State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
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CENTRAL MANAGEMENT REGULATION 2
RULES OF PROCEDURE FOR ADMINISTRATIVE HEARINGS

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Section 1 ***Authority***

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 42-14-1 *et seq.*, 42-35-1 *et seq.* and 42-92-1 *et seq.*

Section 2 ***Purpose***

These rules ("Rules" or "Regulation") are adopted for the purpose of assisting in carrying out the functions, powers and duties assigned to the Department of Business Regulation ("Department"), whether in effect prior to or subsequent to the adoption of these Rules.

These Rules shall govern the conduct of adjudicatory proceedings commenced before the Department after their effective date. These Rules shall be liberally construed to further the fair, prompt and orderly administration and determination of adjudicatory proceedings in conformity with the Rhode Island Administrative Procedures Act. To the extent that any part of these Rules are inconsistent with applicable law or the terms of any other rule or regulation promulgated by the Department, the applicable law and/or the terms of such other rule or regulation shall be deemed to apply.

Section 3 ***Definitions***

When used in these Rules, the following words, except as otherwise required by the context, shall have the following meaning:

(A) "Contested Case" means an adjudicatory proceeding before a Hearing Officer of the Department in which the legal rights, duties or privileges of a Party are determined.

(B) "Department" means the Department of Business Regulation.

(C) "Department Counsel" means the legal representative of the Department.

(D) "Director" means the Director of the Department.

(E) "Division" means a Division of the Department with the authority to perform the functions of the Department as designated by statute.

(F) "Hearing Officer" means the individual(s) authorized by law or duly designated by the Director to conduct hearings, write decisions and make recommendations to the Director in Contested Cases.

(G) "License" means a document issued by the Department (sometimes referred to as a license, permit, certificate, approval, registration, charter) granting permission required by law in order to engage in certain activities.

(H) "Licensee" means any holder of a License.

(I) "Party" or "Parties" means each Person named or admitted as a Party, or properly seeking and entitled as of right to be admitted as a Party in a Contested Case.

(J) "Person" means any individual, partnership, corporation, limited liability company, association, governmental subdivision, public or private organization or any other entity however formed.

(K) "Reasonable Cause" means there exists a set of facts of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs which would induce a reasonably intelligent and prudent person to believe that a violation(s) of law, rule, or regulation has occurred.

(L) **"**Respondent" means a Party who is the subject of a complaint and/or Department investigation pursuant to Section 4 of this Regulation.

(M) "Regular Business Hours" means the regular business hours of the Department of 8:30 a.m. to 4:00 p.m. Monday through Friday except for holidays observed by the State of Rhode Island.

Section 4 ***Complaints and Department Investigations***

(A) Complaints. A complaint may be made by any Person against any Licensee or any Person who is required to be licensed but is not licensed by the Department. Such complaint shall be in writing, signed by the complainant and may be required to be on a form provided by the Department. The Department or the applicable Division thereof shall make an initial determination whether or not the complaint is within the Department's jurisdiction. If no jurisdiction exists, the Department shall notify the complainant in writing. If jurisdiction exists, the Department shall conduct whatever investigation it deems appropriate, including forwarding a copy of the complaint to the Respondent. If instructed to do so by the Department, the Respondent shall file a response to the complaint within fifteen (15) business days or such other time frame specified by the Department.

Upon completion of its investigation, the Department shall take one (1) of the following actions:

(1) If the Department determines that the complaint fails to establish Reasonable Cause, the Department shall take no action on the complaint and advise the complainant and Respondent in writing of the determination; or

(2) If the Department determines that the complaint establishes Reasonable Cause, the Department shall take such action as it deems appropriate under applicable law and the rules and regulations adopted pursuant thereto.

(B) Department Investigations. The Department on its own authority may initiate an investigation and take action (i) against a Licensee, (ii**)** against an applicant for a License or for

renewal of a License, (iii) against any Person who is required to be licensed but is not licensed**,** and (iv) against any Person who is subject to the regulatory authority of the Department**.** All such actions shall be upon such terms and conditions as are permitted under applicable law and the rules and regulations adopted pursuant thereto.

