

DEPARTMENT OF EDUCATION

STATE TENURE COMMISSION

~~TEACHER TENURE GENERAL RULES~~ **STATE TENURE COMMISSION  
RULES**

Filed with the Secretary of State on

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, and 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the state tenure commission by section 4 of article IV, section 1 of article VI, and section 10 of article VII of the teachers' tenure act, 1937 (Ex. Sess.) PA 4, MCL 38.104, 38.121, and 38.140, and section 63 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.263)

R 38.139, R 38.144, R 38.163, R 38.165, and R 38.171 of the Michigan Administrative Code are rescinded and R 38.131, R 38.132, R 38.133, R 38.135, R 38.141, R 38.142, R 38.143, R 38.145, R 38.146, R 38.147, R 38.148, R 38.149, R 38.151, R 38.152, R 38.153, R 38.155, R 38.156, R 38.157, R 38.161, R 38.162, R 38.172, R 38.173, R 38.174, R 38.174a, R 38.175, R 38.176, R 38.177, and R 38.179 are amended as follows:

**PART 1. GENERAL PROVISIONS AND DECLARATORY RULINGS**

R 38.131 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means ~~Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being S38.71 et seq. of the Michigan Compiled Laws~~ **the teachers' tenure act, 1937 (Ex. Sess.) PA 4, MCL 38.71 to 38.191.**

(b) "Commission" means the state tenure commission created by the act.

(c) **"Electronic submission" means submission by email, by facsimile, or by any other electronic means approved by the commission.**

(d) "Person" means an individual, partnership, association, corporation, **limited liability company, limited liability partnership**, governmental subdivision, or public or private organization of any kind, other than the ~~agency engaged in a declaratory ruling commission.~~

(2) The terms defined in the act have the same meanings when used in these rules.

R 38.132 Meetings of commission; **hours of commission office.**

Rule 2. The chairperson of the commission or a majority of its members may call a ~~session~~ **meeting** of the commission. **Subject to state holidays, the** The hours of the **office of the** commission ~~are when in session shall be from 8 a.m. to 12 noon and 1:00 p.m. to 5 p.m. Monday to Friday except as otherwise ordered by the commission.~~

April 18, 2019

R 38.133 Office of commission.

Rule 3. The office of the commission ~~shall be~~ **is** in the office of the state superintendent of public instruction. **The address of the commission is: State Tenure Commission, Michigan Department of Education, P.O. Box 30008, 608 W. Allegan Street, Lansing, Michigan 48909. The email address of the commission is: MDE-AdminLaw@michigan.gov, and the facsimile number of the commission is: 517-241-6987. The telephone number of the commission is: 517-241-6986, and the commission's web address is: www.michigan.gov/adminlaw.**

R 38.135 Request for declaratory ruling.

Rule 5. (1) An interested person may request that the commission issue a declaratory ruling on how a statute ~~that is~~ administered by the commission or a rule or order of the commission applies to an actual state of facts.

(2) **An interested person shall file a A request for a declaratory ruling in the office of the commission by personal delivery, by mail as defined in R 38.146(2), or by electronic submission as defined in R 38.131** ~~shall be submitted to the State Tenure Commission, Department of Education, P.O. Box 30008, 608 West Allegan, Lansing, Michigan 48909.~~ A request **may include a brief and shall must** contain all of the following ~~information~~:

(a) A clear and concise statement of the actual state of facts ~~upon~~ **on** which **the commission would base a ruling will be based.**

(b) A precise statement of the legal question or issue ~~involved.~~

(c) A citation of ~~the~~ **any** statute or administrative rule at issue.

(d) The signature of the ~~interested person~~ making the request.

(e) **The name, address, telephone number, and email address of the person making the request.**

(3) ~~An applicant~~ **A person** who requests a declaratory ruling shall ~~serve~~ **deliver** a copy of the request ~~for a declaratory ruling upon~~ **personally or by certified mail (return receipt requested) on** any person known by the ~~applicant~~ **requesting party** to have an interest in the matter ~~and upon any person referred to in the statement of facts when the request is filed with the commission. An applicant shall deliver a copy of the request personally or send a copy by certified mail, return receipt requested. An applicant and shall file~~ **with the commission the a** proof of service ~~together with the request to issue for a declaratory ruling. The commission may require the person requesting a declaratory ruling to serve the request on any other interested person identified by the commission and to file proof of that service.~~

(4) ~~Within~~ **Not later than** 60 days after receiving a ~~submitted~~ request **for a declaratory ruling and all proofs of service**, the commission shall notify ~~any person identified in subrule (3) of this rule as to whether the declaratory ruling will be issued or denied~~ **the person who made the request and any other interested person receiving the request under subrule (3) of this rule if the commission will grant or deny the request.**

(5) If the **commission denies the** request ~~is denied, then the commission it~~ shall issue a concise written statement of the legal or factual reasons for denial.

(6) If **the commission grants a the** request ~~is granted, then the commission it~~ shall notify all persons identified in subrule (3) of this rule that any interested person may,

**within the time established by the commission**, submit a brief of the legal authority ~~upon on~~ which the person believes the **commission should base the** declaratory ruling ~~should be based within a time to be established by the commission.~~

(7) ~~If a~~ **A** declaratory ruling is issued, ~~then the ruling shall~~ **must** include all of the following information:

(a) The actual state of facts ~~upon on~~ which the **commission bases the** ruling is based.

