# ADMINISTRATIVE RULES FOR CONTESTED CASE HEARINGS MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN

**Effective June 1, 2016**
**Amended June 19, 2017**

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**ADMINISTRATIVE RULES FOR**
**CONTESTED CASE HEARINGS**
**MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF MICHIGAN**

Section 24.274(1) of the Administrative Procedures Act provides that "[a]n agency authorized to adjudicate contested cases may adopt Rules providing for discovery and depositions to the extent and in the manner appropriate to its proceedings." The Municipal Employees' Retirement System of Michigan ("MERS") Plan Document provides at Section 72 that hearings provided for in that section shall be conducted in accordance with the provisions of Chapter 4 of the Administrative Procedures Act, MCL 24.271 to 24.287.

Accordingly, in the exercise of its authority granted by the Michigan Legislature in the Municipal Employees Retirement Act, MCL 38.1536, and memorialized in Section 71 of the MERS Plan Document, the MERS Retirement Board hereby adopts the following Administrative Rules for Contested Case Hearings:

## Rule 1 – Scope

These Rules govern practice and procedure in administrative hearings conducted by the Municipal Employees' Retirement System of Michigan, hereinafter, "MERS."

## Rule 2 – Construction of Rules

a) These procedural Rules shall be construed to secure a fair, efficient, and impartial determination of the issues presented in contested cases.
b) These Rules are not intended to displace any statutorily mandated procedure or procedure provided in the MERS Plan Document. If a statute or the Plan Document prescribes a procedure that conflicts with these Rules, the statute and the Plan Document governs.
c) Any matter not addressed by these Rules shall be governed by the Michigan Court Rules and the provisions of Chapter 4 of the Administrative Procedures Act of 1969, MCL 24.271 to 24.287, as applicable.
d) A heading or title of a part or section of these Rules shall not be considered as a part of the Rules or used to construe these Rules more broadly or narrowly than the text of these Rules would indicate, but shall be considered as inserted for the convenience to users of these Rules.

## Rule 3 – Definitions

(a) For purposes of these Rules, the following words and phrases are defined as follows:
1) "APA" means the Administrative Procedures Act of 1969, MCL 24.201 to 24.328.
2) "Application" means a request for a benefit provided by MERS, including a request to reopen a closed application and a reapplication.
3) "Administrative law judge" means any person assigned by MERS to preside over and hear a contested case or other matter assigned, including, but not limited to a presiding officer.
4) "Adjournment" means a postponement of a hearing to a later date.
5) "Board" means the MERS Retirement Board, which has final decision making authority in a contested case.
6) "Authorized representative" means a person, other than an attorney, representing a party in a proceeding.

7) "Closed application" means a request by a member for a benefit provided by MERS that was withdrawn by the member or on which no determination was made by MERS or the Board.
8) "Contested case" means a proceeding in which a proposed determination of the rights, duties, or privileges of a person or entity who has timely appealed a decision by MERS is made after an opportunity for an evidentiary hearing conducted pursuant to these Rules.
9) "Continuance" means a resumption of a hearing at a later date under these Rules.
10) "Date of receipt" means the date on which the administrative law judge receives a filing.
11) "Person" means an individual, partnership, corporation, association, municipality (as defined by the MERS Plan Document), agency, or any other entity.
12) "Petitioner" means a person or entity who files a request for a hearing.
13) "Reapplication" means a request by a member for a benefit provided by MERS that follows one or more such requests previously addressed by MERS or the Board.
14) "Respondent" means a person or entity against whom a proceeding is commenced.

## Rule 4 – Computation of time

a) In computing any period of time prescribed or allowed by these Rules, the time in which an act is to be done shall be computed by excluding the first day, and including the last, unless the last day is a Saturday, Sunday, or federal legal holiday, in which case the period will run until the end of the next day following the Saturday, Sunday, or federal legal holiday.
b) Unless otherwise specified by the administrative law judge, rule, or statute, the date of receipt of a filing by the administrative law judge shall be the date used to determine whether a pleading or other paper has been timely filed with the administrative law judge.
c) Except where otherwise specified, a period of time in these Rules means calendar days, not business days.

