

THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS



RULES OF PROCEDURE
TITLE 1, PART 7
CHAPTER 155
(Effective January 2017)

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**TITLE 1. ADMINISTRATION
PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS
CHAPTER 155. RULES OF PROCEDURE**

SUBCHAPTER A. GENERAL

§155.1. Purpose.

- (a) This chapter governs the procedures of the State Office of Administrative Hearings (SOAH). These rules apply in all matters referred to SOAH, including contested cases under the Administrative Procedure Act (APA), Tex. Gov't Code Chapter 2001. These rules do not apply to matters otherwise addressed by statute or to matters that are otherwise limited by the provisions of this chapter.
- (b) Administrative License Suspension cases initiated by the Texas Department of Public Safety are governed by Chapter 159 of this title.
- (c) Arbitration procedures for certain enforcement actions of the Texas Department of Aging and Disability Services regarding assisted living facilities and nursing homes are governed by Chapters 156 and 163 of this title.
- (d) Appeals of appraisal review board decisions are governed by Chapter 165 of this title.
- (e) Dispute resolution procedures for certain consumer health benefit disputes under Insurance Code, Chapter 1467, are governed by Chapter 167 of this title.
- (f) SOAH adopts by reference the procedural rules of the Public Utility Commission of Texas (PUC) and the Texas Commission on Environmental Quality (TCEQ) that address the contested case process in matters referred by those agencies. This adoption does not include any PUC or TCEQ rules addressing the use of Alternative Dispute Resolution (ADR) processes at SOAH. Those ADR processes are governed by the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2009; SOAH rule provisions pertaining to ADR; and interagency contracts, memoranda of understanding, or other written agreements with referring entities.
- (g) SOAH adopts by reference the procedural rules of the Comptroller of Public Accounts (CPA) that address the hearing process in matters referred by that agency pertaining to protesting preliminary findings of a property value study.
- (h) Under Tex. Gov't Code § 815.102, the procedural rules of the Employees Retirement System of Texas (ERS) govern the formal contested case process in matters it refers to SOAH.
- (i) Proceedings under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, *et seq.*, are governed by that statute, federal regulations at 34 C.F.R. Part 300, and the rules of the Texas Education Agency at 19 TAC Chapter 89

§155.3. Application and Construction of this Chapter.

- (a) SOAH proceedings shall be conducted in accordance with the APA, when applicable, and with this chapter. The judge may modify and supplement the requirements of this chapter to promote the fair and efficient handling of the case and to facilitate resolution of issues, if doing so will not unduly prejudice the rights of any person or contravene applicable statutes.
- (b) If there is a conflict between an agency's rules or prior decisions and statutory provisions applicable to the case, and the rules or decisions cannot be harmonized with the statute, the statute controls.
- (c) The procedural rules of a state agency govern SOAH proceedings only to the extent that SOAH's rules adopt the agency's procedural rules by reference, unless otherwise required by law.
- (d) If there is a conflict between SOAH's rules and the procedural rules of the TCEQ adopted in §155.1 of this chapter, the TCEQ rules will control.
- (e) If there is a conflict between SOAH's rules and the procedural rules of the PUC adopted in §155.1 of this chapter, the PUC rules will control.
- (f) If there is a conflict between SOAH's rules and the procedural rules of ERS referenced in §155.1 of this chapter, the ERS rules will control.
- (g) This chapter shall be construed to ensure the just and expeditious determination of every matter referred to SOAH. Not all contested procedural issues will be susceptible to resolution by reference to the APA and other applicable statutes, this chapter, and case law. When they are not, the presiding judge will consider applicable policy of the referring agency documented in the record in accordance with §155.419 of this chapter, the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and persuasive authority established in other forums.
- (h) Unless otherwise expressly provided, the past, present, and future tense shall each include the others; the masculine, feminine, and neuter gender shall each include the others; and the singular and plural number shall each include the other.
- (i) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. The principles of statutory construction and of the Code Construction Act, Tex. Gov't Code Chapter 311, apply

§155.5. Definitions.

When used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

- (1) **Administrative law judge or judge**--An individual appointed to serve as a presiding officer by SOAH's chief judge under Tex. Gov't Code Chapter 2003.
- (2) **Alternative Dispute Resolution or ADR**--Processes used at SOAH to resolve disputes outside or in connection with contested cases, including mediation, mini-trials, early neutral evaluation, and arbitration.
- (3) **APA**--The Administrative Procedure Act, Tex. Gov't Code Chapter 2001.
- (4) **Arbitration**--A form of ADR, governed by an agreement between the parties or special rules or statutes providing for the process in which a third-party neutral issues a decision after a streamlined and simplified hearing. Arbitrations may be binding or non-binding, depending on the agreement, statutes, or rules. See Chapters 156 and 163 of this title for procedural rules specifically governing the arbitration of certain nursing home and assisted living facility enforcement cases referred by the Texas Department of Aging and Disability Services.
- (5) **Authorized representative**--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a non-attorney designated by a party to represent the party.
- (6) **Business day**--A weekday on which state offices are open.
- (7) **Chief Judge**--The chief administrative law judge of SOAH.
- (8) **Discovery**--The process of compulsory disclosure by a party, upon another party's request, of information, including facts and documents, relating to a contested case.
- (9) **Evidence**--Testimony and exhibits admitted into the record to prove or disprove the existence of an alleged fact.
- (10) **Exhibits**--Documents, records, photographs, and other forms of data compilation, regardless of media, or other tangible objects offered by a party as evidence.
- (11) **IDEA**--The Individuals with Disabilities Education Act.
- (12) **Media or media agency**--A person or organization regularly engaged in news gathering or reporting, including any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering entity.
- (13) **Mediation**--A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication among the parties to promote settlement, reconciliation, or understanding.
- (14) **Party**--A person named or admitted to participate in a case before SOAH.

- (15) **Person**--An individual, representative, corporation, or other entity, including a public or non-profit corporation, or an agency or instrumentality of federal, state, or local government.
- (16) **Pleading**--A filed document that requests procedural or substantive relief, makes claims, alleges facts, makes legal argument(s), or otherwise addresses matters involved in the case.
- (17) **PUC**--The Public Utility Commission of Texas.
- (18) **Referring agency**--A state board, commission, department, agency, or other governmental entity that refers a contested case or other matter to SOAH.
- (19) **SOAH**--The State Office of Administrative Hearings.
- (20) **Stipulation**—A binding agreement among opposing parties concerning a relevant issue or fact.
- (21) **TAC**--The Texas Administrative Code.
- (22) **TCEQ**--The Texas Commission on Environmental Quality.
- (23) **TRCP**--The Texas Rules of Civil Procedure. The TRCP are found on the website of the Texas Supreme Court.
- (24) **TRE**--The Texas Rules of Evidence. The TRE are found on the website of the Texas Supreme Court.

§155.7. Computation of Time.

- (a) Application of rule. This rule applies unless another method is required by statute, another rule in this chapter, or order.
- (b) Computing time periods. When computing periods of time prescribed or allowed in this chapter:
 - (1) the day of the act, event, or default from which the designated time period begins to run is not counted; and
 - (2) the last day of the time period is counted, unless it is a day on which SOAH's offices are closed, in which case the time period will end on the next day SOAH's offices are open.
- (c) Calendar days. Time limits shall be computed using calendar days rather than business days except as provided by subsection (d) of this section.

- (d) Five days or less. If the time limit is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted.
- (e) Requests to extend a time limit are governed by §155.307 of this chapter.

§155.9. Seal.

SOAH may maintain a seal to authenticate its official acts, including certifying copies of the administrative records of any matters heard by SOAH. The seal shall have a star with five points and the words "State Office of Administrative Hearings" engraved upon it.

SUBCHAPTER B. DOCKETING--FILING A CONTESTED CASE

§155.51. Jurisdiction.

- (a) Acquisition of jurisdiction. SOAH acquires jurisdiction over a case when a referring agency completes and files a Request to Docket Case form. A separate Request to Docket Case form shall be completed and filed for each case referred to SOAH.
- (b) When Request to Docket Case form is considered filed. A Request to Docket Case form shall be considered filed on the date the form is received by SOAH.
- (c) Commencement of time periods. A period of time established by these rules shall not begin to run until SOAH acquires jurisdiction over a case.
- (d) Effect of acquisition of jurisdiction by SOAH. After SOAH acquires jurisdiction, any party may initiate discovery or move for appropriate relief, including evidentiary rulings, continuances, summary disposition, and setting of proceedings.

