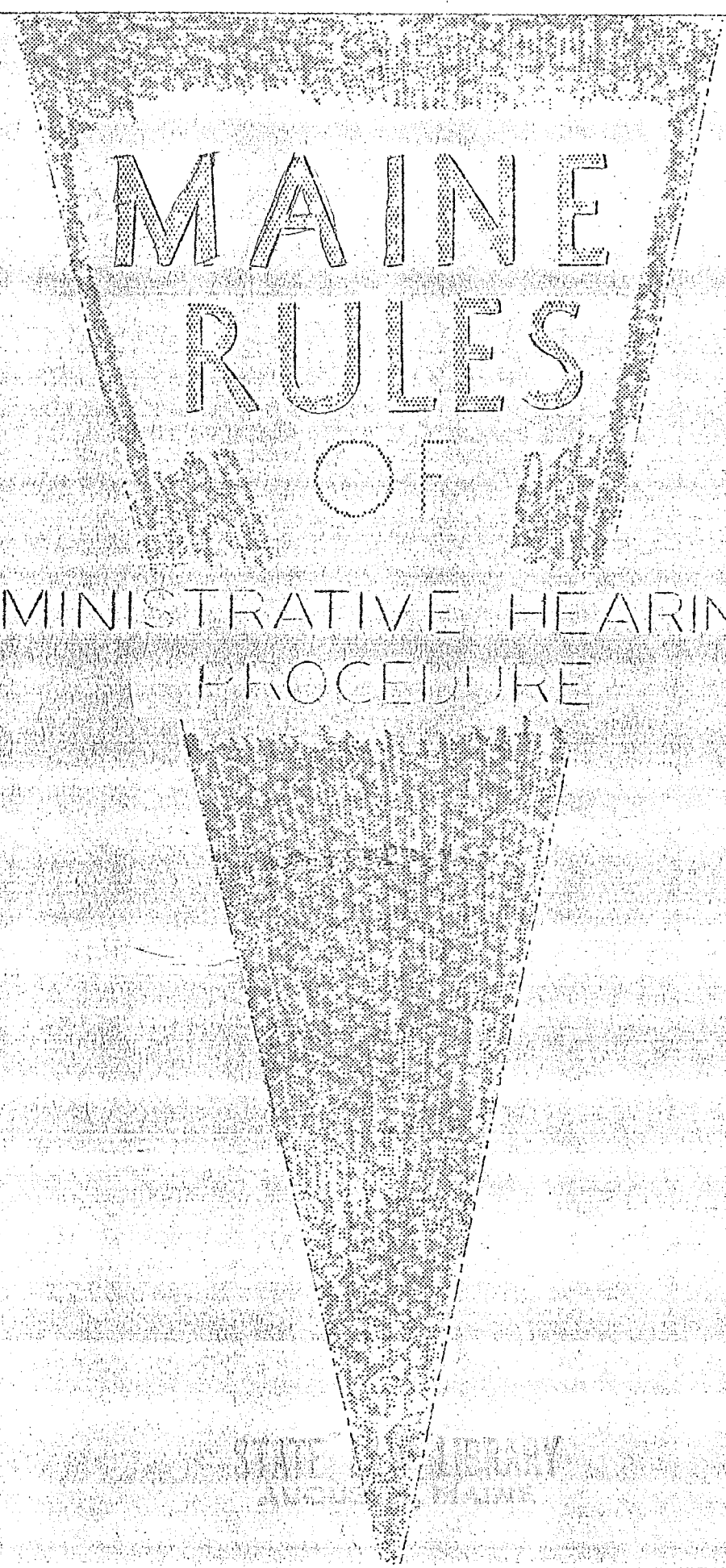


MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



MAINE
RULES
OF

ADMINISTRATIVE HEARING
PROCEDURE

STATE LIBRARY
ALBANY, MAINE

CONTENTS

| | Page |
|--|------|
| RULE 1. DEFINITIONS | 1 |
| I. Agency | 1 |
| II. Contested case | 1 |
| III. Hearing Officer | 1 |
| IV. Business day | 1 |
| RULE 2. CONSTRUCTION | 1 |
| I. Registered mail | 1 |
| RULE 3. COMMENCEMENT OF ACTION | 1 |
| I. How commenced | 1 |
| RULE 4. COMPLAINT AND NOTICE OF HEARING | 2 |
| I. Content of complaint | 2 |
| II. Complaint signed | 2 |
| III. Notice of hearing | 2 |
| RULE 5. SERVICE AND FILING OF COMPLAINT AND NOTICE OF HEARING | 2 |
| I. How served | 2 |
| II. Service by registered mail | 3 |
| III. Filed with Hearing Officer | 3 |
| IV. Return of service | 3 |
| V. Affidavit of mailing | 3 |
| RULE 6. ANSWER | 4 |
| I. Content of answer | 4 |
| II. Answer signed | 4 |
| RULE 7. SERVICE AND FILING OF ANSWER | 4 |
| I. When served and filed | 4 |
| RULE 8. MOTIONS | 4 |
| I. Types permitted | 4 |
| II. When made | 5 |
| III. How made | 6 |
| IV. Procedure | 6 |