## Rule 5 – Administrative law judge; disqualification and recusal; substitution; communications

(a) The administrative law judge shall exercise the following powers when appropriate:
1) Conduct a full, fair, and impartial hearing;
2) Take action to avoid unnecessary delay in the disposition of proceedings;
3) Regulate the course of the hearing and maintain proper decorum. An administrative law judge may exercise discretion with regard to the exclusion of parties, their attorneys or authorized representatives or other persons, and may adjourn hearings when necessary to avoid undue disruption of the proceedings;
4) Administer oaths and affirmations;
5) Provide for the taking of testimony by deposition as permitted under these Rules;
6) Rule upon offers of proof;
7) Rule upon motions and examine witnesses;
8) Limit repetitious testimony and time for presentations;
9) Set the time and place for continued hearings and fix the time for the filing of briefs and other documents;
10) Direct the parties to appear, confer, or both, to consider clarification of issues, stipulations of facts, stipulations of law, settlement, and other related matters;
11) Require the parties to submit prehearing briefs and legal memorandum;

12) Issue orders and proposals for decision, and take any other appropriate action authorized by law; and
13) On motion, or on an administrative law judge's own initiative, adjourn hearings, except where statutory or MERS Plan Document provisions limit adjournment authority.

(b) An administrative law judge may recuse himself or herself, or be disqualified from a case based on bias, prejudice, interest, or any other cause provided for in this Rule.

(c) An administrative law judge may recuse him or herself in any proceeding in which the impartiality of the administrative law judge might reasonably be questioned, including but not limited to, instances in which any of the following exist:
1) The administrative law judge has a personal bias or prejudice concerning a party, a party's authorized representative, or a party's attorney;
2) The administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
3) An attorney with whom the administrative law judge previously practiced law serves as the attorney in the matter in controversy; and
4) The administrative law judge has been a material witness concerning the matter in controversy.

An administrative law judge who would otherwise recuse himself or herself under subsections (c)(2), (3) or (4) may disclose on the record the basis of disqualification and may ask the parties and their attorneys or authorized representatives to consider, out of his or her presence, whether to waive disqualification. If the parties agree that the administrative law judge should not be disqualified, the administrative law judge may preside over the proceeding. The agreement shall be incorporated into the hearing record.

d) An administrative law judge shall recuse him or herself, or otherwise be disqualified from presiding over any proceeding in which the administrative law judge served as an attorney in the matter in controversy or has a pecuniary interest in the outcome of the case.

e) An administrative law judge shall voluntarily disclose to the parties any known conditions listed in subsection (c) or (d).

f) Any party seeking to disqualify an administrative law judge shall move for the disqualification promptly after receipt of notice indicating that the administrative law judge will preside over the proceeding or upon discovering facts establishing grounds for disqualification, whichever is later. A motion for disqualification shall be made in writing and shall be accompanied by an affidavit setting forth definite and specific allegations that demonstrate the facts upon which the motion for disqualification is based. If the challenged administrative law judge denies the motion for disqualification, a party may move for the motion to be decided by the Board.

g) If an administrative law judge is disqualified, incapacitated, deceased, otherwise removed from a case, unable to continue a hearing, or unable to issue a proposal for decision or final order as assigned, another administrative law judge shall be assigned to continue the case by MERS. To avoid substantial prejudice or to enable the administrative law judge to render a decision, the newly assigned administrative law judge may order a rehearing on any part of the affected contested case. This Rule applies whether the substitution occurs before or after the administrative record is closed.

h) Once a case has been referred to the administrative law judge, no person shall communicate with the assigned administrative law judge relating to the merits of the case without the knowledge and consent of all other parties to the matter, except that the administrative law judge may, when circumstances require, communicate with parties, attorneys, or authorized representatives for scheduling, or other administrative purposes that do not deal with substantive matters or issues on the merits, provided that the administrative law judge reasonably believes that no party will gain procedural or tactical advantage as a result of the communication. The administrative law judge shall promptly

notify all other parties of the substance of the communication and allow an opportunity to respond. However, the administrative law judge may communicate and seek the aid and advice of MERS staff, so long as those staff are not involved in any material way with the case.

i) If an administrative law judge receives a communication prohibited by this Rule, the administrative law judge shall promptly notify all parties, attorneys or authorized representatives of the receipt of such communication and its content.

