

**The Florida Bar Administrative Law Section's
Recommended Changes to the Uniform Rules of Procedure
(April 27, 2020; Rule 28-106.213 Revised March 24, 2021)**

THE FULL TEXT OF THE PROPOSED RULE IS:

28-101.001 Statement of Agency Organization and Operation.

(1) No change.

(2) The Statement of Agency Organization and Operation shall be reviewed and updated annually. The Statement shall:

(a) through (d) No change.

(e) ~~State whether~~Describe the manner by which documents can be filed by e-mail or facsimile transmission, including applicable telephone numbers and e-mail addresses where filings may be submitted, if the agency accepts e-filing, describe the manner by which documents can be e-filed, including the applicable website(s) through which the filings may be submitted. ~~and s~~ Set forth the acceptable nature and scope of such filings, including the following:

~~That~~ the filing date for a document that has been e-filed or transmitted by e-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) No change.

(g) ~~Set forth t~~The agency's hours of operation, including the hours during which filings will be accepted.

(h) The legal holidays and other days on which the agency will be closed.

(i) The public notification procedures for unscheduled agency closures.

(~~h~~j) No change.

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, 6-26-13, _____.

Comment: *Requires agencies to describe how to file documents by e-mail or fax, and e-file if allowed, as part of their Statement of Agency Organization and Operation. Requires the Statement to list the days on which the agency will be closed and how the public will be informed of unexpected closures. To implement the statutory mandate that the Statement be maintained as current, this proposal requires the Statement to be reviewed and updated annually. The Administration Commission is encouraged to require all agencies to adopt some form of filing by e-mail.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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) and (3) No change.

(4) The presiding officer shall allow persons meeting the requirements of this rule to intervene. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(5) An intervenor may, within 7 days of (or such later time as is specified in) the order granting intervention, file a response to the petition for declaratory statement. No reply or other paper directed to a timely response may be filed absent leave granted by order of the presiding officer.

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, _____.

Comment: *Reorganizes existing language, relocating two sentences from (1) to (4) for improved organization and clarity. Provides basic guidelines in (5) for an intervenor's written submission and responses thereto from others.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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, _____.

Comment: *Removes 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 noticed public meeting. The existing language is proposed for deletion as unnecessarily repetitive of the Sunshine Law.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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, or any other day on which the agency clerk's office is closed, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, ~~or~~ legal holiday, or any other day on which the agency clerk's office is closed. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, ~~and~~ legal holidays, and any other days on which the agency clerk's office is closed 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 e-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, _____.*

Comment: *Clarifies that days on which the agency clerk’s office is closed (e.g., emergency closures or discretionary closures by executive order) are treated like weekends and legal holidays in the computation of time.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.104 Filing.

(1) No change.

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

(a) through (c) No change.

(d) The name, address, any e-mail address, Florida Bar number, if applicable, 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. Each pleading or document filed with the agency subsequent to the initial pleading shall be served on the other parties to the proceeding in the manner set forth in Rule 28-106.110. 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 and consecutively numbered pages. Originals shall be printed or typewritten.

(8) A document shall be filed by only one method (e-filing, service by e-mail, 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, _____.

Comment: *Made additions for clarity and consistency. First deleted sentence in (4) moved to Rule 28-106.110; second sentence reworded to the active voice. Requires that filings must be consecutively numbered.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.105 Appearances.

~~(1) Counsel or qualified representatives who files a request for a proceeding hearing involving disputed issues of material fact with the agency have~~ has 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) A qualified representative who has filed a request for a proceeding on behalf of 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. The party on whose behalf the qualified representative filed the initial pleading shall make the required filings under Rule 28-106.106, F.A.C. within 7 days of assignment of a presiding officer.~~

~~(2)(3)~~ Service on counsel of record or on a qualified representative shall be the equivalent of service on the party represented.

~~(3)(4)~~ 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, _____.~~

***Comment:** Requires a person seeking representation by a qualified representative to make the required filings within 7 days of filing a request for hearing if the representative makes the initial filing.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.106 Who May Appear; Criteria for Qualified Representatives; Responsibilities of Party Desiring Representation.