Section 5 ***Notice of Contested Case***

(A) Notice Required. The Department shall give notice ("Notice") to all Parties of the initiation of a Contested Case. The Notice shall be designed to afford an opportunity for hearing to all parties pursuant to R.I. Gen. Laws § 42-35-9.

(B) Notices**.** All Persons upon whom a Section 5(A) Notice is served, if required to do so in the Notice, shall file a written answer ("Answer") within twenty (20) days of the service of the Section 5(A) Notice. The Answer shall be in the form of a specific admission or denial or assertion that the Respondent is without sufficient knowledge or information to form a belief with respect to the allegations contained in the Section 5(A) Notice, along with any matter constituting a defense to any of the allegations. Any Party having a right to request a hearing shall request such hearing in accordance with the terms and conditions contained in the Section 5(A) Notice.

If Respondent requests a hearing in response to a Notice, the Department shall then provide an additional Notice to the Respondent in the form of an order appointing a Hearing Officer which shall identify the type of hearing as a Departmental or complaint hearing and schedule a prehearing conference.

It shall be within the Department's discretion to schedule the matter as either a Departmental hearing or a complaint hearing. A Departmental hearing differs from the complaint hearing identified above, in that a Departmental hearing is prosecuted by Department counsel on behalf of the Department. If a complaint hearing is scheduled, the Notice shall also inform the complainant that it shall be his/her or its sole responsibility or his/her or its representative to present the case to the Hearing Officer, and specify the statutory cause of action under which the complaint hearing is convened and potential penalty or penalties resulting therefrom. The Notice shall also inform the Respondent that, regardless of the type of hearing, it shall be his/her or its sole responsibility or his/her or its representative to present his/her or its defense to the Hearing Officer, and specify the statutory cause of action under which the hearing is convened and potential penalty or penalties resulting therefrom.

(C) Contents of Notice: The Notice shall comply with R.I. Gen. Laws § 42-35-9(b).

Section 6 ***Prehearing Conferences***

(A) It is the policy of the Department to encourage the use of prehearing conferences as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof.

(B) The Director or the Hearing Officer may, with reasonable written notice, require that all Parties attend a prehearing conference to consider the following:

(1) the simplification**,** narrowing, and clarification of the issues;

(2) the possibility of obtaining written stipulations, admissions, agreements with respect to the introduction of documents or similar agreements which will avoid unnecessary proof;

(3) the identification of witnesses and the limitation of the number of witnesses;

(4) the possibility of agreement disposing of all or any of the issues in dispute;

(5) the consideration of outstanding motions;

(6) the status of settlement negotiations, if any;

(7) the use of pre-filed testimony, where appropriate;

(8) any matters of discovery, including limitation of data requests, document requests, or other discovery or resolving disputes as to the scope of discovery;

(9) scheduling of hearings; and

(10) such other matters as may aid in the final disposition of the proceeding.

(C) All Parties shall attend the prehearing conference fully prepared to discuss all matters related to the proceedings. Failure of any Party to attend the prehearing conference may constitute a waiver of all objections to any order or ruling issued as a result of the prehearing conference unless good cause is shown.

(D) At the sole discretion of the Hearing Officer, the Parties may be permitted to waive the prehearing conference by filing with the Hearing Officer a stipulation prior to the prehearing conference that contains the following:

(1) agreement to the issues in the matter,

(2) an agreed to discovery schedule,

(3) three (3) agreed to possible dates for a hearing, and

(4) any other agreements as to matters contained in Section 6(B).

(E) In the discretion of the Hearing Officer, with agreement of the parties, prehearing conferences, conference hearings, or status hearings may be held by telephone, electronically, or by any other means.

Section 7 ***Representation***

(A) Appearances.