## Rule 6 – Attorneys and authorized representation; misconduct; withdrawal and substitution

a) A party may appear in person, or be represented by an attorney or by an authorized representative where permitted by statute, rule or the MERS Plan Document. To appear on behalf of a party, an attorney or authorized representative shall file an appearance. A pleading, motion, or other document signed and filed by an attorney or authorized representative on behalf of a party is deemed the appearance of the attorney or authorized representative. An appearance by an attorney or authorized representative is an appearance by his or her firm or office. After an appearance has been filed, service of all papers in a proceeding shall be made upon the person whose name appears on the appearance, at the address indicated on the appearance, and shall be effective as service on the party represented.

b) An attorney or authorized representative who has entered an appearance may withdraw from the case, or be substituted for another attorney or authorized representative at any time by written notice to the administrative law judge. Timely notice of withdrawal or substitution shall be provided to all parties and their attorneys or authorized representatives.

## Rule 7 – Assignment of docket number

Upon receipt of a request for a hearing, MERS shall assign a docket number to the proceeding.

## Rule 8 – Filing

a) Unless electronic filing by email, facsimile or other electronic means is authorized by the administrative law judge or the Board, all filings shall be on 8 ½ x 11 inch paper.

b) Documents received by the administrative law judge after 5 p.m. eastern standard time are considered filed on the following business day.

c) When a party files by facsimile, the party shall then immediately send a facsimile copy of the filing to all other parties named in the case caption, when a facsimile number is available.

d) If electronic filing is authorized by the administrative law judge or the Board, such submission will only be accepted under the following provisions:

   1) The subject line of the email or facsimile cover sheet must include the case name, case number and document title.
   2) Documents attached to the email shall be in .pdf format.
   3) An email or facsimile submission must be directed to the administrative law judge with copies delivered to all parties or their attorneys or authorized representative, if such email addresses and/or facsimile numbers are known. If all parties cannot be sent a submission electronically, the submitting party must mail the submission.

## Rule 9 – Contact information of parties

a) All parties to a case shall keep MERS and the administrative law judge informed of their current mailing addresses, telephone numbers, email addresses and facsimile numbers.
b) If a party suffers prejudice due to such party's failure to provide his/her updated and current contact information to the administrative law judge, the administrative law judge shall not excuse any resulting prejudice to that party in the absence of good cause shown, and such party shall be bound by orders or decisions that issue in his/her absence.

## Rule 10 – Service of documents and other pleadings; manner of service; date of service; statement or proof of service

a) A party shall serve all documents and pleadings filed in a hearing system proceeding on all other parties using the last provided contact information. Unless otherwise directed by the administrative law judge, "parties" are the persons named in the case caption. If an appearance has been filed by an attorney or authorized representative of a party, documents and pleadings shall be served on such attorney or authorized representative.
b) Service on a party shall be completed electronically on request of, or with permission of, the party receiving the documents, or if directed by the administrative law judge or the Board.
c) Service, other than electronic, may be completed by mail, facsimile, commercial delivery service, or by hand delivery to the person or entity required to be served.
d) When service of any document or pleading is completed by mail or commercial delivery service, the date of service is the date of deposit with the United States post office or other carrier.
e) When service of any document or pleading is completed electronically, or by facsimile, the date of service is the date of delivery as indicated by a date stamp or other verifiable date on the email or facsimiled document.
f) When service of any document or pleading is completed by hand, the date of service is the date of delivery as indicated by the proof of service contemplated in subsection (g) below.
g) The person or party serving documents on other parties pursuant to this Rule shall contemporaneously file with the administrative law judge and the receiving parties a proof of service stating the method or manner of service, the identity of the server, the names of the parties served, and the date and place of service.
h) When service is completed electronically, the proof of service shall also state the email addresses of the sender and the recipient. Failure to timely file the proof of service will not affect the validity of service.
i) Disputes with respect to proper service will be resolved by the administrative law judge assigned to the matter.
j) The administrative law judge assigned by MERS may decline to consider any document or pleading not served pursuant to these Rules.
k) Mailing a copy under this Rule means enclosing it in a sealed envelope addressed to the person to be served and depositing the sealed envelope with first class postage fully prepaid in the United States mail or other commercial delivery service.

