

# **UNIFORM RULES OF PROCEDURE**

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## **CHAPTER 28-101** **ORGANIZATION**

### **28-101.001 Statement of Agency Organization and Operation.**

(1) The agency head shall maintain a current Statement of Agency Organization and Operation. The statement shall describe the organization of the agency and outline the general course of the agency's operations. The purpose of the statement is:

(a) To inform the public, in a complete and concise manner, of the nature of the agency's business, operations, delegation of authority, internal organization and other related matters;

(b) To provide assistance to the public when dealing with the agency; and

(c) To expedite the processing of agency matters on behalf of the public.

(2) The Statement of Agency Organization and Operation shall:

(a) Describe the agency head and his or her duties, as well as state the method of selection or appointment of the agency head, and the length of his or her term.

(b) Describe the organizational units and sub-units within the agency, including their assigned functions, duties, responsibilities, statutory authority, and statutes and rules they are charged with implementing. The designation of units and sub-units shall be consistent with Section 20.04, F.S., or as otherwise provided by law.

(c) Describe the manner by which publications, documents, forms, applications for licenses, permits and other similar certifications or rights granted by the agency, or other information, may be obtained.

(d) Identify the agency clerk by name, position, address, e-mail address, and telephone number; and set out his or her duties and responsibilities.

(e) State whether documents can be filed by electronic mail or facsimile transmission, including applicable telephone numbers and electronic mail addresses where filings may be submitted, and set forth the acceptable nature and scope of such filings, including the following:

That the filing date for a document transmitted by electronic mail or by facsimile shall be the date the agency receives the complete document. Any document received by the office of the agency clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

(f) Identify the name, address, and e-mail address of the appropriate contact person for obtaining information about variances from or waivers of agency rules, and indicate how to file a petition for variance or waiver.

(g) Set forth the agency's hours of operation during which filings will be accepted.

(h) Set forth where and how agency index of final orders can be accessed.

(3) The agency clerk shall provide a copy of its Statement of Agency Organization and Operation to any person upon request.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13.*

**CHAPTER 28-102**  
**AGENDA AND SCHEDULING OF MEETINGS,**  
**HEARINGS AND WORKSHOPS**

- 28-102.001      Notice of Public Meeting, Hearing, or Workshop
- 28-102.002      Agenda of Meetings, Hearings, or Workshops
- 28-102.003      Emergency Meetings

**28-102.001 Notice of Public Meeting, Hearing, or Workshop.**

(1) Except where otherwise provided, the agency shall give at least seven days notice of any public meeting, hearing, or workshop by publication in the Florida Administrative Register and on agency's website. Provisions regarding notices of hearings in proceedings for determining substantial interests are found in Rules 28-106.208 and 28-106.302, F.A.C.

(2) An agency shall utilize the following form, or a substantially similar form, in providing notice of any public meeting, hearing, or workshop.

**NOTICE OF PUBLIC MEETING, HEARING, OR WORKSHOP**

The (name of the agency) announces a public meeting, hearing, or workshop to which all persons are invited.

DATE AND TIME: \_\_\_\_\_

PLACE: \_\_\_\_\_

PURPOSE: \_\_\_\_\_

A copy of the agenda may be obtained by writing to (name of the agency) at (address) or by calling (name) at (telephone number).

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/hearing/meeting is asked to advise the agency at least 5 days before the workshop/hearing/meeting by contacting (name) at (telephone number). If you are hearing or speech impaired, please contact the agency by calling (telephone number of TDD).

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)1. FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.*

**28-102.002 Agenda for Meetings, Hearings, or Workshops.**

(1)(a) The agenda shall state with specificity the items that will be considered at a meeting, hearing, or workshop. All matters involving the exercise of agency discretion and policy-making shall be listed and summarized on the agenda. Matters which are solely ministerial, or internal

administrative matters that do not affect the interests of the public generally, may be included on the agenda.

(b) An agency shall utilize the following form, or substantially similar form in preparing its agenda:

NAME OF AGENCY TIME, DATE & PLACE OF MEETING THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order.

2. Review of Minutes.

3. Old Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.

4. New Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.

5. Other Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.

(2) The person designated to preside may make specific changes in the agenda after it has been made available for distribution, only for "good cause" shown.

(3) The agenda and any meeting materials available in electronic form shall be published on the agency's website. Confidential and exempt information need not be published.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.525 FS. History—New 4-1-97, Amended 2-5-13.*

### **28-102.003 Emergency Meetings.**

(1) An agency may hold an emergency meeting notwithstanding the provisions of Rules 28-102.001 and 28-102.002, F.A.C., for the purpose of acting upon emergency matters posing an immediate danger to the public health, safety or welfare.

(2) Whenever an emergency meeting must be held, the agency shall give notice of the meeting on its website, if it has one, and by any procedure that is fair under the circumstances, such as notifying at least one major newspaper of general circulation in the area where the meeting will take place, and the agency may also notify all major wire services of the time, date, place, and purpose of the meeting.

(3) Following an emergency meeting, the agency shall publish in the appropriate publication prescribed by Section 120.54(3), F.S., and on its website, if it has one, notice of the time, date and place of the meeting, a statement setting forth the reasons why an emergency meeting was necessary and a statement setting forth the action taken at the meeting. This notice is in addition to the notice requirements of Section 120.525(3)(c), F.S.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.525, 120.54(5)(b)1. FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.*

## **CHAPTER 28-104** **VARIANCE OR WAIVER**

<a href="#">28-104.001</a>	<a href="#">Purpose; Construction</a>
<a href="#">28-104.002</a>	<a href="#">Petition for Variance or Waiver</a>
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<a href="#">28-104.0051</a>	<a href="#">Revocation of Emergency or Temporary Variance or Waiver</a>
<a href="#">28-104.006</a>	<a href="#">Request for Information</a>

### **28-104.001 Purpose; Construction.**

This chapter implements Section 120.542, F.S., by establishing the procedures for granting or denying petitions for variances and waivers of agency rules, and, should be read in conjunction with the provisions of Sections 120.52(18), 120.52(19) and 120.542, F.S.

*Rulemaking Authority 14.202, 120.542 FS. Law Implemented 120.542(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07.*

### **28-104.002 Petition for Variance or Waiver.**

(1) A petition for a variance from or waiver of an agency rule shall be filed with the clerk of the agency that adopted the rule, with a copy to the Joint Administrative Procedures Committee, Room 680, Pepper Building, Tallahassee, Florida 32399-1400.

