DEPARTMENT OF EDUCATION

STATE TENURE COMMISSION

TEACHER TENURE GENERAL RULES

(By authority conferred on the state tenure commission by section 10 of article 7 of 1937 PA (Ex Sess) 4, MCL 38.140 and section 63 of 1969 PA 306, MCL 24.263)

PART 1. GENERAL PROVISIONS

R 38.131 Definitions.

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

(a) "Act" means Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being S38.71 et seq. of the Michigan Compiled Laws.

(b) "Commission" means the state tenure commission created by the act.

(c) "Person" means an individual, partnership, association, corporation, governmental subdivision, or public or private organization of any kind, other than the agency engaged in a declaratory ruling.

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

History: 1987 AACS.

R 38.132 Meetings of commission.

Rule 2. The chairperson of the commission or a majority of its members may call a session of the commission. The hours of the commission when in session shall be from 8 a.m. to 12 noon and 1:00 p.m. to 5 p.m. except as otherwise ordered by the commission.

History: 1979 AC; 2012 AACS.

R 38.133 Office of commission.

Rule 3. The office of the commission shall be in the office of the state superintendent of public instruction.

History: 1979 AC.

R 38.135 Request for declaratory ruling.

Rule 5. (1) An interested person may request that the commission issue a declaratory ruling on how a statute that is administered by the commission or a rule or order of the commission applies to an actual state of facts.

(2) A request for a declaratory ruling shall be submitted to the State Tenure Commission, Department of Education, P.O. Box 30008, 608 West Allegan, Lansing, Michigan 48909. A request shall contain all of the following information:

(a) A clear and concise statement of the actual state of facts upon which a ruling will be based.

(b) A precise statement of the legal question or issue involved.

(c) A citation of the statute or administrative rule at issue.

(d) The signature of the interested person making the request.

(3) An applicant who requests a declaratory ruling shall serve a copy of the request for a declaratory ruling upon any person known by the applicant to have an interest in the matter and upon any person referred to in the statement of facts when the request is filed with the commission. An applicant shall deliver a copy of the request personally or send a copy by certified mail, return receipt requested. An applicant shall file the proof of service together with the request to issue a declaratory ruling.

(4) Within 60 days after receiving a submitted request, the commission shall notify any person identified in subrule (3) of this rule as to whether the declaratory ruling will be issued or denied.

(5) If the request is denied, then the commission shall issue a concise written statement of the legal or factual reasons for denial.

(6) If a request is granted, then the commission shall notify all persons identified in subrule (3) of this rule that any interested person may submit a brief of the legal authority upon which the person believes the declaratory ruling should be based within a time to be established by the commission.

(7) If a declaratory ruling is issued, then the ruling shall include all of the following information:

(a) The actual state of facts upon which the ruling is based.

(b) The conclusion of law based on the legal authority that the commission relied on for its ruling.

(c) The ruling or determination made.

(8) The commission shall make available a copy of a declaratory ruling, the grant of a request for a declaratory ruling, or a denial of a request for a declaratory ruling upon request.

History: 1998-2000 AACS.

R 38.139 Rescinded.

Rule 9. The rules of practice and procedure of the commission, being R 38.71 and R 38.101 to R 38.123 of the Michigan Administrative Code and appearing on pages 342 to 345 of the 1957 Annual Supplement to the Code, pages 3542 and 3543 of the 1966 Annual Supplement to the Code, and page 5354 of the 1970-71 Annual Supplements to the Code, are rescinded.

History: 1998-2000 AACS.

PART 2. APPEAL PROCEDURES

R 38.141 Representation; appearances.

Rule 11. (1) Practice before the commission is limited to attorneys at law in good standing in the State Bar of Michigan. However, a party may represent himself or herself.

(2) An attorney who represents litigants under the act, or a party representing himself or herself, shall file a written appearance on or before the time of the filing of the claim of appeal or the answer, whichever is applicable, at the office of the commission. Substitution of a withdrawing attorney shall be made upon written stipulation of the withdrawing attorney and the party represented, or at the discretion of the commission. The stipulation shall be filed immediately with the commission.

History: 1998-2000 AACS.

R 38.142 Form and style of papers.

