RULES
OF
THE TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

CHAPTER 1360-04-01
UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES

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1360-04-01-.01 SCOPE.

(1) Subject to any other applicable federal or state law, these rules shall govern contested case proceedings before all agencies that have adopted these rules, and will be relied upon by administrative judges in all contested cases utilizing administrative judges from the Administrative Procedures Division of the Office of the Secretary of State (whether sitting alone or with the agency), except when, pursuant to T.C.A. § 4-5-219(d), an agency has lawfully adopted a rule that is contrary to a provision of these rules. However, Rule 1360-04-01-.20 applies to all administrative judges and hearing officers of the State of Tennessee in all matters.

(2) Any provision of these rules may be suspended at the discretion of the presiding administrative judge or hearing officer when clearly warranted in the interests of justice, consistent with the requirements of the Uniform Administrative Procedures Act and other applicable law.

(3) In any situation that arises that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow when appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

(4) Agencies are encouraged to adopt their own rules of procedure to address specific topics that are unique to the type of cases conducted by an agency, to whatever extent these rules do not address such topics.

Authority: *T.C.A. §§ 4-5-219 and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.02 DEFINITIONS.

The terms defined by the Uniform Administrative Procedures Act (UAPA), Tennessee Code Annotated Title 4, Chapter 5, shall have the same meaning for the purpose of these rules, unless the context otherwise requires, in addition to the following:

(1) Administrative Judge - The term "administrative judge" shall be defined in the same manner as defined by T.C.A. § 4-5-102(1). Wherever the term "administrative judge" is used in these rules, it is intended to include reference to the term "hearing officer," in cases in which hearing officers conduct the proceedings, as defined by T.C.A. § 4-5-102(4).

(2) Administrative Procedures Division - The Administrative Procedures Division of the Office of the Secretary of State.

(3) Burden of Proof - The "burden of proof" refers to the duty of a party to show by a preponderance of the evidence, except when other law or rule has created a different standard, that an allegation is true or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue, except when other laws or rules have created an exception to this general rule. The administrative judge makes all decisions regarding which party has the burden of proof on any issue.

(4) Filing - Unless otherwise provided by law or by these rules, "filing" means actual receipt by the entity designated to receive the required materials.

(5) Petitioner - The "petitioner" in a contested case proceeding is the "moving" party, i.e., the party who initiated the proceedings. The petitioner usually bears the ultimate burden of proof and will therefore present his or her proof first at a contested case hearing. In some cases, however, the party who initiated the proceedings will not be the party with the burden of proof on all issues. In such cases, the administrative judge will determine the order of proceedings, considering the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand.

(6) Pleadings - "Pleadings" are written statements of the facts and law that constitute a party's position or point of view in a contested case and that, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form—for example, a "Notice of Hearing and Charges," "Petition for Hearing," or "Answer"—or, when not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary, to define the parties' positions and issues in the case.

(7) Record - The record consists of all items stated in T.C.A. § 4-5-319 (e.g., pleadings, orders, or other materials filed in a contested case proceeding), including the exhibits admitted into evidence at a hearing and the transcript, if filed. The electronic case file is the official record of proceedings conducted by the Administrative Procedures Division.

(8) Respondent - The "respondent" in a contested case proceeding is the party who is responding to the charges or other action brought by the "petitioner."

(9) "UAPA" - The Uniform Administrative Procedures Act, located at Tennessee Code Annotated Title 4, Chapter 5.

Authority: *T.C.A. §§ 4-5-219, 4-5-301(b), 4-5-312, and 4-5-321; Cross reference T.C.A. § 4-5-102.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment*

(Rule 1360-04-01-.02, continued)
filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.

1360-04-01-.03 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

(1) All pleadings, petitions for review, and any other materials required to be filed with an agency or the Administrative Procedures Division by a time certain shall be filed by delivering such materials in the manner directed by the applicable agency or the Administrative Procedures Division, so long as they are actually received within the required time period.

(2) Every pleading, written motion, and other document filed with the Administrative Procedures Division shall be signed by the attorney of record or if the party is not represented by an attorney shall be signed by the party. An electronic signature may be used to sign a document and shall have the same force and effect as a written signature. Each document shall state the signer's address, telephone number, email address, and Tennessee board of professional responsibility number, if any.