(1) The Department shall notify each Party that each Party may retain legal counsel admitted in the State of Rhode Island. Said notification shall be set forth in the Department's order appointing a Hearing Officer.

(2) Individuals, and partners of partnerships, may appear *pro se* if they choose. Corporations may not appear *pro se*.

(3) If a Party is not appearing *pro se* he, she, or it must be represented by a member in good standing of the Bar of the State of Rhode Island or by out of state attorneys admitted *pro hac vice* by the Superior Court or by the appropriate court unless exempted pursuant to R.I. Gen. Laws § 11-27-11.

(4) All attorneys must conform to the standards of ethical conduct required of practitioners before the courts of the State of Rhode Island.

(B) Appearances of Present and Former Employees of the Department.

(1) No person who is currently an employee of the Department may appear before the Department on behalf of any Person or to represent any Person or act as an expert witness before the Department except in the performance of his/her official duties as an employee of the Department.

(2) No person having been so employed may, within one (1) year after said employment has ceased, appear before the Department on behalf of any other Person**,** or to represent any Person or act as an expert witness before the Department.

Section 8 ***Filing of Pleadings and Other Documents***

(A) Title. All pleadings and other documents filed with the Department in any Contested Case shall, whenever possible, state the file number, if any**,** the title of the proceeding and the name of the Person on whose behalf the filing is made.

(B) Form and Size. All pleadings and other documents filed with the Department, except those documents which are kept in a smaller or larger format during the ordinary course of business, are to be submitted on 8½ by 11 inch paper. At the discretion of the Hearing Officer, filings may be made by telecopier, facsimile, or by electronic mail or any other manner or means approved by the Hearing Officer. If filings are made electronically, the Party shall also file a hard copy of any such electronic filing. All documents must include, if applicable, the Rhode Island Bar number, address, telephone number, facsimile number and e-mail address

of each attorney and *pro se* litigant. All papers shall be filed during Regular Business Hours. The Department's date stamp shall be presumptive of the actual date of filing.

(C) Signature. The original copy of each pleading shall be signed and dated by the Party on whose behalf the pleading is made or by the Party's authorized representative. This signature shall constitute a certification that the individual has read the document, knows the contents thereof and to the best of his/her knowledge believes that such statements are true**,** that it is not interposed for delay and that if the pleading has been signed by an authorized representative, he/she has full power and authority to do so.

(D) Construction. All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of the Parties involved may be disregarded.

Section 9 ***Service***

(A) Service Upon Parties and Others. A copy of all pleadings and other documents filed in any proceeding governed by these Rules shall be served upon all other Parties.

(B) Manner of Service. Unless otherwise ordered or authorized by the Hearing Officer, service under these Rules shall be made upon a Party or upon the Party's attorney, if an appearance has been entered, by first class mail postage prepaid, certified mail or hand delivery to his or her place of business, home address or other address supplied by the Party in the pleadings. Service upon persons who have not yet made an appearance shall be at the last address on file with the Department for any licensee. For non-licensees, service shall be at the last known address which the Department reasonably believes will result in actual delivery to the non-licensee. Service by mail is complete upon mailing.

(C) Certificate of Service. There shall accompany and be included in the original of each pleading filed with the Department a certificate of service showing service on all Parties.

(D) Date of Certificate to Govern. In addition to the provisions of Section 10(A) of this Regulation, the time for response to all pleadings shall commence as of the date of the certificate of service. However, if service is made by mail, then one (1) day shall be added to the prescribed period.

Section 10 ***Time***

(A) Computation. Unless otherwise specifically provided by law**,** computation of any time period referred to in these Rules shall begin with the first day following the act which initiates the running of the time period (including Saturday, Sunday and legal holidays). The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday or any other day on which the Department is closed, in which case the period shall run until the end of Regular Business Hours of the next following business day.