## Rule 11 – Joint hearing; consolidation of proceedings; other orders

When separate pending cases involve a substantial and controlling common question of fact or law, the Board may take any of the following actions:

a) Order a joint hearing on any or all of the issues noticed for hearing;

b) Order consolidation of the cases; or
c) Issue additional orders that expedite proceedings in a cost effective manner.

### Rule 12 – Location

All hearings are held at MERS' headquarters unless the administrative law judge directs otherwise upon application of MERS or a party for good cause.

### Rule 13 – Notice of hearing

a) The notice of hearing shall be issued by the administrative law judge at least forty-two (42) days prior to the hearing and shall contain, at a minimum, all of the following:
    1) The address and phone number, if available, of the hearing location;
    2) A statement of the date, hour, place, and nature of the hearing;
    3) A statement of the legal authority and jurisdiction under which the hearing is being held;
    4) A statement of the issues or subject of the hearing. On request, the administrative law judge may require MERS or a party to furnish a more definite and detailed statement of the issue(s).
    5) A reference to the particular sections of the statute, administrative rule, and/or MERS Plan Document involved.
b) A party served with a notice of hearing may file a written answer within twenty-one (21) days of service of the notice.

### Rule 14 – Intervention

a) Any employee, employer, beneficiary, or retiree that will be directly impacted by a final decision in a contested case shall be identified by MERS, as reasonably practicable, and reported to the administrative law judge as an interested party to such contested case.
b) The administrative law judge shall copy all identified interested parties on any notice of hearing and the interested parties shall be permitted to intervene in the case.
c) If an interested party chooses to intervene, a notice of intervention must be filed with the administrative law judge and served on all named parties within twenty-one (21) days of the notice of hearing. The notice must state the grounds for intervention, including whether the intervenor is an intervening petitioner or intervening respondent.
d) No intervention shall be permitted beyond the twenty-one (21) day deadline unless an interested party shows good cause as to why a timely notice of intervention was not filed, or unless the interests of justice so require.

### Rule 15 – Prehearing conferences

a) The administrative law judge may hold a prehearing conference to resolve matters prior to the hearing to address any one or more of the following matters:
    1) Factual and legal issues;
    2) Stipulations;
    3) Requests for official notice;
    4) Identification and exchange of documentary evidence;
    5) Admission of evidence;
    6) Identification and qualification of witnesses;
    7) Motions;

8) Order of presentation;
9) Scheduling;
10) Position statements;
11) Settlement; or
12) Any other matter that will promote the orderly and prompt conduct of the hearing.

b) At the discretion of the administrative law judge, all or part of a prehearing conference may be recorded.
c) Prehearing conferences may be conducted in person, by telephone, by videoconference, or other electronic means at the discretion of the administrative law judge.
d) When a prehearing conference has been held, the administrative law judge shall issue a prehearing order which states the actions taken or to be taken with regard to any matter addressed at the prehearing conference.
e) If a prehearing conference is not held, the administrative law judge may issue a prehearing order to regulate the conduct of proceedings.

## Rule 16 – Stipulations

a) The parties may agree upon facts, or any portion of facts, in controversy by written stipulation or by a statement entered into the record.
b) Stipulations shall be used as evidence at the hearing or subsequent proceedings.
c) Stipulations are binding on the parties that have acknowledged acceptance of the stipulations.

## Rule 17 – Witnesses

a) The petitioner shall serve a list of witnesses twenty-one (21) days before the scheduled hearing date. If the petitioner wishes to testify, he or she shall be included in the witness list.
b) The respondent shall serve a list of witnesses seven (7) days before the scheduled hearing date.
c) A party shall not call as a witness a person who was not included on a witness list unless the administrative law judge finds that the party has established good cause as to why the person was not included on the party's witness list.
d) The testimony of all witnesses shall be upon oath or affirmation.
e) Witnesses may be sequestered by the administrative law judge on his or her own initiative, or upon request of a party.
f) Opposing parties shall be entitled to cross-examine witnesses.
g) The testimony of a witness may be taken by deposition with permission of the administrative law judge. A party taking a deposition shall give notice to all parties.
h) The administrative law judge may limit the number of witnesses to prevent cumulative or irrelevant evidence, and to prevent unnecessary delay.