(3) Materials shall be filed with the Administrative Procedures Division either electronically or by facsimile, unless both are impracticable. If a party is unable to file electronically or by facsimile, documents may be filed in person or by mail at the address designated by the Administrative Procedures Division, which is available by contacting the Administrative Procedures Division or by visiting the Tennessee Secretary of State's website.

(4) Once a case has been initiated with the Administrative Procedures Division, all pleadings and other materials shall be filed with the Administrative Procedures Division and shall include the Administrative Procedures Division case number on the first page. In contested cases heard before the Administrative Procedures Division, petitions for agency review of an initial order and for agency reconsideration or stay of a final order shall be filed with both the agency and the Administrative Procedures Division. However, once a case in which an administrative judge issued an initial order is being reviewed by an agency commissioner for the issuance of a final order, or a case is on judicial review pursuant to T.C.A. § 4-5-322, no further filings need be made with the Administrative Procedures Division except the agency commissioner's final order or a reviewing court's order.

(5) All materials filed with the Administrative Procedures Division will be stamped with the date and time of receipt as soon as is practicable after actual receipt of the filings. The filing party may request that a copy of the filed document, as stamped received, be returned to the filing party via either mail or electronically, or at the time of filing if filed in person with the Administrative Procedures Division. If the filing was submitted by mail and the filing party requests a return stamped copy by mail, the filing must be submitted with a postage pre-paid envelope for use by the Administrative Procedures Division. If no pre-paid envelope is provided, the Administrative Procedures Division will instead send the stamped copy of the filing via electronic mail if an electronic mail address is available.

(6) All filings received by 11:59 p.m. Central Time on a day that the Administrative Procedures Division is open for business shall be considered filed that day. In the event the filing is received on a weekend, state observed holiday, or other non-business day, the filing shall be considered filed on the next business day.

(7) All personally identifiable information (PII), protected health information (PHI), and any other confidential information, including social security numbers, shall be redacted from all documents prior to filing.

(Rule 1360-04-01-.03, continued)

(8) Depositions, interrogatories, requests for documents, requests for admissions, and responses thereto should not be filed with the Administrative Procedures Division unless they are to be considered by the administrative judge for any purpose in the proceeding.

(9) Copies of any and all materials filed with the agency or Administrative Procedures Division in a contested case shall also be served upon all parties, or upon their counsel once counsel has made an appearance. Any such material shall contain a statement indicating that copies have been served upon all parties, specifying the date and manner of service. The statement should be signed by the person who served the material. Service may be by mail, by electronic mail in the manner provided by the Tennessee Rules of Civil Procedure, or by hand delivery.

(10) Any party to a contested case proceeding before the Administrative Procedures Division may request an electronic copy of the record in the case at no cost. The Administrative Procedures Division may require satisfactory proof, as determined by the Administrative Procedures Division, that the requesting individual is a party to the case, a party representative, or counsel for a party before providing any requested documentation. All other requests for documents pertaining to any contested case before the Administrative Procedures Division must be requested by means of a Public Records Request, as contemplated under Tennessee law and the Public Records Policy for the Department of State. The Administrative Procedures Division may provide the parties either a physical or electronic copy of the record. Unless a law or rule requires otherwise, if a physical copy is requested, then a party may be charged copying fees consistent with those required for a Public Records Request.

Authority: *T.C.A. §§ 4-5-219 and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.04 TIME.

(1) In computing any period of time prescribed or allowed by statute, rule, or order, the date of the act, event, or default, after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, state-observed holiday, or other non-business day, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, state-observed holidays, and other non-business days shall be excluded in the computation.

(2) Except in regard to petitions for review under T.C.A. §§ 4-5-315, 4-5-317, and 4-5-322, or when otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the agency or the administrative judge may, at any time, (a) with or without motion or notice order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect. Nothing in this section shall be construed to allow any ex parte communications concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.

Authority: *T.C.A. §§ 4-5-219 and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.05 COMMENCEMENT OF CONTESTED CASE PROCEEDINGS.

(1) Commencement of Action - A contested case proceeding may be commenced by original agency or public action, by appeal of a person from an agency action, by request for hearing by an affected person, or by any other lawful procedure.