(b) ~~The conclusion~~ **conclusions** of law ~~based on and~~ the legal authority ~~that on which~~ the commission ~~relied on~~ **relies** for its ~~the~~ ruling.

(c) ~~The ruling or determination made.~~

~~(8) The commission shall make available a copy of a declaratory ruling, the grant of a request for a declaratory ruling, or a denial of a request for a declaratory ruling upon request.~~

R 38.139 ~~Rescinded.~~ **Rescinded.**

Rule 9. ~~The rules of practice and procedure of the commission, being R 38.71 and R 38.101 to R 38.123 of the Michigan Administrative Code and appearing on pages 342 to 345 of the 1957 Annual Supplement to the Code, pages 3542 and 3543 of the 1966 Annual Supplement to the Code, and page 5354 of the 1970-71 Annual Supplements to the Code, are rescinded.~~

## PART 2. APPEAL PROCEDURES

R 38.141 Representation; ~~appearances~~ **appearance; withdrawal.**

Rule 11. (1) **A party may represent himself or herself before the commission or an attorney** ~~Practice before the commission is limited to attorneys at law in good standing in with the State Bar of Michigan may represent a party.~~ However, ~~a party may represent himself or herself.~~

(2) An attorney who represents ~~litigants~~ **a party before the commission under the act,** ~~or a party representing himself or herself,~~ shall file a written appearance on or before the time of the filing of the claim of appeal or the answer, whichever is applicable, at the office of the commission. ~~Substitution of a withdrawing attorney shall be made upon written stipulation of the withdrawing attorney and the party represented, or at the discretion of the commission. The stipulation shall be filed immediately with the commission.~~ **An attorney who has filed an appearance with the commission may withdraw only by order of the administrative law judge or the commission.**

R 38.142 ~~Form and style of papers of~~ **pleadings and documents; signature.**

Rule 12. (1) **A party or the attorney representing a party shall file all pleadings** ~~Pleadings and other documents filed with the commission shall be legibly printed or typewritten and shall be on 1 side only of white bond paper not more than 8 ½ inches wide and 11 inches long.~~

(2) **If a party or attorney files a pleading or other document with the commission by personal delivery or by mail, he or she shall file an original and one copy of the pleading or document. If a party or attorney files a pleading or other document with the commission by electronic submission, the commission shall consider the electronically submitted pleading or document to be the original and the party or**

~~attorney shall not file any copies.—Pleadings and briefs shall be filed with the commission along with 1 copy, except as required by R 38.143, R 38.147 and R 38.176, signed by the attorney, appealing party, or controlling board member. The commission may waive filing of the extra copies. The proper caption and docket number shall be placed on all papers filed. The given name and surname of the party shall be set forth in the caption.~~

**(3)(2) A pleading must include the names of the parties, and the signature, address, and telephone number of the party or the attorney representing the party.**

~~(4) The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer of all of the following:~~

~~(a) He or she has read the pleading.~~

~~(b) To the best of his or her knowledge, information, and belief formed after reasonable inquiry, **facts and either existing law or a good faith argument for a modification of existing law support** the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.~~

~~(c) The **signer is not filing the** pleading is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay or needless increase in the cost of the proceedings, **or for any other improper purpose.**~~

R 38.143 ~~Initiation~~ **Claim** of appeal.

Rule 13. **(1) To contest a controlling board's decision over which the commission has jurisdiction**, an appellant shall ~~file a claim of appeal with the commission~~ **do both of the following** not later than 20 days after receipt of the controlling board's decision and notice of tenure rights::

~~(a) An appellant shall file~~ **On or before the close of business on the final day of the 20-day period, file an original and 6 copies of a notice of claim of appeal and claim of appeal with the commission by personal delivery, by mail as defined in R 38.146(2), or by electronic submission as defined in R 38.131. In all cases, the commission shall receive the claim of appeal in its entirety before the close of business on the final day of the 20-day period. The notice and claim shall be set forth in substantially the following forms:**

~~(b) On or before the close of business on the final day of the 20-day period, serve a copy of the claim of appeal on the controlling board by personal delivery, by mail as defined in R 38.146(2), or by electronic submission as defined in R 38.131, with a statement that the controlling board shall file an answer to the claim of appeal not later than 10 days after service of the claim of appeal.~~

**(2) A claim of appeal must contain all of the following:**

**(a) A statement showing that the commission has jurisdiction to consider the claim of appeal, including when and where the appellant earned tenure.**

**(b) A clear and concise statement in separate numbered paragraphs of specific allegations of fact that reasonably inform the controlling board of the nature of the appellant's claim.**

**(c) A clear and concise description in separate numbered paragraphs of specific allegations of error that reasonably inform the controlling board of the nature of the appellant's claim.**

- (d) A statement of the relief requested.
  - (e) The date of the claim of appeal.
  - (f) The signature of the appellant or attorney.
  - (g) The name; complete physical address and, if different, mailing address; telephone number; facsimile number, if available; and email address of the appellant or attorney.
- (3) A template of a claim of appeal is available on the commission’s website at: [https://www.michigan.gov/mde/0,4615,7-140-37818\\_6555---,00.html](https://www.michigan.gov/mde/0,4615,7-140-37818_6555---,00.html).
- (4) As applicable, an appellant shall attach to the claim of appeal a copy of the charges and a copy of the written decision of the controlling board.
- (5) An appellant shall file with the commission a proof of service, as described in R 38.146(3), showing compliance with subrule (1)(b) of this rule.