§155.53. Request to Docket Case.

- (a) Documents to be filed with Request to Docket Case form. A referring agency shall file with SOAH a completed Request to Docket Case form and the complaint, petition, application, or other pertinent documents describing the agency action giving rise to the case.
- (b) Actions to be requested. A referring agency shall request one of the following actions on the Request to Docket Case form:
 - (1) setting of a hearing;
 - (2) assignment of a judge; or
 - (3) an ADR process.

- (c) Request for setting of hearing. If a referring agency requests a setting of hearing, SOAH will attempt to set the hearing on the date and time requested, but the setting will be based on the availability of hearing rooms and judges. SOAH will provide the agency with the date, time, and place of the setting.
- (d) Request for assignment of judge. If a referring agency requests assignment of a judge, SOAH will assign a judge to handle the case.
- (e) Request for ADR. If a referring agency requests ADR, SOAH will assign a judge, mediator, or arbitrator to handle the proceeding.
- (f) Refusal of Request to Docket Case form. SOAH may refuse to accept for filing a Request to Docket Case form that has not been properly referred to SOAH or that does not substantially conform to the filing procedures of this section.

SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

§155.101. Filing Documents. (Amended eff. 1/01/17)

- (a) Filing and service required.
 - (1) All pleadings and other documents, except for confidential materials (as described in § 155.103), shall be filed using one of the methods described in this rule.
 - (2) On the same date a document is filed, it shall also be served on all other parties using one of the methods described in § 155.105.
- (b) Method and format of filing in all cases other than PUC, TCEQ, or IDEA cases.
 - (1) Filing by Electronic Case Information System.
 - (A) Except as otherwise provided in this subchapter, attorneys, state agencies, and other governmental entities are required to file all documents in SOAH's electronic Case Information System (CIS). CIS may be accessed and filings uploaded using SOAH's internet home page, www.soah.texas.gov. Parties not represented by an attorney are strongly encouraged to use CIS but may use alternative methods of filing described in subparagraph (2) of this subsection.
 - (B) The electronic version of a document maintained in CIS shall be given the same legal status as the originally filed document, without regard to the original means of filing.
 - (C) In addition to the other requirements of this rule, filings in CIS must comply with all requirements and procedures set forth on SOAH's website and electronic filing page.

- (D) Formatting. A pleading filed in CIS must:
- (i) be in text-searchable portable document format (PDF);
 - (ii) be directly converted to PDF rather than scanned;
 - (iii) not be locked;
 - (iv) include the email address of a party, attorney, or representative of a state agency who electronically files a document; and
 - (v) include the SOAH docket number and the name of the case in which it is filed.
- (E) Formatting. Other documents filed in CIS, such as attachments to pleadings, exhibits, affidavits, letters, and appendices, must:
- (i) be in PDF format and, if possible, be text-searchable;
 - (ii) be directly converted to PDF rather than scanned, if possible;
 - (iii) not be locked;
 - (iv) if scanned, be at least 300 dots per inch (dpi) resolution;
 - (v) if not attached to a pleading or document that already contains this information, include the email address of a party, attorney, or representative of a state agency who electronically files a document; and
 - (vi) if not attached to a pleading or document that already contains this information, include the SOAH docket number and the name of the case in which it is filed.
- (F) A pleading or document that is filed in CIS is considered signed if the document includes:
- (i) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
 - (ii) an electronic image or scanned image of the signature.
- (G) Time of filing. The time and date of documents filed electronically shall be determined by the time and date of receipt recorded by CIS.
- (H) If deemed necessary by SOAH, alternative means of filing or maintaining documents may be established, including the filing and maintenance of the official file in a paper format.

- (I) Testimony and exhibits offered at a hearing will not be filed in CIS. Confidential material filed or submitted pursuant to § 155.103 will not be publicly available in CIS.
- (2) Non-CIS filings.
 - (A) For unrepresented parties who do not use CIS, documents may be filed with SOAH:
 - (i) by mail addressed to SOAH at P.O. Box 13025, Austin, Texas 78711-3025;
 - (ii) by hand-delivery to SOAH at 300 West 15th Street, Room 504;
 - (iii) by fax to SOAH at (512) 322-2061; or
 - (iv) at the SOAH field office where the case is assigned, using the field office address or fax number, which are available at SOAH's website.
 - (B) All documents must include the SOAH docket number and the name of the case in which it is filed.
 - (C) Time of filing. With respect to documents filed by mail, fax, or hand-delivery, the time and date of filing shall be determined by the file stamp affixed by SOAH. Documents received when SOAH is closed shall be deemed filed the next day SOAH is open.
- (3) Non-conforming documents. SOAH's docketing department may not refuse to file a document that fails to conform with this rule. When a filed document fails to conform to this rule, the presiding judge or SOAH's docketing department may identify the errors to be corrected and state a deadline for the person, attorney, or agency to resubmit the document in conforming format.
- (c) Method of filing in cases referred by the PUC.
 - (1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed at the PUC in accordance with the PUC rules.
 - (2) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.
 - (3) The court reporter shall provide the transcript and exhibits to the judge at the same time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

- (d) Methods of filing in cases referred by the TCEQ.
- (1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed with the TCEQ's chief clerk in accordance with the TCEQ rules.
 - (2) The time and date of filing of these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.
 - (3) The party filing a document with the TCEQ (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.
 - (4) The court reporter shall provide the transcript and exhibits to the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TCEQ by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TCEQ by the judge.

§155.103. Public and Confidential Information.

- (a) Documents filed in proceedings at SOAH are accessible to the public through SOAH's website unless the proceeding is designated as confidential by SOAH or the documents are designated as confidential pursuant to this rule. A party filing or offering documents that contain confidential information and personal identifiers shall comply with this rule to prevent inadvertent public disclosure of such documents.
- (1) For purposes of this chapter, confidential information includes:
 - (A) information made confidential by law;
 - (B) information otherwise protected from disclosure by law; and
 - (C) documents filed in camera, solely for the purpose of obtaining a ruling on the discoverability or admissibility of such documents.
 - (2) A "personal identifier" is information that identifies a specific individual. Personal identifiers include: Social Security numbers, taxpayer identification numbers, driver's license numbers, passport numbers, other similar government-issued personal identification numbers, bank account numbers, credit card numbers or other financial account numbers, dates of birth, full names of minors, full names of patients or clients in a health care setting, full names of persons who are victims of crimes, addresses and

telephone numbers of commissioned peace officers, expunged criminal records, or records subject to a non-disclosure order issued by a court unless allowed by law.

- (b) Redaction required. A person who files documents at SOAH in proceedings accessible to the public, including exhibits offered at hearing, shall redact from the documents all confidential information and personal identifiers that are unnecessary for resolution of the case. A party may not file an entire document as confidential and non-public except as provided in subsection (c) of this section.
- (c) Confidential documents.
 - (1) A party may designate an entire document or exhibit as confidential and non-public only if:
 - (A) the entire document or exhibit contains confidential information or is a personal identifier;
 - (B) redaction of the document or exhibit would remove confidential information or personal identifiers necessary to the resolution of the case; or
 - (C) it would be unduly burdensome to redact confidential information or personal identifiers from the document or exhibit.
 - (2) Filing confidential documents. A party filing confidential documents in a proceeding accessible to the public must file them by delivery in a sealed and labeled package, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and style of the case and shall explain the nature of the sealed materials. The outside of the package shall identify the docket number, style of the case, and name of the submitting party and shall be marked “CONFIDENTIAL” in bold print at least one inch in size. Each page of the confidential document shall be marked “CONFIDENTIAL” in bold print, 12-point type.
- (d) Challenging confidentiality designations. A party may file a motion to challenge the redaction or confidential filing of any information, or the judge can raise the issue. If a confidentiality designation is challenged, the designating party has the burden of showing that the document should remain confidential.
 - (1) If the judge determines that a confidential filing under subsection (c) is appropriate, the judge may allow the filing to remain inaccessible to the public on SOAH’s website, admit the information into the evidentiary record under seal, or employ appropriate protective measures.
 - (2) If the judge determines that a confidential filing under subsection (c) is not appropriate, the offering party must redact the confidential information or the personal identifiers before resubmitting the document.

- (e) Designation of a document as confidential in a SOAH proceeding is not determinative of whether that document would be subject to disclosure under Tex. Gov't Code Chapter 552 or other applicable law.
- (f) Documents in non-public cases. Certain SOAH proceedings are designated confidential. Hearings in those cases are not open to the public, and filings in these cases are not accessible through SOAH's public website.