Rule 12. (1) Pleadings and other documents filed with the commission shall be legibly printed or typewritten and shall be on 1 side only of white bond paper not more than 8 ½ inches wide and 11 inches long. Pleadings and briefs shall be filed with the commission along with 1 copy, except as required by R 38.143, R 38.147 and R 38.176, signed by the attorney, appealing party, or controlling board member. The commission may waive filing of the extra copies. The proper caption and docket number shall be placed on all papers filed. The given name and surname of the party shall be set forth in the caption.

(2) The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer of all of the following:

(a) He or she has read the pleading.

(b) To the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(c) The pleading is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of the proceedings.

History: 1998-2000 AACS; 2012 AACS.

R 38.143 Initiation of appeal.

Rule 13. To contest a controlling board's decision, an appellant shall file a claim of appeal with the commission not later than 20 days after receipt of the controlling board's decision and notice of tenure rights. An appellant shall file an original and 6 copies of a notice of claim of appeal and claim of appeal with the commission. The notice and claim shall be set forth in substantially the following forms:

(1) Notice of Claim of Appeal.

STATE OF MICHIGAN

STATE TENURE COMMISSION

(NAME OF APPELLANT - TEACHER) Appellant,

Docket No.

(NAME OF APPELLEE - CONTROLLING BOARD) Appellee.

NOTICE OF CLAIM OF APPEAL

TO THE ABOVE NAMED APPELLEE(S):
(BOARD OF EDUCATION)

You are hereby notified that a claim of appeal has been filed with the State Tenure Commission in the above matter.

You have ten (10) days after service of this notice to file an answer with the State Tenure Commission and serve a copy on the appellant or to take other lawful action.

(A copy of the Michigan Teachers' Tenure Act and rules of the State Tenure Commission governing the practice and procedure pertaining to proceedings before the State Tenure Commission may be obtained from the office of the Commission.)

Dated:
Signature of Appealing Party or Attorney
(Complete name, street address, and mailing address if different, telephone number of the appealing party or attorney should be printed here.)

(2) Claim of Appeal.

STATE OF MICHIGAN
STATE TENURE COMMISSION

(NAME OF APPELLANT - TEACHER) Appellant,

Docket No.

(NAME OF APPELLEE - CONTROLLING BOARD) Appellee.

CLAIM OF APPEAL

_____, the above named Appellant, (by his or her attorney), hereby requests a hearing and appeals the decision of Appellee, and as a basis alleges as follows:

I
JURISDICTION

(Set forth the basis for the jurisdiction of the tenure commission, such as the date and school district in which the appellant last acquired tenure.)

II
FACTS

(A claim of appeal must contain a statement of the facts, without repetition, on which the appellant relies in claiming an appeal, with allegations specific enough to reasonably inform the adverse party of the nature of the cause the adverse party is called upon to defend. Each allegation must be made in numbered paragraphs which are clear, concise, and direct.)

III
ASSIGNMENTS OF ERROR

(State each assignment of error with sufficient specificity to inform reasonably the adverse party of the nature of the claim asserted. Each assignment shall be clear, concise, and direct and stated in a separate numbered paragraph.)

IV
RELIEF

(Set forth clearly and concisely those demands for relief to which appellant claims entitlement. Relief in the alternative may be demanded.)

V
ATTACHMENTS

(A copy of the appealed charges or written decision, if any, shall be attached to the claim of appeal.)

DATED:

Appealing party or attorney signature

History: 1998-2000 AACS.

R 38.144 Filing and service of notice of appeal and claim of appeal.

Rule 14. An appeal is commenced by filing with the commission, a notice of claim of appeal, and a claim of appeal. The appellant shall serve a copy of the notice of the claim of appeal and the claim of appeal upon the controlling board by delivering the documents in person, by registered mail, return receipt requested, or by certified mail, return receipt requested.

History: 1998-2000 AACS.

R 38.145 Filing.

Rule 15. (1) Pleadings or other papers under these rules shall be filed with the office of the commission and shall be received by the commission before the close of business on the last day of the time limit, if any, for the filing.

(2) The commission shall permit filing of pleadings and documents by use of facsimile (fax) communication equipment or by electronic submission as follows:

(a) All filings sent by fax or electronically shall be typewritten, excluding any required signatures, on 8 1/2" by 11" paper.

(b) The total number of pages of any pleading or document sent by fax or electronically shall not exceed 20 pages.

(c) Every fax filing shall include a cover sheet containing the following information:

(i) The case name.

(ii) The docket number.

(iii) The name and telephone number of the sender.

(iv) The number of pages being transmitted.

(d) Pleadings or documents filed by fax or electronically which are received after 5:00 p.m. will not be considered filed until the next business day.

