



**SECOND REPORT  
UNIFORM RULES OF  
PROCEDURE COMMITTEE  
NOVEMBER 1, 2019**

# THE UNIFORM RULES OF PROCEDURE

- ▶ The APA directs the Administration Commission (Governor and Cabinet) to adopt one or more sets of uniform rules of procedure.
- ▶ The Uniform Rules of Procedure are codified in Chapters 28-101 through -110 and 28-112.
- ▶ They are posted on the DOAH web site.

# UNIFORM RULES OF PROCEDURE LAST REVISED IN 2013

- The Uniform Rules were last updated in 2013, based on recommendations from the Administrative Law Section of The Florida Bar. These recommendations were developed by an ad hoc committee and approved by the Section's Executive Council.
- These changes are summarized in the [April 2013](#) issue of the ALS newsletter.
- An ad hoc committee has been tasked with reviewing the Uniform Rules and recommending updates.
- As in 2013, any amendments to the Uniform Rules must be formally proposed and adopted by the Administration Commission before they may become effective.

# ALS AD HOC UNIFORM RULES OF PROCEDURE COMMITTEE

- ▶ ALJ Yolonda Green
- ▶ ALJ Elizabeth McArthur
- ▶ ALJ LI Nelson
- ▶ ALJ David Watkins
- ▶ Seann Frazier
- ▶ Shaw Stiller
- ▶ Paul Drake, Reporter
- ▶ Larry Sellers, Chair

# ALS AD HOC UNIFORM RULES OF PROCEDURE COMMITTEE MEETING DATES

- ▶ Next meeting: November \_\_, 2019
- ▶ October 23, 2019
- ▶ October 14, 2019
- ▶ September 16, 2019
- ▶ August 5, 2019
- ▶ June 10, 2019
- ▶ May 20, 2019
- ▶ April 22, 2019
- ▶ March 11, 2019
- ▶ February 4, 2019
- ▶ January 14, 2019

# EFFORTS TO SOLICIT INPUT

- ALS newsletter
- ALS e-mail blasts
- ALS CLEs
- DOAH ALJs
- ELULS
- FGBA
- FGCCA
- FGLS



# **SUMMARY OF RECOMMENDED CHANGES TO DATE (October 30 Draft)**

# Rule 28-101.001 Statement of Agency Organization and Operation

- Requires agencies to describe how documents may be filed by e-mail or facsimile as part of their statement of agency organization and operation.
- Requires the statement to list the holidays and other days on which the agency will be closed and how the public will be informed of unscheduled closures.
- Requires the statement to be reviewed and updated annually.



## Rule 28-105.0027 Intervention

- Revises rule governing intervention in declaratory statement proceedings.
- Provides that an intervenor may, within 7 days of (or such later time as specified in) the order granting intervention, file a response to the petition for declaratory statement.
- Prohibits reply or other paper directed to a timely response absent leave granted by order of the presiding officer.

## Rule 28-105.003 Agency Disposition

- ▶ Removes unnecessary language stating that, if an agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly notice public meeting.

## Rule 28-106.103 Computation of Time

- ▶ Adds to Saturdays, Sundays and legal holidays, “any other day in which the agency clerk’s office is closed.”
- ▶ Such days are not included as the last day of a period of time or when the period of time is less than 7 days.

## Rule 28-106.104 Filing

- ▶ Requires pleadings to include the Florida Bar number, if applicable, of the person filing the pleading.
- ▶ Relocates some language to Rule 28-106.110, Service of Papers, and requires each pleading or paper filed with the agency subsequent to the initial pleading to be served in the manner set forth in that rule.

## Rule 28-106.105 Appearances

- Requires the party seeking representation by a qualified representative who filed the initial pleading to make the filing required by Rule 28-106.106 within 7 days of assignment of a presiding officer.

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

- Provides a definition of qualified representative.
- Clarifies that attorneys licensed in other jurisdictions must file a written request to appear as a qualified representative.
- Requires a party seeking to be represented by a qualified representative to file the written request for that representation within 7 days of assignment of a presiding officer if the representative filed the request for a proceeding on behalf of the party.

