OFFICE OF PROFESSIONAL REGULATION
VERMONT SECRETARY OF STATE
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Administrative Rules of Practice

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Part 1. General Provisions

1.1 Definitions

Unless the context requires otherwise, the following definitions apply throughout the Rules of Practice of the Office of Professional Regulation:

(A) Administrative Law Officer: A hearing officer appointed pursuant to 3 V.S.A. § 129(j) to hear contested cases regarding denials of licensure or disciplinary matters.

(B) Appellate Officer: A hearing officer appointed pursuant to 3 V.S.A. § 123(e) to hear appeals of board decisions filed pursuant to 3 V.S.A. § 130a.

(C) Director: Director of the Office of Professional Regulation, Office of Secretary of State.

(D) Docket Clerk: The Docket Clerk in the Office of the Director of the Office of Professional Regulation.

(E) Filing (when used as a noun): Any petition, application, complaint, motion, exhibit, or any other document or thing of any description which is required or permitted to be filed with a hearing authority in connection with a pending case.

(F) Hearing authority: The board or commission regulating a profession or occupation or a hearing officer appointed by a board or commission; for auctioneers, the Secretary of State or a hearing officer appointed by the Secretary of State; for professions or occupations regulated by the Director of the Office of Professional Regulation with advisors, the administrative law officer appointed by the Secretary of State; and the appellate officer assigned by the Director of the Office of Professional Regulation.

(G) Hearing Officer: A hearing officer appointed by a board pursuant to 3 V.S.A. § 129(f) to whom a case has been referred.

(H) Office: The Office of Professional Regulation in the Office of the Secretary of State.

(I) Order of Notice: An order issued by a hearing authority listing persons entitled to receive notice of a proceeding before a hearing authority and copies of all documents filed in the proceeding.

(J) Party: In a disciplinary hearing and appeal, the licensee and the State of Vermont, represented by the Office of the Attorney General or by Special Counsel; in a license denial hearing before a board or commission, the applicant; in a license denial hearing before an administrative law officer, the applicant and the Director; in an appeal from a license denial hearing before a board or commission, the applicant and the hearing authority; in an appeal from a license denial hearing before the administrative law officer, the applicant and the Director.

(K) Person: Any individual, group, corporation, partnership, firm, association, or other entity or organization.

(L) Presiding Officer: Legal counsel authorized by a hearing authority under 3 V.S.A. § 129(g)(3) to preside at hearings.

(M) Respondent: In a disciplinary proceeding, the party against whom a specification of charges has been filed.

1.2 Waiver of Rules

To prevent unnecessary hardship, delay, or injustice, or for other good cause, a hearing authority may waive the application of a rule upon such conditions as it may require, unless precluded by rule or by statute.

PART 2. SCOPE AND CONSTRUCTION OF RULES

2.1 Applicability

These rules shall apply in all proceedings before a hearing authority.

2.2 Vermont Rules of Civil Procedure (VRCP) and Vermont Rules of Appellate Procedure (VRAP)

The Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure, whether specifically adopted herein by reference or whether made applicable by Rule 2.4 below, shall, subject to Rule 2.5 below, apply in the form in which they exist on July 1, 1998 and as they may thereafter from time to time be amended. References in such rules to any judge or to any trial court shall be deemed to be a reference to a hearing authority. References to the clerk of the court shall be deemed to be references to the Docket Clerk in the Office of the Director of Professional Regulation. References to trials shall be deemed to be references to hearings. References to complaints shall be deemed to be references to petitions, applications, or complaints. References to actions shall be deemed to be references to proceedings before a hearing authority. Where less than the whole of any rule of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate Procedure is specifically adopted by reference, the provisions of the remainder thereof shall not apply except by specific order of a hearing authority issued pursuant to Rule 2.7.

2.3 Conflicting Authority

In the event of any conflict, the provisions of any other rule or order of a hearing authority shall prevail over these rules and over otherwise applicable provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate Procedure.