CONTENTS

| | Page |
|--|------|
| RULE 9. PLEADINGS | 6 |
| I. Pleadings signed | 6 |
| II. Effect of signature | 6 |
| III. How served | 6 |
| IV. Filing form | 6 |
| RULE 10. AMENDED PLEADINGS | 7 |
| I. Amendments | 7 |
| II. Time for answering amended complaint | 7 |
| III. Service and filing of amendment | 7 |
| IV. Amendments to conform to the evidence | 7 |
| RULE 11. TIME | 8 |
| I. Computation | 8 |
| II. Enlargement | 8 |
| RULE 12. VOLUNTARY DISMISSAL | 9 |
| I. Procedure | 9 |
| II. With and without prejudice | 9 |
| RULE 13. PARTIES | 9 |
| I. Plaintiff | 9 |
| II. Defendant | 9 |
| RULE 14. APPEARANCE | 9 |
| I. Appearance automatic | 9 |
| RULE 15. SUBPOENA | 10 |
| I. Witnesses and documents | 10 |
| II. Content of subpoena | 10 |
| III. How served | 10 |
| IV. Filed with Hearing Officer | 10 |
| V. Motion to quash | 11 |

CONTENTS

| | Page |
|---|------|
| RULE 16. JUDGMENT BY DEFAULT | 11 |
| I. Failure of one party to appear | 11 |
| II. Failure of both parties to appear | 11 |
| RULE 17. DISPOSITION OF CASE BY AGREEMENT . | 11 |
| I. Procedure | 11 |
| RULE 18. PRE-HEARING CONFERENCE | 11 |
| I. Procedure | 11 |
| II. Pre-hearing memorandum | 12 |
| III. Effect of pre-hearing memorandum | 12 |
| RULE 19. RULES OF EVIDENCE | 12 |
| I. Admissible evidence defined | 12 |
| II. Evidence considered | 12 |
| III. Cross-examination | 13 |
| IV. Documentary evidence | 13 |
| V. Facts noted by Hearing Officer | 13 |
| RULE 20. PROOF OF OFFICIAL RECORD | 14 |
| I. Authentication of copy | 14 |
| II. Proof of lack of record | 15 |
| III. Other proof | 15 |
| RULE 21. EXCEPTIONS | 15 |
| I. Exceptions unnecessary | 15 |
| RULE 22. ARGUMENTS OF COUNSEL | 15 |
| I. Argument may be required | 15 |
| RULE 23. FINDINGS BY THE HEARING OFFICER . | 16 |
| I. Findings of fact and conclusions of law | 16 |

CONTENTS

| | Page |
|---|------|
| RULE 23. FINDINGS BY THE HEARING OFFICER (cont'd) | |
| II. Notice of decision and order | 16 |
| III. Findings amended | 16 |
| RULE 24. POWER OF HEARING OFFICER TO ESTABLISH PROCEDURE | 16 |
| I. Disposition expedited | 16 |
| RULE 25. ERRORS IN RECORD CORRECTED | 17 |
| I. How corrected | 17 |
| RULE 26. HARMLESS ERROR | 17 |
| I. Disregarded | 17 |
| RULE 27. APPEAL | 17 |
| I. Appeal to Superior Court | 17 |
| II. Procedure | 17 |
| III. Effect | 17 |
| IV. Record | 18 |
| V. Additional evidence | 18 |
| VI. Conducted by the Court | 18 |
| VII. Decision of Court | 19 |
| VIII. Appeal to Law Court | 19 |
| RULE 28. FORMS | 19 |
| I. Sufficient under Rules | 19 |
| SAMPLE FORMS: | |
| Complaint | 20 |
| Notice of Proposed Hearing | 21 |
| Return of Service of Complaint and Notice of Hearing | 22 |
| Affidavit of Mailing by Plaintiff | 23 |
| Answer | 24 |
| Motion | 25 |
| Subpoena | 26 |
| Subpoena Duces Tecum | 27 |

CONTENTS

| | Page |
|-------------------------------------|------|
| SAMPLE FORMS: (cont'd) | |
| Return of Service of Subpoena . . . | 28 |
| Agreement for Docket Entry | 29 |
| Filing Back | 30 |
| CERTIFICATE OF ADOPTION | 31 |

MAINE RULES OF ADMINISTRATIVE HEARING PROCEDURE

RULE 1. DEFINITIONS.