(2) The petition must include the following information:

(a) The caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner, if the party is not represented by an attorney or a qualified representative;

(c) The name, address, e-mail address, telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;

(d) The applicable rule or portion of the rule;

(e) The citation to the statute the rule is implementing;

(f) The type of action requested;

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

(3) The petition for a variance or waiver may be withdrawn by the applicant at any time before final agency action.

(4) Upon receipt of a petition for variance or waiver, the agency shall furnish a copy of the petition to any other agency responsible for implementing the rule.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)8. FS. History–New 4-1-97, Amended 3-18-98, 2-5-13.*

#### **28-104.003 Comments on Petition.**

(1) Any interested person or other agency may submit written comments on the petition for a variance or waiver within 14 days after the notice required by Section 120.542(6), F.S. The agency shall state in any order disposing of the petition whether comments were received by the agency.

(2) The agency shall maintain the comments as part of the record.

(3) The right to comment pursuant to this section does not alone confer party status in any proceeding arising from a petition for variance or waiver.

*Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History–New 4-1-97, Amended 2-5-13.*

#### **28-104.004 Petition for Emergency Variance or Waiver.**

(1) A person requesting an emergency variance from or waiver of an agency rule shall so state in the caption to the petition.

(2) In addition to the other requirements of Section 120.542(5), F.S., and this chapter, the petition shall specify:

(a) The specific facts that make the situation an emergency; and

(b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

*Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History–New 4-1-97.*

### **28-104.005 Time for Consideration of Emergency Petition.**

(1) Within 5 days after filing a petition for emergency variance or waiver with the agency clerk, the agency shall give notice of receipt of the petition on its website, if it has one. The agency shall also give notice by any procedure that is fair under the circumstances or provide notice of the petition to the Department of State for publication in the first available issue of the Florida Administrative Register. Any notice under this subsection shall inform interested persons of the right to submit comments. Interested persons or other agencies may submit written comments on the petition for emergency variance or waiver within 5 days after publication of the notice required herein. The notice and comment requirements in this subsection shall not apply if the agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, which final order shall recite with particularity the facts underlying such finding.

(2) The agency shall grant or deny a petition for emergency variance or waiver or determine that the request is not an emergency within 30 days of its receipt by the agency. If such petition is not granted or denied within this time limit, the petition shall be deemed approved unless the time limit is waived by the petitioner.

(3) If the agency decides that the situation is not an emergency, the agency shall so notify the petitioner in writing, and the petition shall then be reviewed by the agency on a non-emergency basis as set forth in Section 120.542(7), F.S.

(4) The duration of an emergency variance or waiver shall be determined by the agency.

(5) The agency shall issue a written order granting or denying the petition. The order shall state the facts and reasons supporting the agency's action.

*Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History–New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13.*

### **28-104.0051 Revocation of Emergency or Temporary Variance or Waiver.**

(1) Upon receipt of evidence sufficient to show that the recipient of an order granting an emergency or temporary variance or waiver is not in compliance with the requirements of that order, the agency shall issue an order to show cause why the emergency variance or waiver should not be revoked.

(2) The recipient of an emergency or temporary variance or waiver shall respond to the order to show cause why the emergency variance or waiver should not be revoked within 15 days of the mailing date of the order to show cause. Failure to timely respond shall result in a final order revoking the emergency or temporary variance or waiver.

*Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 3-18-98.*

### **28-104.006 Request for Information.**

(1) When a person inquires of the agency about the possibility of relief from any rule requirements or the remedies available pursuant to Section 120.542, F.S., the agency shall provide the information required by Section 120.542(4), F.S., within 15 days of the inquiry.

(2) In its response to a request for information, the agency shall indicate the name, address and e-mail address of the appropriate contact person for additional information and shall indicate how a petition for variance or waiver is filed with the agency.

*Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.542(4) FS. History—New 4-1-97, Amended 2-5-13.*

## **CHAPTER 28-105**

# **DECLARATORY STATEMENTS**

<a href="#"><u>28-105.001</u></a>	<a href="#"><u>Purpose and Use of Declaratory Statement</u></a>
<a href="#"><u>28-105.002</u></a>	<a href="#"><u>The Petition</u></a>
<a href="#"><u>28-105.0024</u></a>	<a href="#"><u>Notice of Filing</u></a>
<a href="#"><u>28-105.0027</u></a>	<a href="#"><u>Intervention</u></a>
<a href="#"><u>28-105.003</u></a>	<a href="#"><u>Agency Disposition</u></a>
<a href="#"><u>28-105.004</u></a>	<a href="#"><u>Notice of Disposition</u></a>

### **28-105.001 Purpose and Use of Declaratory Statement.**

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 4-1-97, Amended 1-15-07.*

### **28-105.002 The Petition.**

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

- (1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency).
- (2) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner.
- (3) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative if any.
- (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.
- (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.

(6) The signature of the petitioner or of the petitioner's attorney or qualified representative.

(7) The date.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.565 FS. History—New 4-1-97, Amended 3-18-98, 1-15-07, 2-5-13.*

### **28-105.0024 Notice of Filing.**

The agency shall file a notice of the Petition for Declaratory Statement in the next available Florida Administrative Register including the following information:

(1) The name of the agency with which the Petition for Declaratory Statement is filed.

(2) The name of the Petitioner.

(3) The date the Petition for Declaratory Statement was received.

(4) The statutory provision(s), rule(s) or order(s) on which the declaratory statement is sought.

(5) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.

(6) The applicable time limit for filing motions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.*

### **28-105.0027 Intervention.**

(1) Persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule. Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of (or such later time as is specified in) the notice in the Florida Administrative Register. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, the e-mail address, and facsimile number, if any, of the intervenor; if the intervenor is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative, if any; and

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement; and

(d) The signature of the intervenor or intervenor's attorney or qualified representative; and

(e) The date.