2.4 Procedures Not Specifically Governed

Procedures not specifically governed herein shall be governed by the Vermont Administrative Procedure Act (APA), 3 V.S.A. §§ 801-849, or if not addressed by the APA, by Vermont Rules of Civil Procedure except for Rules 1, 2, 3, 4, 4.1, 4.2, 4.3, 5, 9, 13, 14, 16.1, 17 through 29, 33 through 41, 45, 47 through 57, 59 (a) through (d) and (f), 62 through 73, 76 through 78, 79(c), and 80 through 86 or the Vermont Rules of Appellate Procedure except for Rules 1, 2, 3(c) and (f), 5, 6, 7, 8, 9, 12 through 20, 22, 23, 29, 30, 32, 37 through 41, 43, 44, 46 though 49, by any applicable hearing authority rule or order, or by any applicable statute.

2.5 Construction

These rules shall be liberally construed to secure the just and timely determination of all issues presented to a hearing authority.

2.6 Severability

If any of these rules is found by a court of competent jurisdiction to be illegal or void, the remainder shall be deemed unaffected and shall continue in full force and effect.

2.7 Repeal of Prior Rules

Rules of practice and any amendments or additions thereto previously adopted by a hearing authority are hereby repealed, except that with respect to any proceeding pending on the effective date hereof, a hearing authority may apply any provision of such prior rules where the failure to do so would work an injuctice or substantial inconvenience.

PART 3. PROCEDURES GENERALLY APPLICABLE

3.1 Practice Before a Hearing authority

(A) Notice of appearance. Attorneys or other representatives shall file a written notice of appearance with the Director for any matter in which they are representing a party. The Director shall notify all parties of the appearance. Except as otherwise provided by law, a party's attorney or the representative who has failed to comply with this requirement shall not be entitled to notice or service of any document in connection with such matter, whether such notice or service is required to be made by a hearing authority or by a party. A copy of each notice of appearance shall, on the same day on which it is filed, be served by the party filing the same upon all persons or parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be provided by the Docket Clerk upon request.

(B) Pro se appearances. Any individual may appear pro se in his or her own cause. This rule shall in no respect relieve any person or party from the necessity of compliance with any applicable rule, law, practice, procedure, or other requirement. Except as provided in Rule 3.1(D), anyone appearing pro se shall be under all the obligations of an attorney admitted to practice in this state with respect to the matter in which such person appears.

(C) Withdrawal of appearance. An attorney or other representative who has appeared on behalf of a party may withdraw only upon permission of a hearing authority.

(D) Ex parte communications.

(1) Prohibited communications. Unless required for the disposition of ex parte matters authorized by law, upon the filing of a complaint, petition, application, notice of appeal, or other filing which a hearing authority has treated as the same, no member, employee, or agent of a hearing authority may communicate, directly or indirectly, in connection with any issue of fact, with any party or any interested person, or, in connection with any issue of law, with any party or any employee, agent, or representative of any party, except with the consent of all parties or upon notice and opportunity for all parties to participate.

(2) Exceptions. Notwithstanding the above, members, employees and agents of a hearing authority may communicate with other members, employees or agents, provided that none of the latter has engaged in prohibited communications. Members of an investigative committee of a hearing authority may communicate with any party or any employee, agent, or representative of any party, or any interested person in connection with any issue of fact or law.

(3) Participation in decisions. Unless required for disposition of ex parte matters authorized by law, any member, employee, or agent of a hearing authority who has, in connection with a pending, contested case, except with the consent of all parties or upon notice and opportunity for all parties to participate, communicated in connection with any issue of fact with any party or interested person or, in connection with any issue of law, with any party or any employee agent, or representative of any party, shall not participate or advise in the decision, recommended

decision, or hearing authority review except as a witness or as counsel in public proceedings.

(4) Improper communications by parties. Any person or party who, directly or through an employee, agent or representative, communicates or attempts to communicate with any member, employee or agent of a hearing authority on any subject so as to cause, or with the intent to cause, the disqualification of such member, employee or agent from participating in any manner in any proceeding, may be disqualified from subsequent participation in the proceeding, may be dismissed as a party to the proceeding, or may be deemed to have waived any objection to the subsequent decision by the hearing authority with respect to any matter which is the subject of such communication.