I. Agency. "Agency" means the state boards, commissions, departments, and officers listed in R.S. 1954, Ch. 20-A, Sec. 1.

II. Contested case. "Contested case" means a proceeding before the Hearing Officer in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing. It does not include informal meetings held by consent of the agency and all interested parties.

(R.S. 1954, Ch. 20-A, Sec. 1.)

Administrative Hearing Commissioner

III. Hearing Officer. "~~Hearing Officer~~" means the person appointed by the Governor with the advice and consent of the Council, as provided in R.S. 1954, Ch. 20-A, Sec. 7.

IV. Business day. "Business day" means any day other than a Saturday, Sunday, or legal holiday.

RULE 2. CONSTRUCTION.

I. Registered mail. Whenever "registered mail" is referred to in these rules, it is deemed to include "certified mail," by authority of R.S. 1954, Ch. 10, Sec. 22, subsec. XXXIII.

RULE 3. COMMENCEMENT OF ACTION.

I. How commenced. A contested case is commenced by the service of a copy of a complaint and notice of hearing on the defendant at

least 30 days before the time specified for the hearing, unless an emergency exists as provided in R.S. 1954, Ch. 20-A, Sec. 9.

RULE 4. COMPLAINT AND NOTICE OF HEARING.

I. Content of complaint. ~~The complaint must contain~~ (1) ~~the locus~~ *Refused to defend trial on June 15, 1971* ~~of the action as Kennebec County, State of Maine;~~ (2) the name of the judicial office as ^{O.H.} ~~Administrative Hearing Office~~; (3) a space for the docket number; (4) the name and locus of the plaintiff; (5) the name and locus of the defendant; (6) the statement of the claim in numbered paragraphs; (7) the conclusion based on that statement indicating the violation of a statute or regulation and citing the statute or regulation violated; (8) a demand for judgment; (9) the date; and (10) the name and address of the person signing the complaint.

II. Complaint signed. The complaint must be signed by the plaintiff or his attorney.

III. Notice of hearing. The notice of hearing must state the time and place of hearing and the issues involved. The requirement of stating the issues involved is deemed to be met if they are indicated with reasonable clarity by the allegations of the complaint. The notice of hearing must inform the defendant of the time limit for filing his answer to the complaint.

RULE 5. SERVICE AND FILING OF COMPLAINT AND NOTICE OF HEARING.

I. How served. A copy of the complaint and notice of hearing may

be served by personal delivery in hand by a sheriff or his deputy within his county or by registered mail, return receipt requested, mailed to the last known address of the defendant.

II. Service by registered mail. Service by registered mail is complete when it is delivered and the return receipt signed or when acceptance is refused. The plaintiff shall file with the Hearing Officer an affidavit of mailing and the return receipt or, if acceptance was refused, the envelope so refused.

III. Filed with Hearing Officer. The complaint and notice of hearing accompanied by a return of service or affidavit of mailing must be filed with the Hearing Officer within 10 days after service. If the complaint is not filed within 10 days after service, on motion of the defendant the Hearing Officer may dismiss it without prejudice.

IV. Return of service. The return of service must state the method and date of service and must be signed by the person who served the complaint.

V. Affidavit of mailing. The affidavit of mailing must contain (1) the locus of the action as Kennebec County, State of Maine; (2) the name and address of the affiant; (3) the date and method of mailing; (4) a statement indicating receipt of the return receipt; or (5) a statement indicating receipt of the returned envelope marked "Refused" and stating that the complaint and notice were then sent to the defendant by ordinary mail; (6) the signature of the affiant; and (7) the jurat signed by a notary public or justice of the peace.

RULE 6. ANSWER.

I. Content of answer. The answer must contain (1) the locus of the action as Kennebec County, State of Maine; (2) the name of the judicial office as Administrative Hearing Office; (3) a space for the docket number; (4) the names of the parties; (5) the answer to each of the numbered paragraphs in the complaint either admitting or denying each allegation or indicating a lack of knowledge as to its truth; (6) a statement of any special defenses; (7) the date; and (8) the name and address of the person signing the answer.

II. Answer signed. The answer must be signed by the defendant or his attorney.

RULE 7. SERVICE AND FILING OF ANSWER.

I. When served and filed. The answer must be filed with the Hearing Officer and a copy served on the person who signed the complaint *Amended to 10 days on 9/23/71* within ~~20~~ days after service of the complaint on the defendant. On motion of the defendant, the Hearing Officer may allow a late filing for reasonable cause.

RULE 8. MOTIONS.