(e) If pleadings or other papers are sent by fax or electronically, the sending party shall mail additional copies of the faxed document or pleading, as required by these rules, to the commission and shall serve the document or pleading as required by R 38.142, R 38.144 and R 38.146.

History: 1998-2000 AACS; 2012 AACS.

R 38.146 Service.

Rule 16. Except for the original service of the notice of claim of appeal and the claim of appeal, service required or permitted to be made upon a party represented by an attorney shall be made as follows:

(a) Service upon the attorney shall be made by delivering or by mailing a copy to the attorney's last known business address. Service upon a party shall be made by delivering a copy or by mailing a copy to the party at the address stated in the pleadings.

(b) Mailing of a copy means enclosing it in a sealed envelope with first-class mail postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States government mail.

(c) Proof of service of papers required or permitted to be served may be evidenced by written acknowledgment of service, by affidavit of the person making service, or by other proof satisfactory to the commission.

History: 1998-2000 AACS.

R 38.147 Answers.

Rule 17. After service of a copy of a notice of claim of appeal and the claim of appeal, appellee shall have 10 days within which to file and serve an answer. The answer shall contain a specific admission or denial of each material allegation of fact contained in the claim of appeal, a statement of facts upon which the appellee relies for his or her defense, and affirmative allegations to be relied on by appellee. Each paragraph contained in the answer shall be numbered to correspond with the paragraphs in the claim of appeal. An original and 6 copies of the answer shall be filed with the commission and a copy shall be served upon all other parties.

History: 1998-2000 AACS.

R 38.148 Amendments.

Rule 18. The administrative law judge may permit a party to amend a pleading before, during, or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process.

History: 1998-2000 AACS.

R 38.149 Joinder of claims of appeal.

Rule 19. More than l appellant may join in a claim of appeal if a right to relief jointly, severally, or, in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences is asserted and if a question of law or fact is common to all appellants or it appears that the appellants' presence in the action will promote the convenient administration of justice. Misjoinder of appellants is not a ground for dismissal of the claim of appeal.Appellants may be added or dropped by order of the administrative law judge on motion of any party or on the initiative of the administrative law judge at any stage of the action and on such terms as are just.

History: 1998-2000 AACS.

PART 3. MOTION PRACTICE

R 38.151 Form: time for filing.

Rule 21. (1) An application to the administrative law judge or the commission for an order in a pending action shall be by motion, in writing, unless made during a hearing. The applicant shall state, with particularity, the grounds and authority on which the application is based, state the relief or order sought, and be signed by the party or the party's attorney.

(2) A copy of the written motion, brief, request for hearing date, and notice to the opposing party that the rules of the commission require a response to the motion within 10 days after service of the motion shall be served upon the opposing party at the time an application is filed with the administrative law judge or the commission. If a motion or response is supported by affidavit, then the affidavit shall be filed and served with the motion or response.

(3) Motions and responses to motions shall be accompanied by a brief.The brief shall contain a concise statement of supporting or opposing reasons and a citation of authorities upon which the parties rely.

(4) A respondent opposing a motion shall file a response, including a brief and supporting affidavits, if any, within 10 days after service of the motion unless otherwise ordered by the administrative law judge or the commission.

(5) The movant and respondent shall serve copies of their respective papers upon opposing parties before or concurrently with the filing with the administrative law judge or the commission and shall include proof of service.

(6) The administrative law judge or the commission may limit or dispense with oral arguments on motions.

(7) If an affidavit is filed in support of, or in opposition to, a motion, it shall be in compliance with all of the following provisions:

(a) Be made on personal knowledge.

(b) State, with particularity, facts admissible as evidence establishing or denying the grounds stated in the motion.

(c) Show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit.

(8) The time for a hearing on a motion shall be set by the administrative law judge. However, thehearing on a motion shall not cause a delay in the statutorily mandated date for the conclusion of the hearing, nor shall a motion cause a delay in the due dates of exceptions or cross-exceptions.

(9) If a motion is based on facts not appearing on the record, the administrative law judge may hear the motion on affidavits presented by the parties or may direct that the motion be heard wholly or partly on oral testimony or deposition.

(10) The administrative law judge may direct that a hearing on a motion be held at the commission offices in Lansing.

History: 1998-2000 AACS.

R 38.152 Motion for more definite statement.

