

Proposed Rules
of
Department of Finance and Administration
Office of Inspector General

Chapter 0620-04-02
Rules of Procedure for Contested Cases
Before the Inspector General

Presented herein are proposed amendments of Chapter 0620-04-02 of the Office of Inspector General, a division of the Department of Finance and Administration, submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Finance and Administration, Office of Inspector General, to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the office of the Department of Finance and Administration, Office of Inspector General, P.O. Box 282368, Nashville, TN., 37228 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

Should the Department receive a properly executed petition for a hearing on these proposed Rules, any individuals with disabilities who wish to participate in these proceedings should contact the Office of Inspector General to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made through the Office of Inspector General's mailing address or at (615) 687-7255.

For a complete copy of these proposed rules, please contact Swigah J. Mwakipake, Office of Inspector General, P.O. Box 282368, Nashville, Tennessee 37228, telephone 615-687-7262.

Deborah Y. Faulkner
Inspector General

The Text of the proposed rules is as follows:

New Rules
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0620-4-2-.01 Scope.

- (1) Subject to any superseding federal or state law, these rules shall govern contested case proceedings before the Inspector General that are commenced pursuant to T.C.A. §§ 71-5-2501 et seq., §§ 71-5-2601 et seq. or any other statute or rule wherein the Office of Inspector General is authorized to initiate administrative proceedings pursuant to the Uniform Administrative Procedures Act, as codified at Title 4, Chapter 5, 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 Inspector General).
- (2) In any situation that arises that is not specifically addressed by these rules, reference shall be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, as appropriate, and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.02 Definitions.

- (1) "Administrative Judge" means an agency member, agency employee or employee or official of the Office of the Secretary of State, licensed to practice law and authorized by law to conduct contested case proceedings pursuant to § 4-5-301.
- (2) "Administrative Procedures Division" or "APD" means the Administrative Procedures Division of the Office of the Secretary of State, 312 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243; Telephone (615) 741-7008.

- (3) "Burden of Proof" means the duty of a party to present evidence on and to show, by a preponderance of the evidence, 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. The administrative judge makes all decisions regarding which party has the burden of proof on any issue.
- (4) "Inspector General" means the Inspector General of the Office of Inspector General, Tennessee Department of Finance and Administration.
- (5) "Filing" means actual receipt by the Inspector General and/or by the Administrative Procedures Division of the Tennessee Secretary of State.
- (6) "Notice of Charges and Opportunity for a Hearing" means notice of an action by the Office of Inspector General to seek sanctions against a natural person or business entity subject to the statutes, rules and orders of the Inspector General and notice of the right of the person(s) to contest or otherwise dispute the imposition of such sanctions.
- (7) "OIG" means the Office of Inspector General, Department of Finance and Administration.
- (8) "Petitioner" means the "moving" party or the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof and will therefore present proof first at the 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, taking into account the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand.
- (9) "Pleadings" means written statements of facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. The form of pleadings shall be made as provided in these rules and/or in the Tennessee Rules of Civil Procedure and supplemented as required by the Inspector General and/or the Administrative Judge.
- (10) "Respondent" means the party who is responding to the charges or other action brought by the "petitioner."
- (11) "UAPA" means the Uniform Administrative Procedures Act, as amended, at T.C.A. §§ 4-5-101, et seq.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.03 Filing and Service of Pleadings and Other Materials.

- (1) All pleadings, petitions for review, and any other materials required to be filed with the Inspector General or the APD by a time certain shall be filed by delivering such materials in person or in any other manner permitted by law. All such pleadings, petitions for review and any documents or materials shall be considered as filed upon the date that they are actually received by APD or the Inspector General.
- (2) Once APD has become involved in any contested case proceeding, all pleadings and other materials required to be filed or submitted prior to the hearing of a contested case shall be filed with the Administrative Procedures Division, where they will be stamped with the

date and hour of their receipt. Petitions for agency review of an initial order and for agency reconsideration or stay of a final order may be filed with either the Inspector General or the Administrative Procedures Division and should preferably be filed with both. Whenever the Inspector General or the Administrative Procedures Division receives any such petition, it shall forward a copy to the other.

- (3) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 0620-04-02-.11.
- (4) Copies of any and all materials filed with the Inspector General or APD 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. Service may be made by any lawful means.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.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, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays 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 where otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the Inspector General 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.
 - (c) 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. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.05 Commencement of Contested Case Proceedings.