## Rule 18 – Discovery

Except for the exchange of evidence as provided in these Rules, discovery shall not be allowed in any contested case except that depositions may be taken with the administrative law judge's permission where it is established that it is impractical or impossible to otherwise obtain the evidence. If the administrative law judge approves the taking of a deposition, it shall be taken in conformity with the Michigan Court Rules to the extent practicable.

## Rule 19 – Telephone and electronic hearings

An administrative law judge shall not take testimony by telephone or other electronic means unless both of the following occur:

a) The party who seeks telephonic or other electronic testimony of a witness has submitted and properly served a motion at least fourteen (14) days before the date of hearing pursuant to Rule 25 (Motion practice).
b) The administrative law judge determines that it is impractical or impossible to otherwise obtain the testimony.

## Rule 20 – Hearing by brief

a) When it appears to the administrative law judge that a material factual dispute does not exist, and the questions to be resolved are solely questions of law or the Plan Document, the administrative law judge may, if the parties stipulate, direct that the hearing be conducted by submission of briefs.
b) After consulting with the parties, the administrative law judge shall prescribe the time limits for submission of briefs and, if the parties do not stipulate, decide whether filings are to be either simultaneous or successive.

## Rule 21 – Presentation

a) A party may make or waive an opening and/or closing statement.
b) Unless otherwise directed by the administrative law judge, the party having the burden of proof shall go forward first with presentation of evidence. A party may submit rebuttal evidence so long as it is timely provided to the opposing party under these Rules.

## Rule 22 – Evidence; admissibility; objections; submission in written form

a) The Michigan Rules of evidence, as applied in a civil case in circuit court shall be followed in all proceedings as far as practicable, but an administrative law judge may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
b) Irrelevant, immaterial, or unduly repetitious evidence may be excluded.
c) Effect shall be given to the Rules of privilege recognized by law.
d) Objections to offers of evidence may be made and shall be noted in the record.
e) For the purpose of expediting a hearing, and when the interests of the parties will not be substantially prejudiced, the administrative law judge may require submission of all or part of the evidence in written form.

## Rule 23 – Evidence to be entered on record; documentary evidence

a) All physical evidence intended to be used or offered at the contested case hearing must be submitted to the opposing party no later than twenty-eight (28) days after the initial notice of hearing is issued. Physical evidence submitted by a party more than twenty-eight (28) days after the date the initial notice of hearing is issued by the administrative law judge shall not be considered unless good cause for a late submission is shown.
b) Evidence in a proceeding shall be offered and made a part of the record if admitted by the administrative law judge. The administrative law judge shall admit the administrative record if offered into evidence at the hearing by MERS. Other factual information shall not

be used as the basis of the decision of the administrative law judge, except as provided in Rule 24 (Official Notice of Facts).

c) Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available. Upon timely request, a party shall be given an opportunity to compare a copy with the original, when available. Documentary evidence may be incorporated by reference if the materials are available for examination by the parties.
d) If materials and exhibits offered, but not admitted, are made part of the record for purposes of appeal, they shall be clearly marked by the administrative law judge as "rejected."
e) Exhibits that are rejected as duplicates of material already contained in the file or record, shall be returned to the party offering the exhibits, and shall not be included in the record on appeal.
f) Exhibits introduced into evidence, but later withdrawn, shall not be considered part of the record on appeal.

## Rule 24 – Official notice of facts; evaluation of evidence

An administrative law judge may take official notice of judicially cognizable facts, and general, technical, or scientific facts within MERS' specialized knowledge. The administrative law judge shall notify parties at the earliest practicable time of any officially noticed fact which pertains to a material disputed issue. On timely request before issuance of a final decision, the parties shall be provided an opportunity to dispute the fact or its materiality.