§155.105. Service of Documents on Parties.

- (a) Method of service by parties in all cases other than those referred by PUC or TCEQ.
 - (1) Service on all parties. On the same date a document is filed, a copy shall also be sent to each party or the party's authorized representative by hand-delivery; by regular, certified, or registered mail; by email, upon agreement of the parties; or by fax. By order, the judge may exempt a party from serving certain documents or materials on all parties.
 - (2) Certificate of service. A person filing a document shall include a certificate of service that certifies compliance with this section.
 - (A) A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., regular mail, fax, certified mail.} {Signature}"
 - (B) If a filing does not certify service, SOAH may:
 - (i) return the filing;
 - (ii) send a notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or
 - (iii) send a copy of the filing to all parties.
 - (3) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:
 - (A) If a document was hand-delivered to a party, the judge shall presume that the document was received on the date of filing at SOAH.
 - (B) If a document was served by courier-receipted overnight delivery, the judge shall presume that the document was received no later than the next business day after filing at SOAH.

- (C) If a document was served by regular, certified, or registered mail, or non-overnight courier-receipted delivery, the judge shall presume that it was received no later than three days after mailing.
 - (D) If a document was served by fax or email before 5:00 p.m. on a business day, the judge shall presume that the document was received on that day; otherwise, the judge shall presume that the document was received on the next business day.
- (4) Burden on sender. The sender has the burden of proving date and time of service.
- (b) Method of service by parties in all cases referred by PUC or TCEQ. The procedural rules of the PUC and TCEQ govern the parties' service of documents in cases referred by those agencies.
- (c) Service of SOAH-issued documents by email. Parties may be served all SOAH-issued orders, proposals for decision, decisions, and other SOAH-issued documents in each case to which the requestor is a party, by subscribing to SOAH's email service, subject to the following:
- (1) Parties must access SOAH's public website, enter the link "Request Email Service," and submit a completed consent form "Request to be Served by E-mail."
 - (2) Parties requesting to be served SOAH-issued documents by email shall thereafter be served SOAH-issued documents only by email and shall no longer receive paper copies or any other form of service of such documents. Service of SOAH-issued documents by email applies to all SOAH dockets to which the requestor is a party.
 - (3) Parties who request service of SOAH-issued documents by email waive any right to confidentiality of their email address, which is added to the public service list for each SOAH docket to which the requestor is a party and is viewable on SOAH's public website through SOAH's Case Information System.
 - (4) Parties requesting to be served SOAH-issued documents by email shall:
 - (A) maintain a current email address and provide that email address to SOAH through the consent form "Request to be Served by E-mail";
 - (B) notify SOAH of any change to their email address in writing; and
 - (C) ensure that email filters and settings allow the delivery of emails from SOAH.
 - (5) Parties may rescind the election to be served SOAH-issued documents by email, but the rescission will not be effective until communicated to SOAH and all other parties in writing.
 - (6) Service of SOAH-issued documents by email is not available for SOAH's non-public cases.

- (7) Requesting and consenting to service by email of SOAH-issued documents does not affect a party's duties to serve other parties with filings at SOAH as described in this subchapter.

SUBCHAPTER D. JUDGES

§155.151. Assignment of Judges to Cases.

- (a) Discretion of Chief Judge. Assignment of judges to cases is at the discretion of the Chief Judge and the Chief Judge's designees and is not subject to request except as provided by §155.152 of this subchapter.
- (b) Judge's inability to continue presiding. If a judge is unable to continue presiding or to issue a decision or proposal for decision after the conclusion of the hearing, the Chief Judge or the Chief Judge's designee may reassign the case to another judge. That judge shall review the existing record and need not repeat previous proceedings but may conduct further proceedings as necessary.
- (c) Assignment of more than one judge. More than one judge may be assigned to a case.
 - (1) If more than one judge is assigned to a case, the judges may divide their areas of responsibility.
 - (2) Evidentiary and procedural questions will be resolved by the judge presiding at the time the issues arise or may be referred to another judge assigned to the case.
- (d) Temporary assignments. Cases may be temporarily assigned to a judge or panel of judges to decide regularly occurring threshold issues.

§155.152. Disqualification or Recusal of Judges.

- (a) A judge is subject to recusal or disqualification on the same grounds and under the same circumstances as specified in TRCP Rule 18b.
 - (1) Motion. A motion to recuse or disqualify a judge assigned to a case should:
 - (A) be made at the earliest practicable time;
 - (B) be verified, if the motion is in writing;
 - (C) state with particularity the grounds for the motion; and

- (D) be based on personal knowledge and include such facts as would be admissible in evidence, except that facts may be stated on information and belief if the basis for such belief is specifically stated.
- (2) Response to motion. Any other party may file or make a statement opposing or concurring with a motion to recuse or disqualify.
- (b) If the presiding judge who is the subject of the motion disqualifies or recuses him- or herself based on the motion, the Chief Judge or a designee of the Chief Judge shall assign a different presiding judge to the case.
- (c) If the presiding judge who is the subject of the motion does not disqualify or recuse him- or herself from the case, the Chief Judge or a designee of the Chief Judge shall assign another judge to consider and rule on the motion. At the discretion of the assigned judge, a hearing may be held on the motion. If the assigned judge finds that the presiding judge is disqualified or should be recused, the Chief Judge or a designee of the Chief Judge shall assign a different presiding judge to the *case*.

§155.153. Powers and Duties.

- (a) Judge's authority and duties. The judge shall have the authority and duty to:
 - (1) conduct a full, fair, and efficient hearing;
 - (2) take action to avoid unnecessary delay in the disposition of the proceeding; and
 - (3) maintain order.
- (b) Judge's powers. The judge shall have the power to regulate prehearing matters, the hearing, posthearing matters, and the conduct of the parties and authorized representatives, including the power to:
 - (1) administer oaths;
 - (2) take testimony, including the power to question witnesses and to request the presence of a witness from a state agency;
 - (3) rule on questions of evidence;
 - (4) rule on discovery issues;
 - (5) issue orders relating to hearing and prehearing matters, including orders imposing sanctions;
 - (6) admit or deny party status;
 - (7) designate the party with the burden of proof pursuant to §155.427 of this chapter;

- (8) exclude irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations of evidence or argument;
- (9) order parties to submit legal memoranda and proposed findings of fact and conclusions of law;
- (10) reopen the record when justice requires, if the judge has not issued a dismissal, proposal for decision, or final decision;
- (11) issue proposals for decision pursuant to Tex. Gov't Code §2001.062 and, when authorized, final decisions;
- (12) rule on motions for rehearing, when authorized;
- (13) reopen the record after a proposal for decision has been issued when a case is remanded by a referring agency for further proceedings; and
- (14) reopen the record after a final decision has been issued by SOAH if the judge grants a motion for rehearing, or when a case is remanded by a court to SOAH for further proceedings.

§155.155. Orders.

- (a) Judge's authority. The judge has authority to:
 - (1) issue orders to control the conduct and scope of the proceeding;
 - (2) rule on motions;
 - (3) establish deadlines;
 - (4) schedule and conduct prehearing or posthearing conferences;
 - (5) require the prefiling of exhibits and testimony;
 - (6) set out requirements for participation in the case; and
 - (7) take other steps conducive to a fair and efficient contested case process.
- (b) Record of rulings. Rulings not made orally at a recorded prehearing conference or hearing shall be in writing and issued to all parties of record.
- (c) Consolidation or joinder for hearing. The judge may order that cases be consolidated or joined for hearing if:
 - (1) there are common issues of law or fact; and

- (2) consolidation or joint hearing will promote the fair and efficient handling of the matters.
- (d) Severance of issues. The judge may order severance of issues if separate hearings on the issues will promote the fair and efficient handling of the matters.
- (e) Referral to mediation. The judge may order referral of a case to mediation or other appropriate alternative dispute resolution procedure as provided by the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2009, and the statute creating SOAH, Tex. Gov't Code Chapter 2003.

§155.157. Sanctioning Authority.