3.2 Initiation of Proceedings

A proceeding is initiated by filing a complaint, specification of charges, petition or other application with the Docket Clerk at the Office of Professional Regulation during normal business hours. The Docket Clerk will cause the filing which initiates the proceeding to be served on the respondent or other person or entity entitled to notice by certified mail, return receipt requested, within five days after such filing. If service cannot be accomplished by certified mail, the Docket Clerk will make reasonable attempt to accomplish service by regular mail or by personal service within the state, if feasible.

3.3 Answer

The respondent must file an answer to the charges with the Director within 20 days of the date on which the notice of charges was mailed by the Director. The answer must include:

(A) A response concerning the substance of each of the numbered specifications in the charges, either admitting or denying each of the specifications. If the respondent is without knowledge or information sufficient to form a belief as to the truth of any specification, the respondent must so state, and this has the effect of a denial. When the respondent intends in good faith to deny only part of a specification, he or she must specify so much of it as is true and must deny only the remainder.

(B) A brief statement of the legal and factual basis of any defense that the respondent intends to offer.
A pre-hearing conference or a hearing on the charges shall be scheduled for a date not more than 60 days after the filing of the answer.

3.4 Default

If a respondent does not answer a notice of charges within the time allowed, the allegations of the charges will be treated as proven and disciplinary action will be taken. Upon a showing of good cause, a hearing authority may remove a default and schedule a new hearing when requested by the respondent to do so.

3.5 Signing of Petitions, Motions and Other Pleadings

Every petition, specification of charges, motion or other pleading shall be signed by at least one representative of record in his or her individual name, whose address and telephone number shall be stated. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of a representative constitutes a certificate

by him or her that to the best of the subscriber's knowledge, information and belief, there are good grounds to support the pleading and that it is not interposed for purposes of delay.

3.6 Pleadings and Other Filings; Service, Filing, Form and Amendment

(A) Service, when required. In addition to any other requirement imposed by law, every filing shall, on the same day on which it is filed, be served by the party filing the same upon the other party, unless a hearing authority for good cause directs otherwise.

(B) Service, how made. Whenever under these rules service is required to be made on a party, it shall be made upon the attorney or person appearing pro se whose appearance has been filed on behalf of such party. In all cases, service may be made by mailing a copy of the filing, first class postage prepaid, to the person whose notice of appearance is on file. Service may also be made by personal delivery or by any other means authorized by the person entitled to service.

(C) Filing, manner and significance. Filing shall be accomplished by delivery to the Docket Clerk at the Office of Professional Regulation or by delivery during the course of a hearing to a hearing authority and later delivery to the Docket Clerk. Regardless of the method of delivery employed, filing occurs only upon receipt by the Docket Clerk or the hearing authority, as the case may be. Such filing shall constitute a representation by the attorney or pro se representative signing the same that a copy thereof has been or will be served on the same day on which it is

filed upon the other party on whose behalf a notice of appearance has been filed.
(D) Number of copies. Except as otherwise ordered by a hearing authority, all materials required to be filed shall require an original only.

(E) Form of filings generally. In addition to the requirements of Vermont Rules of Civil Procedure, Rule 10, all filings shall be typewritten on paper 8 1/2" x 11" in size. Pages shall be numbered sequentially. Filings shall be headed by a descriptive title. A hearing authority or the Docket Clerk may refuse to accept for filing or, after filing, may at any time reject any filing which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be afforded a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing.

(F) Amendments. Proposed amendments to any filing may be made at any time. If unobjected to by the other party within ten days of filing or at the commencement of any hearing in which the amended matter is at issue, whichever is earlier, such amendments shall be deemed effective, except that a hearing authority may at any time dismiss any proposed amendments which it finds to have the effect of unreasonably delaying any proceeding or unreasonably adversely affecting the rights of a party. Where objection is made, amendments shall not be allowed unless a hearing authority finds (a) that they will not unreasonably delay any proceeding or (b) unreasonably adversely affect the rights of a party. A hearing authority may condition the acceptance of any amendment as justice may require. An

amendment which is allowed over objection shall be deemed effective as of the date it is approved, unless for good cause, a hearing authority orders that it shall be effective as of a different date. Proposed amendments shall be clearly identified as such and shall clearly indicate the changes they effect. In the event an amendment makes a substantial change in a filing, a hearing authority may order such additional notice to the other party as justice may require.