(2) Notice of Hearing - In every contested case, a notice of hearing shall be issued, filed, and served by the agency, which notice shall comply with T.C.A. § 4-5-307(b). When an administrative judge from the Administrative Procedures Division will be utilized, a contested case is commenced with the Administrative Procedures Division by the agency's filing of a notice of hearing, or similar document otherwise provided by law. If the law otherwise provides, a non-agency person or other entity may file the notice of hearing in order to commence a contested case proceeding with the Administrative Procedures Division.

(3) Supplemented Notice - In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later writings. In certain cases, some requirements of this subsection may be satisfied during the course of a pre-hearing conference.

(4) Filing of Documents - When a contested case proceeding is commenced with the Administrative Procedures Division, the agency shall file with the Administrative Procedures Division a notice of hearing along with all of the papers that are relevant to the notice of hearing, such as pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the agency.

(5) Answer - A responding party may file an answer, or the administrative judge may require a responding party to file an answer, to the charges set out in the notice of hearing or other initial pleading. The responding party should file its answer with the Administrative Procedures Division if the Administrative Procedures Division will be conducting the proceedings, or the agency in cases when the agency is conducting the proceedings, in which the party may:

(a) Object to the notice upon the ground that it does not state acts or omissions upon which the agency may proceed;

(b) Object on the basis of lack of jurisdiction over the subject matter;

(c) Object on the basis of lack of jurisdiction over the person;

(d) Object on the basis of insufficiency of the notice;

(e) Object on the basis of insufficiency of service of the notice;

(f) Object on the basis of failure to join an indispensable party;

(g) Generally deny all the allegations contained in the notice or state that the responding party is without knowledge to each and every allegation, both of which shall be deemed a general denial of all charges;

(h) Admit in part or deny in part allegations in the notice and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues; and

(i) Assert any available defense.

(6) Motion for More Definite Statement - Within two (2) weeks after service of the notice of hearing in a matter, or at any later time with the permission of the administrative judge for

(Rule 1360-04-01-.05, continued)

good cause shown, a party may file a motion for more definite statement pursuant to T.C.A. § 4-5-307 on the ground that the notice or other original pleading is so indefinite or uncertain that one cannot identify the transaction or facts at issue or prepare a defense. The administrative judge may order a more definite statement to be provided by a date certain and may continue the hearing until at least ten (10) days after a more definite statement is provided.

(7) Amendment to Notice - An amendment to the notice of hearing or other initial pleading may be filed and served within fifteen (15) business days from service of the initial notice and before an answer is filed, unless a party shows to the administrative judge that undue prejudice will result from the amendment. Such an amendment shall clearly identify how the original pleading has been amended. Otherwise, the notice of hearing or other initial pleading may only be amended by written consent of the non-amending party, or parties, or by leave of the administrative judge, and leave shall be freely given when justice so requires. No amendment may introduce a new statutory violation without original service and running of times applicable to service of the initial notice of hearing or other initial pleading. The administrative judge may grant a continuance, if necessary, to assure that a party has adequate time to prepare for a hearing in response to an amendment.

(8) 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 in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, but failure to so amend does not affect the result of the determination of these issues. If evidence is objected to at the hearing on the ground that it is not within scope of the issues contained in the pleadings, then the administrative judge may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice its defense. The administrative judge may grant a continuance to enable the objecting party to have reasonable notice of the amendments.

(9) Communications - When a contested case is commenced in which an administrative judge from the Administrative Procedures Division will be conducting the proceedings, the parties may not communicate directly with the administrative judge via electronic mail unless all parties are included as a recipient of the message or unless the communication is otherwise authorized by T.C.A. § 4-5-304. In no event may an electronic message between the parties and an administrative judge, or any attachment thereto, be treated as a filing. All documents for filing must be filed in accordance with Rule 1360-04-01-.03.

(10) Withdrawal/Nonsuit/Voluntary Dismissal - Any petitioner seeking to voluntarily dismiss their case prior to the hearing may do so by filing a written notice or by giving oral notice of dismissal to the parties and the administrative judge or agency conducting the proceedings.

Authority: *T.C.A. §§ 4-5-219, 4-5-301, 4-5-307, 4-5-308, 4-5-312, 4-5-313, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.06 SERVICE OF NOTICE OF HEARING.

(1) In any case in which a party has requested a hearing from an agency and provided the agency with an address, a copy of the notice of hearing shall, within a reasonable time before the hearing, be served on the party to be affected at the address provided, by certified or registered mail, personal service, or service by the methods set forth in the Tennessee Rules of Civil Procedure.