~~(1) Notice of Claim of Appeal.~~

~~STATE OF MICHIGAN  
STATE TENURE COMMISSION~~

~~(NAME OF APPELLANT TEACHER) Appellant,~~

~~— Docket No.~~

~~(NAME OF APPELLEE CONTROLLING BOARD) Appellee.~~

~~————— NOTICE OF CLAIM OF APPEAL~~

~~— TO THE ABOVE NAMED APPELLEE(S):~~

~~— (BOARD OF EDUCATION)~~

~~— You are hereby notified that a claim of appeal has been filed with the State Tenure Commission in the above matter.~~

~~— You have ten (10) days after service of this notice to file an answer with the State Tenure Commission and serve a copy on the appellant or to take other lawful action.~~

~~— (A copy of the Michigan Teachers’ Tenure Act and rules of the State Tenure Commission governing the practice and procedure pertaining to proceedings before the State Tenure Commission may be obtained from the office of the Commission.)~~

~~Dated:~~

~~Signature of Appealing Party or Attorney~~

~~(Complete name, street address, and mailing address if different, telephone number of the appealing party or attorney should be printed here.)~~

~~-(2) Claim of Appeal.~~

~~STATE OF MICHIGAN  
STATE TENURE COMMISSION~~

~~-(NAME OF APPELLANT TEACHER) Appellant,~~

~~\_\_\_\_\_ Docket No.~~

~~-(NAME OF APPELLEE CONTROLLING BOARD) Appellee.~~

~~\_\_\_\_\_ CLAIM OF APPEAL~~

~~\_\_\_\_\_, the above named Appellant, (by his or her attorney), hereby requests a hearing and appeals the decision of Appellee, and as a basis alleges as follows:~~

~~\_\_\_\_\_ I  
\_\_\_\_\_ JURISDICTION~~

~~(Set forth the basis for the jurisdiction of the tenure commission, such as the date and school district in which the appellant last acquired tenure.)~~

~~\_\_\_\_\_ II  
\_\_\_\_\_ FACTS~~

~~-(A claim of appeal must contain a statement of the facts, without repetition, on which the appellant relies in claiming an appeal, with allegations specific enough to reasonably inform the adverse party of the nature of the cause the adverse party is called upon to defend. Each allegation must be made in numbered paragraphs which are clear, concise, and direct.)~~

~~\_\_\_\_\_ III  
\_\_\_\_\_ ASSIGNMENTS OF ERROR~~

~~(State each assignment of error with sufficient specificity to inform reasonably the adverse party of the nature of the claim asserted. Each assignment shall be clear, concise, and direct and stated in a separate numbered paragraph.)~~

~~\_\_\_\_\_ IV  
\_\_\_\_\_ RELIEF~~

~~(Set forth clearly and concisely those demands for relief to which appellant claims entitlement. Relief in the alternative may be demanded.)~~

~~\_\_\_\_\_~~  
~~V~~  
~~\_\_\_\_\_~~  
ATTACHMENTS

~~(A copy of the appealed charges or written decision, if any, shall be attached to the claim of appeal.)~~

~~-DATED:~~

~~\_\_\_\_\_~~ Appealing party or attorney signature

R 38.144 ~~Filing and service of notice of appeal and claim of appeal.~~ **Rescinded.**

~~Rule 14. An appeal is commenced by filing with the commission, a notice of claim of appeal, and a claim of appeal. The appellant shall serve a copy of the notice of the claim of appeal and the claim of appeal upon the controlling board by delivering the documents in person, by registered mail, return receipt requested, or by certified mail, return receipt requested.~~

R 38.145 Filing.

Rule 15. (1) **A party shall file pleadings and other papers documents** under these rules ~~shall be filed~~ with the office of the commission, **which shall receive pleadings and other documents and shall be received in their entirety** by the commission before the close of business on the last day of the time limit, if any, for the filing.

(2) ~~The commission shall permit filing of~~ **A party shall file pleadings and other documents with the commission by personal delivery, by mail as defined in R 38.146(2), use of facsimile (fax) communication equipment or by electronic submission as defined in R 38.131.** as follows:

(a) ~~All filings sent by fax or electronically shall be typewritten, excluding any required signatures, on 8 1/2" by 11" paper.~~

(b) ~~The total number of pages of any pleading or document sent by fax or electronically shall not exceed 20 pages.~~

(c) ~~Every fax filing shall include a cover sheet containing the following information:~~

~~(i) The case name.~~

~~(ii) The docket number.~~

~~(iii) The name and telephone number of the sender.~~

~~(iv) The number of pages being transmitted.~~

**(3)(d) If the commission receives a pleading or other document** ~~Pleadings or documents filed by fax or electronically which are received in whole or in part in the office of the commission after 5:00-5 p.m. will not be,~~ **the commission shall consider it considered filed until on** the next business day.