## Rule 25 – Motion practice

a) All requests for action addressed to the administrative law judge, other than during a hearing, shall be made in a written motion. A motion must state specific grounds and describe the action or order sought. A copy of all written motions shall be served pursuant to these Rules. This Rule shall govern the practice of all motions except as otherwise provided in these Rules.
b) The filing deadlines for all motions shall be as follows:
    i. All motions shall be filed at least fourteen (14) days prior to the date set for hearing of the contested case unless other scheduling provisions prevent compliance with this timeline or the need for the motion could not reasonably have been foreseen fourteen (14) days prior to hearing.
    ii. A response to a motion may be filed within seven (7) days after service of the written motion unless otherwise ordered by the administrative law judge or unless other scheduling provisions prevent compliance with this timeline. Either party may request an extension of the deadline or an expedited ruling.
c) All motions and responses shall include citations of supporting authority and, if appropriate, supporting affidavits or citations to evidentiary materials of record.
d) The administrative law judge has discretion to require oral argument on a motion, or allow or deny oral argument based on a request from a party.
e) A request for oral argument on a motion shall be made in writing.
f) Notice of oral argument on a motion shall be given prior to the date set for hearing. At the discretion of the administrative law judge, a hearing on a motion may be conducted in whole or in part by telephone. The administrative law judge shall rule upon motions within a reasonable time.
g) Multiple motions may be consolidated for oral argument.
h) A party may withdraw a motion for oral argument at any time.

i) Any decision by the administrative law judge in response to a motion shall be incorporated in a written order or the proposal for decision.

## Rule 26 – Motion for extension of time

Requests for extensions of any time limit established in these Rules shall be made by written motion pursuant to Rule 25 (Motion practice) and filed with the administrative law judge before the expiration of the period originally prescribed or previously extended, except as otherwise provided by law, or by stipulation of the parties. A motion under this Rule shall be granted only for good cause or on the written stipulation of the parties, with approval of the administrative law judge, which approval shall not be unreasonably withheld, and only if the order for extension does not conflict with statute or the MERS Plan Document.

## Rule 27 – Summary disposition

a) A party may move for summary disposition on all or any part of the claim at any time. The motion shall state that the moving party is entitled to summary disposition on one (1) or more of the following grounds and shall specify the grounds on which the motion is based:
   1) The petitioner has failed to state a claim upon which relief can be granted;
   2) There is no genuine issue as to a material fact, except as to the relief to be granted;
   3) The Board lacks jurisdiction of the subject matter;
   4) The claim or defense is barred because it is untimely; or
   5) The claim or defense is barred because of some other legal impediment or other disposition of the claim.

b) The procedures for motion practice provided in Rule 25 (Motion practice) shall control with respect to all motions for summary disposition except as otherwise provided in this Rule.

c) If the motion for summary disposition is based on subrule (a)(1) of this Rule, then only pleadings may be considered. A motion based on subrule (a)(2), (3), (4) or (5) of this Rule shall be supported by affidavits or other documentary evidence and shall specifically identify the issues on which the moving party believes there is no genuine issue of material fact. The affidavits, together with the pleadings and documentary evidence then filed in the action, or submitted by the parties, shall be considered. If a motion is made under subrule (a)(2) of this Rule and supported as provided in this Rule, then an adverse party shall, by affidavits or otherwise provided in this Rule, set forth specific facts showing that there is a genuine issue for hearing.

d) The filing deadlines for all motions under this Rule shall be as follows:
   i. All motions shall be filed at least twenty-eight (28) days prior to the date set for hearing of the contested case unless otherwise ordered by the administrative law judge.
   ii. A response to a motion may be filed within fourteen (14) days after service of the written motion unless otherwise ordered by the administrative law judge or unless other scheduling provisions prevent compliance with this timeline.
   iii. The moving party may file a reply brief in support of the motion. Reply briefs must be confined to rebuttal of the arguments in the nonmoving party's response brief. The reply brief must be filed at least seven (7) days before the hearing unless other scheduling provisions prevent compliance with this timeline or as otherwise ordered by the administrative law judge. No other briefs are permitted unless otherwise ordered by the administrative law judge.

e) An administrative law judge shall rule on a motion for summary disposition in a proposal for decision.

f) If the motion for summary disposition is denied, or if the decision on the motion does not dispose of the entire action, then the action shall proceed to hearing.