(H) Custody. Once it has been filed, any filing shall remain in the custody of the Docket Clerk at the Office of Professional Regulation until other lawful disposition shall have been made at the conclusion of the case or otherwise.

3.7 Notice to Other Persons or Parties

(A) Orders of notice. A hearing authority may require a party who seeks the granting or denial of any form of relief to file a proposed order of notice.

(B) Expenses. The expense of furnishing notice shall be borne by the party on whose behalf of or for whose benefit such notice is given.

3.8 Motions

A motion not made orally during the hearing shall be in writing and, if it raises a substantial issue of law, shall be accompanied by a brief or memorandum of law. Any opposition to such a motion must be in writing and must be filed no later than ten days after the motion it opposes unless otherwise ordered by the hearing authority. Motions made during a hearing may be required to be put in writing and supported by a brief or

memorandum of law within such period as a hearing authority may direct. A hearing authority may decline to consider a motion not made within a reasonable time after the issue first arises with respect to the moving party.

3.9 Time

The provisions of the Vermont Rules of Civil Procedure, Rule 6(a) and 6(b) (Time - Computation and Enlargement), shall apply in proceedings before a hearing authority.

3.10 Defective Filings

Substantially defective or insufficient filings may be rejected by a hearing authority, provided that, if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, a hearing authority shall allow a reasonable opportunity to a party to cure any defect or insufficiency. A filing which is found to be defective or insufficient shall not be deemed to have been cured until the date on which the last document is filed which removes the defect or makes the filing complete. A filing is substantially insufficient if, inter alia, it fails to include all material information required by statute or rule.

3.11 Consolidation of Hearings; Separate Hearings

The provisions of Vermont Rules of Civil Procedure 42 (Consolidation; Separate Trials) shall apply in proceedings before a hearing authority.

3.12 Prehearing Conferences

In any proceeding, upon reasonable notice to the parties, a hearing authority or presiding officer may direct the parties to

appear before the presiding officer for a conference to consider the following matters:

(A) the simplification of issues,
(B) the necessity or desirability of amendments to any filing,

(C) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof,

(D) the limitation of the number of expert or other witnesses,

(E) the identification of all documents, witnesses, and offers of proof to be presented at a hearing by any party.

(F) the establishment of a hearing order and schedule, including deadlines for completing discovery and filing prehearing motions.

(G) such other matters as may aid in the disposition of the case. The presiding officer shall make an order which recites the action taken at the conference, including reference to any agreements made by the parties. When entered, such order controls the subsequent course of the proceeding unless later modified.

3.13 Prefiled Written Testimony

(A) A party may file the direct written testimony and exhibits of any witness it proposes to call in support of its direct case or its rebuttal of the case of the other party.

(B) Form of prefiled written testimony. Prefiled written testimony shall be in question and answer form. Its form and content shall be such as would entitle the same oral testimony to be admitted in

proceedings before a hearing authority. Such testimony shall be typed and double-spaced.

3.14 Discovery

After a specification of charges has been filed, a party may take depositions upon due notice of not less than 10 days to the other party and without specific authorization by the hearing authority. No other means of discovery shall be available to parties in proceedings before a hearing authority.

3.15 Informal Dispositions

(A) Consent orders. If a respondent agrees to accept a specified disciplinary action, the hearing authority may accept and issue a consent order based on the accompanying specification of charges as agreed to by the parties, setting forth the violation and the action, or may reject the proposed order. If the hearing authority rejects the proposed order, a hearing will be scheduled. Consent orders and specification of charges contain the factual and statutory basis for the action and are permanent public records.

