

APPENDIX B

UNIFORM SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR APPEALS BEFORE THE CIVIL SERVICE BOARD

1. GENERAL PROVISIONS

1.01 AUTHORITY AND APPLICATION

These rules are promulgated under the authority of the Director of Human Resources for the City of Portland.

1.02 SCOPE AND PURPOSE

The purpose of these rules is to provide a uniform practice and procedure for processing all appeals within the jurisdiction of the Civil Service Board, a three-member panel appointed under the authority of City of Portland Charter Chapter 4. These rules supplement the provisions of City of Portland Human Resources Administrative Rule 3.15 – Civil Service Board (HRAR 3.15).

2. DEFINITIONS

The following definitions shall apply to these supplemental rules and to HRAR 3.15:

Appellant shall mean the party that files an appeal before the Board.

Applicant shall mean the Appellant, the Appellant’s representative or the Respondent’s representative who applies for issuance of a subpoena.

Authorized representative is defined as a representative over the age of eighteen (18) who is not a party to the action and who is authorized to accept delivery of a subpoena on behalf of a subpoenaed party.

Board shall mean a quorum of the members of the Civil Service Board.

Board Administrator shall mean the Civil Service Board Administrator.

Board Administrator Address of Record shall mean the Board Administrator’s physical office or interoffice address of record, as follows:

Physical office: 111 SW Columbia Street
 Room 550
 Portland, Oregon 97201

Interoffice: 122/550

Certificate of Service shall mean a document filed with the Board Administrator that certifies that a copy of the document has been served on the opposing party.

City shall mean the City of Portland.

Days shall mean calendar days except when specifically noted otherwise. When counting to determine a deadline, count every day, including intermediate Saturdays, Sundays, and paid holidays, unless the deadline falls on a Saturday, Sunday or paid holiday. If the deadline to file or serve a document falls on a Saturday or Sunday, or on a paid holiday, the period of time for which to perform the act shall extend to the next day the City is open for regular City business. "Paid holiday" is defined as any holiday that is recognized and observed by the City as provided for in HRAR 6.02.

Discovery rule is defined as a rule that tolls the limitations of time period in which to file an appeal.

Good cause is defined as a substantial and compelling reason and may include but is not limited to a reason that is beyond the control of a party. Whenever a party is required to show good cause, the Board will consider whether there is good cause on a case-by-case basis, with an aim toward making decisions as consistent and uniform as possible.

Hearings Officer shall mean a neutral party that has been empowered to conduct a hearing by referral of the Board. All procedural rules that apply to the Board also apply to a Hearings Officer prior to the date the Board issues a Final Order pursuant to HRAR 3.15.

HRAR or **HRARs** shall mean the City's Human Resources Administrative Rule(s).

Jurisdiction means the power or authority given to the Board to hear and determine the merits of an appeal pursuant to the authority of the City Charter and HRAR 3.15.

PDF format is defined as a document that is in Portable Document Format.

Presiding Officer shall mean the Board member that has been elected by the Board to serve as the Presiding Officer for the Board.

Representative shall mean the attorney for the Appellant, the Respondent's non-attorney representative or the City Attorney representing the Respondent.

Respondent shall mean the entity that the appeal is filed against. Generally, this is a City bureau.

Stipulation shall mean a set of facts or issues that are agreed upon by the Appellant and Respondent.

With prejudice means that a final determination on the merits has been issued, and the Appellant is forbidden from again pursuing the same appeal against the same Respondent.

3. FILING AND SERVICE OF DOCUMENTS

3.01 FILING DOCUMENTS WITH THE BOARD ADMINISTRATOR

Whenever these rules or HRAR 3.15 require the parties to file a document with the Board Administrator, filing may be accomplished by one of the following methods:

- 1) By e-mail to the Board Administrator's e-mail address posted on the Civil Service Board website;
- 2) By facsimile to the fax number posted on the Civil Service Board website;
- 3) By the City's interoffice mail system at the Board Administrator's interoffice address of record;
or
- 4) By hand delivery, U.S. first class mail, registered mail or certified mail at the Board Administrator's physical office address of record.