R 38.146 Service; mail; proof of service.

Rule 16. ~~Except for the original service of the notice of claim of appeal and the claim of appeal, service~~ **(1) A party shall serve required or permitted to be made upon a party represented by an attorney pleadings and other documents on an attorney or on a party not represented by an attorney by personal delivery, by mail as defined in subrule (2) of this rule, or by electronic submission as defined in R 38.131. shall be made as follows:**

~~—(a) Service upon the attorney shall be made by delivering or by mailing a copy to the attorney's last known business address. Service upon a party shall be made by delivering a copy or by mailing a copy to the party at the address stated in the pleadings.~~

**(2)(b) Filing by mail or service by mail** ~~Mailing of a copy~~ means enclosing it in a sealed envelope with first-class mail postage fully prepaid, addressed to the **commission or to the person to be served**, and depositing the envelope ~~and its contents~~ in the United States government mail.

**(3)(c) A party shall provide proof** ~~Proof of service of papers required or permitted to be served may be evidenced by~~ **filing with the commission** written acknowledgment of service, ~~by an~~ affidavit of the person making service, or ~~by other~~ proof satisfactory to the commission.

#### R 38.147 ~~Answers~~ **Answer.**

Rule 17. **(1) Not later than 10 days after** ~~After service of a copy of a notice of claim of appeal and the claim of appeal, an~~ appellee shall ~~have 10 days within which to file an answer with the commission and shall and serve a copy of the answer on all parties~~ **an answer.**

**(2) An** ~~The answer shall~~ **must** contain a specific admission or denial of each material allegation of fact contained in the claim of appeal; **and** a statement of facts **and affirmative allegations on** ~~upon~~ which the appellee relies for his or her defense, ~~and affirmative allegations to be relied on by appellee.~~ Each paragraph contained in the answer shall be numbered to correspond with the paragraphs in the claim of appeal. An original and 6 copies of the answer shall be filed with the commission and a copy shall be served upon all other parties.

#### R 38.148 Amendments.

Rule 18. The administrative law judge may permit a party to amend a pleading before, during, or after the conclusion of the hearing ~~upon such on~~ terms as ~~may be deemed that~~ **are** just and consistent with due process.

#### R 38.149 ~~Joinder of claims of appeal or dismissal of parties and consolidation of cases.~~

Rule 19. ~~More than 1 appellant may join in a claim of appeal if a right to relief jointly, severally, or, in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences is asserted and if a question of law or fact is common to all appellants or it appears that the appellants' presence in the action will promote the convenient administration of justice. Misjoinder of appellants is not a ground for dismissal of the claim of appeal. Appellants may be added or dropped by order of the administrative law judge on motion of any party or on the initiative of the administrative law judge at any stage of the action and on such terms as are just~~**In the**

**exercise of discretion, the administrative law judge may order joinder or dismissal of parties or consolidation of cases.**

### PART 3. MOTION PRACTICE

R 38.151 ~~Form: time for filing~~ **Motions, general provisions.**

Rule 21. (1) ~~An application~~ **A request** to the administrative law judge or the commission for an order in a pending action ~~shall~~ **must** be by **written, signed** motion, ~~in writing,~~ unless made during a hearing. The ~~applicant motion~~ **shall state, with particularity,** ~~must include~~ the **particular** grounds and ~~authority~~ on which the application is based **moving party bases the motion, citations of supporting authority,** state the **particular** relief or order sought, and be signed by ~~the signature of~~ the party or the party's attorney. **The moving party may file with the motion a supporting brief and affidavits and a request for a hearing date.**

(2) **At the time a party files a written motion, the party shall serve on the opposing party a** ~~A copy of the written motion, and, if filed, the brief, affidavits, and request for a hearing date;~~ **and a notice to the opposing party** that the rules of the commission require a response to the motion ~~within~~ **not later than** 10 days after service of the motion ~~shall be served upon the opposing party at the time an application is filed with the administrative law judge or the commission. If a motion or response is supported by affidavit, then the affidavit shall be filed and served with the motion or response. The moving party shall file proof of service with the commission.~~

(3) ~~Motions and responses to motions shall be accompanied by a brief. The brief shall contain a concise statement of supporting or opposing reasons and a citation of authorities upon which the parties rely.~~

(4) ~~A respondent opposing a motion shall file a response, including a brief and supporting affidavits, if any, within~~ **not later than** 10 days after service of the motion unless **the administrative law judge or the commission otherwise orders, shall serve a copy of the response on the moving party, and shall file proof of service with the commission. The response must include citations of supporting authority and the signature of the respondent. The respondent may file with the response a supporting brief and affidavits and a request for a hearing date.** ~~ordered by the administrative law judge or the commission.~~

(5) ~~The movant and respondent shall serve copies of their respective papers upon opposing parties before or concurrently with the filing with the administrative law judge or the commission and shall include proof of service.~~

(4)(6) ~~The administrative law judge or the commission may limit or dispense with oral arguments on motions.~~

(5)(7) **All of the following apply to an affidavit filed under this rule** ~~If an affidavit is filed in support of, or in opposition to, a motion, it shall be in compliance with all of the following provisions:~~

(a) ~~Be made~~ **Made** on personal knowledge.