(Rule 1360-04-01-.06, continued)

(2) In any case in which an agency is initiating a contested case against a party by bringing charges, by attempting to take action against a license, or by other similar action, a copy of the notice of hearing shall be served upon the party to be affected no later than thirty (30) days prior to the hearing date. Except as provided in paragraph (3) below, service in such a case shall be by personal service, return receipt mail or equivalent carrier, such as FedEx, with a return receipt; a person making personal service on a party shall return a statement indicating the time and place of service, and a return receipt must be signed by the party to be affected. However, if the party to be affected evades or attempts to evade service, service may be made by leaving the notice or a copy thereof at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein, whose name shall appear on the proof of service, return receipt card, or equivalent proof of delivery. Service may also be made by delivering the notice or copy to an agent authorized by appointment or by law to receive service on behalf of the individual served, or by any other method allowed by law in judicial proceedings.

(3) When the law governing an agency includes a statute allowing for service of the notice by mail without specifying the necessity for a return receipt, and the statute requires a person to keep the agency informed of his or her current address, service of notice shall be complete upon placing the notice in the mail in the manner specified in the statute, to the last known address of such person. However, in the event of a motion for default when there is no indication of actual service on a party, the following circumstances will be taken into account in determining whether to grant the default, in addition to whether service was complete as defined above:

(a) Whether any other attempts at actual service were made;

(b) Whether and to what extent actual service is practicable in any given case;

(c) What attempts were made to get in contact with the party by telephone or otherwise; and

(d) Whether the agency has actual knowledge or reason to know that the party may be located elsewhere than the address to which the notice was mailed.

(4) The methods of service authorized and time limits required pursuant to paragraphs (1) through (3) of this rule shall apply only to the initial notice of hearing required to be filed pursuant to Rule 1360-04-01-.05(2), which is intended by the filing agency to memorialize the commencement of a contested case proceeding as described by Rule 1360-04-01-.05(1). All other documents including, but not limited to, supplemented notice pursuant to Rule 1360-04-01-.05(4), and orders of continuances that are ordered or required by statute or rule to be served during the course of the resulting contested case proceeding shall not be required to be served by return receipt mail or its equivalent, or by personal service.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-301, 4-5-307, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendment filed February 27, 2004; effective June 28, 2004. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.07 DECLARATORY ORDERS.

(1) Any affected person may petition an agency for a declaratory order as to the validity or the applicability of a statute, rule, or order within the primary jurisdiction of the agency.

(Rule 1360-04-01-.07, continued)

(2) The petition seeking a declaratory order shall be filed in writing with the agency. Any challenge to the applicability of a statute or rule must comply with the procedural requirements for a declaratory order, and a challenge to the applicability of a statute or rule will not be entertained without compliance with these requirements.

(3) In the event the agency convenes a contested case hearing pursuant to this rule and T.C.A. § 4-5-223, in which an administrative judge from the Administrative Procedures Division of the Office of the Secretary of State (whether sitting alone or with the agency) will be utilized, then the Administrative Procedures Division shall be notified immediately and shall be promptly provided with electronic copies of all pleadings, motions, objections, etc.

Authority: *T.C.A. §§ 4-5-219, 4-5-223, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.08 REPRESENTATION BY COUNSEL.

(1) Any party to a contested case hearing may be advised and represented, at the party's own expense, by a licensed attorney.

(2) Any party to a contested case may represent himself or herself or, in the case of a corporation or other artificial person, may participate through a duly authorized representative such as an officer, director or appropriate employee. However, such officer may not undertake any activities that constitute the unauthorized practice of law.

(3) A party to a contested case hearing may not be represented by a non-attorney, except in any situation when state or federal law so permits.

(4) The State shall notify all parties in a contested case hearing of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.

(5) Entry of an appearance by counsel shall be made by:

(a) The filing of pleadings;

(b) The filing of a formal or informal notice of appearance; or

(c) Appearance as counsel at a pre-hearing conference or a hearing.

(6) After appearance of counsel has been made, all pleadings, motions, and other documents shall be served upon such counsel.

(7) Counsel wishing to withdraw shall file a Motion to Withdraw as Counsel, in accordance with Rules 1360-04-01-.03 and 1360-04-01-.09.

