

R 451.3202 Proposal for decision; exceptions; written arguments; forfeiture of right.

Rule 1202. A party filing exceptions and presenting written arguments pursuant to section 81 of the act shall do so within 30 days after service of a proposal for decision or shall forfeit the right to do so. For good cause, a presiding officer may establish a different time period for filing exceptions and presenting written arguments in a particular case. Written argument in support of an exception shall specify the facts and the law upon which the party relies. Factual assertions shall be supported by specific page references or other appropriate references to the record.

History: 1983 AACCS.

R 451.3203 Proposal for decision; motion for oral argument; opportunity for rebuttal; service of notice.

Rule 1203. Upon filing exceptions to a proposal for decision, the party may make a motion for oral argument before the administrator. Oral argument shall be by leave of the administrator and may be limited in scope and duration. Adverse parties shall be given an opportunity for rebuttal. The administrator may limit the scope and duration of rebuttal. When oral argument is granted, notice shall be served upon the parties.

History: 1983 AACCS.

R 451.3204 Request for rehearing.

Rule 1204. (1) A request for rehearing pursuant to section 87 of the act shall be in writing and shall state the grounds upon which the moving party relies.

(2) Upon a finding that the record is not complete or that error was made in the hearing process, the administrator may order a rehearing.

History: 1983 AACCS.

PART 13. PRESIDING OFFICER

R 451.3301 Presiding officer; designation and authorization.

Rule 1301. The administrator, a person designated by statute, or 1 or more hearing officers designated and authorized by the administrator to conduct contested cases shall be the presiding officer in a contested case. Upon commencement of a contested case proceeding, the administrator shall designate the presiding officer.

History: 1983 AACCS.

R 451.3302 Presiding officer; motion to disqualify; required information; filing of motion.

Rule 1302. (1) Whenever any party in good faith believes that the presiding officer is not qualified to preside in a particular proceeding, the party shall file with the administrator and serve upon the presiding officer a written motion to disqualify and remove the presiding officer. The motion shall be filed within a reasonable time after discovery of the alleged grounds for disqualification. The motion shall be accompanied by an affidavit setting forth the facts that constitute the alleged grounds for disqualification. The affidavit shall conform to the standards of section 79 of the act.

(2) The presiding officer shall rule on the motion within 5 days of the date of filing. The presiding officer shall forward copies of the motion and ruling to the administrator. If the presiding officer denies the motion, the administrator shall promptly make a written determination on the motion for the record.

History: 1983 AACS.

R 451.3303 Presiding officer; disqualification on own initiative; motion for disqualification during hearing.

Rule 1303. (1) When a presiding officer on the presiding officer's own initiative deems the presiding officer personally biased or disqualified to preside at a particular proceeding, the presiding officer shall withdraw. The withdrawal shall be noted on the record. The notice shall disclose the nature of the personal bias or disqualification. The presiding officer shall promptly send a copy of the notice to the administrator.

(2) A party may make an oral motion for disqualification of a presiding officer on the record during a hearing based upon conduct of the presiding officer at the hearing. The presiding officer shall rule on the motion. The ruling shall contain the supporting reasons and may be written or stated on the record. If the presiding officer denies the motion the party shall promptly file a written motion for disqualification to be determined on the motion for the record.

History: 1983 AACS.

R 451.3304 Presiding officer; substitution; order for rehearing.

Rule 1304. When a presiding officer is disqualified or it is impracticable for the presiding officer to continue a hearing, another presiding officer may be designated by the administrator to continue the partially completed hearing unless it is shown that substantial prejudice to a party will result therefrom. On the newly designated presiding officer's motion or on the motion of a party, the presiding officer may order a rehearing on any part of a contested case to avoid substantial prejudice to a party or to enable the presiding officer to render a decision.

History: 1983 AACCS.

R 451.3305 Presiding officer; powers.

Rule 1305. The presiding officer may exercise the powers specified in section 80 of the act. The powers of the presiding officer to regulate the course of a hearing include, but are not limited to the following:

(a) Requiring parties to prepare prehearing memoranda and to appear at prehearing conferences.

(b) Expelling disruptive persons or parties from hearings.

(c) Questioning witnesses or counsel in an impartial manner and calling witnesses to clarify the issues and the record. A party may object to questions posed by the presiding officer.

(d) Informing a party of applicable rights in the interest of justice.

(e) Developing and implementing procedures necessary for complex cases.

(f) Ordering the preparation of proposed exhibits, written testimony, and reports when it will expedite the proceeding.

(g) Imposing sanctions for misconduct of attorneys pursuant to R 451.3401.

(h) Performing responsibilities set forth in other parts of these rules.

(i) Issuing orders on the presiding officer's own motion that are necessary for the fair and efficient determination of the issues presented.

History: 1983 AACCS.

PART 14. MISCONDUCT BY ATTORNEYS, AUTHORIZED REPRESENTATIVES, AND PARTIES

R 451.3401 Misconduct by attorneys, authorized representatives, and parties; contempt; sanctions; informing the state bar of Michigan.

Rule 1401. (1) The presiding officer or administrator shall have the power to impose sanctions for misconduct by attorneys, authorized representatives, and parties in the following cases:

(a) Disorderly, contemptuous, or insolent behavior committed at a proceeding in the immediate view and presence of the presiding officer or administrator which tends to interrupt the proceeding.

(b) Disobedience of a lawful order of the presiding officer or administrator.

(c) Failure to appear at properly scheduled conferences or proceeding.

(2) The presiding officer or administrator when confronted with misconduct described in this rule shall warn the attorney, authorized representative, or party and upon repetition or continuance of the conduct may cite the attorney, authorized representative, or party for contempt of administrative process.

(3) An attorney or authorized representative committing misconduct under this rule shall be subject to the following sanctions:

(a) Censure.

(b) Suspension from the proceedings.

(4) A party committing misconduct under this rule may, among other sanctions, be subject to censure.

(5) If an attorney is censured or suspended, a copy of the order, together with the pertinent portions of the record or affidavits supporting the order, shall be promptly transmitted to the state bar of Michigan or the bar of which the attorney is a member.

History: 1983 AACCS.

PART 15. PUBLIC HEARINGS

R 451.3501 Public hearing.

Rule 1501. The administrator may order a public hearing for the purpose of obtaining information and providing the public with an opportunity to present data, views, and arguments on issues upon which the administrator is authorized to make a determination.

History: 1983 AACCS.

R 451.3502 Public hearing; notice; sending of copies; publication.

Rule 1502. (1) Notice of public hearing shall be given out less than 10 days before the public hearing and shall include the following:

(a) A reference to the statutory authority under which the determination is to be made.

(b) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the administrator at other times by any person.

(c) A description of the subjects and issues involved.

(2) A person who makes a written request to the administrator for advance notice of a proposed action that may affect that person shall receive copies of the notice.

(3) The notice shall be published as a display advertisement is not less than 3 newspapers of general circulation in different parts of the state. At least 1 of the newspapers shall be published in the Upper Peninsula.

History: 1983 AACCS.

R 451.3503 Public hearing; presentation of testimony.

Rule 1503. The administrator shall determine the order in which testimony is presented and may question those persons who present testimony. Subject to any limitation the administrator may prescribe, the administrator may permit persons to question other persons who present

testimony. The administrator may set time limits on testimony.

History: 1983 AACCS.