- (a) Authority to impose sanctions. For contested cases referred by an agency other than the PUC or the TCEQ, the judge has the authority to impose appropriate sanctions against a party or its representative for:
 - (1) filing a motion or pleading that is deemed by the judge to be groundless and brought:
 - (A) in bad faith;
 - (B) for the purpose of harassment; or
 - (C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;
 - (2) abuse of the discovery process in seeking, making, or resisting discovery; or
 - (3) failure to obey an order of the judge or a SOAH or referring agency rule.
- (b) Sanctions that may be imposed. The judge may issue an order imposing sanctions when justified by party or representative behavior described in subsection (a) of this section and after notice and opportunity for hearing. Sanctions may include:
 - (1) disallowing or limiting further discovery by the offending party;
 - (2) charging all or part of the expenses of discovery against the offending party or its representatives;
 - (3) deeming designated facts be admitted for purposes of the proceeding;
 - (4) refusing to allow the offending party to support or oppose a claim or defense or prohibiting the party from introducing designated matters into the record;
 - (5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; or
 - (6) striking pleadings or testimony in whole or in part.

SUBCHAPTER E. REPRESENTATION OF PARTIES

§155.201. Representation of Parties.

- (a) Representation. A party may represent himself or herself or may appear by authorized representative. Parties that are not represented by an attorney may obtain information regarding contested case hearings on SOAH's public website at www.soah.texas.gov.
- (b) Appearance by authorized representative. A party's authorized representative shall enter an appearance with SOAH that contains the representative's mailing address and telephone and fax numbers. If the party's representative is not licensed to practice law in Texas and the authority of the representative is challenged, the representative must show authority to appear as the party's representative.
- (c) Nonresident attorney. An attorney who is a resident of and licensed to practice law in another state and who is not an active member of the State Bar of Texas shall comply with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules Governing Admission to the Bar of Texas before entering an appearance on behalf of a party at SOAH. Rule XIX may be found on the website of the Board of Law Examiners.
- (d) Attorney in charge. When more than one attorney makes an appearance on behalf of a party, the attorney whose signature first appears on the initial pleading for a party shall be the attorney in charge for that party unless another attorney is specifically designated in writing. Unless otherwise ordered by the judge, all communications sent by SOAH or other parties regarding the matter shall be sent to the attorney in charge.
- (e) This rule does not allow a person to engage in the unauthorized practice of law.

§ 155.203. Withdrawal of Counsel.

- (a) An attorney may withdraw from representing a party only if a written motion showing good cause for withdrawal is filed by the withdrawing attorney, the substituting attorney, or the client.
 - (1) If another attorney is to be substituted as attorney for the party, the motion shall state: the substituted attorney's name, address, telephone number, and fax number; that the substituting attorney has been notified of all pending settings and deadlines; and that the substituting attorney approves the substitution.

- (2) If the party has no substitute attorney, the motion shall state: the party's last known address, telephone number, and fax number; that the party has been notified of all pending settings and deadlines; and whether the party consents to the withdrawal. If the party does not consent to the withdrawal, the attorney also must affirm that the party has been served with a copy of the motion and informed of the right to object to the withdrawal.
- (b) A motion to withdraw must be served on all parties and must comply with § 155.305(b)(2) of this chapter.
- (c) An attorney will remain a party's attorney of record until a filed motion to withdraw has been granted by the judge.
- (d) If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the party or substitute attorney in writing of any settings or deadlines of which the attorney has knowledge at the time of the withdrawal and about which the attorney has not already notified the party or substitute attorney.
- (e) A state agency may substitute one attorney for another by providing written notice to all parties and the judge without necessity for a motion or order.

SUBCHAPTER F. DISCOVERY

§155.251. General Provisions.

- a) Commencement of discovery. Discovery may begin when SOAH acquires jurisdiction under §155.51 of this chapter.
- (b) Discovery period. The discovery period ends ten days before the hearing on the merits begins, unless otherwise ordered by the judge or agreed by the parties.
- (c) Discovery rights. Parties have the discovery rights provided in this section, the APA, and the TRCP, other than the provisions relating to discovery control plans and except as modified by this chapter. Discovery rights may be modified or changed by the judge. For cases not adjudicated under the APA, the judge will determine what discovery, if any, will be permitted.
- (d) Discovery requests, responses, and documents produced in discovery shall not be filed with SOAH, except as provided in §155.259 of this chapter.

§155.253. Depositions.

- (a) The APA governs the taking and use of depositions unless otherwise provided by law.
- (b) Except with permission of the judge upon a showing of good cause or upon agreement by all parties, the following apply:

- (1) All parties must receive at least seven days' notice of a deposition. The parties should make reasonable efforts to confer on the date, time, and location of the deposition.
- (2) No party or side may examine or cross-examine an individual witness for more than six hours.
- (3) Brief breaks taken during the deposition do not count in the calculation of the period for a deposition.

§155.255. *Written Discovery.*

- (a) Forms of written discovery. Unless otherwise ordered by the judge, parties may use the forms of written discovery provided by the TRCP, with the following modifications:
 - (1) Requests for production. Each party may serve no more than 25 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.
 - (2) Interrogatories. Each party may serve no more than 25 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.
 - (3) Requests for admissions. Each party may serve no more than 25 requests for admissions. Requests for admissions may be used only to address jurisdictional facts or the genuineness of any documents served with the request.
- (b) Written discovery requests shall be served at least 30 days before the end of the discovery period.
- (c) Response. Unless otherwise ordered by the judge or agreed by the parties, responses to written discovery requests shall be made within 30 days after receipt.
 - (1) Responses and documents produced in discovery shall be served upon the requesting party, and notice of service shall be given to all parties.
 - (2) A party producing documents in response to a discovery request must retain the original documents or exact duplicates of the original documents.

§155.257. *Subpoenas and Commissions.*

- (a) Except in TCEQ and PUC cases, requests for issuance of subpoenas or commissions shall be directed to the referring agency. Any such requests shall comply with the APA and the applicable agency procedure, if any, regarding issuance of subpoenas or commissions.
- (b) In TCEQ and PUC cases, requests for issuance of subpoenas or commissions shall be submitted in accordance with those agencies' rules.

- (c) Disputes over whether a request complies with applicable law should be presented to the judge in a motion filed pursuant to §155.259 of this chapter.

§155.259. *Discovery Motions.*

- (a) Certificate of conference. The parties and their authorized representatives shall cooperate in discovery and shall endeavor to make any agreements reasonably necessary for the efficient disposition of the case. All discovery motions shall include a certificate of conference complying with §155.305(b)(2) of this chapter.
- (b) Motions for protection. A person from whom discovery is sought may file a motion within the time permitted for a response to request an order protecting that person from the discovery sought. A motion for protection shall include the relevant portion of the discovery request at issue. A person must comply with a discovery request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion.
- (c) Motions to compel. A person alleging failure to comply with discovery shall file a motion to compel as soon as practicable. A motion to compel shall include the relevant portion of the discovery response at issue. A motion to compel shall not be filed less than 10 days before the first day of the hearing on the merits, unless good cause is shown. A judge may deny or limit relief sought in a motion to compel if the judge determines that the discovery requests at issue are improper or unduly burdensome.
- (d) *In camera* inspections. If a party's assertion of a privilege or an exemption under the TRCP is made the subject of a motion for protection or a motion to compel, the party resisting discovery must request an *in camera* inspection (inspection by the judge) and provide the documents for review under seal. The request shall state the factual and legal basis that support the claimed privilege or exemption and shall comply with the provisions of §155.103 of this chapter.
- (e) Responses to discovery motion. Responses to discovery motions shall be filed in accordance with §155.305(c).
- (f) Discovery materials. Motions and responses in a discovery dispute shall include only the relevant portions of the discovery materials at issue.
- (g) Confidentiality. Confidential information contained in or attached to a discovery motion or response must be filed in compliance with § 155.103 of this chapter.

SUBCHAPTER G. PLEADINGS AND MOTIONS

§155.301. Required Form of Pleadings.

- (a) Content generally. Written requests for action in a contested case shall be typewritten or printed legibly on 8-1/2 x 11 inch paper and timely filed at SOAH. Photocopies are acceptable if copies are clear and legible. All filings shall contain or be accompanied by the following:
- (1) the name of the party seeking action;
 - (2) the SOAH docket number;
 - (3) the parties to the case and their status as petitioner or respondent;
 - (4) a concise statement of the type of relief, action, or order desired by the pleader and identification of the specific reasons for and facts to support the action requested;
 - (5) a certificate of service, as required by §155.105(a)(2) of this chapter;
 - (6) any other matter required by statute or rule; and
 - (7) the signature of the submitting party or the party's authorized representative.
- (b) Amendment or supplementation of pleadings. A party may amend or supplement its pleadings as follows:
- (1) As to a proceeding in which a state agency has the burden of proof and intends to rely on a section of a statute or rule not previously referenced in the notice of hearing, the agency must amend the notice of hearing not later than the seventh day before the hearing. This subsection does not prohibit the state agency from filing an amendment during the hearing provided, if requested, the opposing party is granted a continuance of at least seven days to prepare its case.
 - (2) As to all other matters in a pleading, an amendment or supplementation that includes information material to the substance of the hearing, requests for relief, changes to the scope of the hearing, or other matters that unfairly surprise other parties may not be filed later than seven days before the date of the hearing, except by agreement of all parties or by permission of the judge.