(8) Out-of-state counsel shall comply with T.C.A. § 23-3-103(a) and Tennessee Supreme Court Rule 19, except that if the proceeding is conducted by the Administrative Procedures Division, then the affidavit referred to in Tennessee Supreme Court Rule 19 and a Motion to Appear Pro Hac Vice shall be filed with the Administrative Procedures Division for consideration by the presiding administrative judge in the matter in which counsel wishes to appear.

(Rule 1360-04-01-.08, continued)
Authority: *T.C.A. §§ 4-5-219, 4-5-301, 4-5-305, 4-5-312, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.09 PRE-HEARING MOTIONS.

(1) Scope - This rule applies to all motions made prior to a hearing on the merits of a contested case, except that discovery-related motions shall not be subject to Interlocutory Review by an agency under this rule. This rule does not preclude the administrative judge from convening a hearing or converting a pre-hearing conference to a hearing at any time pursuant to T.C.A. § 4-5-306(b) to consider any question of law.

(2) Motions - Parties to a contested case are encouraged to resolve matters on an informal basis; however, if efforts at informal resolutions fail, any party may request relief in the form of a motion by serving a copy on all parties and, if an administrative judge from the Administrative Procedures Division is conducting the contested case, by filing the motion with the Administrative Procedures Division. Any such motion shall set forth a request for all relief sought and shall set forth grounds that entitle the moving party to relief.

(3) Time Limits; Argument - A party may request oral argument on a motion by indicating the request on the front of the motion, or any response to the motion, at the time it is filed; however, a brief memorandum of law submitted with the motion is preferable to oral argument. Each opposing party may file a written response to a motion provided the response is filed within seven (7) days of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed unless oral argument is granted, or unless a longer or shorter time is set by the administrative judge.

(4) Oral Argument - If oral argument is requested, the motion may be argued in person, by conference telephone call, or by video conference call, as determined appropriate by the administrative judge.

(5) Affidavits and Briefs

(a) Motions and responses thereto shall be accompanied by all supporting affidavits and briefs. All motions and responses thereto shall be supported by affidavits for facts relied upon that are not of record or that are not the subject of official notice. Such affidavits shall set forth only facts which are admissible under T.C.A. § 4-5-313, and to which the affiants are competent to testify. Properly verified copies of all documents referred to in such affidavits may be attached thereto.

(b) In the discretion of the administrative judge, a party or parties may be required to submit briefs pursuant to a schedule established by the administrative judge.

(6) Disposition of Motions; Drafting the Order

(a) When a pre-hearing motion has been made in writing or orally, the administrative judge shall render a decision on the motion by issuing an order or by instructing the prevailing party to prepare and submit an order in accordance with subparagraph (b) below.

(b) If the administrative judge instructs the prevailing party on any motion to draft an appropriate order, it shall be filed if the case is being conducted by an administrative judge from the Administrative Procedures Division, or submitted to any other administrative judge, within five (5) days of the ruling on the motion, or as otherwise ordered by the administrative judge.

(Rule 1360-04-01-.09, continued)

(c) The administrative judge, after signing any order, shall cause the order to be issued forthwith to the parties, either by mail or electronically.

(7) Interlocutory Review Prior to Hearing - For cases in which an initial order will be issued pursuant to T.C.A. § 4-5-314, decisions regarding the availability of interlocutory review of an order issued on a preliminary matter shall be made, in accordance with the criteria specified in Rule 9 of the Tennessee Rules of Appellate Procedure, by the administrative judge who issued the order, upon application made by the party seeking the review. Should the request for interlocutory review be approved, the administrative judge shall specify the procedure for seeking the review, including timeframes, and shall identify the entity from whom the review should be sought. Should the reviewing entity not address the request for review within the timeframe specified by the administrative judge, the request shall be deemed denied.

Authority: *T.C.A. §§ 4-5-219, 4-5-301, 4-5-306, 4-5-308, 4-5-312, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.10 CONTINUANCES.

(1) Continuances may be granted by the administrative judge, or presiding officer of a multi-member agency if the administrative judge permits, upon good cause shown at any stage of the proceeding. The need for a continuance shall be brought to the attention of the administrative judge as soon as practicable. All requests for a continuance prior to the scheduled hearing time should be made in writing by filing a Motion for Continuance, or be made orally during a pre-hearing conference.