- (1) Commencement of Action: a contested case proceeding may be commenced by OIG or public action, by appeal of a person from a OIG 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 charges and opportunity for a hearing shall be issued by the OIG, which notice shall comply with T.C.A. § 4-5-307(b). Service of the notice of hearing may be effected by any lawful means.

- (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. At the discretion of the Inspector General or the Administrative Judge, some requirements of this subsection may be satisfied during the course of prehearing conferences.
- (4) **Filing of Documents:** when a contested case is commenced in which an administrative judge from the Administrative Procedures Division will be conducting the proceedings, the OIG shall provide the Administrative Procedures Division with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the OIG. Legible copies may be filed in lieu of originals.
- (5) **Answer:** a party receiving a petition for a contested case hearing in which such party is identified as a respondent shall respond to the charges set out in the notice or other original pleading by filing a written answer with the OIG as set forth in Rule 8.02 of the Tennessee Rules of Civil Procedure, unless otherwise provided in these rules or the Tennessee Rules of Civil Procedure. Failure to timely file an answer to a petition may be adjudicated as set forth in Rule 8.04 of the Tennessee Rules of Civil Procedure.
- (6) **Amendment to Notice:** the parties to a contested case hearing may amend and supplement their pleadings in accordance with Rule 15 of the Tennessee Rules of Civil Procedure.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.06 Service of Notice of Hearing.

- (1) In any case in which a party has requested a hearing from the OIG and provided the OIG with an address, a copy of the notice of hearing shall, within a reasonable time before the hearing, be delivered to the party to be affected at the address provided, by certified or registered mail, personal service, or by service by the methods set forth in paragraphs (2) and (3) of this rule.
- (2) Except as provided in paragraph (3) below, service of the notice of charges and opportunity for a hearing shall be proven by any of the following methods:
 - (a) personal service with return of a statement indicating the time and place of service by a person who made the personal service;
 - (b) certified return receipt mail or equivalent carrier with a return receipt signed by the party to be affected;
 - (c) proof of delivery of overnight or second-day mail by the U.S. Post Office or by a parcel delivery carrier, regardless of whether the recipient of such mail signed a receipt for delivery of overnight or second-day mail; or
 - (d) delivery 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 service of a summons, process or notice is provided for or permitted by registered, or certified mail or through a private delivery service under the laws of Tennessee and the addressee or the addressee's agent refuses to accept delivery and it is so stated in the return receipt or notice of delivery, the written return receipt or notice of delivery, if returned and

filed in the action, shall be deemed an actual and valid service of the notice of charges and opportunity for a hearing or of any other pleadings, letters, motions or orders. Service by mail is complete upon mailing. For purposes of this Chapter, a notation by the mail carrier or delivery service that a properly addressed registered, certified, or privately delivered mailing is "unclaimed" or other similar notation is sufficient evidence of the respondent's refusal to accept delivery.

- (4) The methods of service authorized 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 0620-04-02-.05(2) which is intended by the OIG to memorialize the commencement of a contested case proceeding as described by rule 0620-04-02-.05. All other documents including, but not limited to, supplemented notice pursuant to rule 0620-04-02-.05, and notices 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, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.07 Declaratory Orders.

- (1) Any affected person may petition the Inspector General for a declaratory order as to the validity or the applicability of a statute, rule or order within the primary jurisdiction of the Inspector General.
- (2) The petition seeking a declaratory order shall be filed in writing with the Inspector General.
- (3) The form of such petitions shall be substantially as follows:

State of Tennessee
Department of Finance and Administration
Before the Inspector General of the Office of Inspector General
Petition for Declaratory Order

1. Name of Petitioner

2. Address of Petitioner

3. Agency rule, order, or statutory provision on which declaratory order is sought

4. Statement of the facts of the controversy and description of how this rule, order or statute affects or should affect the Petitioner.