§155.303. Effect of Signing Pleadings.

The signatures of parties or authorized representatives constitute certification that they have read the pleading and that, to the best of their knowledge, information, and belief formed after reasonable inquiry, the pleading is neither groundless nor brought in bad faith.

§155.305. Motions, Generally.

- (a) Purpose and effect of motions. To make a request, including a request to change a setting or obtain a ruling, order, or any other procedural relief from the judge, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for the requested action. Unless otherwise specified in this chapter, a motion is not granted until it has been ruled on by the judge, even if the motion is uncontested or agreed.
- (b) General requirements for motions. Except as provided in this chapter, or unless otherwise ordered by the judge, all motions shall:
 - (1) be filed in writing no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing;
 - (2) include a certificate of conference that complies substantially with one of the following examples:
 - (A) Example one: "Certificate of Conference: I certify that I conferred with {name of other party or other party's authorized representative} on {date} about this motion. {Succinct statement of other party's position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the judge for resolution.} Signature."
 - (B) Example two: "Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with {name of other party or other party's authorized representative} on {date or dates} about this motion. {Succinctly describe these attempts.} Signature."; and
 - (3) include a reference in the motion's title to a request for a hearing on the motion if the moving party seeks a hearing.
- (c) Responses to motions.
 - (1) Except as otherwise provided in this chapter or as ordered or allowed by the judge, responses to motions shall be in writing and filed on the earlier of:
 - (A) five days after the motion is filed; or
 - (B) the date and time of the hearing; however, if the judge finds a good reason has been shown, responses to written motions may be presented orally at hearing.
 - (2) If no response is filed within the time period prescribed by this section or chapter, the judge may consider the motion unopposed.

- (d) Motions to intervene or for party status. Motions for party status shall be filed no later than 20 days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is filed.
- (e) Other motions. In addition, other types of motions are addressed in other sections of this chapter. If there is a conflict between this section and a requirement found in another section relating to a specific type of motion, the more specific provision applies

§155.307. Motions for Continuance and to Extend Time.

- (a) Contents of a motion for continuance. A request to postpone or delay a hearing or prehearing conference shall include:
 - (1) a statement of the number of motions for continuance previously filed in the case by each party;
 - (2) the specific reason for the continuance;
 - (3) at least three proposed dates for the rescheduled proceeding or a deadline by which the movant will confer with the non-moving parties to submit three agreed proposed dates; and
 - (4) a certificate of conference that complies substantially with one of the examples set out in §155.305(b)(2) of this subchapter.
- (b) Contents of a motion to extend time. A request for more time to file a document or respond to discovery shall include:
 - (1) a statement of the number of extension requests previously sought in the case by the movant;
 - (2) the specific reason for the request;
 - (3) a proposed date for the deadline the movant seeks to extend; and
 - (4) a certificate of conference that complies substantially with one of the examples set out in §155.305(b)(2) of this subchapter.
- (c) Date of filing. Motions for continuance or to extend time shall be filed no later than five days before the date of the proceeding or deadline at issue or shall state good cause for presenting the motion after that time. If the judge finds good cause has been demonstrated, the judge may consider a motion filed after that time or presented orally at the proceeding.
- (d) Date of service. Motions for continuance or extension shall be served in accordance with §155.105 of this chapter. However, a motion for continuance that is filed five days or less before the date of the proceeding shall be served:

- (1) by hand-delivery, fax, or email on the same day it is filed with SOAH, if feasible; or
 - (2) if same-day service is not feasible, by overnight delivery on the next business day.
- (e) Responses to motions for continuance. Responses to motions for continuance shall be in writing, except a response to a motion for continuance made on the date of the proceeding may be presented orally at the proceeding. Unless otherwise ordered or allowed by the judge, responses to motions for continuance shall be made by the earlier of:
- (1) three days after receipt of the motion; or
 - (2) the date and time of the proceeding.
- (f) Responses to motions to extend time. Unless otherwise ordered by the judge, responses to motions for extension of a deadline are due three days after receipt of the motion.
- (g) A motion for continuance or extension of time is not granted until it has been ruled on by the judge, even if the motion is uncontested or agreed. A case is subject to default or dismissal for a party's failure to appear at a scheduled hearing in which a motion for continuance has not been ruled on by the judge, even when the motion is agreed or unopposed.

SUBCHAPTER H. MEDIATION

§155.351. Mediation.

- (a) Requesting mediation.
- (1) A party may request mediation in writing or orally during a prehearing conference or hearing.
 - (2) A request for mediation must be based on a good faith belief that the parties may be able to resolve all or a portion of their dispute in mediation.
 - (3) A party may object to a request for mediation orally or in writing.
 - (4) Mediation may not be used as a delay or discovery tactic.
 - (5) Mediation does not stay an existing procedural schedule unless ordered by the presiding judge.
 - (6) A judge may refer a case to mediation without agreement of all parties.
 - (7) An agency may refer a case for mediation only.

- (b) Evaluation for Mediation.
 - (1) A party may request, or the presiding judge may order, that a mediator evaluate whether a case is appropriate for mediation. The presiding judge will refer the case to the SOAH ADR Team Leader for assignment of a mediation evaluator.
 - (2) The mediation evaluator may conduct confidential, *ex parte* communications with the parties during the course of the evaluation.
 - (3) The mediation evaluator will make a written recommendation to the presiding judge indicating whether the case is appropriate for mediation as of the time of the evaluation. The written recommendation will be served on all parties.
- (c) Referral to mediation.
 - (1) If a request for mediation is granted, the presiding judge will refer the case to the SOAH ADR Team Leader for assignment of a mediator, unless the parties have notified the judge that they have agreed upon a non-SOAH mediator qualified in accordance with Tex. Civ. Prac. & Rem. Code Chapter 154 and that they will be responsible for any costs and expenses of the non-SOAH mediator.
 - (2) The referral order may include requirements to facilitate the mediation.
- (d) Assignment of SOAH mediators.
 - (1) The SOAH ADR Team Leader will assign a qualified judge or judges to serve as mediator or co-mediators.
 - (2) A party may object to an appointed mediator. Upon a timely showing of good cause for the objection, the SOAH ADR Team Leader will appoint another qualified judge to serve as mediator or co-mediator.
 - (3) The appointed mediator will not serve as presiding judge in the case.
- (e) Use of non-SOAH mediators.
 - (1) Parties who agree to retain a non-SOAH qualified mediator shall notify the presiding judge within ten days of the mediator's retention.
 - (A) The notice must include the name, address, and telephone number of the non-SOAH mediator selected; a statement that the parties have entered into an agreement with the mediator regarding the mediator's rate and method of compensation; and an affirmation that the mediator is qualified to serve according to Tex. Civ. Prac. & Rem. Code Chapter 154.
 - (B) The presiding judge shall issue an order specifying the date by which the mediation must be completed.

- (2) When a presiding judge refers a TCEQ case to mediation, the mediation will be conducted by a TCEQ mediator unless a party or TCEQ's Senior Mediator requests that SOAH conduct the mediation. TCEQ enforcement cases shall not be referred to mediation except on request of the Executive Director's representative.
- (f) Confidentiality of mediation.
- (1) All communications in a mediation are confidential and subject to the provisions of Tex. Gov't Code §2009.054 and TRE 408.
 - (2) The mediator shall not communicate about the mediation with the presiding judge except to disclose in a written report, copied to all parties, whether the parties attended the mediation, whether the matter settled, and any other stipulations or matters the parties agree to be reported.
 - (3) The mediator shall not be required to testify about communications that occur in mediation or to produce documents submitted to the mediator.
- (g) Agreements reached in mediation.
- (1) Agreements reached by the parties in mediation shall be reduced to writing and signed by the parties before the end of the mediation, if possible.
 - (2) Whether an agreement signed by a governmental entity is subject to disclosure shall be determined in accordance with applicable law.
- (h) Limits on mediator's authority.
- (1) A mediator has no authority to order the parties to settle their dispute.
 - (2) A mediator has no authority to issue orders in a case referred to mediation. Deadlines in the case may be extended only by order of the presiding judge.
- (i) This section does not limit the parties' ability to settle cases without mediation.