(3) Any party may, within seven days of service of the motion, file a response in opposition.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History–New 1-15-07, Amended 2-5-13.*

### **28-105.003 Agency Disposition.**

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History–New 4-1-97, Amended 1-15-07.*

### **28-105.004 Notice of Disposition.**

The agency shall file a Notice of Disposition for the Declaratory Statement or denial of the petition in the next available issue of the Florida Administrative Register including the following information:

- (1) The name of the agency.
- (2) A summary statement of the agency's decision.
- (3) The agency, contact person, address, and e-mail address where a copy of the petition and final order may be obtained.
- (4) The date the final order is filed.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.*

# **CHAPTER 28-106**

## **DECISIONS DETERMINING SUBSTANTIAL INTERESTS**

### **PART I GENERAL PROVISIONS**

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### **PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT**

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## **PART VI CONFLICT**

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## **PART I GENERAL PROVISIONS**

### **28-106.101 Scope of this Chapter.**

This chapter shall apply in all proceedings in which the substantial interests of a party are determined by the agency and shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. This chapter applies to all proceedings under Chapter 120 except as follows:

- (1) Where the agency has adopted rules covering the subject matter pursuant to Section 120.54(5)(a)2., F.S.;
- (2) Agency investigations or determinations of probable cause preliminary to agency action; and
- (3) Mediation conducted pursuant to Section 120.573, F.S. The notice provisions in Rule 28-106.111 and Part IV, F.A.C., of this subchapter apply to such mediation.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.*

### **28-106.102 Presiding Officer.**

“Presiding officer” means an agency head, or member thereof, who conducts a hearing or proceeding on behalf of the agency, an administrative law judge assigned by the Division of Administrative Hearings, or any other person authorized by law to conduct administrative hearings or proceedings who is qualified to resolve the legal issues and procedural questions which may arise.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.103 Computation of Time.**

In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, legal holiday means those days designated in Section 110.117, F.S. Except as provided in Rule 28-106.217, F.A.C., five days shall be added to the time limits when service has been made by regular U.S. mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by hand, facsimile transmission, or electronic mail or when the period of time begins pursuant to a type of notice described in Rule 28-106.111, F.A.C.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07.*

### **28-106.104 Filing.**

(1) In construing these rules or any order of a presiding officer, filing shall mean received by the office of the agency clerk during normal business hours or by the presiding officer during the course of a hearing.

(2) All pleadings filed with the agency shall contain the following:

(a) The style of the proceeding involved;

(b) The docket, case or file number, if any;

(c) The name of the party on whose behalf the pleading is filed;

(d) The name, address, any e-mail address, and telephone number of the person filing the pleading;

(e) The signature of the person filing the pleading; and

(f) A certificate of service that copies have been furnished to all other parties as required by subsection (4) of this rule.

(3) Any document received by the office of the agency clerk before 5:00 p.m. shall be filed as of that day but any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

(4) Whenever a party files a pleading or other document with the agency, that party shall serve copies of the pleading or other document upon all other parties to the proceeding. A certificate of service shall accompany each pleading or other document filed with the agency.

(5) All parties, if they are not represented, or their attorneys or qualified representatives shall promptly notify all other parties and the presiding officer of any changes to their contact information by filing a notice of the change.

(6) All papers filed shall be titled to indicate clearly the subject matter of the paper and the party requesting relief.

(7) All original pleadings shall be on white paper measuring 8 1/2 by 11 inches, with margins of no less than one inch. Originals shall be printed or typewritten.

(8) A document shall be filed by only one method (e-filing, facsimile, courier, hand-delivery, or U.S. mail) and shall not be filed multiple times. A duplicate filing will not be docketed and will be destroyed.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.*

### **28-106.105 Appearances.**

(1) Counsel or qualified representatives who file a request for a hearing involving disputed issues of material fact with the agency have entered an appearance in the proceeding and shall be deemed counsel or qualified representative of record. All others who seek to appear shall file a notice of appearance as soon as possible.

(2) Service on counsel of record or on a qualified representative shall be the equivalent of service on the party represented.

(3) On written motion served on the party represented and all other parties of record, the presiding officer shall grant counsel of record and qualified representatives leave to withdraw for good cause shown. The motion shall contain the address, any e-mail address, and telephone number of the party represented.

(4) A qualified representative who has filed an initial pleading or notice of appearance for a party shall be deemed the qualified representative of record until the presiding officer makes the determination required by Rule 28-106.106, F.A.C.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 2-5-13.*

#### **28-106.106 Who May Appear; Criteria for Qualified Representatives.**

(1) Any party who appears in any agency proceeding has the right, at his or her own expense, to be represented by counsel or by a qualified representative. Counsel means a member of The Florida Bar or a law student certified pursuant to Chapter 11 of the Rules Regulating The Florida Bar. An attorney disbarred in any state shall not be authorized to serve as a qualified representative.

(2)(a) A party seeking representation by a qualified representative shall file a written request with the presiding officer as soon as practicable, but no later than any pleading filed by the person seeking to appear on behalf of the party. The request shall identify the name, address, e-mail address, and telephone number of the representative and shall state that the party is aware of the services which the representative can provide, and is aware that the party can be represented by counsel at the party's own expense and has chosen otherwise.

(b) The presiding officer shall consider whether the representative is qualified to appear in the administrative proceeding and capable of representing the rights and interests of the party. The presiding officer may consider a representative's sworn affidavit setting forth the representative's qualifications.

(c) The presiding officer shall determine the qualifications of the representative within a reasonable time after the request required by paragraph (a) is filed.

(3) The presiding officer shall authorize the representative to appear if the presiding officer is satisfied that the representative has the necessary qualifications to responsibly represent the party's interests in a manner which will not impair the fairness of the proceeding or the correctness of the action to be taken.

(4) The presiding officer shall make a determination of the qualifications of the representative in light of the nature of the proceedings and the applicable law. The presiding officer shall consider:

(a) The representative's knowledge of jurisdiction;

(b) The representative's knowledge of the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding;

(c) The representative's knowledge regarding the rules of evidence, including the concept of hearsay in an administrative proceeding;

(d) The representative's knowledge regarding the factual and legal issues involved in the proceedings; and

(e) The representative's knowledge of and compliance with the Standards of Conduct for Qualified Representatives, Rule 28-106.107, F.A.C.

(5) If the presiding officer determines a representative is not qualified, the reasons for the decision shall be in writing and included in the record.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.*

### **28-106.107 Standards of Conduct for Qualified Representatives.**

The following standards of conduct are mandatory for all qualified representatives.

(1) A representative shall exercise due diligence to insure that any motion or pleading is filed and argued in good faith.