(2) Factors relevant to the decision of the administrative judge, or presiding officer of a multi-member agency, about whether to grant a Motion for Continuance include, but are not limited to: (1) the length of time the proceeding has been pending, (2) the reason for the continuance, (3) the diligence of the party seeking the continuance, (4) mutual consent of the parties, (5) whether such a continuance will cause a significant delay in reaching a resolution of the matter, and (6) the prejudice to either party.

(3) Under no circumstances should the parties consider the hearing to be continued absent an order or other ruling from the administrative judge or presiding officer of a multi-member agency.

Authority: *T.C.A. §§ 4-5-219, 4-5-301, 4-5-308, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.11 DISCOVERY.

(1) Parties are encouraged, when practicable, to attempt to achieve any necessary discovery informally in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed, or when the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.

(2) Upon motion of a party or pursuant to a scheduling order, the administrative judge may order that discovery be completed by a certain date.

(Rule 1360-04-01-.11, continued)

(3) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion shall:

(a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition that shows the question and objection or response if applicable;

(b) State the reason or reasons supporting the motion; and

(c) Be accompanied by a statement certifying that the moving party or the party's counsel has made a good faith effort to resolve by agreement the issues raised, and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.

(4) The administrative judge shall decide any motion relating to discovery under the Administrative Procedures Act, T.C.A. §§ 4-5-101 et seq., or the Tennessee Rules of Civil Procedure. The procedures for the consideration of such a motion are set forth at Rule 1360-04-01-.09.

Authority: *T.C.A. §§ 4-5-219, 4-5-311, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.12 INTERVENTION.

(1) All petitions to intervene in a pending contested case shall be filed in accordance with T.C.A. § 4-5-310 and shall state any and all facts and legal theories under which the petitioner claims to be qualified as an intervenor.

(2) In deciding whether to grant a petition to intervene, the following factors shall be considered:

(a) Whether the petitioner claims an interest relating to the case and that he or she is so situated that the disposition of the case may as a practical matter impair or impede his or her ability to protect that interest;

(b) Whether the petitioner's claim and the main case have a question of law or fact in common;

(c) Whether prospective intervenor interests are adequately represented; or

(d) Whether admittance of a new party will render the hearing unmanageable or interfere with the interests of justice and the orderly and prompt conduct of the proceedings.

(3) In deciding a petition to intervene, the administrative judge may impose conditions upon the intervenor's participation in the proceedings as set forth at T.C.A. § 4-5-310(c).

(4) When the validity of a statute of this state or an administrative rule or regulation of this state is drawn in question in any case, the administrative judge shall require that notice be given to the office of the Tennessee Attorney General, specifying the pertinent statute, rule or regulation, and the Attorney General's office will be permitted to intervene or to serve as co-counsel with the state's counsel, if any.

(Rule 1360-04-01-.12, continued)
Authority: *T.C.A. §§ 4-5-219, 4-5-301, 4-5-310, 4-5-312, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.13 SUBPOENA.

(1) Any party to a contested case may request blank form subpoenas, which shall then be prepared by the party. Once prepared, the parties shall submit subpoenas for issuance by the administrative judge, or other person allowable by law.

(2) If the contested case is being conducted by the Administrative Procedures Division, the requesting party should use the form subpoena available on the Administrative Procedures Division's website. If a party has no means to access the website, such a party may request a copy of the form by telephone or mail. Once the form is filled out by the requesting party, it shall be submitted electronically to the Administrative Procedures Division for issuance. If a party has no means to make the request electronically, the request may be made by telephone or mail.

(3) Once issued by the administrative judge, or other person allowable by law, a party shall then serve subpoenas by certified mail with a return receipt, or personal service. Copies of served subpoenas must be served on all parties in accordance with Rule 1360-04-01-.03(9), and all material produced must be made available for inspection, copying, testing, or sampling by all parties.

(4) If the contested case is being conducted by the Administrative Procedures Division, copies of served subpoenas must be filed with the Administrative Procedures Division.

Authority: *T.C.A. §§ 4-5-219, 4-5-311, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.14 DEFAULT AND UNCONTESTED PROCEEDINGS.

(1) Default

(a) The failure of a party to attend or participate in a pre-hearing conference, hearing, or other stage of contested case proceedings after due notice thereof is cause for holding such party in default pursuant to T.C.A. § 4-5-309. Failure to comply with any lawful order of the administrative judge or agency, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and thereby be cause for a holding a party in default.