Rule 22. If a claim of appeal or answer is so vague or ambiguous that it fails to comply with these rules, then the opposing party may move for a more definite statement before filing responsive pleadings. The motion shall specify the claimed defects and the details desired. If an order granting the motion is not obeyed within 10 days of the

order, or within such other time as the administrative law judge may set, then the administrative law judge may strike the pleading to which the motion was directed or enter an order the administrative law judge deems just.

History: 1998-2000 AACS.

R 38.153 Motion to strike.

Rule 23. Upon motion made by a party or upon the administrative law judge's own initiative, the administrative law judge may order redundant, immaterial, impertinent, scandalous, or indecent matter stricken from pleadings. The administrative law judge may order evidence which is objected to and which would not be admitted by the administrative law judge stricken from pleadings.

History: 1998-2000 AACS.

R 38.154 Rescinded.

History: 1998-2000 AACS.

R 38.155 Motion for summary disposition.

Rule 25. (1) A party seeking to recover upon a claim of appeal, or a party against whom a claim of appeal is asserted, may move for summary disposition on all or any part of the claim at any time. The motion shall state that the moving party is entitled to summary disposition on 1 or more of the following grounds and shall specify the grounds on which the motion is based:

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

(b) The controlling board has failed to state a valid defense to the claim asserted against it.

(c) There is no genuine issue as to a material fact, except as to the relief to be granted, and the moving party is therefore entitled to judgment as a matter of law.

(d) The commission lacks jurisdiction of the subject matter.

(e) The claim of appeal is barred because it is untimely.

(f) The claim of appeal is barred because of some other disability of the appellant or other disposition of the claim.

(2) Only the pleadings may be considered when the motion for summary disposition is based on subrule (1) (a) or (b) of this rule. A motion based upon subrule (1) (c) of this rule shall be supported by affidavits and shall specifically identify the issues as to which the moving party believes there is no genuine issue of material fact. The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, shall be considered. If a motion is made under subrule (1) (c) of this rule and supported as provided in this rule, then an adverse party may not rest upon the mere allegation or denial of the pleading, but shall, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for hearing. If the adverse party does not

respond, then summary disposition, if appropriate, shall be entered. Summary disposition shall be entered if the pleadings show that a party is entitled to summary disposition as a matter of law or if the affidavits or other proof shows that there is no genuine issue of fact.If it appears that the opposing party, rather than the moving party, is entitled to summary disposition, the administrative law judge may render summary disposition in the opposing party's favor without a motion.

(3) The administrative law judge may order an immediate hearing on disputed questions of fact and enter a summary disposition if the proofs show that the moving party is entitled to summary disposition or the administrative law judge may postpone the hearing until the merits are heard.

(4) If the grounds asserted for summary disposition are based on subrule (1)(a),(b), or (c) of this rule, then the administrative law judge shall give the parties an opportunity to amend their pleadings, unless the evidence before the administrative law judge shows that amendment would not be justified.

History: 1998-2000 AACS.

R 38.156 Motion for adjournment or continuance.

Rule 26. An administrative law judge shall not grant a request for adjournment or continuance except on good cause. A request for adjournment or continuance may be made by written motion, by oral motion during a hearing, or by stipulation of the parties.

History: 1998-2000 AACS.

R 38.157 Lack of progress or repeated failure to follow statute or rule.

Rule 27. After a party, the administrative law judge, or the commission gives a party notice of an alleged deficiency and an opportunity to respond or comply within 10 days, the administrative law judge or the commission may dismiss an appeal or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to comply with the procedures specified in section 4 of article 4 of the act or these rules. A party may move to set aside an order under this rule within 10 days of the issuance of the order. A motion to set aside an order shall be granted only if good cause is shown and an affidavit of facts showing a meritorious claim or defense is filed.

History: 1998-2000 AACS.

R 38.158 Rescinded.

History: 1998-2000 AACS.

R 38.159 Rescinded.

History: 1998-2000 AACS.

PART 4. PREHEARING CONFERENCE

R 38.161 Scope of conference.

Rule 31. In every matter, the administrative law judge may direct the parties and their attorneys to participate in a prehearing conference, either in person or by telephone, to do the following:

(a) State and simplify the factual and legal issues involved and consider the amendment of pleadings.

(b) Consider motions to be disposed of before hearing, the consolidation of the case with another, admissions of fact and authenticity of documents to avoid unnecessary proofs, and limiting the number of witnesses and the nature and extent of the relief demanded.