(2) A representative shall advise the client to obey the law.

(3) A representative shall not:

(a) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

- (b) Engage in conduct that is prejudicial to the administration of justice;
  - (c) Handle a matter which the representative knows or should know that he or she is not competent to handle;
  - (d) Handle a legal or factual matter without adequate preparation;
  - (e) Communicate, or cause another to communicate, as to the merits of the proceeding with the presiding officer except on the record or in writing with a copy promptly delivered to the opposing party; or
  - (f) Communicate with an adverse party regarding matters at issue in the administrative proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative.
- (4) Failure to comply with these provisions shall authorize the presiding officer to disqualify the representative appearing in the administrative proceeding.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

#### **28-106.108 Consolidation.**

If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

#### **28-106.109 Notice to Interested Parties.**

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

#### **28-106.110 Service of Papers.**

Unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall

be served on each party or the party's representative at the last address of record.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

**28-106.111 Point of Entry into Proceedings and Mediation.**

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall also advise whether mediation under Section 120.573, F.S., is available, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

(3) An agency may, for good cause shown, grant a request for an extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters. This provision does not eliminate the availability of equitable tolling as a defense.

(5) The agency may publish, and any person who has timely requested mediation may, at the person's own expense, cause the agency to publish, a notice of the existence of the mediation proceeding in the *Florida Administrative Register* or in a newspaper of general circulation in the affected area. The mediation notice can be included in the notice of intended agency action.

(a) The notice of the mediation proceeding shall include:

1. A statement that the mediation could result in a settlement adopted by final agency action;

2. A statement that the final action arising from mediation may be different from the intended action set forth in the notice which resulted in a timely request for mediation;

3. A statement that any person whose substantial interests may be affected by the outcome of the mediation shall within 21 days of the notice of mediation proceeding file a request with the agency to participate in the mediation; and

4. An explanation of the procedures for filing such a request.

(b) The notice shall also advise that in the absence of a timely request to participate in the mediation, any person whose substantial interests are or may be affected by the result of the mediation waives any right to participate in the mediation.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 3-18-98, 1-15-07.*

## **PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT**

### **28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation

of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

*Rulemaking Authority 14.202, 120.54(3), (5) FS. Law Implemented 120.54(3) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 2-5-13.*

### **28-106.2015 Agency Enforcement and Disciplinary Actions.**

(1) Prior to entry of a final order to suspend, revoke, or withdraw a license, to impose administrative fines, or to take other enforcement or disciplinary action against a licensee or person or entity subject to the agency's jurisdiction, the agency shall serve upon the licensee an administrative complaint. For purposes of this rule, an agency pleading or communication that seeks to exercise an agency's enforcement authority and to take any kind of disciplinary action against a licensee or other person shall be deemed an administrative complaint.

(2) An agency issuing an administrative complaint shall be the petitioner, and the licensee against whom the agency seeks to take disciplinary action shall be the respondent.

(3) The agency's administrative complaint shall be considered the petition, and service of the administrative complaint on the respondent shall be deemed the initiation of proceedings.

(4) The agency's administrative complaint shall contain:

(a) The name of the agency, the respondent or respondents against whom disciplinary action is sought and a file number.

(b) The statutory section(s), rule(s) of the Florida Administrative Code, or the agency order alleged to have been violated.

(c) The facts or conduct relied on to establish the violation.

(d) A statement that the respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.

(5) Requests for hearing filed by the respondent in accordance with this rule shall include:

(a) The name, address, any e-mail address, telephone number, and facsimile number, if any, of the respondent, if the respondent is not represented by an attorney or qualified representative.

(b) The name, address, e-mail address, telephone number, and facsimile number of the attorney or qualified representative of the respondent, if any, upon whom service of pleadings and other papers shall be made.

(c) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

(d) A statement of when the respondent received notice of the administrative complaint.

(e) A statement including the file number to the administrative complaint.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 1-15-07, Amended 2-5-13.*

### **28-106.202 Amendment of Petitions or Requests for Hearing.**

A petition or request for hearing may be amended prior to the designation of the presiding officer by filing and serving an amended petition or amended request for hearing in the manner prescribed for filing and serving an original petition or request for hearing. Thereafter the petitioner may amend the petition or request for hearing only upon order of the presiding officer.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07.*

### **28-106.203 Answer.**

A respondent may file an answer to the petition.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.204 Motions.**

(1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. The original written motion shall be filed with the presiding officer. When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition. No reply to the response shall be permitted unless leave is sought from and given by the presiding officer. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The presiding officer shall conduct such proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) Unless otherwise provided by law, motions to dismiss the petition or request for hearing shall be filed no later than 20 days after assignment of the presiding officer, unless the motion is based upon a lack of jurisdiction or incurable errors in the petition.

(3) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion. Any statement that the movant was unable to contact the other party or parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted.

(4) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.*

### **28-106.205 Intervention.**

(1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor, if the intervenor is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative; and

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding; and

(d) A statement as to whether the intervenor supports or opposes the preliminary agency action; and

(e) The statement required by subsection 28-106.204(3); and

(f) The signature of the intervenor or intervenor's attorney or qualified representative; and

(g) The date.

(3) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07, 2-5-13.*

### **28-106.206 Discovery.**

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.207 Venue.**

(1) Whenever practicable and permitted by statute or rule, hearings shall be held in the area of residence of the non-governmental parties affected by agency action, or at the place most convenient to all parties as determined by the presiding officer.

(2) Failure to respond timely to any order requiring or allowing the parties to suggest an appropriate locality for final hearing may constitute a waiver of venue.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.208 Notice of Hearing.**

The presiding officer shall set the time and place for all hearings and shall serve written notice on all parties at their address of record. No less than 14 days notice shall be given for the hearing on the merits of the petition unless otherwise agreed by the parties or unless otherwise provided by law.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.209 Pre-hearing Conferences.**

At any time after a matter has been filed with the agency, the presiding officer may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of

witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.210 Continuances.**

The presiding officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.211 Conduct of Proceedings.**

The presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.212 Subpoenas.**

(1) Upon the request of any party, a presiding officer shall issue subpoenas for the attendance of witnesses for deposition or at the hearing. The requesting party shall specify whether the witness is also requested to bring documents.

(2) A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is 18 years of age or older. Service shall be made by delivering a copy to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if not served by a person specified by law to serve process.