(b) ~~State~~ **States,** with particularity, facts admissible as evidence establishing or denying the grounds stated in the motion.

(c) ~~Show~~ **Shows** affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit.

~~(6)~~**(8)** The **administrative law judge shall set the time, manner, and place** for a hearing on a motion ~~shall be set by the administrative law judge~~. However, the hearing on a motion ~~shall~~ **must** not cause a delay in the ~~statutorily mandated~~ date for the conclusion of the hearing **as set forth in section 4 of article IV of the act, MCL 38.104**, ~~nor shall a motion cause a delay or~~ in the due dates of exceptions or cross-exceptions.

~~(7)~~**(9)** If **the record does not establish the facts necessary for resolution of** a motion ~~is based on facts not appearing on the record~~, the administrative law judge may hear the motion on affidavits ~~presented by the parties~~ or may ~~direct that~~ **hear** the motion be heard wholly or partly on oral testimony or deposition.

~~(8)~~**(10)** The administrative law judge may direct that a hearing on a motion be held ~~at the commission offices in Lansing,~~ **Detroit, or the county of the appellee**.

R 38.152 Motion for more definite statement.

Rule 22. If a claim of appeal or answer **does not reasonably inform the opposing party of the nature of the claim or defense**, ~~is so vague or ambiguous that it fails to comply with these rules, then~~ the opposing party may move for a more definite statement ~~before filing responsive pleadings at any time~~. The motion ~~shall~~ **must** specify the claimed defects ~~and the details desired~~. If **a party does not comply with** an order granting ~~the a~~ motion **under this rule is not obeyed** within 10 days of the order; or within such other time as the administrative law judge ~~may set~~ **sets**, ~~then~~ the administrative law judge may strike the **challenged claim of appeal or answer** ~~pleading to which the motion was directed~~ or enter an order the administrative law judge deems just.

R 38.153 Motion to strike.

Rule 23. ~~Upon~~ **On** motion made by a party or ~~upon~~ **on** the administrative law judge's own initiative, the administrative law judge may ~~order~~ **issue an order striking** redundant, immaterial, impertinent, scandalous, or indecent matter ~~stricken from pleadings~~. ~~The administrative law judge may order evidence which is objected to and which would not be admitted by the administrative law judge stricken from pleadings.~~

R 38.155 Motion for summary disposition.

Rule 25. (1) A party ~~seeking to recover upon a claim of appeal, or a party against whom a claim of appeal is asserted,~~ may move for summary disposition on all or any part of ~~the~~ **a claim of appeal** at any time. The motion ~~shall~~ **must identify which** ~~state that the moving party is entitled to summary disposition on 1 or more of the following grounds and shall specify the grounds on which~~ **supports** the motion is based:

(a) The appellant has failed to state a claim ~~upon~~ **on** which **the commission can grant the requested relief can be granted**.

(b) The controlling board has failed to state a valid defense ~~to the claim asserted against it~~.

(c) There is no genuine issue as to a material fact; except as to the relief ~~to be granted~~, and the moving party **has the right is therefore entitled** to judgment as a matter of law.

(d) The commission lacks jurisdiction of the subject matter.

(e) The claim of appeal is ~~barred because it is~~ untimely.

(f) The claim of appeal is ~~barred~~ **cannot proceed** because of some other disability of the appellant or other disposition of the claim.

(2) ~~The administrative law judge may consider only~~ ~~Only the pleadings may be considered~~ when the motion for summary disposition is based ~~on~~ **under** subrule ~~(1)(a)~~ **(1)(a)** or (b) of this rule.

(3) ~~A party filing a~~ ~~A motion based upon~~ ~~on~~ subrule ~~(1)(c)~~ **(1)(c)** of this rule shall ~~be supported by~~ ~~file~~ **supporting affidavits, depositions, admissions, or other documentary evidence** and ~~the motion shall~~ **must** specifically identify the issues as to which the moving party believes there is no genuine issue of material fact. **When considering a motion under subrule (1)(c), the** ~~The administrative law judge shall consider the supporting documents and affidavits, together with~~ the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, ~~shall be considered~~. If a **party makes a** motion ~~is made~~ under subrule ~~(1)(c)~~ **(1)(c)** of this rule and ~~supported~~ **supports the motion** as provided in this rule ~~subrule~~, then an adverse party may not rest ~~upon~~ ~~on~~ the mere allegation or denial of the ~~pleading~~ **pleadings**; but shall, by affidavits, **depositions, admissions, or other documentary evidence** or ~~as otherwise provided in this rule~~, set forth specific facts showing that there is a genuine issue for hearing. If the adverse party does not respond, ~~then the administrative law judge shall enter~~ summary disposition, if appropriate, ~~shall be entered~~. **The administrative law judge shall enter summary** ~~Summary disposition shall be entered~~ if the pleadings show **a party's entitlement** ~~that a party is entitled~~ to summary disposition as a matter of law or if the affidavits or other proof shows that there is no genuine issue of fact. If it appears that the opposing party, rather than the moving party, ~~is entitled~~ **has the right** to summary disposition, the administrative law judge may ~~render~~ **enter** summary disposition in the opposing party's favor without a motion.