SUBCHAPTER I. HEARINGS AND PREHEARINGS

§155.401. Notice of Hearing.

- (a) Notice of hearing. A referring agency shall provide notice of hearing to all parties in accordance with Tex. Gov't Code §§ 2001.051 and 2001.052 and shall include a specific citation to Chapter 155 of this title unless applicable law provides otherwise. The notice of hearing shall include the following language in 12-point, bold-face type:

“Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.”

- (b) Judge's orders. A judge may issue orders regarding the date, time, and place for hearing, and orders affecting the scope of the proceeding.
- (c) Sufficiency of initial notice of hearing. A notice of rescheduling of a hearing will not affect the sufficiency of an initial notice of hearing provided by an agency under subsection (a) of this section.

§155.403. Venue.

- (a) Neutral hearing site. SOAH will designate a neutral hearing site in accordance with applicable law.
- (b) Factors judge may consider. In designating a hearing site not in Austin, the judge may consider the following factors:
- (1) the amount in controversy;
 - (2) the number of persons in the geographical region affected by the outcome of the hearing;
 - (3) the estimated length of the hearing;
 - (4) the availability of hearing facilities;
 - (5) the costs to and preferences of the parties;
 - (6) the location of witnesses;
 - (7) the availability and feasibility of videoconference technology as a means to reduce costs to SOAH and the parties;
 - (8) legislative restrictions on travel; and

- (9) any applicable law or other factor relevant to the fair and expeditious resolution of the case.

§155.405. Participation by Telephone or Videoconference.

- (a) Request to appear by telephone. A party may request to appear or present testimony by telephone or to present the testimony of a witness by telephone.
 - (1) To appear or present testimony by telephone, a party must file a motion no later than ten days before the proceeding unless a different time period is allowed by the judge.
 - (2) A motion shall include at least the following:
 - (A) the reason for the request;
 - (B) the name of the party or witness who will appear by phone;
 - (C) the telephone number at which the party or witness may be reached at the time of the proceeding;
 - (D) a statement that the party or witness will be the same person who will appear by telephone at the proceeding; and
 - (E) a certificate of conference complying with §155.305(b)(2) of this chapter.
 - (3) A timely, unopposed motion will be deemed granted without the necessity of an order, unless denied by order.
- (b) Request to appear by videoconference. A party may request to appear or present the testimony of a witness by videoconference.
 - (1) To appear or present testimony by videoconference, a party must file a motion no later than ten days before the proceeding.
 - (2) A motion shall include a statement of the reason for the request, the name of the party or witness who will appear by videoconference, and the city in which the party or witness will be located at the time of the proceeding.
- (c) Hearings and prehearing conferences by telephone or videoconference. The judge may conduct hearings and prehearing conferences by telephone or videoconference upon notice to the parties, even in the absence of a motion.
- (d) Substantive and procedural rights. All substantive and procedural rights apply to telephone and videoconference proceedings, subject only to the limitations of the physical arrangement.

- (e) Documentary evidence. Prior to the hearing, the parties must exchange, and provide to witnesses appearing telephonically or by videoconference, all documents necessary for effective participation in the hearing.
- (f) Failure to appear at telephone or videoconference proceeding. For a telephone or videoconference proceeding, the following may be considered a failure to appear and grounds for default, dismissal for want of prosecution, or other adverse action if the conditions exist for more than ten minutes after the scheduled time for the proceeding:
 - (1) failure to answer the telephone or videoconference line;
 - (2) failure to free the line for the proceeding; or
 - (3) failure to be ready to proceed.

§155.407. Interpreters.

- (a) A party or witness who needs an interpreter or translator in order to participate in a proceeding shall file a written request at least seven days before the setting. A timely, unopposed request will be deemed granted without the necessity of an order, unless denied by order.
- (b) SOAH shall provide and pay for the following:
 - (1) an interpreter for hearing-impaired parties and witnesses, in accordance with Tex. Gov't Code §2001.055;
 - (2) reader services or other communication services for visually-impaired parties and witnesses; and
 - (3) a certified language interpreter.

§155.409. Public Attendance and Comment.

- (a) Proceedings open to public. Unless prohibited by law, all SOAH proceedings are open to the public.
- (b) Removal of persons from proceeding. The judge retains the authority to remove persons whose conduct impedes the orderly progress of the proceeding and to take necessary steps to limit attendance due to any physical limitations of the hearing facility.
- (c) Public comment. When authorized by statute, members of the public shall be allowed to make public comment addressing matters pertinent to the issues in the case. Unless provided by law, public comment is not part of the evidentiary record of the case.

§155.411. Media Coverage and Use of Recording Devices.

- (a) When coverage is permitted. Proceedings that are open to the public may be photographed or recorded, whether for broadcast or personal use, in a manner that does not interfere with the orderly conduct of the proceeding, unduly distract participants, or impair the dignity of the proceedings. A person desiring to photograph or record a SOAH proceeding must notify the judge before doing so. Photographing or recording in a covert manner is prohibited.
- (b) Recording or photographing any of the following is prohibited:
 - (1) proceedings that are closed to the public;
 - (2) conferences between an attorney and client, witness, or aide, or between attorneys;
 - (3) bench conferences or other deliberations of the judge(s); or
 - (4) other privileged or confidential communications.
- (c) Authority of presiding judge.
 - (1) The judge may deny, limit, or terminate any recording or photographing that does not comply with this section.
 - (2) No proceeding will be delayed or continued for the sole purpose of facilitating recording or photographing the proceeding.
- (d) Equipment and personnel. The judge may specify the placement of media personnel and equipment to permit reasonable coverage or recording without disruption to the proceeding. Unless the judge orders otherwise, the following standards apply to the placement and operation of media equipment:
 - (1) If media coverage is sought by more than one person or entity, the judge may require a pool system to be used. It will be the responsibility of the media to resolve any disputes among themselves as to which personnel will operate equipment in the hearing room.
 - (2) Equipment shall not produce distracting sound or light. Moving lights, flash attachments, or sudden lighting changes are prohibited.
 - (3) Operators shall not move equipment while the hearing is in session or otherwise cause a distraction. All equipment shall be in place in advance of the commencement of the proceeding.
 - (4) Media personnel operating outside the hearing room shall not create a distraction and shall withdraw whenever necessary to avoid restricting movement of persons passing through the hearing room door.

§155.413. Redaction of Documents. (Repealed)

§155.415. Party Agreements.

Unless otherwise provided in this chapter, no agreement between attorneys or parties regarding a contested case pending before SOAH will be enforced unless it is in writing, signed, and filed with SOAH or entered on the record at the hearing or prehearing conference.

§155.417. Stipulations.

- (a) Generally. Subject to the judge's approval, the parties may stipulate to any factual, legal, or procedural matters.
- (b) Record of stipulations. A stipulation must be filed in writing or stated on the record.

§155.419. Consideration of Policy Not Incorporated in Referring Agency's Rules.

- (a) Agency policy. A party relying on a specific, written agency policy not incorporated in a rule has the burden of authenticating the policy and showing it to be applicable to a factual or legal issue in the case.
- (b) Judge's consideration of agency policy. In resolving contested issues, the judge shall consider any applicable agency policy not incorporated in the agency's rules that is written and supported by the evidence. The judge's decision or recommendation on whether to apply an agency's policy will depend upon the nature and context of the policy, any request to apply it, and other factors such as:
 - (1) the extent to which the parties were given notice of the policy, including whether:
 - (A) the policy was made available through a generally accessible internet site as provided in Tex. Gov't Code §2001.007(a);
 - (B) the parties had adequate opportunity to address it in the presentation of their cases and arguments; and
 - (C) a party opposes application of the policy in the case;
 - (2) the specificity of the policy statement and the relative certainty of its applicability to the case;
 - (3) the stability and duration of the policy, as illustrated by the type of process that led to its adoption (including whether it was published in the *Texas Register*), the frequency and consistency with which it has been previously applied, and the level of formality of the process required for the agency to amend it;
 - (4) the highest level within the agency at which the policy has been adopted or ratified;

- (5) whether the policy is a substantive principle coming within the agency's subject matter expertise and jurisdiction or pertains more to contested case procedure and practice; and
- (6) whether application of the policy would violate applicable constitutional or statutory provisions or would be inconsistent with the agency's rules or applicable decisions by Texas courts.