(3) Any motion to quash or limit the subpoena shall be filed with the presiding officer and shall state the grounds relied upon.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.213 Evidence.**

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to impeach any witness regardless of which party called the witness to testify.

(3) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-.805, F.S.

(4) The rules of privilege apply to the same extent as in civil actions under Florida law.

(5) If requested and if the necessary equipment is reasonably available, testimony may be taken by means of video teleconference or by telephone.

(a) If a party cross-examining the witness desires to have the witness review documents or other items not reasonably available for the witness to review at that time, then the party shall be given a reasonable opportunity to complete the cross-examination at a later time or date for the purpose of making those documents or other items available to the witness.

(b) For any testimony taken by telephone, a notary public must be physically present with the witness to administer the oath. The notary public shall provide a written certification to be filed with the presiding officer confirming the identity of the witness, and confirming the affirmation or oath by the witness. It shall be the responsibility of the party calling the witness to secure the services of a notary public.

(6) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material. Requests for official recognition shall be by motion and shall be considered in accordance with the provisions governing judicial notice in Sections 90.201-.203, F.S.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.*

### **28-106.214 Recordation.**

(1) Responsibility for preserving the testimony at final hearings shall be that of the agency transmitting the petition to the Division of Administrative Hearings pursuant to Sections 120.569 and 120.57, F.S., the agency whose rule is being challenged, or the agency whose action initiated the proceeding. Proceedings shall be recorded by a certified court reporter or by recording instruments.

(2) No later than 10 days prior to the final hearing, the agency shall notify the parties of the method by which the agency will record the testimony at the final hearing. Any party to a hearing may, at its own expense, provide a certified court reporter if the agency does not. The presiding officer may provide a certified court reporter. At hearings reported by a court reporter, any party who wishes a transcript of the testimony shall order the same at its own expense. If a court reporter records the proceedings, the recordation shall become the official transcript.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 3-18-98.*

### **28-106.215 Post-Hearing Submittals.**

All parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer. Unless authorized by the presiding officer, proposed orders shall be limited to 40 pages.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.216 Entry of Recommended Order.**

(1) If a hearing is conducted by other than the agency head, or member thereof, the presiding officer shall, within 30 days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for final agency action.

(2) By agreeing to a deadline for filing post-hearing submissions that is more than 10 days after the conclusion of the hearing or the filing of the hearing transcript, whichever is later, a party waives the provisions of subsection (1) above.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.217 Exceptions and Responses.**

(1) Parties may file exceptions to findings of fact and conclusions of law contained in recommended orders with the agency responsible for rendering final agency action within 15 days of entry of the recommended order except in proceedings conducted pursuant to Section 120.57(3), F.S. Exceptions shall identify the disputed portion of the recommended order by page

number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record.

(2) Exceptions shall be provided to all parties by facsimile or electronic mail, if a facsimile number or e-mail address has been provided number or address provided, the day they are filed with the agency.

(3) Any party may file responses to another party's exceptions within 10 days from the date the exceptions were filed with the agency.

(4) No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.*

### **PART III PROCEEDINGS AND HEARINGS NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT**

#### **28-106.301 Initiation of Proceedings.**

(1) Unless otherwise provided by statute and except for agency enforcement and disciplinary actions initiated under subsection 28-106.2015(1), F.A.C., initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document which requests a proceeding. Each petition shall be legible and on 8 1/2 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be doubled-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, and telephone number of the petitioner, if the petitioner is not represented by an attorney or qualified representative; the name, address, e-mail address, facsimile number, and telephone number of the petitioner; if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) An explanation of how the petitioner's substantial interests will be affected by the agency determination;

(d) A statement of when and how the petitioner received notice of the agency decision;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action;

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action; and

(h) A statement that no material facts are in dispute.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 12-24-07, 2-5-13.*

### **28-106.302 Notice of Proceeding.**

(1) The agency shall serve written notice on all parties at their address of record, allowing at least 14 days from the date of the notice for the parties to provide any documents, memorandum of law, or other written material in support of or opposition to the agency action or refusal to act or in aggravation or mitigation of any penalty which may be imposed. If only written evidence is submitted, the notice shall provide that all other parties shall have 14 days to respond in writing to that written evidence.

(2) The agency may schedule a hearing on the matter for the purpose of taking oral evidence or argument. If it does so, the agency shall serve written notice at least 14 days prior to the hearing, setting forth the place, date, time of the hearing, and legal authority and jurisdiction under which the hearing is to be held.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 3-18-98, 12-24-07.*

### **28-106.303 Motions.**

(1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing and shall fully state the action requested and the grounds relied upon. The original motion shall be filed with the presiding officer. When time allows, the other parties may, within seven days of service of a written motion, file a response in opposition. No reply to the response shall be permitted unless leave is sought from and

given by the presiding officer. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The presiding officer shall conduct proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state whether any party has an objection to the motion.

(3) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 2-5-13.*

### **28-106.304 Continuances.**

The presiding officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-106.305 Conduct of Proceedings.**

The presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07.*

### **28-106.306 Recordation.**

(1) Responsibility for preserving the testimony at final hearings shall be that of the agency responsible for taking final agency action. Proceedings shall be recorded by a certified court reporter or by recording instruments.

(2) Any party to a hearing may, at its own expense, provide a certified court reporter if the agency does not. The presiding officer may provide a certified court reporter. At hearings reported by a court reporter, any party who wishes a transcript of the testimony shall order the same at its own expense.

If a court reporter records the proceedings, the recordation shall become the official transcript.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 3-18-98.*

### **28-106.307 Post-Hearing Submittals.**

The presiding officer may permit all parties to submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer. Unless authorized by the presiding officer, proposed orders shall be limited to 40 pages.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

## **PART IV MEDIATION**

### **28-106.401 Purpose.**

This rule applies to all mediation proceedings conducted pursuant to Section 120.573, F.S.

(1) Mediation is a process whereby a third person acts to encourage and facilitate a resolution of an administrative dispute, without prescribing what the resolution should be. Mediation is an informal and nonadversarial process with the objective of helping the parties reach a mutually acceptable agreement.