Parties may not file a document by e-mail or facsimile if the number of pages exceed 50.

3.02 FILING AND SERVICE DATE

- A. Documents filed by e-mail, facsimile, interoffice mail or hand delivery with the Board Administrator shall be deemed filed on the date the Board Administrator receives the document, provided that the document is received on or before 5:00 p.m. Documents received by e-mail, facsimile or hand delivery after 5:00 p.m. shall be deemed as filed on the next business day. Documents filed by mail shall be deemed filed on the date that the envelope is postmarked.
- B. Whenever these uniform supplemental rules or HRAR 3.15 require a party to serve a copy of a document on the opposing party, the filing party shall serve the document at the opposing party's address of record by e-mail, facsimile, hand delivery, U.S. first class mail, certified mail or registered mail. Parties may not serve documents by e-mail or facsimile if the number of pages exceed 50. Service shall be complete as described in Section 3.02 A.

3.03 FORMS AND FILING REQUIREMENTS

- A. All documents served or filed must be dated and signed by the party or Representative submitting the document. Documents served or filed by e-mail must be in PDF format.
- B. Forms are provided in fillable PDF format and are posted on the Civil Service Board website under the "Civil Service Board Fillable Forms" tab for the convenience of all parties. Parties may choose not to use the forms; provided that documents filed with the Board Administrator are in the same or similar format as the forms provided.

The Board, in its discretion, may not consider documents that are not filed in the proper format.

- C. As soon as reasonably possible, a Representative is required to file a Notice of Appearance with the Board Administrator; a form is provided on the Civil Service Board website. The contact information in each Notice of Appearance shall constitute each party Representative's address of record and preferred method of delivery of service for purposes of these rules. In the event an Appellant is unrepresented, the contact information on the Appellant's Notice of Appeal shall serve as the Appellant's address of record and preferred method of delivery of service.
- D. With the exception of a Notice of Appeal and exhibits, all documents filed with the Board Administrator must include a Certificate of Service in the format provided on the Civil Service Board website.

4. FILING OF AN APPEAL

- A. The form and content of an appeal must comply with the provisions set forth in HRAR 3.15. An Appellant may use the Notice of Appeal form on the Civil Service Board website.
- B. In accordance with HRAR 3.15, an appeal shall not be considered filed unless it has been filed with the Board Administrator.

5. BOARD JURISDICTION

5.01 REVIEW OF APPEALS

The Board is limited to hearing appeals that fall within the scope of HRAR 3.15. Furthermore, the time limits specified in HRAR 3.15 for filing an appeal to the Board are jurisdictional in nature. Failure to comply with the time limits specified in HRAR 3.15 means that the Board lacks jurisdiction to hear the appeal. The time limits specified in HRAR 3.15 are not subject to the discovery rule.

5.02 PROCESS OF REVIEW TO DETERMINE BOARD JURISDICTION

- A. Per HRAR 3.15, the Board may, on its own motion, determine whether an appeal involves legal issues that require resolution before the Board schedules a hearing.
- B. Upon receipt of an appeal to the Board, the Board Administrator shall review the appeal to determine if there is a question whether the Board has jurisdiction over the appeal.
- C. If the Board Administrator determines that there is a question whether the Board has jurisdiction over an appeal, the appeal is untimely or that the appeal does not fall within the scope of HRAR 3.15, the Board Administrator shall notify the Appellant. The Board Administrator shall serve a copy of the notification on the Respondent's Representative and the Board.