(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 in good standing 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.~~ Qualified representative means a person who meets the qualifications of this section and has been authorized by order of the presiding officer to represent a party in a proceeding. An attorney licensed solely in jurisdiction(s) other than Florida must file a written request to appear as a qualified representative.

~~(2)(a) When a request for a proceeding has been filed on behalf of a party by a qualified representative, that~~ A party seeking representation by a qualified representative shall file a written request under this rule withnot later than 7 days after assignment of the presiding officer. Otherwise, a party seeking representation by a qualified representative after assignment of the presiding officer shall file a written request 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 include the following:

(a) The name, address, e-mail address, and telephone number of the representative.

~~(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.~~

(b) A statement that the party is aware of the services which the representative can provide and aware that the party can represent themselves or be represented by counsel at their own expense, but has chosen otherwise.

(c) A sworn affidavit from the representative setting forth her or his qualifications, listing all proceedings in the past 2 years in which he or she has been granted or denied authorization as a representative, and stating whether the proposed representative has been denied admission to the bar of any jurisdiction. The affidavit shall state that the representative has read, and shall comply with, the relevant provisions of the Uniform Rules of Procedure, Chapter 28-106, F.A.C., and the Administrative Procedure Act, Chapter 120, F. S.; the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding; the rules of evidence, including the concept of hearsay in an administrative proceeding; and the Standards of Conduct for Qualified Representatives, Rule 28-106.107, F.A.C. The affidavit also shall state that the representative is knowledgeable regarding the factual and legal issues involved in the proceedings

(d) If the representative is a lawyer, the sworn affidavit shall also include a list of the jurisdictions in which the lawyer is currently admitted to practice and a certification that the lawyer does not meet any of the disqualifying criteria in paragraph (4).

(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 and capably represent the party's rights and 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 nature of the proceedings and the applicable law~~representative's knowledge of jurisdiction;

(b) The representative's sworn affidavit;

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

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

~~(e)~~The representative's knowledge of Chapter 120, F.S., and the uniform rules adopted pursuant to Section 120.54(5), F.S.;

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

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

(4) No person currently or formerly admitted to practice law may be authorized as a qualified representative under this rule if that person is disbarred, resigned in lieu of

discipline, is inactive due to incapacity, or is suspended as a disciplinary sanction from practice in any jurisdiction.

(5) Within a reasonable time after the request under paragraph (2) is filed, If the presiding officer shall determines whether a representative is not qualified, If the presiding officer determines that the proposed representative is not qualified, the reason(s) 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), 120.57(1)(b) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13, _____.

Comment:

Changed heading for rule to provide additional clarity regarding what the rule entails. Provides a definition of qualified representative. Clarifies that attorneys appearing in administrative proceedings must be members of The Florida Bar in good standing and 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, or as soon as practicable if the representative did not file the initial pleading. 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 or were 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, the Uniform Rules, specific Rules of Civil Procedure, certain rules of evidence, and the Standards of Conduct for Qualified Representatives. Prohibits a person who is or was 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.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.107 Standards of Conduct for Qualified Representatives.

All qualified representatives shall comply with the following standards of conduct; ~~are mandatory for all qualified representatives.~~

(1) A representative shall comply with the Uniform Rules of Procedure, Chapter 120, Florida Statutes, and all other applicable statutes and rules.

~~(2)~~ A representative shall exercise due diligence to ensure ~~insure~~ that any motion or pleading is filed and argued in good faith.

~~(23)~~ A representative shall advise the client to obey the law.

~~(34)~~ 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.

(5) 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, Amended _____.

Comment: *Clarifies the obligation of a qualified representative to comply with governing rules and statutes to ensure that a proposed qualified representative knows about the obligation before entering into the representation.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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.~~

(1) Unless otherwise provided by law, service shall be as provided by this rule.

(2) Whenever a party files a pleading or other document, that party shall serve copies of the pleading or other document upon all other parties to the proceeding.

(3) Service upon an unrepresented party shall be made to that party's address of record. Service upon a represented party shall be made by service upon that party's attorney or qualified representative at the attorney or representative's address of record.