5. Description of requested ruling _____

Signature of Petitioner

Address

Date

- (4) In the event the agency convenes a contested case hearing pursuant to this rule and T.C.A. § 4-5-223, then the Administrative Procedures Division shall be notified immediately and shall be provided originals or legible copies of all pleadings, motions, objections, and other relevant documents.
- (5) The provisions of this Chapter governing contested case hearings conducted under Title 71, Chapters 5 and 6, of the Tennessee Code Annotated shall likewise apply to any declaratory order hearing commenced with respect to Title 71, Chapters 5 and 6, of the Tennessee Code Annotated.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.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 Tennessee-licensed attorney.
- (2) Any individual party to a contested case or declaratory action may represent himself/herself pro se or, in the case of a corporation or other artificial person, may participate through a Tennessee-licensed attorney appointed to represent it. A corporation, partnership, Limited Liability Company or other artificial person may not represent itself pro se in an administrative proceeding or appeal therefrom nor can it be represented pro se by an officer or other non-lawyer agent.
- (3) A party to a contested case hearing may not be represented by a non-attorney, except in any situation where federal law so requires or state law specifically so permits.
- (4) The OIG 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) filing of pleadings;
 - (b) filing of a formal or informal notice of appearance; or
 - (c) appearance as counsel at a prehearing 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 give written notice to the agency and the Administrative Procedures Division.
- (8) Out-of-state counsel shall comply with T.C.A. § 23-3-103(a) and Supreme Court Rule 19, except that the affidavit referred to in Supreme Court Rule 19 shall be filed with the director of the Administrative Procedures Division or, as appropriate, with the OIG, with a copy to the administrative judge presiding in the matter in which counsel wishes to appear.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.09 Prehearing Conferences; 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 prehearing 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 is conducting the contested case, by filing the motion with APD. Any such motion shall set forth a request for all relief sought, and shall set forth grounds which entitle the moving party to relief.
- (3) Time Limits; Argument - A party may request oral argument on a motion; 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 fifteen (15) days of the date the motion was filed. A motion shall be considered submitted for disposition fifteen (15) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the Inspector General or administrative judge.
- (4) Oral Argument - If oral argument is requested, the motion may be argued by conference telephone call.
- (5) Affidavits; Briefs and Supporting Statements.
 - (a) Motions and responses thereto shall be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses thereto shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under T.C.A. § 4-5-313, and to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto.
 - (b) In the discretion of the administrative judge or Inspector General, a party or parties may be required to submit briefs or supporting statements pursuant to a schedule established by the administrative judge.
- (6) Disposition of Motions; Drafting the Order.
 - (a) When a prehearing 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 (b) below.
 - (b) The prevailing party on any motion shall draft an appropriate order, unless waived by the administrative judge. This order shall be submitted to the administrative judge within five (5) days of the ruling on the motion, or as otherwise ordered by the administrative judge.
 - (c) The administrative judge after signing any order shall cause the order to be served forthwith upon the parties.

(7) Interlocutory Review Prior to Hearing.

- (a) Any party who wishes to seek interlocutory review by the Inspector General of an administrative judge's decision on a preliminary matter shall make application to the administrative judge for permission to seek such review.
- (b) If the administrative judge determines that interlocutory review is appropriate, an order may be entered specifying the procedures for obtaining such review. The administrative judge may in such order set a specific time period, at the conclusion of which the requested review shall be deemed to have been denied by the OIG if no action has been taken by the Inspector General to decide the matter or extend the time for action.
- (c) If no specific time period is set, the matter may be set for consideration by the Inspector General at a time certain.
- (d) Nothing in this Rule shall preclude the right to seek interlocutory judicial review under T.C.A. § 4-5-322(a).
- (e) It is the intent of this Rule that interlocutory review by the Inspector General not be granted where to do so would significantly delay the resolution of the proceedings, unless the administrative judge deems the issue to be one on which the Inspector General's determination is particularly appropriate for policy or other reasons.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.10 Continuances.

- (1) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the Inspector General or administrative judge as soon as practicable.
- (2) Any case may be continued by mutual consent of the parties when approved by the Inspector General or administrative judge.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.11 Discovery.

- (1) Parties are encouraged where 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 where 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, except as provided in this Rule.
- (2) Depositions and Production of Documents.
 - (a) Depositions of parties to a contested case hearing commenced under Title 71, Chapters 5 and 6 of the Tennessee Code Annotated shall be taken within the State of Tennessee, at the expense of the party taking the deposition, or as agreed by the parties. The Inspector General or administrative judge may prescribe the time and manner of the taking of the deposition.

(b) Production of documents and things and entry upon land for inspection and other purposes.

1. Any party may serve on any other party a request:

- (i) to produce and/or permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Tenn. R. Civ. P. 26.02 and which are in the possession, custody or control of the party upon whom the request is served; or
- (ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Tenn. R. Civ. P. 26.02.