(2) Mediation proceedings are available to settle administrative disputes if provided for in the announcement of agency actions. If an agreement to mediation by the agency and all parties is filed within 10 days of the announcement for election of an administrative remedy under Sections 120.569 and 120.57, F.S., the time limitations shall be tolled until the completion of the mediation with settlement or impasse.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 3-18-98, 1-15-07.*

### **28-106.402 Contents of Request for Mediation.**

The request for mediation shall contain:

(1) The name, address, any e-mail address, and telephone number of the party requesting mediation and of that party's representative, if any; and

(2) A statement of the preliminary agency action.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07, 2-5-13.*

### **28-106.403 Allocation of Costs and Fees.**

The costs of mediation, including the mediator's fees and other shared costs, shall be split equally or as otherwise agreed by the parties. The cost allocation shall be specified in the agreement to mediate. Mediators shall be compensated at a rate agreed upon by the parties and the mediator.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.*

### **28-106.404 Contents of Agreement to Mediate.**

The agreement to mediate shall set forth:

- (1) The names, addresses, any e-mail address, and telephone numbers of any persons who may attend the mediation;
- (2) The name, address, e-mail address, and telephone number of the mediator agreed to by the parties;
- (3) How the costs and fees associated with mediation will be allocated;
- (4) The agreement of the parties regarding the confidentiality of discussions and documents introduced during mediation to the extent authorized by law;
- (5) The date, time, and place of the first mediation session;
- (6) The name of the party's representative who shall have authority to settle or recommend settlement; and
- (7) The signatures of the parties.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 2-5-13.*

### **28-106.405 Standards of Conduct for Mediators.**

- (1) Mediators shall adhere to the highest standards of integrity, impartiality, and professional competence.
- (2) On commencement of the mediation session, a mediator shall inform all parties that the process is consensual in nature, that the mediator is an impartial facilitator, and that the mediator may not impose or force any settlement on the parties.
- (3) A mediator shall:

(a) Perform the mediation services in a timely and expeditious fashion, avoiding delays wherever possible;

(b) Be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality; and

(c) Withdraw from mediation if the mediator believes the mediator can no longer be impartial.

(4) A mediator shall not:

(a) Coerce or unfairly influence a party into a settlement agreement and shall not make substantive decisions for any party to a mediation process;

(b) Intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation; or

(c) Give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney, or any other person involved in, or associated with any person involved in, the mediation process.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

## **PART V EMERGENCY ACTION**

### **28-106.501 Emergency Action.**

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall enter an emergency order summarily suspending, limiting, or restricting a license, or taking such other emergency action as is authorized by law.

(2) The agency's emergency order shall include a notice of the licensee's (or person or entity subject to the agency's jurisdiction) right to an immediate appeal of the emergency final order pursuant to Section 120.569(2)(n) or 120.60(6), F.S.

(3) In the case of the emergency suspension, limitation, or restriction of a license, unless otherwise provided by law, within 20 days after emergency action taken pursuant to subsection (1) of this rule, the agency shall initiate administrative proceedings in compliance with Sections 120.569, 120.57 and 120.60, F.S., and Rule 28-106.2015, F.A.C.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 1-15-07, Amended 12-24-07.*

## **PART VI CONFLICT**

### **28-106.601 Conflict.**

Following receipt of a recommended order, the agency attorney or qualified representative who acts on behalf of the agency in the conduct of the hearing will not serve as legal advisor to the agency head during subsequent proceedings which result in the issuance of the final order.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 12-24-07.*

# **CHAPTER 28-108**

## **EXCEPTION TO UNIFORM RULES OF PROCEDURE**

[28-108.001](#)      [Petition for Exception to Uniform Rules of Procedure](#)

[28-108.002](#)      [Final Disposition on Petition for Exception](#)

### **28-108.001 Petition for Exception to Uniform Rules of Procedure.**

(1) The agency head shall file a petition with the Administration Commission for an exception to the Uniform Rules of Procedure as provided in Section 120.54(5)(a)2., F.S., for procedural rules within the scope of any Uniform Rule of Procedure that includes the following:

(a) Grounds for the request for the exception.

(b) Citation to the particular Uniform Rule of Procedure for which each exception is sought.

(c) Specific citation to the provisions of existing agency rule for which an exception is sought, if any.

(d) Attachment of the proposed rule language as an exhibit to the petition.

(2) The agency shall publish notice of the petition in the next available edition of the Florida Administrative Register, after consultation with the agency clerk of the Administration Commission. The notice shall include:

(a) The name of the agency seeking an exception;

(b) The uniform rule of procedure from which the exception is sought;

(c) The date the matter is expected to be heard by the Administration Commission;

(d) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.

(3) The Administration Commission shall provide interested persons with the opportunity to file written statements or make oral presentations in support of or in opposition to the exception.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 9-9-98, 1-15-07, 2-5-13.*

**28-108.002 Final Disposition on Petition for Exception.**

The Administration Commission shall publish, at the agency's expense, notice in the next available edition of the Florida Administrative Register of the disposition of the petition, and shall transmit a copy of the notice to the Joint Administrative Procedures Committee, the Department of State, and any person who requests a copy.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

# **CHAPTER 28-109**

## **CONDUCTING PROCEEDINGS BY**

### **COMMUNICATIONS MEDIA TECHNOLOGY**

<a href="#"><u>28-109.001</u></a>	<a href="#"><u>Purpose</u></a>
<a href="#"><u>28-109.002</u></a>	<a href="#"><u>Definitions as Used in this Rule Chapter</u></a>
<a href="#"><u>28-109.003</u></a>	<a href="#"><u>Application and Construction</u></a>
<a href="#"><u>28-109.004</u></a>	<a href="#"><u>Government in the Sunshine</u></a>
<a href="#"><u>28-109.005</u></a>	<a href="#"><u>Notice</u></a>
<a href="#"><u>28-109.006</u></a>	<a href="#"><u>Evidence, Testimony, and Argument</u></a>

#### **28-109.001 Purpose.**

This chapter provides the procedures to be followed when an agency desires to conduct a proceeding by means of communications media technology (CMT) or to provide public access to a proceeding by the use of CMT.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07.*

#### **28-109.002 Definitions as Used in this Rule Chapter.**

(1) “Access point” means a designated place where a person interested in attending a communications media technology proceeding may go for the purpose of attending the proceeding.

(2) “Attend” means having access to the communications media technology network being used to conduct a proceeding, or being used to take evidence, testimony, or argument relative to issues being considered at a proceeding.