(4) If both the filer's and recipient's address of record includes an e-mail address, service shall be made by e-mail.

(5) A pleading or document served by e-mail after 5:00 p.m. shall be deemed served as of 8:00 a.m. the following day.

(6) A certificate of service shall accompany each filing. When any party, representative, or attorney certifies in substance:

"I certify that the foregoing document has been furnished to (here insert name or names, addresses used for service, and mailing addresses) by (e-mail) (delivery) (mail) (fax) on (date) [Name, Title, Signature]"

the certificate is taken as prima facie proof of such service in compliance with this rule.

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

Comment: *Consolidates existing provisions regarding service from several rules into one. Adds requirement for service by e-mail when address of record includes an e-mail address, a form for certificate of service, and a provision that service by e-mail after 5:00 p.m. shall be deemed service as of 8:00 a.m. the following day. Designed to make clear that this does not displace service requirements in specific statutes, such as in Sections 120.60(5) or 766.303, F. S.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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 include the address for delivery by mail or courier, e-mail address, and telephone number for the agency clerk and instructions on how to file documents with the agency clerk by e-mail, electronic filing, or by facsimile transmission, as applicable. 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) No change.

(3) ~~An agency may, for good cause shown, grant a~~ The notice of rights shall advise that a person may request for an extension of time for to filing an initial pleading, and that the request shall state good cause for the extension. 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. An agency may grant the request for extension for good cause shown. 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 timely 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) No change.

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, _____.

Comment: *Requires the notice of administrative rights to include directions on how to file by all methods accepted by the agency. Requires the notice of administrative rights to advise of the right to request an extension of time to file a request for hearing for good cause shown.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.201 Initiation of Proceedings.

(1) through (3) No change.

(4) A specifically-named person, who is the subject of the agency’s proposed action and who was not made party to the original proceeding, may become a party to the proceeding by entering an appearance as a respondent and identifying how their substantial interests are being determined. Such named party respondent shall be entitled to raise issues in support of the agency’s determination or defenses to the allegations in the petition.

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, _____.

Comment: *Adds (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 successful*

competing 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 may raise issues in support of the agency's determination or defenses to the allegations in the petition.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.204 Motions.

(1) through (2) No change.

(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 and whether any party intends to file a response 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) No change.

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, _____.

Comment: *Requires parties to indicate in a motion whether any party intends to file a response so that the presiding officer will know whether to wait for the time allowed for a response to elapse before ruling on the motion.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.205 Intervention; Appearances by Specifically-Named Persons

(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) If the intervenor seeks to raise new issues, the information required by Rule 28-106.201(2)(c)-(g); and

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

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

(gh) The date.

(3) The intervention shall be in subordination to, and in recognition of, the main proceeding, unless otherwise ordered by the presiding officer in their discretion.

(3)(4) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance as a named party in the manner described in Rule 28-106.201(4) 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, _____.

Comment: *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). 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 (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).*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.2115 Motions to Disqualify.

(1) Any party may request the disqualification of an administrative law judge by filing with the Division of Administrative Hearings, prior to the taking of evidence at a hearing, a motion to disqualify accompanied by an affidavit stating the grounds with particularity.

(2) The motion must be in writing and specifically allege the facts and reasons upon which the movant relies as grounds for disqualification. The affidavit must allege a well-founded fear that the movant will not receive a fair hearing before the administrative law judge because of the prejudice of the administrative law judge against the affiant or in favor of an adverse party, and the reasons for such fear; that the administrative law judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree; or that the administrative law judge is a material witness for or against one of the parties to the cause.

(3) The motion must also include the dates of all previously granted motions to disqualify in the case and the dates of the orders ruling on such motions.

(4) Determination: Initial and Successive Motions.

(a) The administrative law judge against whom an initial motion to disqualify is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the administrative law judge shall immediately enter an order granting disqualification and the case shall be transferred to another administrative law judge. If the motion is legally insufficient, the administrative law judge shall enter an order denying the motion. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.