### Rule 28 – Correction of transcripts

a) The administrative law judge may specify corrections to an official hearing transcript or provide for any party to request relevant corrections of the official hearing transcript.
b) After specifying the corrections, the administrative law judge shall provide seven (7) days notice to all parties and a reasonable time for responses in support of or in opposition to all or part of the proposed corrections.
c) If a party files a request for corrections, all other parties may, within seven (7) days after the filing of the request, file a response to the proposed corrections.
d) The administrative law judge shall specify the corrections made to the transcript, either upon the record or by order served on all parties.
e) Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected with written notice to the parties.

### Rule 29 – Post-hearing briefs

a) A party may demand an opportunity to submit a post-hearing closing brief or argument. The administrative law judge may also require closing briefs on his or her own initiative.
b) If closing briefs or arguments are demanded or required, the administrative law judge shall set a briefing schedule, including time in which reply briefs may be submitted.

### Rule 30 – Proposals for decision

a) After consideration of all evidence and testimony presented at any hearing, as well as any submitted briefs or written arguments, the administrative law judge shall prepare and issue a proposal for decision and serve it on the parties.
b) A proposal for decision shall contain findings of fact and conclusions of law and an analysis or rationale for such conclusions, including appropriate citation to any authority on which the administrative law judge relies.

### Rule 31 – Exceptions

The parties may file exceptions to a proposal for decision, specifically identifying the findings of fact and conclusions of law with which the party disagrees, along with any written argument in support of the exceptions. Any exceptions must be filed with the administrative law judge and served on all other parties within twenty-one (21) days after the proposal for decision is served. An opposing party may file a response to exceptions within fourteen (14) days after exceptions are served. Oral argument before the Board regarding exceptions filed or any other matter will not be permitted.

### Rule 32 – Default judgments

a) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

b) Within seven (7) days after service of a default order, the party against whom it was entered may file a written motion requesting that the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings.

### Rule 33 – Final Board decisions and orders

a) The Board shall issue a final written decision, which shall be supported by competent, material and substantial evidence. A written final decision shall include separate sections entitled "findings of fact" and "conclusions of law." Findings of fact set forth in statutory language shall include a concise statement of the underlying supporting facts. Findings of fact shall be based exclusively on the evidence. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling on each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion.
b) A decision or order shall be based on the record as a whole or a portion of the record.
c) A copy of the Board's decision or order shall be served on each party and any authorized representatives or attorneys of record within three (3) business days of the Board's decision or order.

### Rule 34 – Request for reconsideration

a) A party may file a request for reconsideration of a final decision with the Board, which the Board shall only grant upon a showing of a material error of fact or law (including an error in the implementation of the Plan Document), or due to new evidence that was not discovered and not able to be discovered prior to the closing of the record.
b) A request for reconsideration shall state with specificity the material error claimed. A request for reconsideration that presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted.
c) A request for reconsideration must be filed within fourteen (14) days after the issuance of a final decision or order by the Board.

### Rule 35 – Request for rehearing

a) Where for justifiable reasons the record of testimony made at the hearing is found to be inadequate for purposes of judicial review, the Board on its own initiative, or on request of a party, shall order a rehearing.
b) A request for a rehearing shall be filed within sixty (60) days of the issuance of the Board's final decision.
c) A request for rehearing must be served on all parties and the parties being served shall have fourteen (14) days from the date of service in which to file a reply to the request.
d) If a request for rehearing is granted, the hearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for any further Board or appellate review. A decision or order based on the original hearing may be amended or vacated after the rehearing.

**Rule 36 – Record**

a) The administrative law judge shall maintain an official record of each case or proceeding.
b) The record shall include all of the following:
    1) Notices of hearings and orders of adjournment;
    2) Prehearing orders;
    3) All motions, responses, pleadings, briefs, exceptions, petitions, requests, and intermediate rulings, whether pre- or post-hearing;
    4) Evidence presented;
    5) Offers of proof, objections, and rulings;
    6) Hearing transcripts;
    7) All orders and proposals for decision issued by the administrative law judge and the Board prior to a final Board decision; and
    8) Written notation of any ex parte communications referred to on the record.
c) Recordings, other than the official recording prepared by the administrative law judge or court reporter hired by MERS, shall not be accepted to challenge the official record unless adopted by the administrative law judge.
d) The official record shall be deemed complete when the latest deadline for action with respect to the Board's final decision has passed.