2. Procedure. A party making a request as set forth in part (2)(b)1. of this Rule may, without leave of the Inspector General or administrative judge, be served upon the petitioner after commencement of the action and upon any other party with or after service of the notice of hearing as provided in Rule 0620-04-02-.06 upon that party. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. Concerning the production:

- (i) The party upon whom the request is served shall serve a written response within thirty (30) days after the service of the request, except that a respondent may serve a response within forty-five (45) days after service of the notice of hearing upon that respondent. The Inspector General or administrative judge may allow a shorter or longer time for the written response. The response shall state, with respect to each item or category, that production and/or inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Tenn. R. Civ. P. 37.01 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.
- (ii) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (iii) Production of documents for inspection shall be made to the party requesting such documents via personal service, certified return receipt mail or equivalent carrier with a return receipt signed by the party to be affected, overnight or second-day mail by the U.S. Post Office or by a parcel delivery carrier, or by delivering the documents to an agent

authorized by appointment or by law to receive service on behalf of the party.

- (iv) The reasonable cost of production of documents shall be born by the party requesting such documents.
- (3) Upon motion of party or upon the Inspector General's or administrative judge's own motion, the Inspector General or administrative judge may order that the discovery be completed by a certain date.
- (4) Production of documents for inspection by the Inspector General shall be made at the offices of the OIG or as agreed upon by the parties.
- (5) 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 which 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 his or her 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.
- (6) The Inspector General or the administrative judge shall decide any motion relating to discovery under this rule, the UAPA and/or the Tennessee Rules of Civil Procedure, as applicable.
- (7) Other than as provided above, discovery materials need not be filed with either the Inspector General or APD.
- (8) This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.12 Intervention.

- (1) All petitions for leave to intervene in a pending contested case or declaratory action 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 by the Inspector General and the administrative judge:
 - (a) Whether the petitioner claims an interest relating to the case and that s/he is so situated that the disposition of the case may as a practical matter impair or impede the petitioner's 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 already adequately represented; and
 - (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 Inspector General or administrative judge shall require that notice be given 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 OIG's counsel.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.13 Subpoena.

The Inspector General or administrative judge at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas, as provided in T.R.C.P. 45.

Authority: T.C.A. §§ 4-5-202, 71-5-2518, 71-5-2604.

0620-4-2-.14 Order of Proceedings.

- (1) This shall be the order of proceedings for the hearing of contested cases when an administrative judge is hearing a case with the Inspector General:
- (a) Administrative judge may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) Hearing is called to order by the administrative judge.
 - (c) Administrative judge introduces self and gives a very brief statement of the nature of the proceedings, including a statement of the administrative judge's role of making legal rulings.
 - (d) Administrative judge introduces the Inspector General and states that the final decision in the proceedings will be made by the Inspector General alone, after being charged on the law by the administrative judge.
 - (e) Administrative judge then calls on the respondent to ask if the respondent is represented by counsel, and if so, counsel is introduced. The administrative judge then introduces the petitioner's counsel and any other officials who may be present at the hearing.
 - (f) The administrative judge states what documents the record contains.
 - (g) In appropriate cases, the petitioner reads the charges as set out in the notice with regard to the respondent, while giving references to the appropriate statutes and rules.

- (h) In appropriate cases, the respondent is asked how he or she pleads to the charges; if he or she admits the charges, no further proof may be necessary, other than introduction of evidence pertaining to the proper penalty, if appropriate. If he or she denies the charges or fails to admit them, the hearing proceeds.
- (i) The administrative judge swears the witnesses.
- (j) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room and the state or any other party that is a corporation or other artificial person may have one appropriate individual, who may also be a witness, act as its party representative.
- (k) Any preliminary motions, stipulations, or agreed orders are entertained.
- (l) Opening statements are allowed by both the petitioner and the respondent.
- (m) Moving party (movant-usually petitioner) calls witnesses and questioning proceeds as follows:
 - 1. movant questions;
 - 2. non-movant cross-examines;
 - 3. movant redirects;
 - 4. non-movant re-cross-examines;
 - 5. Inspector General questions; and
 - 6. Further questions by petitioner and respondent.
- (n) Other party (usually the Respondent) calls witnesses and questioning proceeds as follows:
 - 1. (Respondent) other party questions.
 - 2. (Petitioner) moving party cross-examines.
 - 3. (Respondent) other party redirects.
 - 4. (Petitioner) moving party re-cross-examines.
 - 5. Inspector General questions.
 - 6. Further questions by respondent and petitioner.
- (o) Petitioner and respondent allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above.
- (p) Closing arguments are allowed to be presented by the petitioner and by the respondent.