(b) If an administrative law judge has been disqualified previously on a motion for alleged prejudice or partiality, a successor administrative law judge shall not be disqualified based on a successive motion by the same party unless the successor administrative law judge rules that he or she is in fact not fair or impartial in the case. A successor judge may rule on the truth of the facts alleged in support of the motion.

(5) Any motion to disqualify shall be ruled on immediately, but in no event more than 15 days after filing of the motion. Any motion not ruled upon after 15 days will be deemed granted.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5), 120.569(2)(a) FS. History - New _____.

Comment: *Codifies the process to be used and the standards for evaluating a motion to disqualify a presiding officer. The text generally mirrors that of the Rules for Judicial Administration so that case law referencing and applying those Rules can be instructive. The changes to the text are designed solely to adjust the process to comport with the timeframe in Section 120.569(2)(a) and are not intended to be substantive.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.213 Evidence.

(1) through (4) No change.

(5) If requested, and if the necessary equipment is reasonably available, the presiding officer may enter an order allowing 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) No change.

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, _____.

Comment: *Removes the requirement that a notary public be physically present with a witness appearing by telephone to administer the oath.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.214 Recordation; Translator or Interpreter.

(1) through (2) No change.

(3) No later than 7 days prior to any hearing, a party who needs a translator or interpreter in order to testify, present or understand evidence, or otherwise fully participate in the hearing, shall give notice to all other parties. This notice shall include the name of the translator or interpreter the party intends to use, contact information for the translator or interpreter, the nature of the translation or interpretation services needed, and a disclosure of the relationship, if any, of the translator or interpreter to the person for whom translation or interpretation services will be provided. This notice shall be served on each party or the party's representative at the address of record. If the address of record includes an e-mail address, then service shall be made by e-mail.

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

Comment: Establishes a procedure for the use of interpreters and translators.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.217 Exceptions and Responses.

(1) No change.

(2) Exceptions and responses thereto shall be served in accordance with Rule 28-106.110 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 same day they are filed with the agency.

(3) No change.

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, _____.

Comment: Amended for consistency with amended Rule 28-106.110. No intended change to existing rule requirements.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.3015 Amendment of Petitions.

(1) A petition may be amended prior to the designation of the presiding officer by filing and serving an amended petition in the manner prescribed for filing and serving an original petition. Thereafter the petition may be amended only upon order of the presiding officer.

(2) If an administrative law judge determines that no genuine issue as to any material fact remains in a proceeding brought under Section 120.57(1), and enters an order relinquishing jurisdiction to the agency, the party that initiated the proceeding may amend their petition to comply with Rule 28-106.301(2) without leave of the presiding officer. The amended petition must be filed no later than 14 days after entry of the order relinquishing jurisdiction and shall not raise any issues of disputed fact that could have been raised before the administrative law judge.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New _____.

Comment: Establishes procedures for the amendment of petitions, consistent with Rule 28-106.202. Allows a party to amend a petition for hearing without leave to comply with the requirements for initiating an informal proceeding following an order determining the absence of material fact and relinquishing jurisdiction.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.3016 Intervention.; Appearances by Specifically-Named Persons.

(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. 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;

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

(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;

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

(e) If the intervenor seeks to raise new issues, the information required by Rule 28-106.301(d)-(g);

(f) The statement required by Rule 28-106.303(2);

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

(h) The date.

(3) Other than parties to the original proceeding, 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 identifying how their substantial interests are being determined. Such named party respondent shall be entitled to raise issues in support of the agency's determination or defenses to the allegations in the petition.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New

Comment: Establishes procedures for intervention, in proceedings not involving disputed facts, generally consistent with the procedures in Rule 28-106.205.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.302 Notice of Proceeding.

(1) After receipt of a petition determined to be in substantial compliance with this Rule and which raises no issues of disputed material fact, the agency shall serve a written notice on all parties that includes:

(a) The opportunity to submit written evidence; and

(b) The opportunity to request a hearing before the agency.