(b) After entering into the record evidence of service of notice to an absent party, a motion may be made to hold the absent party in default and either to adjourn the proceedings or continue on an uncontested basis.

(c) The administrative judge, when sitting with an agency, advises the agency whether the service of notice is sufficient as a matter of law, according to Rule 1360-04-01-06.

(d) If the notice is held to be adequate, the agency, or administrative judge hearing a case alone, shall grant or deny the motion for default, taking into consideration the criteria listed in Rule 1360-04-01-.06, subsections (2)(a) through (2)(d), when appropriate. Grounds for the granting of a default shall be stated and shall thereafter be set forth in

(Rule 1360-04-01-.14, continued)

a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.

(e) The agency or administrative judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party may file a motion for reconsideration under T.C.A. § 4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The agency or administrative judge may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. § 4-5-317.

(2) Effect of Entry Default

(a) Unless the proceedings are continued, charges shall be dismissed as to all issues on which the petitioner bears the burden of proof if the petitioner is held in default at a contested case hearing.

(b) Upon entry into the record of the default of the respondent at a contested case hearing, the matter shall be tried as uncontested as to such respondent, unless the proceedings are continued.

(3) Uncontested Proceeding - As referred to in this rule, an uncontested proceeding is one in which a party to the proceeding is absent. When the matter is tried as uncontested, the party with the burden of proof must establish its allegations by a preponderance of the evidence.

Authority: *T.C.A. §§ 4-5-219, 4-5-309, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Rule was previously numbered 1360-04-01-.15 but was renumbered 1360-04-01-.14 with the deletion of original rule 1360-04-01-.14 filed January 8, 2024; effective April 7, 2024.Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.15 EVIDENCE IN HEARINGS.

(1) In all agency hearings, the testimony of witnesses shall be taken in open hearings except as otherwise provided by these rules or otherwise provided by law. In the discretion of the agency or upon motion of any party, witnesses may be excluded prior to or after their testimony. The standard for admissibility of evidence is set forth at T.C.A. § 4-5-313.

(2) In all cases before an administrative judge from the Administrative Procedures Division, whether sitting alone or with an agency, the administrative judge shall have the authority to order that all evidence that comes in the form of exhibits be separately filed with the Administrative Procedures Division in an electronic format consistent with Rule 1360-04-01-.03.

Authority: *T.C.A. §§ 4-5-219, 4-5-312, 4-5-313, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Rule was previously numbered 1360-04-01-.16 but was renumbered 1360-04-01-.15 with the deletion of original rule 1360-04-01-.14 filed January 8, 2024; effective April 7, 2024. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.16 REQUESTS FOR COSTS.

(1) In cases heard by administrative judges from the Administrative Procedures Division, sitting alone, whenever a statute allows for the recovery of costs or attorney's fees, the moving party shall file a motion for the actual and reasonable costs and attorney's fees incurred in order to recover such costs and fees. These may include, but are not limited to, the costs

(Rule 1360-04-01-.16, continued)

associated with the Administrative Procedures Division for docketing, filing, judges, and other costs; cost for all depositions, court reporters, and transcriptions; costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, and such other persons involved in the investigation, prosecution, and hearing of the contested matter as well as the time rendered for each service.

(2) The motion shall be accompanied by an affidavit of the attorney setting forth an itemized statement of the services rendered, the time involved, a suggestion of the fee to be awarded, and with a statement of other pertinent facts including, but not limited to, that required by Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.5, applicable case law, and such other information as may be requested by the administrative judge.

(3) To the extent the motion seeks to recover costs associated with the Administrative Procedures Division, the moving party may request that the Administrative Procedures Division provide a bill of costs. The bill of costs shall be attached to the motion as an exhibit, and those costs shall be allowed to the movant unless the administrative judge otherwise directs.

(4) The non-moving party may contest any costs or attorney's fees requested by filing a written response to the motion. If the motion is not contested, the awardable amount remains subject to the administrative judge's discretion regarding accuracy and reasonableness. Such motions shall otherwise be governed by Rule 1360-04-01-.09.

***Authority**: T.C.A. §§ 4-5-219 and 4-5-321.* ***Administrative History:** New rule filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.17 THE RECORD.