§155.421. Certification of Issues.

In cases referred by the PUC and the TCEQ, a party may move to certify an issue to the respective commission. A judge may also certify an issue without a motion. Certified issues are governed by the rules of the PUC and the TCEQ.

§155.423. Making a Record of the Proceeding.

- (a) Record of proceedings. A record will be made of all contested case proceedings and prehearing conferences.
- (b) Court reporters. Unless otherwise ordered by the judge, the referring agency shall provide a court reporter for a proceeding set to last longer than one day.
- (c) SOAH's responsibility. For a proceeding in a docket set to last no longer than one day, SOAH is responsible for making an audio recording of the proceeding unless otherwise ordered by the judge. If SOAH has recorded the proceeding, a party may request a copy of the recording from SOAH.
- (d) Transcripts. If a court reporter is provided for a proceeding, the court reporter shall make a stenographic record of the proceeding but shall prepare a transcript only on the request of a party or the judge. If a proceeding lasts longer than one day, the judge may order that a transcript be prepared.
 - (1) The original transcript shall be filed with SOAH, and SOAH may assess the cost of the transcript to one or more of the parties.
 - (2) The cost of a copy of a transcript ordered by a party shall be paid by that party, unless otherwise ordered by the judge.
 - (3) The transcript prepared according to these procedures becomes part of the official record of the proceedings for purposes of all actions within SOAH's jurisdiction.
 - (4) Proposed written corrections of purported transcript errors must be filed with SOAH and served on the parties and the court reporter before issuance of the proposal for decision or final decision. The judge may establish deadlines for the filing of proposed corrections and responses. The transcript will be corrected only upon order of the judge.

- (e) Official record. The recording made by SOAH under subsection (c) of this section or the transcript prepared under subsection (d) of this section constitutes part of the official record of the proceeding for purposes of all actions within SOAH's jurisdiction. The judge may order a different means of making a record and may designate that record as the official record of the proceeding.
- (f) Maintenance of exhibits and official record. The judge shall maintain all exhibits admitted during the proceeding and the official record of the proceeding.
 - (1) The judge may allow the court reporter to retain the exhibits and the recording of the proceeding, if applicable, while a transcript is being prepared.
 - (2) The judge may retain the exhibits and transcript or recording to prepare for presentation of the proposal for decision to the referring agency. SOAH will send the exhibits and transcript or recording to the referring agency no later than after:
 - (A) the judge has issued the final decision; or
 - (B) the judge has issued the proposal for decision and the deadline for filing exceptions and replies has passed.
- (g) Sealing records. The judge may order all or part of the record sealed in accordance with applicable law or rule or upon a showing of the following:
 - (1) a specific, serious, and substantial interest that clearly outweighs the presumption of openness that applies to SOAH's records and any probable adverse effect that sealing will have upon the public health or safety; and
 - (2) no less restrictive means than sealing the records will adequately and effectively protect the specific interest asserted.

§155.425. Procedure at Hearing.

- (a) Control of the hearing. The judge shall exercise reasonable control over the mode and order of presenting preliminary matters, pending motions, opening statements, witness testimony and other evidence, oral or written closing argument, and other processes in the hearing.
- (b) Designation of order of parties' presentations. The judge will designate the order in which the parties will present evidence and argument. Generally, the party with the burden of proof will present evidence first and will open and conclude oral argument. The judge shall designate the party with the burden of proof in accordance with §155.427 of this chapter.
- (c) Waiver of allegations. An allegation contained in the notice of hearing, complaint, or other pleading that is not addressed during the proceeding may be deemed waived.
- (d) Closing arguments. Closing arguments may be made orally or, when ordered by the judge, in writing.

- (e) Closing the evidentiary record. Unless otherwise ordered by the judge, the record will close at the later of:
 - (1) the end of the hearing; or
 - (2) the date the final brief is due, when closing arguments are made in writing.

§155.427. Burden of Proof.

In determining which party bears the burden of proof, the judge shall first consider the applicable statute, the referring agency's rules, and the referring agency's policy in accordance with §155.419 of this chapter. After considering those sources, the judge may consider additional factors, including:

- (1) the status of the parties;
- (2) the parties' relative access to and control over information pertinent to the merits of the case;
- (3) the party seeking affirmative relief;
- (4) the party seeking to change the status quo; and
- (5) whether a party would be required to prove a negative.

§155.429. Evidence.

- (a) Rules of evidence.
 - (1) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern contested case hearings conducted by SOAH.
 - (2) Evidence may be admitted if it meets the standards set out in Tex. Gov't Code §2001.081.
- (b) Physical evidence: Exhibits.
 - (1) Paper size. Documents shall not be submitted on paper other than 8-1/2 x 11 inches unless good cause is shown that the documents cannot be reduced without loss of information, or if allowed by the judge.
 - (2) Numbering of pages. A multipage document shall be paginated.
 - (3) Physical limits.
 - (A) Exhibits offered as evidence must not unduly encumber the records of SOAH by their size or other qualities.

- (B) Physical evidence that is bulky, dangerous, perishable, or otherwise not suitable for inclusion in agency records shall not be offered into the record.
 - (C) A party seeking to admit an exhibit contrary to this section must make reasonable efforts to use photographs, recordings, or other mechanical or electronic means to substitute for physical evidence that would encumber SOAH's records.
 - (D) Maps, drawings, blueprints, and other documents not reasonably susceptible to reduction shall be rolled or folded to avoid physically encumbering the record.
- (4) Numbering of exhibits.
- (A) Each exhibit to be offered shall first be numbered by the offering party or court reporter.
 - (B) Copies of the original exhibit shall be furnished by the party offering the exhibit to the presiding judge and to each party present at the hearing unless otherwise ordered by the judge.
- (5) Excluded exhibits. An exhibit excluded from evidence will be considered withdrawn by the offering party and will be returned to the party, unless the party makes an offer of proof in accordance with the TRE.
- (6) Exhibits deemed withdrawn. Prefiled exhibits that are not offered and admitted at the hearing will be deemed withdrawn.
- (7) Non-conforming exhibits. The judge may exclude exhibits not conforming to this section.
- (c) Prefiled evidence.
- (1) Prefiled testimony.
 - (A) The judge may require that direct testimony of witnesses to be called at the hearing, and any exhibits to be presented through those witnesses, be filed in writing prior to hearing and served on other parties. The written testimony of a witness may be prepared in narrative or question-and-answer form.
 - (B) Prefiled testimony and related exhibits shall be subject to evidentiary objections. The judge may require that objections to prefiled testimony of witnesses and related exhibits be submitted in writing, filed prior to hearing, and served on other parties.
 - (C) After a witness has been sworn and has identified his or her written testimony as a true record of what the testimony would have been if given orally, the written

testimony may be admitted into evidence at the hearing as if read or presented orally.

- (D) When written testimony is offered into evidence, the witness must attend the hearing for cross-examination, unless cross-examination is waived by the other parties.
 - (E) A party may object to the prefiling of exhibits, testimony, and objections if the hearing will not be expedited and the interests of the parties will be substantially prejudiced by the entry of an order under this section.
- (2) Prefiled exhibits. The judge may require parties to prefile some or all exhibits and provide those exhibits to the other parties. The judge may also require that objections to prefiled exhibits be submitted in writing, filed prior to the hearing, and provided to other parties.
- (d) Exclusion of witnesses.
- (1) At the request of either party or by the judge's own action, the judge may:
 - (A) order witnesses excluded from the hearing room so that they may not hear the proceedings;
 - (B) instruct the witnesses not to converse about the case with each other or any person other than the attorneys in the proceeding except by permission of the judge; and
 - (C) instruct the witnesses not to read any report of, or comment upon, the testimony in the case while under order of this section.
 - (2) This section does not authorize the exclusion of:
 - (A) a party who is a natural person or the spouse of such natural person;
 - (B) an officer or employee of a party that is not a natural person and who is designated by the party as its representative;
 - (C) a person whose presence is shown by a party to be essential to the presentation of the party's case.

§155.431. Conduct and Decorum.

- (a) Standards of conduct. Parties, representatives, and other participants shall conduct themselves with dignity, show courtesy and respect for one another and for the judge, follow any additional guidelines of decorum prescribed by the judge, and adhere to the time schedule. Attorneys shall adhere to the standards of conduct in the Texas Lawyers' Creed promulgated by the Texas Supreme Court.