- D. The Appellant shall have fourteen (14) days from the date the Board Administrator notifies the Appellant to file a written statement, along with exhibits, if applicable, with the Board Administrator. The Appellant's written statement is limited to seven (7) pages, exclusive of exhibits, and is limited to the issue of whether the Board has jurisdiction to hear the Appellant's appeal.
- E. The Respondent shall have fourteen (14) days from the date the Appellant files the Appellant's written statement, along with exhibits, if applicable, to file a responsive written statement with the Board Administrator. The Respondent's written statement is limited to seven (7) pages, exclusive of exhibits, and is limited to the issue of whether the Board has jurisdiction to hear the Appellant's appeal.
- F. The procedure for filing exhibits set forth in Section 6.03 of these rules applies to exhibits to be submitted with a written position statement concerning a jurisdictional issue.
- G. Upon timely receipt of an Appellant's written statement, the Board Administrator shall schedule a public meeting so that the Board can determine the sole issue of whether the Board has jurisdiction over the appeal. No witness testimony shall be taken at the public meeting unless the Board, in its discretion, finds that testimony will be useful or of assistance to the Board.
- H. If an Appellant fails to file a written statement within fourteen (14) days of the date the Board Administrator notifies the Appellant that the Board may lack jurisdiction, the Board will automatically dismiss the appeal for lack of jurisdiction.
- I. The Board's Order of Dismissal for lack of jurisdiction is final subject to a request for writ of review in accordance with ORS 34.010-34.100.

5.03 NOTIFICATION PROCESS WHEN AN APPEAL MEETS JURISDICTIONAL REQUIREMENTS

- A. If an appeal meets jurisdictional requirements, the Board Administrator shall notify the Appellant of the choice between an expedited hearing or a formal hearing. Information regarding the difference between an expedited hearing and a formal hearing is posted on the Civil Service Board website.
- B. The Appellant must file a Notice of Election of Hearing with the Board Administrator within fourteen (14) days of the date the Board Administrator notifies the Appellant of his or her hearing options. A Notice of Election form is provided on the Civil Service Board website.
- C. Per HRAR 3.15, failure to file a Notice of Election of Hearing with the Board Administrator within the time frame required will result in the scheduling of an expedited hearing. Parties may not be represented by legal counsel at an expedited hearing.
- D. Upon timely receipt of a Notice of Election of Hearing, or in the case where fourteen (14) days has elapsed without timely receipt of a Notice of Election of Hearing, the Board Administrator shall schedule the hearing within the time frame required by HRAR 3.15 and shall serve a Notice of Hearing on all parties at their address of record.

6. PRE-HEARING PROCEDURES

6.01 GENERAL WRITTEN COMMUNICATIONS

All written communications to the Board Administrator on behalf of the Board must be copied to the opposing party so as to avoid the appearance of ex parte communications. If the Board Administrator receives a written communication from one party that has not been copied to the other party, the Board Administrator, in the Board's discretion, may notify the party that the written communication may not be received or considered by the Board until it has been copied to the other party.

6.02 PUBLIC RECORDS FOR COPYING AND INSPECTION

- A.** Per HRAR 3.15, documents that may be obtainable by filing a Public Records Request shall not be subject to subpoena, unless good cause is shown.
- B.** Parties may file a Public Records Request with the appropriate bureau. Bureau contact information is on the Civil Service Board website. Parties may also obtain the current City form to obtain public records on the Civil Service Board website.
- C.** If a party is unable to obtain documents by filing a Public Records Request, the party may file an application for issuance of a subpoena to obtain the documents. Parties who apply for issuance of a subpoena for production of documents must comply with the application process outlined in Section 6.06 and Section 6.07 of these rules. The Board may issue a protective order or take other measures to protect the confidentiality of documents.

6.03 FORMAT OF EXHIBITS FOR PUBLIC MEETINGS AND HEARINGS

- A.** With the exception of exhibits for pre-hearing motions, all exhibits to be considered by the Board for an expedited hearing, a formal hearing or a public meeting must be filed in the following format:
 - 1) Documents must be filed with a Table of Contents that lists and briefly describes each document.
 - 2) Each exhibit must be separated by indexed tabs and clearly marked with an exhibit number.
 - 3) Each party must file six (6) sets of copies of their exhibits with the Board Administrator. Exhibits shall not be filed with the Board Administrator by e-mail or facsimile. Per HRAR 3.15, the Board Administrator distributes exhibits to the Board and to the opposing party.
- B.** A checklist that provides guidance for preparing exhibits is provided on the Civil Service Board website.