(2) The notice shall provide the parties allowing at least 14 days from the date of the notice for the parties to provide material file written evidence 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. The notice shall also provide the parties at least 7 days to file written evidence in response to written evidence filed by another party. No further written evidence may be submitted without first obtaining leave of the agency. any "Written evidence" includes documents, memoranda of law, or and all 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 the parties at least 7 that all other parties shall have 14 days to file respond in writing to that written evidence.

(23) The notice shall provide the parties at least 14 days to file a request for a hearing before the agency. The agency may schedule an informal hearing with or without such a

~~request 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), 120.57(2) FS. History—New 4-1-97, Amended 3-18-98, 12-24-07, _____.

Comment: *Conforms rule to more closely align with the requirements of Section 120.57(2).*

THE FULL TEXT OF THE PROPOSED RULE IS:

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~~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 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 and whether any party intends to file a response 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, _____.

Comment: *Requires parties to indicate in a motion whether any party intends to file a response to that the presiding officer will know whether to wait the time allowed for a response to elapse before ruling on the motion.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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.

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.3045 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, except contempt, in accordance with the Florida Rules of Civil Procedure.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New

Comment: *Codifies the discovery procedures to clarify that discovery is available in proceedings not involving disputed facts.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.305 Conduct of Proceedings.

The presiding officer before whom a proceeding 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, _____.

Comment: *Minor editorial changes for clarity and consistency with nature of proceedings not involving disputed facts.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-106.306 Recordation; Translator or Interpreter.

(1) ~~Responsibility for preserving the testimony at final hearings shall be that of the~~ The agency responsible for taking final agency action. Proceedings shall ensure that any final hearing shall be recorded by a certified court reporter or by recording instruments. The agency shall serve on all parties written notice of the method of recordation not later than 7 days before the scheduled commencement of the hearing.

(2) Any party to a proceeding may, at its own expense, provide a certified court reporter for a hearing 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.

(3) No later than 7 days prior to any hearing, a party who needs a translator or interpreter in order to testify, present or understand evidence, or otherwise fully participate in the hearing shall give notice to all other parties. This notice shall include the name of the translator or interpreter the party intends to use, contact information for the translator or interpreter, the nature of the translation or interpretation services needed, and a disclosure of the relationship, if any, of the translator or interpreter to the person for whom translation or interpretation services will be provided. This notice shall be served on each party or the party’s representative at the last address of record. If the address of record includes an e-mail address, then service shall be made by e-mail

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

Comment: *Requires a notice of recordation in a manner consistent Rule 28-106.214.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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, Repealed _____.

Comment: *Repealed for lack of a law to implement. The statutory authority for proposed findings of facts and orders is found only in Section 120.57(1)(b).*

THE FULL TEXT OF THE PROPOSED RULE IS:

~~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 section (1) of this rule, the agency shall initiate emergency 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) History – New 1-15-07, Amended 12-24-07, Repealed _____.*~~

Comment: *Repealed because it is substantially similar to Section 120.60(6), F.S., and because it does not have statutory authority.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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)(3)(c), F.S., or other solicitation documents as permitted by law.

(2) No Change

(3) “Competitive solicitation” or “solicitation” shall have the meaning ascribed in Section 287.012(97)(6), F.S.

(4) “Electronic posting” shall have the meaning ascribed in Section 287.012(11)(10), 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, _____.

Comment: *Updates statutory citations.*

THE FULL TEXT OF THE PROPOSED RULE IS:

28-110.003 Notice of Protest.

(1) A notice of protest shall be addressed to the agency clerk of the agency 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) The notice of protest must be filed with the agency clerk unless otherwise designated by the solicitation. 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) No change.

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

Comment: *Addresses inconsistent references in (1) and (2) to clarify that notice of protest is filed with the agency clerk, unless otherwise designated by the solicitation.*

THE FULL TEXT OF THE PROPOSED RULE IS:

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)~~(e)~~(d), 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 at the time of filing 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) No change.

(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)(~~e~~)(d), 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, _____.

Comment: *Clarifies that a protest bond is due at the time of filing a formal written protest, pursuant to Section 287.042(2)(c), F.S. Simplifies protest bond form and removes reference to exceptional purchases, which are uncommon. Updates statutory citations.*