- (b) Judge's authority. To maintain and enforce proper conduct and decorum, the judge may take appropriate action, including:
 - (1) issuing a warning;
 - (2) sanctioning a party pursuant to §155.157 of this chapter;
 - (3) excluding persons from the proceeding; and
 - (4) recessing the proceeding.

SUBCHAPTER J. DISPOSITION OF CASE

§155.501. Default Proceedings. (Amended eff. 1/1/17)

- (a) If a party who does not bear the burden of proof and to whom a notice of hearing with factual allegations is served or provided fails to appear for the hearing, the judge may proceed in that party's absence on a default basis.
- (b) A default proceeding under this section requires adequate proof of the following:
 - (1) the notice of hearing included a disclosure in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and that the relief sought in the notice of hearing might be granted by default against the party that fails to appear at the hearing;
 - (2) the notice of hearing satisfies the requirements of Tex. Gov't Code, §2001.051 and §2001.052, and §155.401 of this chapter; and
 - (3) the notice of hearing was:
 - (A) received by the defaulting party; or
 - (B) sent by first class or certified mail to the party's last known address as shown by the referring agency's records, and the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address.
- (c) In the absence of adequate proof to support a default, the judge shall continue the case and direct the party responsible to provide adequate notice of hearing. If the responsible party persists in failing to provide adequate notice, the judge may dismiss the case from the SOAH docket without prejudice to refileing.
- (d) Upon receiving the required showing of proof to support a default, the judge may issue one of the following:

- (1) Default dismissal and remand. In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, the judge may issue an order finding adequate notice, conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to the referring agency for informal disposition on a default basis in accordance with Tex. Gov't Code §2001.056.
 - (2) Default proposal for decision. In default proceedings where SOAH is not authorized by law to render a final decision in the proceeding, the judge may deem admitted the factual allegations in the notice of hearing and issue a proposal for decision.
 - (3) Default decision. In default proceedings where SOAH is authorized by law to render a final determination in the proceeding, the judge may deem admitted the factual allegations in the notice of hearing and issue a default decision.
- (e) Default dismissals and remands.
- (1) A conditional order of dismissal and remand issued under subsection (d) shall inform the party of the opportunity to have the default set aside under this subsection by filing an adequate motion no later than 15 days after the issuance of the conditional order of dismissal and remand.
 - (2) If a motion to set aside a default is filed within 15 days after the issuance of a conditional order of dismissal and remand, the judge will rule on the motion and either:
 - (A) grant the motion, set aside the default, and reopen the hearing for good cause shown or in the interests of justice; or
 - (B) deny the motion and issue a final order of dismissal and remand.
 - (3) In the absence of a timely motion to set aside a default, a conditional order of dismissal and remand shall become final on the sixteenth day after its issuance without further action by the judge.
 - (4) Dismissal under this section removes the case from the SOAH docket without a decision on the merits.
- (f) Default proposals for decision.
- (1) A default proposal for decision issued under subsection (d) shall inform the party of the opportunity to have the default set aside under this subsection by filing an adequate motion no later than 15 days after the issuance of the default proposal for decision.
 - (2) If a motion to set aside a default is filed within 15 days after the issuance of a default proposal for decision, the judge may grant the motion, set aside the default, and reopen the hearing for good cause shown or in the interests of justice.
- (g) Default decisions.

- (1) Default decisions are subject to motions for rehearing as provided for in the APA.
- (2) A default decision issued under subsection (d) shall inform the party of the opportunity to have the default set aside by filing a motion for rehearing under Tex. Gov't Code Chapter 2001, Subchapter F.

§155.503. Dismissal Proceedings.

- (a) Failure to prosecute.
 - (1) A contested case may be dismissed in whole or in part for want of prosecution if the party seeking affirmative relief:
 - (A) fails to appear for a hearing of which the party had notice; or
 - (B) fails to prosecute the case in accordance with a requirement of statute, rule, or order of the judge.
 - (2) The judge may dismiss the case by issuing a conditional order of dismissal that:
 - (A) explains the party's failure to prosecute;
 - (B) informs the party of an opportunity to contest the dismissal; and
 - (C) states the order of dismissal will become final unless:
 - (i) the party files a motion to retain the case on the docket not later than 15 days after the issuance of the order; and
 - (ii) the motion to retain specifies the bases for the motion.
 - (3) The judge may grant a motion to retain in the interests of justice or if the moving party shows good cause for the failure to prosecute.
 - (4) In the absence of a timely motion to retain the case on the docket, the conditional order of dismissal shall become final on the sixteenth day after its issuance without further action by the judge.
 - (5) Dismissal under this section removes the case from the SOAH docket without a decision on the merits.
- (b) Other Dismissal Actions.
 - (1) The judge may dismiss a case or a portion of the case from SOAH's docket for:
 - (A) lack of jurisdiction over the matter by the referring agency;
 - (B) lack of statute, rule, or contract authorizing SOAH to conduct the proceeding;

- (C) mootness of the case;
 - (D) failure to state a claim for which relief can be granted;
 - (E) unnecessary duplication of proceedings;
 - (F) withdrawal of a claim by a moving party; or
 - (G) full or partial settlement of a case.
- (2) The judge may issue an order in response to a party's motion or after the judge notifies the parties of an intent to dismiss a case and allows time for responses.

§155.505. Summary Disposition.

- (a) Final decision or proposal for decision on summary disposition. Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing.
- (b) Deadlines. Unless otherwise ordered by the judge:
- (1) A party may file a motion for summary disposition at any time after SOAH acquires jurisdiction over a case, but the motion must be filed at least 30 days before a scheduled hearing on the merits.
 - (2) The response and opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion.
- (c) Contents of Motion. A motion for summary disposition shall include the contents listed below. A motion may be denied for failure to comply with these requirements.
- (1) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.
 - (2) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.
 - (3) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the judge to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the

merits. See SOAH's rules at 1 Texas Administrative Code § 155.505. These rules are available on SOAH's public website."

- (d) Responses to motions.
 - (1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition.
 - (2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.
- (e) Summary disposition evidence.
 - (1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.
 - (2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the judge must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.
 - (3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.
- (f) Proceedings on motions.
 - (1) A judge may hold a hearing on a motion for summary disposition or rule on the motion without a hearing.
 - (2) If summary disposition is granted on all contested issues in a case, the record shall close on the date ordered by the judge or on the later of the filing of the last summary disposition arguments or evidence, the date the summary disposition response was due, or the date a hearing was held on the motion. The judge shall prepare a final decision or proposal for decision as appropriate. The final decision or proposal for decision shall include a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.
 - (3) If summary disposition is granted on some but not all of the contested issues in a case, the judge shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The judge shall issue an order:

- (A) specifying the facts about which there is no genuine issue;
- (B) specifying the issues for which summary disposition has been granted; and
- (C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the judge shall include in the final decision or proposal for decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

§155.507. Proposal for Decision; Exceptions and Replies.

- (a) Submission of the proposal for decision. For contested cases in which a proposal for decision is issued, the judge shall submit the proposal for decision to the referring agency and furnish a copy to each party.
- (b) Exceptions and replies. The parties may submit to the judge and the referring agency exceptions to the proposal for decision and replies to exceptions to the proposal for decision.
 - (1) Unless the referring agency's rules apply by statute, exceptions shall be filed within 15 days after the date the proposal for decision is issued.
 - (2) A reply to the exceptions shall be filed within 15 days of the filing of the exceptions.
 - (3) A motion to change the time to file exceptions or replies to exceptions shall be filed no later than the applicable deadline. The judge may change the time to file exceptions or replies if:
 - (A) good cause is shown for the requested change; or
 - (B) all parties agree.
- (c) Judge's review of exceptions and replies. The judge shall review all exceptions and replies and notify the referring agency and parties whether the judge recommends any changes to the proposal for decision.
- (d) Judge's authority. The judge may:
 - (1) amend the proposal for decision in response to exceptions and replies to exceptions; and
 - (2) correct any clerical errors in the proposal for decision.

§ 155.509. Final Decisions; Motions for Rehearing

- (a) Final decisions. For contested cases in which the judge issues a final decision, the judge shall furnish a copy of the decision to the referring agency and to each party.
- (b) Motions for rehearing. Motions for rehearing shall be filed and handled in accordance with Tex. Gov't Code Chapter 2001, Subchapter F.