6.04 UNTIMELY OR IMPROPER FILING OF EXHIBITS

Exhibits that are not filed within the time frames or format required by HRAR 3.15 and these uniform supplemental rules will not be considered by the Board unless good cause for untimely or improper filing can be shown.

6.05 PRE-HEARING MOTIONS

- A.** All pre-hearing motions shall be filed with the Board Administrator in the format provided on the Civil Service Board website.
- B.** Unless the number of pages for exhibits exceed 50 pages, the procedure for filing exhibits set forth in Section 6.03 A. of these rules does not apply to exhibits for pre-hearing motions. A party may attach copies of exhibits to each party's motion or written objection to pre-hearing motion. In the event a party's exhibits exceed 50 pages, the party must file the exhibits in the format outlined in Section 6.03 A. of these rules.
- C.** If the pre-hearing motion is for postponement of a hearing or for an extension of time, the moving party must show good cause why the hearing date should be postponed or why the party should be allowed an extension of time, unless both parties mutually agree to a postponement or to allow for an extension of time. In any event, it is within the Board's discretion to grant or deny a motion for postponement of a hearing or for an extension of time.
- D.** The opposing party shall have seven (7) days from the date a pre-hearing motion is filed to file any written objections with the Board Administrator in the format posted on the Civil Service Board website. The opposing party shall attach any exhibits the party wishes the Board to consider with the written objections.
- E.** If, in the Board's discretion, oral argument is necessary, the Board Administrator shall schedule a date and time for oral argument and shall notify all parties of such date and time.
- F.** The Board Administrator shall schedule a date and time for the Board to meet and issue a ruling on the motion. The Board may consider an opposing party's failure to file written objections as evidence that the opposing party has no objection to the motion.
- G.** The Board may, in its discretion, waive the requirements of this section for motions made for an extension of time or for postponement of a hearing.

6.06 APPLICATION FOR SUBPOENAS

- A.** Pursuant to HRAR 3.15, subpoenas to compel the attendance of a witness or for production of documents for a hearing may be issued upon application of either party upon a showing of good cause. Good cause for issuance of a subpoena for production of documents includes a showing that the Applicant used due diligence to comply with Section 6.02 of these rules prior to filing a subpoena application. Absent such a showing, the Board may deny the Applicant's subpoena application, to the extent it seeks records that may be subject to or attainable through a public information request.
- B.** An Applicant must comply with the following process to request issuance of subpoenas:
 - 1) An Applicant must file a separate application for each subpoena requested in the format provided on the Civil Service Board website.
 - 2) An Applicant must complete all information for the subpoena in the format provided on the Civil Service Board website.
 - 3) Subpoena application(s) to compel the attendance of a witness must be filed with the Board Administrator no later than twenty-one (21) days in advance of the date of the scheduled hearing if the hearing is an expedited hearing, and no later than thirty (30) days in advance of the hearing if the hearing is a formal hearing.

- 4) Subpoena application(s) to compel production of documents must be filed with the Board Administrator as soon as reasonably possible, and in any event, no more than seven (7) days of the date the Applicant learns that the Applicant is unable to obtain the requested documents through a public information request.
- 5) The opposing party shall have three (3) days from the date a subpoena application is filed to file any written objections with the Board Administrator.
- 6) The Board Administrator shall schedule a date and time for the Board to meet and determine whether the subpoena(s) shall be issued. The Board may consider an opposing party's failure to file written objections to subpoena application(s) as evidence that the opposing party has no objection to the issuance of the requested subpoena(s).
- 7) If a subpoena application has been filed with the Board Administrator outside of the time frame required by these rules, the Board may deny the application.
- 8) If the Board determines that the Applicant's subpoena application(s) shall be granted, the Presiding Officer shall issue the subpoena(s) as soon as reasonably possible, or within no later than five (5) business days from the date the Board met to determine whether the subpoena application(s) should be granted.
- 9) If the Board denies the Applicant's subpoena application(s), the Board will provide the reason(s) for the denial. The Board's decision is final.

