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Standing Order 1-96: Processing and Hearing of Complaints for Judicial Review of Administrative Agency Proceedings

(Amended)

(Applicable to Civil Actions in All Counties)

In order to facilitate and clarify the orderly processing and hearing of Complaints for Judicial Review of Administrative Agency Proceedings, it is ORDERED, effective April 8, 2002, that:

1. Claims filed in the Superior Court seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in **G.L. c. 30A, § 14, G.L. c. 249, § 4**, or similar statutes, whether joined with a claim for declaratory relief under **G.L. c. 231A**, or any other claim, shall be heard in accordance with the following procedures.

2. The administrative agency whose proceedings are to be judicially reviewed shall, by way of answer, file the original or certified copy of the record of the proceeding under review (the record) within ninety (90) days after service upon it of the Complaint. Such record "shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties." **G.L. c. 30A, § 14(4)**. Upon service of a Complaint, the agency shall notify all parties of procedures for acquiring a transcript of the hearing testimony. The agency shall also inform the parties of their obligation to provide a transcript, or portions thereof, to the court if alleging that an agency's decision is not supported by substantial evidence or is arbitrary or capricious, or is an abuse of discretion. A request for a copy of the transcript must be made by a party within thirty (30) days after service of the Complaint, and such transcript or portion thereof shall be made part of the record. Any party seeking to defend the agency's decision as supported by substantial evidence or as not arbitrary or capricious, or is not an abuse of discretion shall have an affirmative obligation to provide the court with a copy of the transcript or portion thereof in support of its position.

The court may assess the expense of preparing the record as part of the costs in the case. **G. L. c. 30A, § 14(4)**. Additionally, "the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal." **G. L. c. 30A, § 14(4)**. The court may require or permit subsequent corrections or additions to the record when deemed desirable. **G. L. c. 30A, § 14(4)**. The time for filing the record may be enlarged, for good cause shown, upon allowance of an appropriate motion.

3. The following motions raising preliminary matters must be served in accordance with **Superior Court Rule 9A** not later than twenty (20) days after service of the record by the administrative agency.

(a) Motions authorized by **Mass. R. Civ. P. 12(b) or 12(e)**.

(b) Motion for leave to present testimony of alleged irregularities in procedure before the agency, not shown in the record (**G.L. c. 30A, § 14(5)**).

(c) Motion for leave to present additional evidence (**G.L. c. 30A, § 14(6)**).

Any party failing to serve such a motion within the prescribed time limit, or within any court-ordered extension, shall be deemed to have waived any such motion (unless relating to jurisdiction) and the case shall proceed solely on the basis of the record. Any such motion shall be promptly resolved in accordance with **Superior Court Rule 9A**. If the motion specified in (c) is allowed, all further proceedings shall be stayed until the administrative agency has complied with the provisions of **G.L. c. 30A, § 14(6)**.

4. A claim for judicial review shall be resolved through a motion for judgment on the pleadings, **Mass. R. Civ. P. 12(c)**, in accordance with **Superior Court Rule 9A** except as otherwise provided by this Standing Order, unless the Court's decision on any motion specified in part 3 above has made such a resolution inappropriate. A plaintiff's Rule 12(c) motion and supporting memorandum shall be served within thirty (30) days of the service of the record or of the Court's decision on any motion specified in part 3 above, whichever is later. A defendant's response shall be served within thirty (30) days after service of the plaintiff's motion and memorandum. The plaintiff shall then promptly file the motion materials in accordance with **Superior Court Rule 9A**. The Court may grant an extension of time to file for good cause shown. Memoranda shall include specific page citations to matters in the record.

5. The Clerk or her/his designee will schedule a hearing date after receiving the motion materials. No pre-trial conference will be held, and no pre-trial memorandum filed, unless specifically ordered by the Court. No testimony or other evidence shall be presented at the hearing, and the review shall be confined to the record. A party may waive oral argument and submit on the brief by filing a written notice. Such waiver by a party shall not affect the right of any other party to appear and present oral argument.

Effective: April 8, 2002

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