(B) Extensions of Time. It shall be within the discretion of the Hearing Officer, for good cause shown, to extend any time limit. All requests for extensions of time shall be made by written motion filed with the Hearing Officer before the expiration of the applicable time period unless waived by the Hearing Officer.

(C) Continuances. Except as otherwise provided by law, the Hearing Officer may, at any time, with or without request, continue or adjourn a prehearing conference or a hearing. If a Party requests a continuance, the Hearing Officer may direct the Party to seek the assent of the other Party(ies) prior to deciding whether to grant such request. If the Hearing Officer grants a continuance at the request of a Party(ies), the Hearing Officer may direct the Party(ies) requesting the continuance to immediately notify all other Parties of record and if deemed necessary to prepare an order. If such an order is made, the continuance will only be effective when the notification to all other parties of record has been made.

Section 11 ***Motions***

(A) General. Any Party may request that the Hearing Officer enter any order or action not inconsistent with law or these Rules. The types of motions made shall be those which are permissible under these Rules and the Rhode Island Superior Court Rules of Civil Procedure ("Super. R. Civ. P.").

(B) Presentation/Objections to Motions. Motions may be made in writing at any time before or after the commencement of a prehearing conference or hearing, and/or they may be made orally during a prehearing conference or hearing. Each motion shall set forth and/or state the grounds for the desired order or action and state whether oral argument is requested. Within ten (10) days after a written motion is filed with the Hearing Officer and served on the opposing Party(ies), a Party opposing said motion must file a written objection to the granting of the motion, and shall, if desired, request oral argument. All written motions and objections shall be accompanied by a written memorandum specifying the legal and factual basis for the Party's position.

(C) Action on Motion. The Hearing Officer shall, if he/she determines oral argument on the motion is warranted, give notice of the time and place for such argument. The Hearing Officer may rule on a motion without argument if the motion involves a matter as to which the presentation of testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved or if disposition without argument would best serve the public interest. The Hearing Officer may act on a motion when all Parties have responded thereto, or the deadline for response has passed, whichever comes first.

Section 12 ***Discovery***

(A) General. The Department favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the Parties for this exchange. It is the Department's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes.

(B) Procedure. Any Party, by written request served upon all other Parties, may request the other Party to produce for inspection, copying or photocopying document, object or tangible thing which are relevant to the subject matter of the hearing

(C) Hearing Delay. No hearing shall be continued to permit the completion of discovery unless due diligence is shown.

(D) Discovery Schedule. At the discretion of the Hearing Officer, the discovery schedule shall be set at the prehearing conference. The Hearing Officer may amend such discovery schedule at the request of a party or on his or her own volition.

(E) Written Discovery. Written discovery as set forth in Super. R. Civ. P. is allowed but may be limited by the Hearing Officer.

(F) Types of Discovery. Any other types of discovery as set forth in Super. R. Civ. P. may be allowed in the discretion of the Hearing Officer.

(G) Discovery Disputes. Objections to discovery requests shall be made pursuant to Super. R. Civ. P. If there is a dispute between the Parties relating to a Party's failure to respond to discovery, the Party requesting the discovery shall comply with Super. R. Civ. P. 37(a)(2) prior to filing a Motion to Compel Discovery with the Hearing Officer.

(H) A Party is not required to file discovery responses with the Hearing Officer unless otherwise ordered by the Hearing Officer**.**

Section 13 ***Subpoenas***

Upon application of any Party, subpoenas requiring the attendance and testimony of witnesses and to compel the production and examination of papers, books, accounts, documents, records, certificates and other evidence that may be necessary or proper for the determination and decision of any question before the Hearing Officer may be issued by the Director or his/her designee upon submission to the Hearing Officer. Except as may be otherwise provided by law, including, without limitation, the provisions of R.I. Gen. Laws § 42-14-11, in cases where a subpoena is not honored, the Director or his/her designee may elect to make application to the State of Rhode Island Superior Court for an order to show cause why the Person who failed to honor the subpoena shall not be held in contempt and for such further relief as may be appropriate. The Hearing Officer may, *sua sponte*, or on motion of any of the Parties or witnesses, issue such protective orders, grant such motions to quash and grant other motions as justice or fairness may require.