(B) Approval of consent orders. When a specification of charges and a consent order has been negotiated, they are to be filed with the Director. When time allows, the Director will send a letter to the respondent notifying him or her of the time the hearing authority will consider the order, together with a copy of the proposed order. A copy of this letter and enclosures will be sent to the complainant. Consideration of the proposed consent order will be set for a time satisfactory to the hearing authority. The letter will make clear that the purpose of the review is to consider approval of the consent order, not to take evidence. Copies of the

letter, proposed order, and charges will be distributed to the hearing authority.

(1) Continuance. If an evidentiary hearing has been scheduled, the parties may request a continuance in writing. The Office will forward such requests to the hearing authority for action. In unusual circumstances, when time does not allow the above procedures, as much notice as possible will be given to each party.

(2) Review of consent order. At the hearing to consider a consent order, both parties will have an opportunity to be heard, and the hearing authority will have an opportunity to ask questions. The parties may decide whether to attend the meeting and, if they attend, how detailed they wish to be in response to questions from the hearing authority.

(3) Public Record: At the hearing a public record will be developed which will provide the basis for the hearing authority's consideration and decision

3.16 Conduct of Hearings

(A) Presiding Officer: A board or commission may authorize its legal counsel to preside at hearings for the purpose of making procedural and evidentiary rulings. A presiding officer may administer oaths and affirmations, rule on offers of proof and receive relevant evidence, regulate the course of the hearing, convene and conduct prehearing conferences, dispose of procedural requests and similar matters, and take other action authorized by these rules consistent with the Vermont Administrative Procedures Act, 3 V.S.A. §§ 801-849.

(B) Hearing authority expert witnesses. In its discretion, a hearing authority may call expert witnesses to testify as to any matter in issue in any proceeding. Except as required to establish the subject matter and scheduling of the testimony to be offered, a hearing authority shall not communicate with such expert witnesses unless it is done in open hearing or upon notice and opportunity for all parties to participate.

(C) Examination of witnesses by hearing authority or presiding officer, or both. Any member of the hearing authority or the presiding officer, or both, may examine witnesses who testify in any proceeding.

(D) Rulings by hearing officers. When a matter has been assigned to a hearing officer, such officer may make rulings of law on procedural matters, on the admission or exclusion of evidence, and on any other matters necessary to conclude proceedings before the officer. After the hearing officer has issued and served a proposal for decision, a party may bring such rulings to a hearing authority for review by requesting, pursuant to 3 V.S.A. § 811, the opportunity to file exceptions and to present briefs and oral argument. Exceptions and briefs shall be filed with the Docket Clerk within 20 days of the date that the hearing officer's proposal for decision has been filed.

3.17 Evidence

(A) General rule. Evidentiary matters are governed by 3 V.S.A. § 810.

(B) Procedure with respect to prefiled written testimony and exhibits. Prefiled written testimony, if admitted into evidence, shall be included in any transcript of a hearing authority proceeding. Objections to the admissibility of prefiled testimony or exhibits shall be filed in writing not more than 30 days after such evidence has been prefiled and not less than five days before the date on which such evidence is to be offered.

3.18 Objections and Exceptions

The provisions of Vermont Rules of Civil Procedure 46 (Exceptions Unnecessary) shall apply in proceedings before a hearing authority.

3.19 Testimony by Telephone or Other Electronic Means

Upon motion of any party and upon a showing of good cause, a hearing authority may exercise discretion to conduct all or part of a hearing by telephone, video or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding and if all participants and all interested members of the public have an opportunity to hear and, if appropriate, to see the entire proceeding. In deciding a motion under this procedure, the hearing authority may consider, among other factors, the nature of the expected testimony of the witness, the duration of the testimony, the nature of the exhibits or demonstrative evidence to which the witness is expected to refer, the unavailability of the witness to testify in person, the cost of testifying in person, any hardship to the witness by testifying in person, and the extent to which demeanor and credibility are significant.