6.07 VALID SERVICE OF SUBPOENAS

If the Board grants an Applicant's subpoena application(s), the Applicant must comply with the following process for service of the subpoena(s):

- A. An Applicant shall be responsible for obtaining issued subpoena(s) from the Board Administrator.
- B. The Applicant shall be responsible for serving the subpoena(s).
 - 1) If the subpoena is to compel witness testimony, service of the subpoena must be made sufficiently in advance of the date of the hearing so as to allow the witness a reasonable time for preparation and travel to the place of attendance.
 - 2) If a subpoena is for production of documents, service of the subpoena must be made sufficiently in advance to allow for production of the documents prior to the date all hearing documents must be filed with the Board Administrator.
- C. If an Applicant is unable to personally serve the subpoena(s), service shall be made by any person over the age of eighteen (18) who is not a party to the appeal. The Applicant must certify under penalty of perjury that the person who effectuated service is over the age of eighteen (18) and is not a party to the appeal.
- D. An Applicant must pay attendance fees and travel expenses to all witnesses who have been subpoenaed to testify in accordance with ORS 44.415(1) (<http://www.oregonlaws.org/ors/44.415>). Service of witness fees is not required for subpoenas for production of documents, unless the subpoena is to compel both attendance at the hearing to testify and for production of documents.

- E. An Applicant shall accomplish valid service of a subpoena by one of the following methods:
- 1) By hand delivering a copy of the subpoena to the subpoenaed party or the authorized representative for the subpoenaed party personally and providing at the same time the fees to which the subpoenaed party is entitled, if applicable.
 - a. Service of a subpoena by hand delivery is effectuated on the date that the subpoenaed party or authorized representative signs a confirmation receipt in the format provided on the Civil Service Board website.
 - 2) By delivering a copy of the subpoena by certified or registered mail with receipt delivery and signature requested to the subpoenaed party's business address, along with the fees to which the subpoenaed party is entitled, if applicable.
 - a. Service by certified or registered mail is effectuated on the date that the return receipt is signed by the subpoenaed party or is signed by the authorized representative for the subpoenaed party.
- F. Once service of a subpoena is effectuated, the Applicant must file a Proof of Service with the Board Administrator in the format provided on the Civil Service Board website. An Applicant must attach to the Proof of Service to the original subpoena, along with documentation that establishes the date, time and method of service.

6.08 STIPULATION OF AGREED UPON FACTS AND ISSUES

Pursuant to HRAR 3.15, unless excused by the Board, parties are required to meet and confer prior to the date of a hearing for the purpose of stipulating to agreed upon facts and issues. The process for such meetings is as follows:

- A. The Board Administrator will schedule the meeting for a date and time that is mutually agreed upon by all parties.
- B. The Board Administrator or the Board's designee shall facilitate the meeting. All facts and issues that are agreed upon shall be recorded in the format provided on the Civil Service Board website.
- C. Per HRAR 3.15, the stipulations of facts and issues shall be entered as evidence at the hearing and are binding upon all parties.

6.09 PRE-HEARING CASE CONFERENCES

The Board may, in its discretion, schedule pre-hearing case conferences to resolve issues not covered by these rules prior to the date of a hearing. If, in the Board's discretion, a pre-hearing case conference is necessary, the Board Administrator shall schedule a date and time for the pre-hearing case conference and shall notify all parties of such date and time.