Section 14 ***Evidence***

(A) Rules of Evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings wherein evidence is taken. While the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the extent

practicable, the Hearing Officer shall not be bound by the technical evidentiary rules. Evidence not otherwise admissible may be admitted, unless precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.

(B) Exhibits, Copies. In all cases wherein evidence is taken, exhibits may be introduced in the form of copies or excerpts, if the original is not readily available. Upon request, a Party shall be given an opportunity to compare the copy with the original.

(C) Administrative Notice. In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge; but Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any report or data required by law or regulation to be filed with the Department, and they shall be afforded an opportunity to contest the material so noticed. The Hearing Officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. The burden is on the Party requesting the Hearing Officer's notice to produce the documents or other matter for the Hearing Officer's review.

(D) Department Employees, Agents and Consultants. The Hearing Officer may employ the use of Department employees, agents and consultants to assist him/her in the evaluation of any evidence introduced at the hearing. In the Hearing Officer's discretion, he/she may allow the presence of these persons at the hearing.

(E) Oath. All testimony shall be under oath or by affirmation.

(F) Testimony. At the discretion of the Hearing Officer, an adverse inference may be drawn by an assertion by a witness or a Party of his/her Fifth Amendment rights under the U.S. Constitution.

Section 15 ***Conduct of Hearings***

(A) General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. All Parties, witnesses and other Persons at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any courtroom. Where such decorum is not observed, the Hearing Officer may take appropriate action including ejectment or adjournment, if necessary.

(B) Duties of Hearing Officer. The Hearing Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters and either administer oaths to all witnesses or ask the stenographer to do so.

(C) Order of Proceedings. Except as otherwise required by law, it shall be the usual practice that the Department or the complainant shall open. Where evidence is peculiarly within the knowledge of one Party, or in cases in which Contested Cases have been consolidated or where there are multiple Parties, the Hearing Officer may, in his/her discretion, direct who shall open and shall further designate the order of presentation.

(D) Rights of Parties. Parties shall have the right to present evidence, cross-examine witnesses, object, make motions and present arguments.

(E) Record of Proceedings.

(1) A complete record of the proceedings shall be recorded on audiotape, or at the discretion of the Hearing Officer, by stenographic record. In the event the Hearing Officer orders a stenographic record, the Hearing Officer shall declare which Party or Parties shall bear the cost thereof. Any Party may on his, her or its own initiative order a stenographic record made of the proceedings. The requesting Party shall incur all costs associated therewith. The Hearing Officer shall be provided, at no cost, with the original of the stenographic record and Department Counsel shall be provided with a copy at no cost. Any Party may request a copy of the audiotape record of the proceedings. The requesting Party shall bear the cost thereof.

(2) If a Party chooses to appeal a final Departmental decision to Superior Court pursuant to R.I. Gen. Laws § 42-35-1 *et seq*. and the Superior Court requires a transcript of the hearing, said Party shall be responsible for having the transcript prepared by an independent person or company at his, her or its expense within twenty (20) days of filing the appeal.

(F) Public Hearings. Except as required by law, all hearings are to be open to the public. In general, any Person who is not a Party to a proceeding may, in the discretion of the Hearing Officer, be permitted to make oral or submit written statements on any issues relevant to the proceeding.

(G) Close of Proceedings. At the conclusion of the evidence, the Hearing Officer may, in his/her discretion, permit the Parties to argue orally and/or to submit written briefs. The Hearing Officer may, within his/her discretion, direct that proposed findings of fact and conclusions of law be submitted by the Parties. The record in the proceeding shall close after oral argument, the deadline for the filing of the briefs or upon such date as may be set by the Hearing Officer. No evidence shall be admitted thereafter, unless otherwise ordered by the Hearing Officer. The Hearing Officer may in any case require either Party, with appropriate notice to the other Party, to submit additional evidence in any matter relevant to the hearing.