I. Types permitted. Only seven types of motions are permitted as a matter of right: (1) a motion to enlarge the time within which an act must be performed; (2) a motion to amend the pleadings to conform with the evidence; (3) a motion for default judgment where the defendant has failed to appear, answer, or otherwise defend; (4) a

motion to quash or modify a subpoena; (5) a motion for continuance; (6) a motion to dismiss the complaint; and (7) a motion for a more definite statement in a complaint or answer. Other types of motions not in contravention of the law are permitted at the discretion of the Hearing Officer.

II. When made. A motion to enlarge the time within which an act must be performed may be made at any time before disposition of the case.

A motion to amend the pleadings to conform with the evidence may be made at any time before disposition of the case.

A motion for default judgment where the defendant has failed to appear, answer, or otherwise defend may be made only on or after the day scheduled for hearing.

A motion to quash or modify a subpoena may be made only on or before the day of hearing.

A motion for continuance may be made only on or before the day of hearing. If the motion is made less than 3 days before the day of hearing, the Hearing Officer may allow the presentation of such evidence as is available on the day of hearing and continue the case to a later date for completion.

A motion to dismiss the complaint on the ground that admitting the truth of its allegations no basis for action is shown must be made at least 7 days before the day scheduled for hearing. A motion to dismiss the complaint on other grounds may be made at any time.

A motion for a more definite statement in a complaint or answer must be made within 10 days after it is served.

III. How made. A motion may be made in writing or it may be made orally, provided it is reduced to writing within the time prescribed by the Hearing Officer. It must be filed with the Hearing Officer and a copy served on the opposing party forthwith.

IV. Procedure. On receipt of a motion, the Hearing Officer shall set a time for argument. He shall notify the parties giving them a reasonable opportunity to appear and be heard. A motion made at a hearing may be disposed of at that time.

RULE 9. PLEADINGS.

I. Pleadings signed. A party or his attorney shall sign each pleading personally and add his address.

II. Effect of signature. The signature of an attorney constitutes certification by him (1) that he has read the pleading; (2) that to the best of his knowledge there is good ground to support it; and (3) that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading had not been served.

III. How served. All pleadings may be served by delivery in hand or by mail.

IV. Filing form. All pleadings must be filed without backers.

The filing back of each pleading must contain (1) the locus of the

action as Kennebec County, State of Maine; (2) the name of the judicial office as Administrative Hearing Office; (3) a space for the docket number; (4) the names of the parties; (5) the title of the pleading; and (6) the office from which it came.

RULE 10. AMENDED PLEADINGS.

I. Amendments. A party may amend his pleading once as a matter of right before a responsive pleading is served, or if the pleading requires no response, before action is taken on it by the Hearing Officer. Otherwise, a party may amend his pleading only by permission of the Hearing Officer or by written consent of the adverse party. The Hearing Officer shall allow amendments to be made freely when the right of the opposing party to prosecute or defend the case will not be prejudiced.

II. Time for answering amended complaint. A party shall answer an amended complaint within the time remaining for response to the original complaint or within 10 days after service of the amended complaint, whichever is longer, unless otherwise ordered by the Hearing Officer.

III. Service and filing of amendment. The amended pleading must be filed with the Hearing Officer and a copy served on the opposing party forthwith.

IV. Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated as if they had been raised by the

pleadings. Amendment of the pleadings to cause them to conform to the evidence may be made on motion of any party at any time, even after judgment. Failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the pleadings, the Hearing Officer shall allow the pleadings to be amended unless the objecting party satisfies him that the new issues raised and the evidence to support them would prejudice the prosecution or defense of the case. The Hearing Officer may grant a continuance to enable the objecting party to prepare his defense against the new issues.

RULE 11. TIME.

I. Computation. In computing any period of time prescribed by these rules, by the Hearing Officer, or by any applicable statute, the day of the act, event, or default after which the designated period begins to run is not included. If the last day of the period is a business day, it is included. If not, the period runs until the end of the next business day.

II. Enlargement. When by these rules or by order of the Hearing Officer an act is permitted or required to be done at or within a specified time, the Hearing Officer on motion and for reasonable cause may order the time enlarged, if the request is made before the expiration of the time originally prescribed or previously extended.

RULE 12. VOLUNTARY DISMISSAL.

I. Procedure. A contested case may be dismissed by the plaintiff without order of the Hearing Officer (1) by filing a notice of dismissal with the Hearing Officer and the defendant at any time before commencement of hearing on the action, or (2) by filing a stipulation of dismissal signed by the parties or their attorneys.

II. With and without prejudice. If voluntary dismissal is effected by a notice of dismissal filed by a plaintiff who has previously so dismissed a contested case based on the same claim, it is dismissed with prejudice; ^{except that a second voluntary dismissal may be without prejudice by leave of the A.H.C. or by stipulation by the parties.} Otherwise, voluntary dismissal is without prejudice unless stipulated to the contrary.