3.20 Subpoenas

Any attorney representing a party may issue subpoenas in connection with any authorized hearing, investigation or disciplinary proceeding. The chair of a hearing authority may issue subpoenas ex parte in connection with any authorized hearing, investigation or disciplinary proceeding.

3.21 Proposed Findings of Fact

In any case, a hearing authority may require each party to file proposed findings of fact. Each proposed finding shall deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately. Proposed findings shall be consecutively numbered and shall be in logical sequence. Where the party claims to have established more than one ultimate fact, proposed findings shall be arranged into separate groups, appropriately identified as to subject matter. Each proposed finding shall contain a citation or citations to the specific part or parts of the record containing the evidence upon which the proposed finding is based.

3.22 Briefs

Briefs shall address each issue of law which a party desires a hearing authority to consider. Whenever a brief addresses more than one issue, it shall be suitably divided into sections which separately address each issue.

3.23 Sanctions

(A) Proposed findings and briefs. An attorney or party who fails to submit proposed findings or briefs, after having been requested by a hearing authority to do so, or who manifestly fails to conform to the requirements respecting proposed findings or briefs as

specified in Rules 3.21 and 3.22, may be suspended from further participation in the proceeding or, for such period of time as a hearing authority finds to be just. In addition, with respect to any issue of law as to which a party has manifestly failed to conform to the requirements of Rule 3.22, such party may be deemed to have waived any claims of law with respect to such issue, and the claims of the opposing party with respect thereto may be deemed to be the law of the case.

(B) Contemptuous or disruptive behavior. An attorney, party or witness who engages in contemptuous or disruptive behavior before a hearing authority shall first be warned once by the hearing authority or presiding officer off the record in a bench conference with the parties. Thereafter, if the attorney, party or witness persists in such behavior, he or she shall be warned once on the record by the hearing authority or presiding officer. Thereafter, if the attorney, party or witness continues to persist in such behavior, he or she may be suspended from further participation in the proceeding or, for such period of time as a hearing authority finds to be just.

3.24 Decision

A hearing authority shall issue a written decision within a reasonable time of the closing of the record in the case. The Docket Clerk shall serve a Notice of Decision on the parties and may provide notice to any other person on request.

3.25 Entry of Order

Upon a decision by a hearing authority granting or denying relief, the Docket Clerk shall enter the order. A decision is effective only when entered.

3.26 Stay of Decisions

(A) Requesting a stay. No decision of a hearing authority is automatically stayed by the filing of an appeal. A party aggrieved by a final order of a hearing authority may request a stay by written motion filed with the Director. The request must identify the order or portion of the order for which a stay is sought and must state in detail the grounds for the request. The party requesting the stay has the burden of proof.

(B) Criteria for evaluating request for a stay. In deciding whether to grant a stay, the hearing authority considers the likelihood of success on the merits of the requesting party's apeal, whether the party seeking the stay will suffer irreparable injury if the stay is not granted, whether the issuance of a stay will substantially harm other parties, and the location of the best interest of the public.

Part 4. Appeal

4.1 Notice of Appeal

(A) Appeal to Appellate Officer. A party may appeal a decision of a board or commission (except the Board of Real Estate Appraisers, 26 V.S.A. § 3323(c)) to an Appellate Officer by filing with the Docket Clerk a written notice of appeal within 30 days of the date of entry of the order. The notice of appeal shall include a statement of questions to be determined by the Appellate Officer. Thereafter, every time a party files a paper, he or she must send a copy to the other party. The Director shall assign the case to an Appellate Officer. The Office shall prepare the record of the proceeding and deliver it to the assigned Appellate Officer.

(B) Appeal to Washington Superior Court. A party may appeal a decision of an Appellate Officer or an Administrative Law Officer to the Washington Superior Court by filing with the Docket Clerk a written notice of appeal within 30 days of the date of entry of the order, in the manner provided in Vermont Rules of Appellate Procedure 3 and 4. A check for the court filing fee, made payable to the Clerk of the Washington Superior Court, must accompany the filing. Any request for a stay pending appeal should be filed with the Washington Superior Court.