(3) “Communications media technology” (CMT) means the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

#### **28-109.003 Application and Construction.**

(1) The agency may conduct a proceeding by using CMT and may provide CMT access to a proceeding for purposes of taking evidence, testimony, or argument.

(2) A proceeding is not a CMT proceeding merely because it is broadcast over a communications network.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.*

### **28-109.004 Government in the Sunshine.**

(1) Nothing in this chapter shall be construed to permit the agency to conduct any proceeding otherwise subject to the provisions of Section 286.011, F.S., exclusively by means of CMT without making provision for the attendance of any member of the public who desires to attend.

(2) No proceeding otherwise subject to Section 286.011, F.S., shall be conducted exclusively by means of CMT if the available technology is insufficient to permit all interested persons to attend. If during the course of a CMT proceeding technical problems develop with the communications network that prevent interested persons from attending, the agency shall terminate the proceeding until the problems have been corrected.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07.*

### **28-109.005 Notice.**

When the agency chooses to conduct a CMT proceeding, it shall provide notice in the same manner as required for a non-CMT proceeding, and shall plainly state that such proceeding is to be conducted utilizing CMT and identify the specific type of CMT to be used. The notice shall describe how interested persons may attend and shall include:

(1) The address or addresses of all access points, specifically designating those which are in locations normally open to the public.

(2) The address of each access point where an interested person may go for the purpose of attending the proceeding.

(3) An address and telephone number where an interested person may write or call for additional information.

(4) An address and designated person to whom a person may submit written or other physical evidence which he or she intends to offer into evidence during the CMT proceedings.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07.*

**28-109.006 Evidence, Testimony, and Argument.**

(1) Any evidence, testimony, and argument which is offered utilizing CMT shall be afforded equal consideration as if it were offered in person, and shall be subject to the same objections.

(2) In situations where sworn testimony is required by the agency, persons offering such testimony shall be responsible for making appropriate arrangements for offering sworn testimony.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07.*

## **CHAPTER 28-110** **BID PROTESTS**

<a href="#">28-110.001</a>	<a href="#">Purpose and Scope</a>
<a href="#">28-110.002</a>	<a href="#">Definitions</a>
<a href="#">28-110.003</a>	<a href="#">Notice of Protest</a>
<a href="#">28-110.004</a>	<a href="#">Formal Written Protest</a>
<a href="#">28-110.005</a>	<a href="#">Bond</a>

### **28-110.001 Purpose and Scope.**

(1) This chapter supplements the statutes on protests that arise from the contract procurement process under Chapters 24, 255, 287, 334 through 349, Sections 282.303 through 282.313, F.S., and other statutes applicable to agencies as defined in Section 120.52(1), F.S.

(2) Policies and procedures are established primarily by Section 120.57(3), F.S. Interested persons must follow the requirements of those statutes as well as these rules. Other statutes may apply to specific circumstances.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.57(5) FS. History—New 4-1-97.*

### **28-110.002 Definitions.**

For purposes of this subchapter, the following terms mean:

(1) "Contract procurement process" has the same meaning as "contract solicitation or award process" as used in Section 120.57(3), F.S. This includes procurements by invitation to bid (ITB), request for proposal (RFP), or invitation to negotiate (ITN), as each is defined in Section 287.012, F.S., approval of a single source procurement, as defined in Section 287.057(5)(c), F.S., or other solicitation documents as permitted by law.

(2) "Decision or intended decision" means:

(a) The contents of a solicitation, including addenda;

(b) A determination that a specified procurement can be made only from a single source;

(c) Rejection of a response or all responses to a solicitation; or

(d) Intention to award a contract as indicated by a posted solicitation tabulation or other written notice.

(3) "Competitive solicitation" or "solicitation" shall have the meaning ascribed in Section 287.012(97), F.S.

(4) "Electronic posting" shall have the meaning ascribed in Section 287.012(11), F.S.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.57(5) FS. History–New 4-1-97, Amended 1-15-07.*

**28-110.003 Notice of Protest.**

(1) A notice of protest shall be addressed to the office that issued the solicitation or made any other decision that is intended to be protested; shall identify the solicitation by number and title or any other language that will enable the agency to identify it; and shall state that the person intends to protest the decision. If a bond is required, it shall not be filed with the notice unless otherwise required by law.

(2) A notice of protest shall not be filed before the 72-hour period begins. The 72-hour period begins upon electronic posting of a decision or intended decision. The notice of protest must be received by the agency before the 72-hour period expires. The notice of protest must be filed with the agency clerk unless otherwise designated by the solicitation.

(3) The 72-hour period is not extended by service of the notice of protest by mail.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.57(5) FS. History–New 4-1-97, Amended 1-15-07.*

**28-110.004 Formal Written Protest.**

(1) The "formal written protest" required by Section 120.57(3)(b), F.S., is a petition that states with particularity the facts and law upon which the protest is based. The formal written protest shall contain the information specified in Section 120.54(5)(b)4., F.S., and in subsection 28-106.201(2), F.A.C. If the formal written protest is filed in proper form within the 72-hour period for filing a notice of protest, the formal written protest will also constitute the notice of protest. Thereafter, all time limits relative to formal written protests apply.

(2) Form of Petition.

STATE OF FLORIDA  
DEPARTMENT OF \_\_\_\_\_

XYZ CORPORATION,  
a corporation organized

under the laws of Florida,  
Petitioner,  
vs.  
STATE OF FLORIDA  
DEPARTMENT OF \_\_\_\_\_  
Respondent.  
\_\_\_\_\_/

Case No.: \_\_\_\_\_

### PETITION

XYZ Corporation, a corporation organized under the laws of Florida, brings this petition against State of Florida Department of \_\_\_\_\_ and alleges:

1. This is a bid protest under Section 120.57(3), Florida Statutes.
2. Respondent issued an invitation to bid (ITB) entitled Bid No. \_\_\_\_\_.
3. Petitioner submitted the low bid but Respondent rejected its bid for the stated reason that \_\_\_\_\_.
4. The stated reason for rejection is erroneous because \_\_\_\_\_.
5. (Additional relevant facts, if any)
6. The facts that are in dispute between Petitioner and Respondent are:

- 
7. A copy of the bid tabulation is attached.
  8. (Applicable points of law.)

Petitioner requests a hearing involving disputed issues of material fact and an order awarding the contract to Petitioner (or other relief).