RULE 13. PARTIES.

I. Plaintiff. An action to suspend or revoke a license must be brought in the name of the complaining agency as plaintiff. In an appeal to the Hearing Officer from the refusal of an agency to grant a license under R.S. 1954, Ch. 25, Secs. 5, 29, 165, 206, 254, and 272, the appellant is the plaintiff.

II. Defendant. The party against whom the action is brought is the defendant.

RULE 14. APPEARANCE.

I. Appearance automatic. The filing of a pleading by an attorney constitutes his appearance for the party for whom the pleading is filed, and he is deemed to be the attorney of record for that party until notice to the contrary is filed with the Hearing Officer.

RULE 15. SUBPOENA.

I. Witnesses and documents. The Hearing Officer may issue a subpoena for the attendance of any witness or the production of any document or other tangible evidence in any contested case. He shall issue a subpoena at the request of a party.

II. Content of subpoena. The subpoena must contain ^{Revised on 6/15/71} (1) ~~the locus of the action as Kennebec County, State of Maine;~~ (2) the name of the judicial office as Administrative Hearing Office; (3) a space for the docket number; (4) the name and locus of the plaintiff; (5) the name and locus of the defendant; (6) the order to attend the hearing and give testimony or produce records, documents, or other tangible evidence; (7) the date; and (8) the signature and seal of the Hearing Officer.

III. How served. A subpoena may be served by a sheriff, his deputy, or any other person at least 18 years of age who is not a party. Service of a subpoena shall be made by delivering a copy to the person named in it and tendering to him the fees for one day's attendance and the mileage allowed by law for a civil action. The party who requests the issuance of a subpoena is responsible for the payment of all fees.

IV. Filed with Hearing Officer. The original subpoena shall be filed with the Hearing Officer on or before the scheduled day of hearing. It must include a return signed by the person who made the service stating the method and date of service.

V. Motion to quash. On motion made promptly, the Hearing Officer may quash or modify the subpoena if it is unreasonable, or he may condition denial of the motion on the advancement by the person for whom the subpoena is issued of the reasonable cost of producing the items demanded.

RULE 16. JUDGMENT BY DEFAULT.

I. Failure of one party to appear. When either party fails to appear at the time and place scheduled for hearing, the Hearing Officer may accept a motion for default judgment, or he may request the party appearing to present his side of the case and render judgment on the evidence presented; *or he may, in his judicial discretion, where warranted, continue the case for hearing. (Amendment 8/18/71)*

II. Failure of both parties to appear. If neither party appears at the time and place scheduled for hearing, the Hearing Officer *may, in his* ~~shall~~ *(Amendment 8/18/71)* dismiss the case with *judicial discretion, where warranted,* ~~prejudice;~~ *or he may continue the case for hearing.*
or without

RULE 17. DISPOSITION OF CASE BY AGREEMENT.

I. Procedure. Any case may be finally disposed of by agreement of counsel on approval of the Hearing Officer. If the case is disposed of in this manner, the parties shall sign and file an agreement for docket entry which becomes effective on the date approved by the Hearing Officer.

RULE 18. PRE-HEARING CONFERENCE.

I. Procedure. On the day of hearing in any contested case, the Hearing Officer may direct the attorneys for the parties to appear

before him for a conference to consider (1) the simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; and (4) such other matters as may aid in the disposition of the case.

II. Pre-hearing memorandum. The Hearing Officer shall make a memorandum which recites (1) the action taken at the conference; (2) the amendments allowed to the pleadings; (3) the agreements made by the parties as to any of the matters considered; and (4) which limits the issues for trial to those not disposed of by admissions or agreements of counsel.

III. Effect of pre-hearing memorandum. The pre-hearing memorandum controls the subsequent course of the hearing unless modified by the Hearing Officer to prevent manifest injustice.

RULE 19. RULES OF EVIDENCE.

I. Admissible evidence defined. The Hearing Officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable, prudent men in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. He may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. (R.S. 1954, Ch. 20-A, Sec. 10, sub-sec. I.)

II. Evidence considered. All evidence, including records and documents in the possession of the agency of which it desires to avail

itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. (R.S. 1954, Ch. 20-A, Sec. 10, subsec. II.)

III. Cross-examination. Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence. (R.S. 1954, Ch. 20-A, Sec. 10, subsec. III.)

IV. Documentary evidence. Whenever the agency or any party to the contested case intends to introduce documentary evidence other than official records as recognized by statute, the party offering the evidence shall first notify all other parties. Adverse parties may then demand the right to cross-examine the writer or affiant. If this right of cross-examination is not claimed within a reasonable time after notification it shall be deemed to have been waived and the document will be admitted in evidence. If demand is made for the right to cross-examine, but the writer or affiant is not produced, then the document in question shall be excluded as hearsay. (R.S. 1954, Ch. 20-A, Sec. 10, subsec. IV.)