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

- Requires an affidavit from a proposed qualified representative that discloses (a) prior proceedings in which they have been granted or denied permission to appear as a representative and (b) whether they have been denied admission to the bar of any jurisdiction.
- Requires a lawyer seeking to appear as a qualified representative to disclose all jurisdictions where they are licensed to practice and certify that they are not subject to any disqualifying criteria.
- Requires the affidavit to state that the representative has read and will comply with Chapter 120 and the Uniform Rules.
- Prohibits a person who is admitted to practice in any jurisdiction from being a qualified representative if that person has been disbarred, resigned in lieu of discipline, is inactive due to incapacity, or is suspended as a disciplinary sanction from practice.

## Rule 28-106.110 Service of Papers

- Consolidates existing provisions regarding service.
- Provides that service after 5:00 p.m. shall be deemed service as of 8:00 a.m. the following day.
- Consistent with other changes, requires that if the address of record includes an e-mail address, service shall be by e-mail.



## Rule 28-106.111 Point of Entry into Proceedings and Mediation

- Requires the notice of administrative rights to include, if applicable, instructions on how to file documents by e-mail or by facsimile, or, if applicable, instructions on how to electronically file documents.
- Requires the notice of administrative rights to advise that a person may request an extension of time to file a request for hearing and that the request must state good cause for the requested extension.

## Rule 28-106.201 Initiation of Proceedings

- Adds new subsection (4) to provide that specifically-named persons who are the subject of the agency's proposed action may become a party to the proceeding by entering an appearance as a respondent and describing how their substantial interests are being determined.
- Similar to former Rule 28-106.205(3) and referenced in amended Rule 28-106.205(4).
- Examples of such specifically-named persons include the applicant or bidder named in the agency's notice of decision or intended decision that is the subject of a petition for hearing.
- Provides that such party is a respondent and may raise issues in support of the agency's determination or defenses to the allegations in the petition.

## Rule 28-106.204 Motions (Duty to Confer)

- ▶ Revises the provision governing duty to confer to also require the movant to indicate whether any party intends to file a response to the motion.

## Rule 28-106.205 Intervention

- ▶ Requires an intervenor who seeks to raise new issues to also include the information required by Rule 28-106.201 (2)(c)-(g) (prescribing contents of petition).
- ▶ This information includes: a statement of all disputed issues of material fact, a concise statement of ultimate facts, a statement of the specific rules or statutes that require reversal or modification of the agency's position, and a statement of relief sought.

## Rule 28-106.205 Intervention—cont'd.

- ▶ Consistent with case law, provides that intervention is in subordination to, and in recognition of, the main proceeding, unless otherwise ordered by the presiding officer.
- ▶ Revises Subsection (3) (now (4)) to reference the process by which a specifically-named person may become a party— as opposed to an intervenor. See Rule 28-106.201 (4).

# Rule 28-106.2115 Motions to Disqualify

- ▶ New rule prescribes the process to be used and the standards for evaluating a motion to disqualify a presiding officer. Much of the text mirrors the provisions of the Rules of Judicial Administration (RJA) governing such motions, while adjusting the process to comport with the time frames in Section 120.569(2)(a), F.S.

## Rule 28-106.213 Evidence

- ▶ Requires a party seeking to offer testimony by telephone to advise the presiding officer at least 5 days prior to the date noticed for the final hearing.

# Rule 28-106.214 Recordation

- ▶ Establishes a procedure for the use of interpreters and translators.



## Rule 28-106.217 Exceptions and Responses

- ▶ Revises rule to require that service of exceptions and responses be made in accordance with Rule 28-106.110.
- ▶ Still has the effect of requiring service by e-mail if the address of record includes an e-mail address.

## Part III Proceedings and Hearings Not Involving Disputed Issues of Material Fact

- Generally makes changes, where appropriate, to conform to similar rules in Part II, Hearings Involving Disputed Issues of Material Fact.

# Rule 28-106.3015 Amendment of Petitions

- Adds new rule establishing procedures for amendment of petitions in informal proceedings.
- Similar to Rule 28-106.202, governing amendments to petitions in proceedings involving disputed issues of fact.

# Rule 28-106.3016 Intervention

- Adds new rule governing intervention in proceedings not involving disputed issues of fact.
- Similar to Rule 28-106.205, governing intervention in proceedings involving disputed issues of fact.

# Rule 28-106.302 Notice of Proceeding

- ▶ More closely aligns the Rule to requirements of Section 120.57(2), Florida Statutes.

## Rule 28-106.303 Motions (Duty to Confer)

- ➔ Conforms to Rule 28-106.204 and requires that the motion state whether any party intends to file a response to the motion.