(1) Clerical Mistakes - Prior to any appeal being perfected by either party to a court, clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omissions may be corrected by the administrative judge if sitting alone, or by the agency if the matter was heard before them. Such corrections may be made at any time on the initiative of either the administrative judge or the agency, or upon motion of any party. The entering of a corrected order will not affect the dates of the original appeal or reconsideration time period.

(2) Certified Record - Once an appeal has been perfected, if the case was conducted by the Administrative Procedures Division, a party may file a request with the Administrative Procedures Division for a certified copy of the record in accordance with T.C.A. § 4-5-322. If a party believes a record, as contemplated by T.C.A. § 4-5-319, certified by an administrative judge pursuant to T.C.A. § 4-5-322, contains anything improperly included or misstated, then a motion may be filed with the Administrative Procedures Division to correct or modify such a certification. However, in no event shall such a certification add to or subtract from the record of what transpired while the case was pending with the Administrative Procedures Division. If a transcript(s) was not filed with the Administrative Procedures Division at the time of the certification, then no transcript will be included as part of the record certified by the administrative judge.

(3) Recordings and Transcripts - The hearing of a case shall be recorded by the agency, either by audio or video recording, stenography, or both. Such recording shall be maintained by the agency. If the case was conducted by the Administrative Procedures Division and a transcript is filed with the Administrative Procedures Division, such filing will be maintained as part of the Administrative Procedures Division record. All other oral proceedings may likewise be

(Rule 1360-04-01-.17, continued)

recorded by either party, at their own expense, upon advising the administrative judge that the proceeding is being recorded, or by order of the administrative judge.

Authority: *T.C.A. §§ 4-5-219 and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.18 PETITIONS FOR RECONSIDERATION AND STAYS TO MULTI-MEMBER AGENCIES.

(1) Unless agency rules state otherwise, the chair of a multi-member agency or any other of its members that the multi-member agency authorizes may in his or her discretion, by written order served on all parties, deny petitions for reconsideration of final orders or grant such petitions and schedule a hearing for further proceedings in front of a quorum of the multi-member agency, in accordance with T.C.A. § 4-5-317.

(2) Unless agency rules state otherwise, the chair of a multi-member agency or any other of its members that the multi-member agency authorizes may in his or her discretion, by written order served on all parties, schedule a hearing in front of a quorum of the multi-member agency on a petition for a stay of the effectiveness of a final order filed under T.C.A. § 4-5-316.

(3) Hearings contemplated by subsections (1) and (2) above may be conducted by telephone conference call or via other electronic means under the requirements of T.C.A. § 4-5-312.

Authority: *T.C.A. §§ 4-5-219, 4-5-312, 4-5-314, 4-5-315, 4-5-316, 4-5-317, 4-5-318, and 4-5-321.* ***Administrative History:*** *Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987. Amendment filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.19 FILING OF FINAL ORDERS.

After an agency has made a decision in a contested case hearing conducted by the Administrative Procedures Division, whichever party is assigned the responsibility for drafting the final order shall file the signed, final order with the Administrative Procedures Division. The order shall state that it is deemed entered upon the date that it is filed with the Administrative Procedures Division, unless otherwise allowable by law. The party responsible for filing the final order with the Administrative Procedures Division shall serve a copy of the final order, timestamped by the Administrative Procedures Division, on the opposing party, or if such party is represented by counsel, on counsel for the opposing party, on the date of filing either by standard postal mail or electronically. All final orders shall contain a clear and concise statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

Authority: *T.C.A. §§ 4-5-219, 4-5-312, 4-5-318, and 4-5-321.* ***Administrative History:*** *Original rule filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*

1360-04-01-.20 CODE OF JUDICIAL CONDUCT.

Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all administrative judges and hearing officers of the State of Tennessee. However, any complaints regarding any individual administrative judge's or hearing officer's conduct under the code shall be made to the Director of the Administrative Procedures Division

(Rule 1360-04-01-.20, continued)
or hearing officer or other comparable entity with supervisory authority over the administrative judge or hearing officer, and any complaints about such supervising authority shall be made to the appointing authority.

Authority: *T.C.A. § 4-5-321.* ***Administrative History:*** *Original rule filed May 31, 1990; effective July 15, 1990. Amendments filed January 8, 2024; effective April 7, 2024.*