6.10 PRE-HEARING DISMISSAL OF AN APPEAL

Aside from dismissal for lack of jurisdiction, the Board may issue a Final Order dismissing an appeal before a hearing has been conducted for any of the following reasons:

- A.** A voluntary withdrawal of appeal has been filed by the Appellant or the Appellant's representative. In the event an Appellant wishes to withdraw an appeal, the Appellant shall file a Voluntary Withdrawal of Appeal and Order of Dismissal in the format provided on the Civil Service Board website.
- B.** The Appellant and the Respondent settle the appeal by mutual agreement. In the event an appeal is settled by mutual agreement, a Stipulation and Order of Dismissal shall be filed with the Board Administrator in the format provided on the Civil Service Board website.
- C.** On the scheduled hearing date, an Appellant fails to appear within thirty (30) minutes of the scheduled time of the hearing. If the Appellant fails to appear, the following process shall apply:
 - 1) An Appellant may file a Motion to Reopen Hearing with the Board Administrator in the format provided on the Civil Service Board website. The Appellant must show good cause for the Appellant's failure to appear at the date and time of the hearing.
 - 2) A Motion to Reopen Hearing must be filed with the Board Administrator within seven (7) days of the date the hearing had been scheduled to be conducted.
 - 3) The Board Administrator shall schedule a date and time for the Board to meet and rule on the Motion to Reopen Hearing, unless, in the Board's discretion, the Board determines that oral argument is necessary before the Board can rule on the motion.
 - 4) If, in the Board's discretion, oral argument is necessary, the Board Administrator shall schedule a date and time for oral argument and shall notify all parties of such date and time.
 - 5) The Board may consider the Appellant's failure to appear for a scheduled oral argument on a Motion to Reopen Hearing as evidence in determining whether there is good cause for the Appellant's failure to appear at the date and time of the hearing.
 - 6) Upon a showing of good cause, the Board may excuse an Appellant's failure to appear and the hearing will be rescheduled.

6.11 EFFECT OF PRE-HEARING DISMISSAL OF APPEALS

- A.** Appeals dismissed because of a Voluntary Withdrawal of Appeal or Stipulation of Dismissal are with prejudice and cannot be refiled. However, such dismissal of appeals are subject to the right to request writ of review in accordance with ORS 34.010-34.100.
- B.** If an appeal is dismissed because the Appellant does not file a Motion to Reopen Hearing within the time frame required by these rules or because the Appellant fails to show good cause for the Appellant's failure to appear at the hearing, the Board's Order of Dismissal shall become final and is with prejudice. The Appellant's failure to appear at the date and time of the scheduled hearing shall be considered a default and a waiver of all rights except the right to request writ of review in accordance with ORS 34.010-34.100.

7. HEARING PROCEDURES

7.01 HEARING FORMAT

- A.** Although hearings are generally informal in nature, hearings shall be conducted in a manner deemed to make the relevant evidence most readily and efficiently available for the Board to consider and to provide both parties with a fair opportunity to be heard.
- B.** For expedited hearings, each party is limited to 90 minutes to present their case per HRAR 3.15.
- C.** For formal hearings, the Board may, in its discretion, impose limits on the length of each party's presentation and the number of witnesses each party may call to testify at the hearing.
- D.** The Board may limit any party's direct or cross-examination of any witness if the Board deems the examination or testimony redundant, irrelevant, immaterial, or otherwise unhelpful to the Board in determining the issues.
- E.** The general order of a hearing is outlined in HRAR 3.15 under "General Hearings Procedure." The order of a hearing may be modified or a different order established, if the Board deems it necessary for the efficient, clear and fair representation of the evidence.

7.02 WITNESS FAILURE TO APPEAR

If a party moves to postpone or continue a hearing because a witness fails to appear at the scheduled date and time of the hearing, the moving party must show good cause why the hearing should be postponed or continued. Good cause includes a showing that the moving party used due diligence to comply with Sections 6.06 and 6.07 of these rules. Absent such a showing, the Board may deny the party's motion.