(c) Produce all proposed documentary evidence and admit its authenticity if possible.

(d) Prepare a list of witnesses who may be called at the time of the hearing.

(e) Estimate the time for hearing.

(f) Discuss the possibility of settlement.

(g) Consider all other matters that may aid in the disposition of the subject of disagreement.

History: 1998-2000 AACS.

R 38.162 Prehearing summary.

Rule 32. The administrative law judge shall prepare and serve upon the parties a summary of the results of the conference specifically covering each of the items discussed within 5 days after the prehearing conference. The parties, within 5 days of service of the summary, may file objections to the summary.

History: 1998-2000 AACS.

R 38.163 Hearing briefs.

Rule 33. At the time of the prehearing conference, the administrative law judge may direct the parties to file a hearing brief as to any of the issues involved in the action. If hearing briefs are required, parties shall submit the briefs to the administrative law judge not less than 10 days before the hearing, unless a different date is set by the administrative law judge, or unless the administrative law judge specifically waives the requirement.

History: 1998-2000 AACS.

R 38.164 Rescinded.

History: 1998-2000 AACS.

R 38.165 Waiver of prehearing conference.

Rule 35. The provisions of these rules pertaining to the prehearing conference and prehearing summary may be waived by stipulation of counsel of all parties to the action subject to the approval of the administrative law judge.

History: 1998-2000 AACS.

PART 5. HEARINGS

R 38.171 Notice of hearing.

Rule 41. An administrative law judge shall furnish to each party a notice of hearing establishing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 45 days after service of the controlling board's answer, unless the administrative law judge grants a delay for good cause shown by the teacher or controlling board.

History: 1998-2000 AACS; 2012 AACS.

R 38.172 Conduct of evidentiary hearing; representation; stipulations of fact; objections to hearing; rules of evidence; rules of privilege; official notice.

Rule 42. (1) A hearing for the purpose of taking evidence upon a claim of appeal shall be conducted by an administrative law judge.

(2) A party may appear at a hearing in person or by legal counsel and may call, examine, and cross-examine witnesses and introduce into the record documentary or other evidence.

(3) Stipulations of fact may be introduced in evidence at the hearing at the discretion of the administrative law judge.

(4) An objection to the conduct of the hearing, including an objection to the introduction of evidence, may be oral or written and accompanied by a short statement on the grounds for the objection.

(5) In a contested case, the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but the administrative law judge may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.

(6) Irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(7) Effect shall be given to the rules of privilege recognized by law.

(8) Objections to offers of evidence may be made and shall be noted in the record.

(9) The administrative law judge may take official notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within the commission's specialized knowledge.

History: 1998-2000 AACS.

R 38.173 Subpoenas.

Rule 43. (1) The administrative law judge may subpoena witnesses and documentary or physical evidence on his or her own motion and shall subpoena witnesses and documentary or physical evidence at the request of the controlling board or the teacher. If a person refuses to appear and testify in answer to a subpoena issued by the administrative law judge, then the party on whose behalf the subpoena was issued may file a petition in the circuit court of the county in which the hearing is held for an order requiring compliance. Failure to obey an order of the court may be punished by the court as contempt. The administrative law judge may stay further proceedings until the subpoena is obeyed. Upon motion made at or before the time specified in the subpoena for compliance with the subpoena, the administrative law judge may quash or modify the subpoena if it is unreasonable or oppressive.

(2) A subpoena shall state the title of the matter and shall command each person to whom it is directed to attend and give testimony at a time and place specified in the subpoena. The administrative law judge shall sign and issue a subpoena, in blank, to a party requesting it. The requesting party shall fill in the subpoena before service.

(3) A subpoena shall be served in the manner prescribed by statute or the Michigan Court Rules, 1996/1997 edition, for subpoenas in civil actions. A subpoena may be served at any place within the state. Upon a showing to the administrative law judge that service of the subpoena cannot reasonably be made in person, the administrative law judge may allow service of a subpoena to be made upon a person in any other manner that is reasonably calculated to give the person actual notice of the subpoena.

(4) Witnesses subpoenaed before the commission shall be paid the same fees and mileage that are paid to witnesses in circuit courts. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, but may be recovered by the prevailing party as costs if the commission so directs.

History: 1998-2000 AACS.

R 38.174 Discovery.