(Note: If the relevant facts are not in dispute the petition should so allege and request a hearing not involving disputed issues of material fact. The above allegations are illustrative. They should be altered to suit varying circumstances).

(3) The time allowed for filing a petition or a bond is not extended by mailing either document.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.57(5) FS. History—New 4-1-97, Amended 1-15-07.*

### **28-110.005 Bond.**

(1) Bid protest bonds are required by Section 287.042(2)(c), F.S., for procurements under Chapter 287 (commodities, contractual services, professional services and insurance) and by Section 255.25(3)(c), F.S., for procurements of leases of space in privately owned buildings. Bonds are not required for protests involving building construction projects undertaken pursuant to Chapter 255, except that Section 255.0516, F.S., authorizes school boards, community college boards of trustees and a state university board of trustees to require bonds under some circumstances. Bonds are

also required by Section 337.11(5)(a), F.S., for certain procurements by the Department of Transportation.

(2) Bonds required by Section 337.11(5)(a), F.S., must be filed with the notice of protest. Other bonds are not to be filed with the notice of protest, but must be filed with the formal written protest or within the 10-day period allowed for filing the formal written protest. The bond must accompany a protest filed pursuant to Section 24.109(2)(a), F.S. A bond can be in substantially the following form:

STATE OF FLORIDA ADMINISTRATION COMMISSION  
PROCUREMENT PROTEST BOND

Bond Number: \_\_\_\_\_

Contract Number: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS:

That we, \_\_\_\_\_ a (mark one)  corporation,  partnership,  proprietorship, organized and existing under the laws of the State of \_\_\_\_\_, and having its principal place of business at \_\_\_\_\_, as PRINCIPAL; and \_\_\_\_\_, a surety company, organized under the laws of the State of \_\_\_\_\_, and duly authorized to do business in the State of Florida, whose principal place of business is \_\_\_\_\_, as SURETY, are held and firmly bound unto the STATE OF FLORIDA, (Agency), as OBLIGEE, in the amount of \$ \_\_\_\_\_ for the payment of which sum we, as Principal and Surety, bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued under the provisions of \_\_\_\_\_ Florida Statutes. The above-named Principal has initiated an administrative protest regarding the Obligee's decision or intended decision pertaining to (mark one)  Bid Number \_\_\_\_\_  an agency's request for approval of an exceptional purchase of \_\_\_\_\_ submitted by \_\_\_\_\_. Said protest is conditioned upon the posting of a bond at the time of filing the formal written protest.

NOW, THEREFORE, the condition of this Bond is that if the Principal, after the administrative hearing process and/or any appellate court proceedings regarding the protest, shall satisfy all costs and charges allowed by final order and/or judgment, and interest thereon, in the event the Obligee prevails, then the obligation shall be null and void; otherwise it shall remain in full force and effect.

The Obligee may bring an action in a court of competent jurisdiction on this bond for the amount of such liability, including all costs and attorneys' fees.

PRINCIPAL: \_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_ (CORPORATE SEAL)

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
SURETY: \_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_ (CORPORATE SEAL)

Florida Resident Agent: \_\_\_\_\_

(Note: Power of Attorney showing authority of Surety's agent or Attorney in Fact must be attached).

Bonds must be countersigned by an agent licensed in Florida. Section 287.042(2)(c), F.S., authorizes a cashier's check or money order in lieu of a bond, for procurements governed by Chapter 287, F.S.

(3) When a bond is required, a notice of decision or intended decision shall contain this statement: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes." If the notice advises of the bond requirement but a bond or statutorily authorized alternate is not posted when required, the agency shall summarily dismiss the petition.

(4) If, at the conclusion of the proceeding and any appellate proceedings, the petitioner prevails, the agency shall return the bond, cashier's check or money order to the petitioner. If the agency prevails but the petitioner is not ordered to pay costs, the agency shall return the bond or alternate security to the petitioner. If the petitioner is ordered to pay costs, the agency shall return the bond or alternate security as provided by Section 255.25(3)(c), 287.042(2)(c) or 337.11(5)(b), F.S. The entire bond may be forfeited if circumstances warrant under Section 337.11(5)(a), F.S.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Joint Administrative Procedures Committee Objection Filed – See FAW Vol. 24, No. 20, May 15, 1998, Amended 1-15-07, Joint Administrative Procedures Committee objection resolved by Chapter 2006-82, Laws of Florida, Florida Administrative Weekly Vol. 35, No. 27, July 10, 2009.*

# **CHAPTER 28-112**

## **EXCEPTION TO UNIFORM RULES RELATING TO STATE EMPLOYMENT**

28-112.001      Petition for Exception to Uniform Rules Relating to State Employment

28-112.002      Final Disposition on Petition for Exception

### **28-112.001 Petition for Exception to Uniform Rules Relating to State Employment.**

(1) The agency head shall file a petition with the Administration Commission for an exception to uniform rules as provided in Sections 110.201(1)(b), and 110.217, F.S., that includes the following:

- (a) Grounds for the request for the exception.
- (b) Citation to the particular uniform rule for which each exception is sought.
- (c) Specific citation to the provisions of existing agency rule for which an exception is sought, if any.
- (d) Attachment of the proposed rule language as an exhibit to the petition.

(2) The agency shall publish notice of the petition in the next available edition of the Florida Administrative Register, after consultation with the agency clerk of the Administration Commission. The notice shall include:

- (a) The name of the agency seeking an exception;
- (b) The uniform rule from which the exception is sought;
- (c) The date the matter is expected to be heard by the Administration Commission; and
- (d) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.

(3) The Administration Commission shall provide interested persons with the opportunity to file written statements or make oral presentations in support of or in opposition to the exception.

*Rulemaking Authority 14.202, 110.201 FS. Law Implemented 110.201, 110.217 FS.  
History–New 12-24-07, Amended 2-5-13.*

**28-112.002 Final Disposition on Petition for Exception.**

The Administration Commission shall publish, at the agency's expense, notice in the next available edition of the Florida Administrative Register of the disposition of the petition, and shall transmit a copy of the notice to the Joint Administrative Procedures Committee, the Department of State, and any person who requests a copy.

*Rulemaking Authority 14.202, 110.201 FS. Law Implemented 110.201, 110.217 FS.  
History–New 12-24-07.*