~~(4)(3)~~ The administrative law judge may order an immediate hearing on disputed questions of fact and **may** enter a summary disposition if the proofs show that the moving party ~~is entitled~~ **has the right** to summary disposition or the administrative law judge may postpone the hearing ~~on the motion~~ until the ~~merits are heard~~ **hearing on the claim of appeal**.

~~(5)(4)~~ If ~~the grounds asserted~~ **a motion** for summary disposition ~~is under~~ ~~are based on~~ subrule (1)(a), (b), or (c) of this rule, ~~then~~ the administrative law judge shall give the parties an opportunity to amend their pleadings; unless the evidence before the administrative law judge shows that amendment would ~~not be justified~~ **futile**.

#### R 38.156 Motion for adjournment or continuance **of hearing**.

Rule 26. An administrative law judge ~~shall not~~ **may** grant a request for adjournment or continuance **of a hearing** ~~except on~~ **for** good cause. ~~A request for adjournment or continuance may be made by written motion, by oral motion during a hearing, or by stipulation of the parties.~~ **Any adjournment or continuance is subject to the mandatory date for the conclusion of the hearing as set forth in section 4 of article IV of the act, MCL 38.104.**

#### R 38.157 Lack of progress or repeated failure to follow statute or rule.

Rule 27. After a party, the administrative law judge, or the commission ~~gives~~ **notifies** a party ~~notice~~ of an alleged deficiency and an opportunity to respond or comply within 10 days, the administrative law judge or the commission may dismiss an appeal or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to

comply with the procedures specified in section 4 of article 4 IV of the act, **MCL 38.104**, or these rules. A party may move to set aside an order under this rule within 10 days of the issuance of the order. **The administrative law judge shall not grant a** motion to set aside an order **under this rule unless** ~~shall be granted only if~~ **the moving party shows** good cause ~~is shown~~ and **files** an affidavit of facts showing a meritorious claim or defense ~~is filed~~.

#### PART 4. PREHEARING CONFERENCE

R 38.161 Scope of **prehearing** conference.

Rule 31. ~~In every matter,~~ **Unless, in the exercise of discretion,** the administrative law judge **determines that a prehearing conference is unnecessary, the administrative law judge shall** ~~may~~ direct the parties and their attorneys to participate in a prehearing conference, either in person or by telephone, to do the following:

(a) State and simplify the factual and legal issues involved and consider the amendment of pleadings.

(b) Consider **the resolution of** motions ~~to be disposed of~~ before hearing, the consolidation of the case with another, admissions of fact and **of the** authenticity of documents ~~to avoid unnecessary proofs,~~ **stipulations to the admissibility of evidence,** and ~~limiting~~ **limitations on** the number of witnesses and the nature and extent of the relief demanded.

(c) ~~Produce~~ **Determine dates for the exchange of** all proposed documentary evidence ~~and admit its authenticity if possible.~~

(d) ~~Prepare a~~ **Determine dates for the exchange of** a list of **possible** witnesses ~~who may be called at the time of the hearing.~~

(e) ~~Estimate~~ **Set the date or dates for** the time for hearing.

(f) Discuss the possibility of settlement.

(g) **Determine whether and when the parties shall file pre-hearing briefs.**

(h) Consider all other matters that may aid in the disposition of the ~~subject of~~ **disagreement claim of appeal.**

R 38.162 Prehearing summary.

Rule 32. The administrative law judge shall prepare and serve ~~upon~~ **on** the parties a summary of the results of the **prehearing** conference ~~specifically covering each of the items discussed~~ within 5 days after the prehearing conference. The parties, within 5 days of service of the summary, may file objections to the summary.

R 38.163 ~~Hearing briefs~~ **Rescinded.**

~~Rule 33. At the time of the prehearing conference, the administrative law judge may direct the parties to file a hearing brief as to any of the issues involved in the action. If hearing briefs are required, parties shall submit the briefs to the administrative law judge not less than 10 days before the hearing, unless a different date is set by the administrative law judge, or unless the administrative law judge specifically waives the requirement.~~

R 38.165 ~~Waiver of prehearing conference~~ **Rescinded.**

~~Rule 35. The provisions of these rules pertaining to the prehearing conference and prehearing summary may be waived by stipulation of counsel of all parties to the action subject to the approval of the administrative law judge.~~

## PART 5. HEARINGS, EXCEPTIONS, AND CORRECTION OF MISTAKES

R 38.171 ~~Notice of hearing~~ **Rescinded.**

~~Rule 41. An administrative law judge shall furnish to each party a notice of hearing establishing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 45 days after service of the controlling board's answer, unless the administrative law judge grants a delay for good cause shown by the teacher or controlling board.~~

R 38.172 Conduct of evidentiary hearing; ~~representation~~; stipulations of fact; objections ~~to hearing~~; rules of evidence; rules of privilege; official notice.