(H) Waiver of Hearing. In any proceeding, if the Parties agree to waive the hearing, the Hearing Officer may dispose of the matter upon the pleadings and other submittals of the Parties.

(I) Dispositions. Unless otherwise precluded by law, disposition may be made of any Contested Case at any time by stipulation, consent agreement**,** consent settlement, consent order, default or dismissal by the Hearing Officer. A joint request for a stay of the hearing for the purpose of preparing documents relevant to the above shall be forwarded to the Hearing Officer and may be granted within the sound discretion of the Hearing Officer.

(J) Consent Agreements and Consent Orders. The Department may enter into a consent agreement with a Party(ies) prior to a prehearing conference being held in an administrative proceeding. A consent agreement is valid if signed by a Department representative; it does not have to be approved by the Hearing Officer and Director. Subsequent to a prehearing conference being held in an administrative proceeding, the Parties may agree to the terms of a consent order; provided however, such a consent order must be approved by the Hearing Officer and the Director to be effective. Both consent agreements and consent orders are considered public records pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq*.

Section 16 *Penalties*

(A) In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s) or regulation(s), the Hearing Officer shall look to past precedence of the Department for guidance and may consider any mitigating or aggravating circumstances.

(1) Mitigating circumstances may include, but shall not be limited to, the following: the Party's licensing history, i.e. the absence of prior disciplinary actions; the Party's acceptance of responsibility for any violations; the Party's cooperation with the Department; and the Party's willingness to give a full, trustworthy, honest explanation of the matter at issue.

(2) Aggravating circumstances may include, but shall not be limited to, the following: the Party's prior disciplinary history; the Party's lack of cooperation and/or candor with the Department; the seriousness of the violation; whether the Party's act undermines the regulatory scheme at issue; whether there has been harm to the public; and whether the Party's act demonstrates dishonesty, untrustworthiness, or incompetency.

(B) The finding of mitigating factors will not necessarily lead to a reduction in the penalty imposed if the circumstances of the violations found by the Hearing Officer are such that they do not warrant a reduction in penalty.

Section 17 *Decisions*

All decisions rendered by the Hearing Officer at the conclusion of a hearing shall be in writing and shall comply with the requirements of R.I. Gen. Laws § 42-35-12. The decision of the Hearing Officer shall be reviewed by the Director of the Department who shall enter an order adopting, modifying or rejecting the decision of the Hearing Officer. The decision and order shall be delivered to all Parties with a notice indicating the right to take an appeal of the decision and order to the Superior Court pursuant to R.I. Gen. Laws § 42-35-15.

Section 18 ***Publication of License Suspensions and Revocations***

Any final decision and order of the Director of the Department which results in the imposition of a sanction of suspension or revocation of a License, a bar from practice in a particular field or type of business or other similar sanction may be published as many times and in whatever manner as the Director, in his/her sole discretion, deems necessary to adequately inform the public of the action taken. The intent to publish a sanction shall be contained in the final decision, final order, consent agreement, or consent order. The Director may require the Licensee to bear the cost of the publication.

Section 19 ***Reconsideration***

At any time after the issuance of a final order of the Director**,** any Party may, for good cause shown, by motion petition the Director to reconsider the final order. The petitioner shall file his/her motion within twenty (20) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Director may grant the motion for reconsideration within his/her discretion and shall order such relief as he/she deems appropriate under the circumstances.

The Department shall not entertain a motion for reconsideration filed more than twenty (20) days after entry of the final decision, unless the Hearing Officer finds good cause to entertain said motion

Section 20 ***Judicial Review***

Any Party aggrieved by a final written order of the Director may file a complaint with the Superior Court pursuant to R.I. Gen. Laws § 42-35-15. In the absence of a timely appeal, the order or decision of the Director shall become final and no further administrative appeal may be taken.