V. Facts noted by Hearing Officer. The Hearing Officer may take notice of judicially cognizable fact and in addition may take notice of general, technical, or scientific facts within his specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material

so noticed and they shall be afforded an opportunity to contest the facts so noticed. The Hearing Officer may utilize his experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to him. (R.S. 1954, Ch. 20-A, Sec. 10, sub-sec. V.)

RULE 20. PROOF OF OFFICIAL RECORD.

I. Authentication of copy. An official record or an entry in it, when admissible for any purpose, may be evidenced (1) by a document purporting to be an official publication of it, or (2) by a copy attested as a correct copy by a person purporting to be an officer or deputy having legal custody of the record. If the office in which the record is kept is outside the state, the copy must be accompanied by a certificate that the officer or deputy has the custody of the record. The certificate must be made as follows: (1) by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court; (2) by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the court; or (3) by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation,

consul general, consul, vice consul, consular agent, or by any officer in the foreign service of the United States stationed in a foreign state or country in which the record is kept, and authenticated by the seal of his office.

II. Proof of lack of record. A written statement signed by a person purporting to be an officer or deputy, having the official custody of specified official records, that he has made diligent search of the records of the office and has found no record or entry of a specified tenor, is admissible as evidence that the records of his office contain no such record or entry. If the place where the record is kept is outside the state, the statement must be accompanied by a certificate like that required in paragraph I.

III. Other proof. This rule does not prevent the proof of official records or of an entry or lack of entry in them by any method authorized by any applicable statute or by the rules of evidence at common law.

RULE 21. EXCEPTIONS.

I. Exceptions unnecessary. Exceptions to rulings of the Hearing Officer are unnecessary. It is sufficient to save an exception if a party at the time the ruling is made or sought makes known to the Hearing Officer his objection to the ruling and the grounds for it.

RULE 22. ARGUMENTS OF COUNSEL.

I. Argument may be required. At the close of the hearing, each

party may summarize his action or defense in an argument before the Hearing Officer. He shall summarize if requested to do so by the Hearing Officer. The moving party shall argue first. The time of argument of each party is limited to 20 minutes, unless the Hearing Officer extends the time because of the nature of the case.

RULE 23. FINDINGS BY THE HEARING OFFICER.

I. Findings of fact and conclusions of law. The Hearing Officer shall make a written decision and order containing findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions on each contested issue of fact.

II. Notice of decision and order. The Hearing Officer shall send a copy of the decision and order to each party or his attorney.

III. Findings amended. At the request of a party made within 10 days after notice of a decision or on his own motion, the Hearing Officer may amend his findings or make additional findings, and may amend his order accordingly. He shall notify the parties forthwith of the amendments made.

RULE 24. POWER OF HEARING OFFICER
TO ESTABLISH PROCEDURE.

I. Disposition expedited. In order to expedite the disposition of a case or to effect substantial justice, the Hearing Officer may order the observance of procedures not in contravention of any statute or regulation, provided they do not violate the intent of these rules or prejudice the right of a party to prosecute or defend his case.

RULE 25. ERRORS IN RECORD CORRECTED.

I. How corrected. Errors in findings of fact, conclusions of law, decisions, orders, or other parts of the record may be corrected by the Hearing Officer at any time. When an appeal to the Superior Court is pending, errors may be corrected only by leave of the Court.

RULE 26. HARMLESS ERROR.

I. Disregarded. The Hearing Officer shall disregard any error in following the procedure established by these rules which does not affect the substantial rights of the parties.

RULE 27. APPEAL.

I. Appeal to Superior Court. Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to appeal. (R.S. 1954, Ch. 20-A, Sec. 13, subsec. I.)

II. Procedure. Appeal shall be instituted by filing a complaint in the Superior Court within 30 days after the service of the final decision of the Hearing Officer. Copies of the complaint shall be served upon the agency and all other parties of record. The Court, in its discretion, may permit other interested persons to intervene. (R.S. 1954, Ch. 20-A, Sec. 13, subsec. II.)

III. Effect. The filing of the complaint shall not stay enforcement of the decision, but the agency may do so or the Superior Court may order a stay upon such terms as it deems proper. (R.S. 1954, Ch. 20-A, Sec. 13, subsec. III.)

IV. Record. Within 30 days after service of the complaint, or within such further time as the Court may order, the Hearing Officer shall transmit to the Superior Court the original or certified copy of the entire record of the proceeding under review, but by stipulation of all parties to the appeal the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the Court for the additional costs. The Court may require or permit subsequent corrections or additions to the record when deemed desirable. (R.S. 1954, Ch. 20-A, Sec. 13, subsec. IV.)