Rule 44. Discovery is permitted upon leave of the administrative law judge or on stipulation of all parties. A motion for discovery may not be filed unless the discovery sought has been requested previously and refused. All discovery shall be completed before the statutorily required commencement of the hearing unless the administrative law judge grants a delay pursuant to R 38.171.

History: 1998-2000 AACS.

R 38.174a Physical and mental examination.

Rule 44a. (1) If the appellant places his or her mental or physical condition in controversy, then the administrative law judge may order the appellant to submit to a physical or mental examination by a physician or other appropriate professional. The order may be entered only on motion for good cause with notice to the appellant and to all parties. The order shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The order shall provide that the attorney for the appellant may be present at the examination.

(2) If requested by a party against whom an order is entered under subrule (1) of this rule, the party causing the examination to be made shall deliver to the requesting person a copy of a detailed written report of the examining physician setting out the findings, including the results of all tests made, diagnoses, and conclusions, together with reports on all tests and examinations pertaining to the same condition, and shall make available for inspection and examination x-rays, cardiograms, and other diagnostic aids.

(3) After delivery of the report specified in subrule (2) of this rule, the party causing the examination to be made is entitled, on request, to receive from the party against whom the order is made a similar report of any examination previously or thereafter made pertaining to the same condition and to a similar inspection of all diagnostic aids. (4) If a person who is examined refuses to deliver a report, then the administrative law judge, on motion and notice, may enter an order requiring delivery on terms as are just. If a physician refuses or fails to comply with this rule, then the administrative law judge may order the physician to appear for a discovery deposition.

(5) By requesting and obtaining a report on the examination ordered under this rule or by taking the deposition of the examiner, the person examined waives any privilege he or she may have in that action, or another action involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the person as to the same mental or physical condition.

(6) Subrule (2) of this rule applies to an examination made by agreement of the parties, unless the agreement expressly provides otherwise.

(7) Subrule (2) of this rule does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

History: 1998-2000 AACS.

R 38.175 Briefs.

Rule 45. The administrative law judge may require the parties to file briefs, may limit the length of the briefs, and shall designate the manner of, and time for, filing and serving the briefs.

History: 1998-2000 AACS.

R 38.176 Exceptions briefs.

Rule 46. (1) Within the time allowed by the act, a party shall file an original and 6 copies of the brief and of the statement of exceptions, statement of cross-exceptions, or statement in support of the preliminary decision and order. If a party files an exception to a written ruling of the administrative law judge on a motion, the party shall file 6 copies of the motion decision and any associated pleadings.

(2) The argument presented in a brief in support of the statement of exceptions or statement of cross-exceptions shall correspond to the statement of exceptions or cross-exceptions.

(3) Except as permitted by order of the commission, briefs are limited to 50 double-spaced pages, exclusive of tables, indexes, appendices, and title page. Quotations and footnotes may be single-spaced. At least 1-inch margins shall be used, and printing shall not be smaller than 12-point type.

(4) The brief shall contain, in the following order, all the following items:

(a) A table of contents, listing the exceptions or cross-exceptions, in the order of presentation, with the numbers of the pages where the discussion of the exceptions or cross-exceptions appear in the brief.

(b) An index of authorities, listing in alphabetical order all case authorities cited, with the complete citations including the years of decision, and all other authorities cited, with the numbers of the pages where they appear in the brief. Parallel citations of Michigan statutes are required.

(c) A statement of facts, which shall be supported by specific page references to the record. Page references to the record shall also be given to show whether the issue was preserved for review by appropriate objection

or by other means.

(d) The arguments, each portion of which shall be prefaced by the principal point stated in capital letters or boldface type.

(e) The relief requested.

(f) A signature.

(5) If, on its own initiative or on a party's motion, the commission concludes that a brief does not substantially comply with the requirements in this rule, the commission may order the party who filed the brief to file a supplemental brief within a specified time correcting the deficiencies or the commission may strike the nonconforming brief.

History: 1998-2000 AACS; 2012 AACS.

R 38.177 Decision or order.

Rule 47. (1) A decision or order of the commission shall be effective only if voted upon by a majority of the members of the commission.

(2) A decision or order of the commission shall be served, in writing, on the parties concerned, or on their attorneys if represented, by certified mail.

History: 1998-2000 AACS.

R 38.178 Rescinded.

History: 1998-2000 AACS.

R 38.179 Correction of clerical mistakes.

Rule 49. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the commission at any time on its own initiative or, after notice, on motion of a party, if the commission orders correction.

History: 1998-2000 AACS.