# Rule 28-106.3045 Discovery

- ▶ New rule governing discovery in informal proceedings.
- ▶ Similar to the rule governing discovery in formal proceedings.

# Rule 28-106.305 Conduct of Proceedings

- Makes minor editorial changes.
- Removes references to bifurcating the proceeding.



## Rule 28-106.306 Recordation

- ▶ Requires the agency to give notice of the method of recordation not later than 7 days before the scheduled commencement of the final hearing. Generally consistent with the existing requirement for formal proceedings in Rule 28-106.214(2).

## Rule 28-106.307 Post-Hearing Submittals

- Repeals this provision, as it does not appear to be authorized.
- The only authority for proposed findings of fact and orders is found in Section 120.57(1)(b), relating to formal proceedings.

# Rule 28-106.501 Emergency Action

- ▶ Repealed because it paraphrases the statute.
- ▶ The statute requires that administrative proceedings be “promptly instituted and acted upon” after the emergency suspension, limitation or restriction of a license. The current rule requires that administrative proceedings be instituted “within 20 days.”

# Rule 28-110.002 Definitions

- ▶ Updates cross-references to the statutes.

## Rule 28-110.003 Notice of Protest

- Clarifies that the notice of protest is to be filed with the agency clerk, unless otherwise designated by the solicitation.
- Makes minor editorial changes.

## Rule 28-110.005 Bond

- ▶ Clarifies that a protest bond is due at the time of filing a formal written protest.
- ▶ Makes changes to the protest bond form to simplify the form and remove references to exceptional purchases, which are uncommon.

# SOME OF THE KEY CHANGES

- Describing whether agency accepts filing by e-mail vs Requiring agency to implement E-filing
- New Requirements for Qualified Representatives
- Requiring Notice of Rights to advise of Extension of Time
- Requiring Motion to state whether other party will file a response
- New Rule Governing Disqualification
- Requiring service by 5 p.m.
- Repealing rule re post hearing submittals in informals

# SUGGESTIONS STILL UNDER CONSIDERATION

- ▶ Rule 28-106.112 Notice of agency final orders; standards; grounds to vacate and reissue agency final orders for lack of notice.



# SUGGESTIONS CONSIDERED BUT NOT RECOMMENDED

- Motions for reconsideration or rehearing (as at PSC).
- Changing filing deadline from 5:00 p.m. to midnight to conform to RJAs.
- E-service by DOAH (authorizing legislation not enacted).
- Extending from 7 days to 10 days the time for filing a response to motions.
- Authorizing replies to responses to motions

# SUGGESTIONS CONSIDERED BUT NOT RECOMMENDED

- ➔ Defining “good cause” for continuances.
- ➔ Requiring a continuance to be granted if agreed to by all parties.
- ➔ Eliminating the requirement for a “certified” court reporter.
- ➔ Defining “Notice of Intended Decision” to include constructive notice by publication
- ➔ Prescribing time limit for remand to DOAH.

# SUGGESTIONS CONSIDERED BUT NOT RECOMMENDED

- ▶ Specifying consequences of violations of rules
- ▶ Requiring non-lawyers seeking to be QRs to disclose whether they have been convicted of a crime involving dishonesty or moral turpitude.
- ▶ Providing advance notice of proposed emergency orders to affected persons

# SPECIAL THANKS TO THOSE WHO SUBMITTED SUGGESTIONS

- Fred Aschauer
- Chris Bryant
- ALJ Gary Early
- Laura Gaffney
- Mike Glazer
- Keith Hetrick
- David Miller
- Eric Miller
- ALJ John Newton
- Richard Shoop
- ALJ Suzanne Van Wyk
- Karen Walker

- Melinda Butler
- Douglas Dolan
- Brittany Griffin
- Alyssa Lathrop
- Wendy Loquasto
- Gregg Morton
- Bill Roberts
- Louise St. Laurent
- Jacek Stramski
- Kathleen Toolan
- Craig Varn
- Adrienne Vining

# PROCESS GOING FORWARD

- ▶ October 30 Draft distributed for comments.
- ▶ Next (final?) committee meeting is November 2019.
- ▶ Final Report to ALS Executive Council.
- ▶ ALS Recommendation to Administration Commission.

# ANY AMENDMENTS MUST BE FORMALLY ADOPTED

- ▶ REMINDER: As in 2013, any amendments to the Uniform Rules must be formally proposed and adopted by the Administration Commission before they may become effective.