V. Additional evidence. If, before the date set for hearing, application is made to the Court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the Court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Hearing Officer, the Court may order the additional evidence to be taken before the Hearing Officer upon such conditions as the Court deems proper. The Hearing Officer may modify his findings and decision by reason of the additional evidence and shall file with the Superior Court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision. (R.S. 1954, Ch. 20-A, Sec. 13, subsec. V.)

VI. Conducted by the Court. The appeal shall be conducted by the Court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the

Hearing Officer not shown in the record, testimony thereon may be taken in the Court. The Court shall, upon request, hear oral argument and receive written briefs. (R.S. 1954, Ch. 20-A, Sec. 13, subsec. VI.)

VII. Decision of Court. The Court may affirm the decision of the Hearing Officer or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the plaintiffs may have been prejudiced because the findings, inferences, conclusions, or decisions are in violation of constitutional provisions; or in excess of the statutory authority or jurisdiction of the agency; or made upon unlawful procedure; or affected by other error of law; or unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or arbitrary or capricious. (R.S. 1954, Ch. 20-A, Sec. 13, subsec. VII.)

VIII. Appeal to Law Court. An appeal from the decision of the Superior Court may be taken to the Law Court the same as in other actions.

RULE 28. FORMS.

I. Sufficient under Rules. The appended Forms meet the requirements of these Rules and indicate the desired simplicity and brevity of statement.

STATE OF MAINE
KENNEBEC, SS.

ADMINISTRATIVE HEARING OFFICE

Docket No. _____

Maine Real Estate Commission,
Plaintiff
of Augusta
Kennebec County

v.

COMPLAINT

John Doe, Defendant
of Portland
Cumberland County

1. On February 15, 1959, defendant was licensed as a real estate broker by plaintiff, which license he holds at this time;

2. On or about June 10, 1960, defendant received a 5% commission on the sale of certain real estate from the buyer, Richard Roe, of Portland, Maine, and also received a 5% commission from the seller, Charles Coe, of York, Maine, without the knowledge of both parties. The sale price of the property was \$10,000;

3. Defendant advised Roe that he would have to pay the commission in order to complete the sale;

4. Defendant made a similar statement to Coe;

5. In committing the acts specified in paragraphs 2 - 4, defendant violated the provisions of R.S. 1954, Ch. 84, Sec. 8. I.D.

Wherefore plaintiff demands that the license of defendant to sell real estate in the State of Maine be suspended or revoked as provided in R.S. 1954, Ch. 84, Sec. 8.

Dated: September 10, 1960

Signed: Frank E. Foe
Assistant Attorney General
Attorney for Plaintiff
Address: State House
Augusta, Maine

NOTICE OF PROPOSED HEARING

To _____, Defendant:

You are hereby notified that you must file an answer to the attached complaint with the Administrative Hearing Officer, State House, Augusta, Maine, and serve a copy of the answer on _____, plaintiff's attorney, whose address is _____.

The answer must be filed within 20 days after service of the complaint on you, exclusive of the day of service.

You are also notified that a hearing on the complaint will be held on _____, 19 ____, at ____ o'clock ____ M. at the Administrative Hearing Office, State House, Augusta, Maine.

If you fail to file your answer or to appear at the hearing on the complaint, judgment by default may be taken against you for the relief demanded in the complaint.

RETURN OF SERVICE OF COMPLAINT

AND NOTICE OF HEARING

STATE OF MAINE

_____, SS.

On _____, 19____, I served the
attached complaint and notice of hearing on _____
_____, defendant,
by delivering a copy of the complaint and notice to
him in hand.

Sheriff, Deputy Sheriff

Service \$
Travel
_____ miles one way
Postage
Total \$ _____

AFFIDAVIT OF MAILING BY PLAINTIFF

STATE OF MAINE
KENNEBEC, SS.

I, _____, being first duly sworn, depose and say: (1) that I am attorney for the plaintiff in the attached complaint; that my office is located at _____; (2) that on _____, 19____, I mailed a copy of the attached complaint and notice of hearing to the defendant at _____ Street, _____, _____, by registered (or certified) mail, postage prepaid, return receipt requested, with instructions to deliver to addressee only, by depositing in a U. S. mail box at _____ Street, _____, Maine, an envelope containing the complaint and notice of hearing which was properly sealed, stamped, and addressed; and (3) that I received a return receipt signed by the defendant which is attached to this affidavit. [Or (3) "that the envelope was returned to me marked "Refused," which envelope I attached to this affidavit; and (4) that I then sent a copy of the complaint and notice of hearing to the defendant by ordinary mail."]

Attorney for Plaintiff

Subscribed and sworn to before me on _____, 19____.