- (q) The administrative judge prepares to turn proceedings over to the Inspector General by charging the Inspector General as to the applicable law, requisites of the final order, and other pertinent matters. The administrative judge will take no part in any finding of fact or conclusion of law by the Inspector General.
 - (r) The administrative judge then turns the proceedings over to the Inspector General for deliberation and the decision.
 - (s) The Inspector General deliberates in public and reaches a decision which is communicated to the parties or takes the case under advisement and schedules public deliberations for a later time.
- (2) The order of proceedings for the hearing of contested cases when an administrative judge is hearing the case alone is identical to the procedure outlined in paragraph (1) with the exception that the Inspector General is not present to participate. The parties are informed that an Initial Order will be written and sent to the parties and that the Initial Order will inform the parties of their appeal rights.
 - (3) Paragraphs (1) and (2) of this rule are intended to be merely a general outline as to the conduct of a contested case proceeding and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.15 Default and Uncontested Proceedings.

- (1) Default.
 - (a) The failure of a party to request a hearing after receiving actual service of notice of charges and opportunity for a hearing, or to attend or participate in a prehearing conference, hearing or any 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 Inspector General, 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 of 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 to adjourn the proceedings or continue on an uncontested basis.
 - (c) Upon entry into the record evidence of service of notice of charges and opportunity for a hearing as provided in Rule 0620-04-02-.06, the Inspector General may deem the respondent(s) in default and may consider the adequacy of the pleadings and the evidence and the evidence supporting such pleadings in considering whether to issue an initial order based upon the evidence and the respondent's failure to request a hearing.
 - (d) The administrative judge, when sitting with the Inspector General, advises the agency whether the service of notice is sufficient as a matter of law, according to rule 0620-04-02-.06.

- (e) If the notice is held to be adequate, the Inspector General, or administrative judge hearing a case alone, shall grant or deny the motion for default, taking into consideration the criteria listed in rule 0620-04-02-.06, where appropriate. Grounds for the granting of a default shall be stated and shall thereafter be set forth in a written order. If a default is granted, the proceedings may then be adjourned or conducted without the participation of the absent party.
 - (f) The Inspector General or administrative judge shall serve upon all parties written notice of entry of default for failure to appear. The defaulting party, no later than fifteen (15) days after service of such notice of default, 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 Inspector General 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 of Default.
- (a) Upon entry into the record of the default of the petitioner at a contested case hearing, the charges shall be dismissed as to all issues on which the petitioner bears the burden of proof, unless the proceedings are adjourned.
 - (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 adjourned.
 - (c) Upon the entry into the record of the default of the respondent(s) to request a hearing after being served with a notice of charges and opportunity for a hearing as provided in Rule 0620-04-02-.06, the Inspector General may issue an initial order granting or denying the relief sought in the notice of charges. The respondent(s) may seek to set aside such initial order as provided in T.C.A. § 4-5-317.
- (3) Uncontested Proceeding. When a contested case hearing is tried as uncontested, the petitioner has the burden of proof of establishing affirmative allegations of a prima facie case by a preponderance of the evidence presented.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.16 Evidence in Hearings

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

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.17 Clerical Mistakes.

Prior to any appeal being perfected by either party to Chancery 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 Inspector General, if the matter was heard before him/her, at any time on the initiative of either the administrative judge or the Inspector General or on motion of any party and after such notice, if any, as the administrative judge may require. The entering of a corrected order will not affect the dates of the original appeal time period

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.18 Filing of Final Orders.

A copy of all final orders entered by the Inspector General or his/her designee in a contested case hearing shall be filed with APD. The order shall state that it is deemed entered upon the date that it is filed with APD. The person responsible for drafting and filing the final order with APD shall assure that a copy of the final order with its filing date stamped by APD is mailed to the opposing party, or if such party is represented by counsel, to counsel for the opposing party on the date of filing. 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. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

0620-4-2-.19 Review of Final Orders.

Review of initial or final orders shall be conducted by the Inspector General or, at the sole discretion of the Inspector General, by an individual designated to review initial or final orders. Such individual shall not have participated in or have received any remuneration as an advocate, investigator, or interested party in the subject of the litigation. An individual designated by the Inspector General to review initial or final orders shall comply with all statutory requirements regarding the issuance of a final order, as provided at T.C.A. §§ 4-5-301 – 325.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-5-2518, 71-5-2604.

The proposed rule amendments set out herein were properly filed in the Department of State on the 8th day of August, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of December. (FS 08-04-07; DBID 2647)