4.2 Record on Appeal

(A) Composition of record on appeal. The record on appeal shall consist of the original papers listed in 3 V.S.A.
§ 809(e), including exhibits, any transcript of the proceedings, and a certified copy of the docket entries prepared by the Docket Clerk.

(B) Transcript of the proceedings; duty of appellant to order; stipulation or order for abbreviated transcript. If the oral proceedings were tape-recorded and the hearing lasted no longer than three hours, the record shall include copies of the tapes. If a stenographic record of the oral proceedings was made, or if the hearing lasted longer than three hours, the appellant shall file with the Docket Clerk an order for a complete transcript of the proceedings within ten days after filing the notice of appeal. Unless the appellant is proceeding in forma pauperis, the appellant must pay to the Office the estimated cost of producing a transcript. If the appellant wishes to proceed on appeal in forma pauperis, the appellant may, within ten days after filing the notice of appeal, file an application to proceed in forma pauperis, with an

affidavit stating assets and liabilities. Should the Director grant the application, the Office shall provide for the preparation of a partial or complete transcript as necessary for the full presentation of the issues to be raised on appeal. In any case, the Office shall provide the stenographer or transcriber. If the parties agree to and file a joint stipulation, a partial transcript or an agreed statement of facts may be substituted for a complete transcript. The Docket Clerk will notify the parties when the record is complete.

4.3 Appellate Prehearing Conference

In any appeal, upon 14 days' notice to the parties, the Appellate Officer may direct the parties to appear for a conference to consider simplification of the issues, possibility of settlement, and such other matters as may aid in disposition of the proceedings by the Appellate Officer.

4.4 Briefs; Oral Argument

The appellant must submit a brief within 30 days after the date on the notice that the record is complete. The appellee must file any responsive brief within 21 days after the appellant's brief is filed. Briefs shall not exceed 15 double-spaced pages. A case shall be deemed ripe for oral argument when the responsive brief is filed or when the time for riling the responsive brief has expired. Oral argument may be scheduled in advance of the filing of the responsive brief consistent with the requirements of this Rule. Each party will be allowed 15 minutes for oral argument.

4.5 Taking Additional Evidence on Appeal

Upon motion and good cause shown, the Appellate Officer may schedule a hearing to take additional evidence on whether irregularities in procedure occurred that are not otherwise of

record. The hearing on those irregularities is to be limited to those matters not of record. The Appellate Officer is not authorized to rehear substantive evidence that otherwise was or could have been raised before the hearing authority.

4.6 Decision

The Appellate Officer shall issue a written decision within 60 days of final hearing affirming the order of the hearing authority, or reversing and remanding with instructions to the hearing authority on requirements to conform the hearing authority's order to the law. The Docket Clerk shall serve a Notice of Decision on the parties and may provide notice to any other person on request.

4.7 Interlocutory Appeal

Upon motion of a party, the hearing authority shall permit an appeal to be taken from any interlocutory order or ruling if the hearing authority finds that the order or ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal will materially advance the final disposition of the matter. If the hearing authority denies the motion, the order denying the motion may not be appealed until final disposition of the matter by the hearing authority. If the motion is granted, the moving party must within ten days file a notice of appeal pursuant to Rule 4.1. For cases within the jurisdiction of the Appellate Officer, a scheduling order to expedite the hearing of the interlocutory appeal shall be established. For all other cases, the appeal shall be filed in the Washington Superior Court.

4.8 Further Appeal

Except in cases involving real estate appraisers, further appeal may be had to the Washington Superior Court, as authorized by 3 V.S.A. § 130a(c). Within 30 days of the decision, the appellant must file a notice of appeal with and submit the appropriate fee to the Docket Clerk who shall prepare the record and deliver it to the Washington Superior Court. Pursuant to 26 V.S.A. § 3323(c), an individual aggrieved by a decision of the Board of Real Estate Appraisers may appeal directly to the superior court of the county in which the person resides. Any request for a stay pending appeal should be filed with the appropriate superior court.
Statutory Authority: 3 V.S.A. § 831(d)

Effective Date: February 1, 1999