Notary Public
Justice of the Peace

STATE OF MAINE
KENNEBEC, SS.

ADMINISTRATIVE HEARING OFFICE

Docket No. _____

Maine Real Estate Commission,
Plaintiff
of Augusta
Kennebec County

v.

ANSWER

John Doe, Defendant
of Portland
Cumberland County

1. Defendant admits the allegations of Paragraph 1.
2. Defendant denies the allegations of Paragraphs 2, 3, 4,
and 5.
3. Defendant states that the law prohibiting a real estate
broker from receiving a commission from the buyer and from the
seller without the knowledge of both parties did not become effec-
tive until September 12, 1960.

Dated: September 22, 1960

Signed: Nelson Noe
Attorney for Defendant

Address: 172 Maine Street
Brunswick, Maine

STATE OF MAINE
KENNEBEC, SS.

ADMINISTRATIVE HEARING OFFICE

Docket No. _____

Maine Real Estate Commission,
Plaintiff
of Augusta
Kennebec County

v.

John Doe, Defendant
of Portland
Cumberland County

MOTION

Defendant moves the Hearing Officer as follows:

1. To dismiss the complaint because it fails to state a cause of action against defendant.
2. To dismiss the complaint because (here state any other reason why the action should be dismissed).

Dated: September 22, 1960

Signed: Nelson Noe
Attorney for Defendant

Address: 172 Maine Street
Brunswick, Maine

STATE OF MAINE
KENNEBEC, SS.

ADMINISTRATIVE HEARING OFFICE

Docket No. _____

v.

SUBPOENA

To _____, of _____,

County of _____, and State of Maine:

You are hereby required in the name of the STATE OF MAINE to appear before the Administrative Hearing Officer at the State House, Augusta, Maine, on _____, 19____, at ___ o'clock ___ M. to give evidence of what you know relating to an administrative hearing concerning the suspension or revocation of a license granted by the plaintiff to the defendant. (or concerning the refusal of the defendant to grant a license to the plaintiff.) _____

Your failure to abide by this subpoena will result in the levying of penalties as provided by law.

Dated: _____

Administrative Hearing Officer
State House
Augusta, Maine

(SEAL)

STATE OF MAINE
KENNEBEC, SS.

ADMINISTRATIVE HEARING OFFICE

Docket No. _____

.
. .
. .
. .
. .
. .
. .
. .
. .
. .
. .

v.

SUBPOENA

DUCES TECUM

To _____, of _____,

County of _____, and State of Maine:

You are hereby required in the name of the STATE OF MAINE, to appear before the Administrative Hearing Officer at the State House, Augusta, Maine, on _____, 19____, at ___ o'clock ___ M. to give evidence of what you know relating to an administrative hearing concerning the suspension or revocation of a license granted by the plaintiff to the defendant. (or concerning the refusal of the defendant to grant a license to the plaintiff.) _____

You are also required to bring with you and produce at the same time and place _____

and all other records or documents which you have in your custody or under your control concerning the above hearing.

Your failure to abide by this subpoena will result in the levying of penalties as provided by law.

Dated: _____

Administrative Hearing Officer
State House
Augusta, Maine

(SEAL)

RETURN OF SERVICE OF SUBPOENA

STATE OF MAINE

_____, SS.

On _____, 19 ____, I served the within
subpoena on _____,
by delivering a copy of it to him in hand.

Sheriff, Deputy Sheriff, or
person 18 years old or over

| | |
|---------------------|----------|
| Service | \$ |
| Travel | |
| _____ miles one way | |
| Postage | |
| Total | \$ _____ |

STATE OF MAINE
KENNEBEC, SS.

ADMINISTRATIVE HEARING OFFICE

Docket No. _____

v.

.
. .
. .
. .
. .
. .
. .
. .
. .
. .
. .
. .
. .
. .
. .

AGREEMENT FOR

DOCKET ENTRY

The following docket entry may be made by agreement of counsel:

Dated: _____

Attorney for Plaintiff

Attorney for Defendant

Date approved: _____

Administrative Hearing Officer

(SAMPLE FILING BACK)

STATE OF MAINE
KENNEBEC, SS.

ADMINISTRATIVE HEARING OFFICE

Docket No. _____

MAINE REAL ESTATE COMMISSION

v.

JOHN DOE

ANSWER

From the Office of:

Nelson Noe, Esq.
172 Maine Street
Brunswick, Maine

CERTIFICATE OF ADOPTION

On _____, 1962, the preceding
Rules and Forms were adopted by majority vote of

Any rules of hearing procedure previously adopted
are hereby repealed and replaced by these Rules.

Any contested case commenced under rules previously
adopted shall be completed under those rules.

Signed: _____
Secretary, Clerk, or other
Recording Officer