Rule 42. (1) ~~A~~ **An administrative law judge shall conduct a** hearing for the purpose of taking evidence ~~upon~~ **on** a claim of appeal ~~shall be conducted by an administrative law judge.~~

(2) A party ~~may appear at a hearing in person or by legal counsel and~~ may call, examine, and cross-examine witnesses and introduce into the record documentary or other evidence.

(3) **The administrative law judge may admit stipulations of fact into evidence** ~~Stipulations of fact may be introduced in evidence at the hearing at the discretion of the administrative law judge.~~

(4) **A party may make an oral or written** ~~An~~ objection to the conduct of the hearing, including an objection to the introduction of evidence, ~~may be oral or written~~ and **shall describe** ~~accompanied by a short statement on~~ the grounds for the objection.

(5) ~~In a contested case,~~ **The administrative law judge shall apply** the rules of evidence ~~as applied that apply~~ in a nonjury civil case in circuit court ~~shall be followed~~ as far as practicable, but the administrative law judge may admit and give probative effect to evidence of a type **on which reasonably prudent people commonly rely** ~~commonly relied upon by reasonably prudent people~~ in the conduct of their affairs.

(6) **The administrative law judge may exclude irrelevant** ~~Irrelevant~~, immaterial, or unduly repetitious evidence ~~may be excluded.~~

(7) **The administrative law judge shall apply** ~~Effect shall be given to~~ the rules of privilege recognized by law.

(8) ~~Objections to offers of evidence may be made and shall be noted in the record.~~

(9) The administrative law judge may take official notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within the commission's specialized knowledge.

(9) **For matters that these rules do not specifically address, R 792.10101 to R 792.10137, the Michigan court rules, and chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288, apply.**

R 38.173 Subpoenas.

Rule 43. (1) ~~The administrative law judge may subpoena witnesses and documentary or physical evidence on his or her own motion and shall subpoena witnesses and documentary or physical evidence at the request of the controlling board or the teacher. If a person refuses to appear and testify in answer to a subpoena issued by the administrative law judge, then the party on whose behalf the subpoena was issued may file a petition in the circuit court of the county in which the hearing is held for an order requiring compliance. Failure to obey an order of the court may be punished by the court as contempt. The administrative law judge may stay further proceedings until the subpoena is obeyed. Upon motion made at or before the time specified in the subpoena for compliance with the subpoena, the administrative law judge may quash or modify the subpoena if it is unreasonable or oppressive.~~

(2) ~~A subpoena shall state the title of the matter and shall command each person to whom it is directed to attend and give testimony at a time and place specified in the subpoena. The administrative law judge shall sign and issue a subpoena, in blank, to a party requesting it for a witness or documentary or physical evidence. The requesting party shall fill in the subpoena before service.~~

**(2) A subpoena must state the title of the matter and must command attendance and testimony or production of documentary or physical evidence at a time and place specified in the subpoena.**

(3) ~~A party shall serve a subpoena shall be served in the manner prescribed by statute or the Michigan Court Rules, 1996/1997 edition, court rules for subpoenas in civil actions. A subpoena may be served at any place within the state. Upon a showing to the administrative law judge that service of the subpoena cannot reasonably be made in person, unless the administrative law judge may allow allows service of a subpoena to be made upon a person in any other another manner that is reasonably calculated to give the person actual notice of the subpoena.~~

**(4) On motion at or before the time specified in a subpoena for compliance, the administrative law judge may quash or modify the subpoena if it is unreasonable or oppressive.**

(5) ~~Witnesses subpoenaed before the commission shall be paid receive the same fees and mileage that are paid to witnesses in circuit courts receive. The party at whose request a witness appears shall pay the witness Witness fees and mileage to the witness. shall be paid by the party at whose instance the witnesses appear, but may be recovered~~

**(6) The by the prevailing party may recover witness fees and mileage as costs if the commission so directs.**

R 38.174 Discovery.

Rule 44. ~~There may be discovery Discovery is permitted upon on leave of the administrative law judge or on stipulation of all parties. A party shall not file a motion for discovery may not be filed unless the party has requested the discovery sought has been requested previously and refused unsuccessfully. The parties shall complete all All discovery shall be completed before the statutorily required commencement of the hearing unless the administrative law judge grants a delay pursuant to R 38.171.~~

R 38.174a Physical and mental examination.

Rule 44a. (1) If the appellant places his or her mental or physical condition in controversy, ~~then~~ the administrative law judge, **on motion for good cause with notice to the appellant and all parties**, may order the appellant to submit to a physical or mental examination by a physician or other appropriate professional. ~~The order may be entered only on motion for good cause with notice to the appellant and to all parties. The order shall~~ **must** specify the time, place, manner, conditions, and scope of the examination and the ~~person or persons by whom it is to be made~~ **name of the examiner or examiners**. ~~The order shall provide that the attorney for the appellant may be present at the examination.~~

(2) **On request of the appellant or his or her attorney** ~~If requested by a party against whom an order is entered under subrule (1) of this rule, the party causing~~ **who requested** the examination ~~under subrule (1) of this rule to be made~~ shall deliver to the requesting **appellant or his or her attorney** a copy of a detailed written report of the ~~examining physician~~ **examiner or examiners** setting out the findings, including ~~the results of all tests~~ **test results** made, diagnoses, and conclusions, ~~together with~~ **and all** reports ~~on earlier examinations~~ **on all tests and examinations** pertaining to the same condition, and shall make available for inspection ~~and examination~~ **all x-rays, cardiograms, and other** diagnostic aids.