Section 21 ***Default***

If any Party to a proceeding fails to answer a complaint, plead, appear at a prehearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Hearing Officer may enter a default judgment against the defaulting Party, take such action based on the pleadings and/or other evidence submitted by the nondefaulting Party as the Hearing Officer deems appropriate in his/her sole discretion or take such other action as the Hearing Officer deems appropriate in his/her sole discretion. Challenge to such an order shall be made as a motion for reconsideration per Section 19, above.

Section 22 ***Disqualification; Incapacity of Hearing Officer***

(A) Disqualification. Any Party may make a motion to the Director requesting that he/she disqualify or remove the Hearing Officer from the proceeding. The motion shall be accompanied by an affidavit setting forth the reasons for the disqualification. In the event that

the motion to disqualify is granted, the Director shall assign another Hearing Officer to the matter.

(B) Incapacity. When the Hearing Officer becomes incapacitated or unavailable to complete a hearing and/or render a decision, the hearing shall be conducted and/or the decision shall be rendered by a substitute Hearing Officer appointed by the Director. If any party objects to the substitution, that party must prove prejudice by presentation of argument and evidence to the substitute Hearing Officer. If the substitute Hearing Officer finds that the objecting party will be prejudiced, the substitute Hearing Officer will issue an Order making such findings and will hear the matter *de novo*.

Section 23 *Miscellaneous*

(A) Intervention. Any Person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought may seek to intervene in any proceeding. Intervention may be initiated by filing a motion to intervene with the Hearing Officer. The motion shall set out clearly and concisely the facts from which the nature of the movant's alleged right of interest can be determined, the grounds for the proposed intervention and the position of the movant in the proceeding.

(B) Ex Parte Consultations. No Person who is a Party to or a participant in any proceeding before the Department or the Party's counsel, employee, agent or any other individual acting on the Party's behalf, shall communicate *ex parte* with the Hearing Officer or the Director about any matter related to the proceeding, and the Hearing Officer and/or the Director shall not request or entertain any such *ex parte* communications. The prohibitions contained above do not apply to those communications which relate solely to general matters of procedure and scheduling.

(C) Consolidation. The Hearing Officer may, in his/her discretion, consolidate or combine several matters for purposes of hearing or other proceedings, when he/she finds that sufficient common issues of fact or law or both are involved.

(D) Plural. Words in the singular number include the plural, and vice-versa, except where the context otherwise requires or where a contrary result appears from necessary implication.

(E) Appointment of Department Counsel. At any time during a complaint hearing, the Hearing Officer may request the Director to appoint Department Counsel to prosecute the case on behalf of the complainant.

(F) Statutes. If any statute has different requirements than those contained within this Regulation, the statute shall be controlling.

(G) Public Documents. The Department reserves the right to publish in any form any public document.

Section 24 ***Consent Orders***

(A) Consent Orders. At any time after the opening of the prehearing conference and prior to the close of the record of a Departmental hearing, the Parties may attempt to dispose of the matter by entering into a consent order as provided in Section 15(J) of this Regulation. Every consent order shall contain, at a minimum, an admission of all jurisdictional facts and express waivers of further procedural steps before the Hearing Officer**,** including the right to appeal. Upon receiving a consent order, the Hearing Officer may:

(1) accept the consent order and recommend its adoption to the Director; or

(2) reject the consent order and state the reasons therefore in writing and take such other appropriate administrative action.

In the event that the Hearing Officer rejects the consent order, either Party may appeal the rejection directly to the Director. Such appeal shall be in writing and shall be filed with the Director no later than seven (7) days after the date the Hearing Officer notifies the Parties, in writing, of the rejection of the consent order. Upon receipt of an appeal, the Director shall take whatever action he/she deems appropriate. Should the Director confirm the Hearing Officer's decision to reject the consent order, such rejection shall be deemed an interim order of the Director and not a final order and the matter shall continue through the administrative hearing process. Nothing herein shall prevent the Parties from subsequently entering into and presenting to the Hearing Officer for consideration a new consent order.

