



ADMINISTRATIVE RULES OF MONTANA



2.43.1502 CONTESTED CASE PROCEDURES

- (1) Contested cases will be presided over and heard by a quorum of the board or a hearing examiner who may be any individual appointed by the board, including any board member.
 - (a) A party may seek to disqualify a hearing examiner only on the basis of a prehearing motion and affidavit containing an affirmative showing of prejudicial personal bias or lack of independence. The hearing examiner will rule on the motion or voluntarily disqualify himself or herself. The ruling will not be reviewed by the board.
 - (b) The hearing examiner has general authority to regulate the course of contested cases and may exercise the power and authority provided or implied by law, including 2-4-611, MCA.
 - (c) The hearing examiner may establish prehearing and hearing dates and procedures, rule on procedural matters, make proposed orders, findings and conclusions, and otherwise regulate the conduct and adjudication of contested cases as provided by law. The hearing, unless the parties stipulate otherwise, shall be conducted in the following order:
 - (i) the statement and evidence of the party opposing the board's initial decision or decision on reconsideration;
 - (ii) the statement and evidence of MPERA; and
 - (iii) rebuttal testimony.
 - (d) The contested case hearing must be conducted in Helena. The parties and their witnesses must appear in person unless, for good cause shown, the hearing examiner determines otherwise.
 - (e) The hearing examiner shall enter proposed findings of fact, conclusions of law, and order, with any necessary explanation, for review and final determination by the board.
 - (f) The jurisdiction and authority of a hearing examiner terminates upon the entry of a proposed order unless the board delegates further authority.
- (2) Exceptions to proposed findings of fact, conclusions of law, and orders that are allowed by statute must be filed with MPERA and served upon opposing counsel within 20 days of service of the proposed findings, conclusions, and order. Any response must be filed within ten days of service of the exceptions.
 - (a) Briefs in support are not required, but if filed, must be filed simultaneously with exceptions or responses.
 - (b) Requests for oral argument must be in writing, and must be filed simultaneously with the exceptions or responses.

- (c) Date of service shall be the date indicated on the appropriate certificate of service or certificate of mailing.
 - (d) The board may request briefing, additional briefing, or oral argument by the parties.
 - (e) The board's final decision must be issued no later than 90 days after the matter is submitted to the board, unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.
- (3) If a quorum of the board hears the contested case, the board may use a hearing examiner for procedural rulings and administrative purposes, and to assist in the drafting of a final order. A final order so adopted will be the final administrative decision of the board, subject only to judicial review.
- (4) An attorney may be assigned to present a case or to appear in any contested case to represent the interests of MPERA. A different attorney will be assigned to assist the board in reaching its determinations with respect to that contested case.
- (5) A contested case hearing, and any other proceeding before a hearings examiner, will be recorded electronically unless a party notifies the hearing examiner no later than 20 days prior to the proceeding that the party wants to retain a court reporter for the hearing. The party requesting the court reporter must arrange and pay for the court reporter.
- (a) The record shall be transcribed on the request of any party. The cost of the transcription shall initially be paid by the requesting party. A party who has a transcript prepared shall provide a copy to any other party requesting it in exchange for the proportional cost of transcribing the original and the necessary copies. A copy must also be provided to the hearing examiner, at no cost.
 - (b) The party(ies) filing exceptions to the hearing examiner's proposed order must file the original and one copy of the transcript with the board only if exceptions have been filed to the hearing examiner's proposed findings of fact.
 - (c) If an electronic recording of any hearing or proceeding is defective or cannot be transcribed, the hearing examiner may reconstruct the record or the parties may reconstruct the record by stipulation. The record so reconstructed will constitute the record for determination and review of findings of fact.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-403, MCA

History: NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 1994 MAR p. 2711, Eff. 10/14/94; AMD, 2003 MAR p. 972, Eff. 5/9/03; AMD & TRANS, from ARM 2.43.204, 2008 MAR p. 2467, Eff. 12/1/08.