(3) After delivery of the report specified in subrule (2) of this rule, the party ~~causing~~ **who requested** the examination ~~to be made is entitled, on request, to receive~~ **shall, upon request, receive** from the ~~party against whom the order is made~~ **appellant** a similar report of any examination previously or thereafter made pertaining to the same condition and to a similar inspection of all diagnostic aids.

(4) ~~If a person who is examined~~ **an appellant** refuses to deliver a report ~~requested under subrule (3) of this rule, then~~ the administrative law judge, on motion and notice, may enter an order requiring delivery on **just** terms ~~as are just~~. If a ~~physician~~ **an examiner** refuses or fails to ~~comply with~~ **provide a report required under** this rule, ~~then~~ the administrative law judge may order the ~~physician~~ **examiner** to appear for a discovery deposition.

(5) By requesting and obtaining a report on ~~the~~ **an** examination ordered under this rule or by taking the deposition of the examiner, the ~~person examined~~ **appellant** waives any privilege he or she may have in ~~that~~ **the** action, or another action involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the person as to the same mental or physical condition.

(6) Subrule (2) of this rule applies to an examination made by agreement of the parties, unless the agreement expressly provides otherwise.

(7) Subrule (2) of this rule does not preclude discovery of a report of an ~~examining physician~~ **examiner** or the taking of a deposition of the ~~physician~~ **examiner** under any other **statute or** rule.

R 38.175 Briefs.

Rule 45. The administrative law judge may require the parties to file briefs, may limit the length of the briefs, and shall designate the manner of, and time for, filing and serving the briefs.

R 38.176 Exceptions, **cross-exceptions, statement in support of preliminary decision**

**and order, supporting** briefs.

Rule 46. (1) Within the time allowed by the act **and in the manner required by R 38.142(2)**, a party shall file ~~an original and 6 copies of the brief and of the a~~ statement of exceptions, statement of cross-exceptions, or statement in support of the preliminary decision and order, **and supporting brief**. ~~If a party files an exception to a written ruling of the administrative law judge on a motion, the party shall file 6 copies of the motion decision and any associated pleadings.~~

~~(2) The argument presented in a brief in support of the statement of exceptions or statement of cross exceptions shall correspond to the statement of exceptions or cross-exceptions.~~

~~(2)(3) Except as permitted by order of the commission, briefs are limited to~~ **must not exceed 50 double-spaced pages using margins of at least 1 inch and type of at least 12-points**, exclusive of tables, indexes, appendices, and title page. **Single spacing of quotations** ~~Quotations and footnotes is permissible may be single spaced.~~ **At least 1-inch margins shall be used, and printing shall not be smaller than 12-point type.**

~~(3)(4) The A~~ **brief under this rule shall must** contain, in the following order, all of the following items:

(a) A table of contents; listing the exceptions or cross-exceptions; in the order of presentation, with the ~~numbers of the pages~~ **page number** where the ~~discussion of the exceptions~~ **argument related to each exception** or ~~cross-exceptions appear~~ **cross-exception begins** in the brief.

(b) An index of authorities; listing in alphabetical order all ~~ease authorities cited, with the complete citations including the years of decision, and all other authorities cited, with the page numbers of the pages where they appear in the brief.~~ **Parallel citations of Michigan statutes are required.**

(c) A statement of facts; ~~which shall be supported by specific page references to the record. Page references to the record shall also be given to show whether the issue was preserved for review by appropriate objection or by other means.~~

(d) The arguments, **which must correspond to each exception or cross-exception**; each portion of which shall be prefaced by the ~~principal point stated in capital letters or boldface type.~~

(e) The relief requested.

(f) ~~A~~ **The signature of the party or attorney.**

~~(4)(5) If, on its own initiative or on a party's motion, the commission concludes~~ **finds** that a brief does not substantially comply with the requirements in this rule, the commission may order the party who filed the brief to file a supplemental brief within a specified time correcting the deficiencies. **If the party does not comply with the order,** ~~or~~ the commission may strike the nonconforming brief.

R 38.177 Decision or order.

Rule 47. (1) A decision or order of the commission ~~shall be~~ **is** effective only if ~~voted upon by~~ a majority of the members of the commission **vote on it**.

(2) ~~The commission shall serve a~~ **A written** decision or order ~~of the commission shall be served, in writing, by certified mail on the parties concerned, or on their attorneys if represented by certified mail.~~

R 38.179 Correction of clerical mistakes.

Rule 49. **The commission may correct clerical** Clerical mistakes in judgments, orders, or other parts of the record and ~~errors~~ **mistakes** arising from oversight or omission ~~may be corrected by the commission~~ at any time on its own initiative or, after notice, on motion of a party, ~~if the commission orders correction.~~