Section 25 ***Complaint Hearing Settlements***

The Parties in a complaint hearing may enter into a settlement at any time prior to the close of the record of a complaint hearing. The Parties may choose to put the settlement on the record but are not required to do so. If the Parties settle the matter, the Parties shall file with the Hearing Officer a written stipulation of dismissal asking that the matter be dismissed or the complainant may file a written withdrawal of complaint asking that the matter be dismissed.

Section 26 ***Public Information***

(A) Access to public records shall be governed in accordance with R.I. Gen. Laws § 38-2-1 *et seq*. All hearings are conducted pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq*. Except where the Director, his or her designee or the Hearing Officer directs otherwise, or when the documents in question are governed by R.I. Gen. Laws § 27-13.1–5(f), upon the opening of the prehearing conference all pleadings, orders, communications, exhibits and other documents filed with the Hearing Officer shall become public records. Any claim of privilege shall be governed by the policy underlying the Access to Public Records Act, with the burden of proof resting on the party claiming the privilege.

(B) Any Party may request a preliminary finding that some or all of the information is not a public document under the Access to Public Records Act. A preliminary finding that some documents are privileged shall not preclude the Department from later determining that those documents are public in accordance with R.I. Gen. Laws § 38-2-1 *et seq*.

(C) Claims of privilege shall be made by filing a written request with the Department. One copy of the original documents, boldly indicating on the front page, "Contains Privileged Information – Do Not Release," shall be filed specifically identifying the information for which the privilege is sought, along with a description of the grounds upon which the Party is claiming a privilege. If a document is filed electronically, it shall contain a statement that the information has been redacted; however, the original document must be filed as delineated above.

(D) The Department shall retain the documents for which privilege is asserted to exist in a secure, non-public file until a determination is made as to whether to grant the request for privileged treatment.

(E) Any person, whether or not a Party, may apply to the Department for release of the information, pursuant to R.I. Gen. Laws § 38-2-1 *et seq*., the Access to Public Records Act. Such requests shall be governed by R.I. Gen. Laws § 38-2-1 *et seq*. and any regulations thereunder.

Section 27 ***Equal Access to Justice for Small Businesses***

(A) Pursuant to R.I. Gen. Laws § 42-92-1 *et seq*., the Hearing Officer shall award reasonable litigation expenses incurred by the prevailing party in connection with Departmental hearings, if the Hearing Officer finds that all of the following conditions are met:

(1) that there was no reasonable basis in fact or law for the Department's position; and

(2) the adjudicatory proceedings involved loss of benefits, the imposition of a fine, the suspension or revocation of a license or permit, or which may result in the compulsion or restriction of activities; and

(3) the prevailing party must be either:

(i) an individual whose net worth is less than five hundred thousand dollars ($500,000) at the time the adjudication is initiated; or

(ii) an individual, partnership, corporation, association. or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs no more than one hundred (100) persons at the time the adjudication is initiated; and

(4) the prevailing party must request reimbursement not later than thirty (30) days following the issuance of the written order, detailing:

(i) compliance with Section 27(1), (2), (3), and (4) of this Regulation; and

(ii) the costs incurred in defending against the unreasonable adjudicatory proceedings, including, but not limited to, attorney's fees and witness fees.

(B) If found to the applicable, the Hearing Officer shall issue a supplementary order directing the Department to pay reasonable litigation expenses, as limited by R.I. Gen. Laws § 42-92-2(6).

Section 28 ***Severability***

If any Section, term, or provision of this Regulation should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

Section 29 ***Effective Date***

This Regulation shall be effective twenty (20) days from the date of filing with the Secretary of State.

EFFECTIVE DATE: July 21, 1997
REFILED: December 27, 2001
AMENDED: June 28, 2004