

TITLE 80: DEPARTMENT OF LABOR

SUBCHAPTER 80-20.2 ALIEN LABOR RULES OF PRACTICE AND PROCEDURE

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Subchapter Authority: 1 CMC § 2454; 3 CMC § 4424(a)(1); Executive Order 94-3 § 301.

Subchapter History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: Under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (Covenant, Pub. L. No. 94-241, § 301, 90 Stat. 263), the CNMI government retained nearly exclusive control over immigration. After the enactment of the Consolidated Natural Resources Act of 2008 (CNRA, Pub. L. No. 110-229, 122 Stat. 754) on May 8, 2008, federal immigration law became applicable to the CNMI beginning on November 28, 2009. Under CNRA § 702(a), the CNRA made the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) applicable to the CNMI. The CNRA further amended the Covenant to state that the “immigration laws,” as well as the amendments to the Covenant, “shall ... supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth.” On March 22, 2010, the Governor of the CNMI signed P.L. 17-1 into law, which effectively removed all references to immigration and deportation functions from the Commonwealth Code, and on April 15, 2010, the Office of the Attorney General, Division of Immigration, repealed the Division of Immigration Rules and Regulations (NMIAC Title 5, Chapter 40). The CNMI Department of Labor’s regulations relating to the admission of aliens in this subchapter were not specifically repealed, and therefore, remain.

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For a complete history of the authority of the Department of Labor, see the commission comment to NMIAC subchapters 80-10.1 and 80-20.1.

Attorney General Opinion 07-02 found that “a nonresident worker, as defined in 3 CMC § 4412(i), who did not have a ‘financial interest in or operated or engaged in any business or become an employer’ before July 28, 1987, may not be either a member for the board of directors nor an officer of a corporation.” 29 Com. Reg. 26679 (July 18, 2007). Attorney General Opinion 07-02 emphasized that mere presence in the Commonwealth before July 28, 1987 does not make a nonresident worker eligible to have an interest in or operate a business or become an employer.

Part 001 - General Provisions

§ 80-20.2-001 Scope of Rules

The rules in this subchapter govern the practice and procedure in the Division of Labor, Department of Labor and Immigration of the Commonwealth of the Northern Mariana Islands (hereinafter referred to as Labor) in all actions pursued by the Chief of Labor and/or other litigants.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: With respect to the reference to the Department of Labor and Immigration, see Executive Order 03-01 (effective May 9, 2003), the “Department of Labor and Immigration Reorganization Plan of 2003,” returning the immigration functions of the executive branch to the Office of the Attorney General and renaming the Department of Labor. See also the commission comment to NMIAC subchapter 80-20.1.

On April 15, 2010, the Office of the Attorney General, Division of Immigration, repealed the Division of Immigration Rules and Regulations (NMIAC Title 5, Chapter 40), as a result of the enactment of the Consolidated Natural Resources Act of 2008 (CNRA, P.L. 110-229, May 8, 2008), which amended the Covenant Act (P.L. 94-241, 1976) which gave the CNMI control over its immigration system. The effect was to remove all references to immigration and deportation functions by regulation in the NMIAC or by law in the Commonwealth Code. See 32 Com. Reg. at 30094 (April 29, 2010).

§ 80-20.2-005 Application

Cases Pending When Rules Adopted. Proceedings in all cases or other matters before Labor upon the effective date of the rules in this subchapter shall be governed by these rules, unless the proceeding was initiated prior to the effective date of these rules, in which case the parties may or may not stipulate to the adoption of these rules in any proceeding initiated prior to the effective date of these rules.

Modified, 1 CMC § 3806(d).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Part 100 - Rules of Practice and Procedure

§ 80-20.2-101 Two Forms of Actions

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There shall be two forms of actions; one of which will be known as an “agency case,” the other of which will be known as a “labor case.”

Modified, 1 CMC § 3806(f), (g).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The Commission moved the comma after “case” inside of the closing quotation mark.

§ 80-20.2-105 Commencement of Actions

An agency case is commenced by the issuance of a notice of warning or notice of violation; a labor case is also commenced, following the issuance by the Chief of Labor of a notice of warning or notice of violation, by the filing of a written complaint signed by the complainant or his counsel and containing the following:

- (a) The caption setting forth the name of the Division of Labor;
- (b) The names and addresses of the parties;
- (c) The nature of the complaint; and
- (d) The relief requested or demanded, provided however that if the relief requested or demanded is the termination of the employment relationship or an application for transfer relief, an unsuccessful good faith attempt to settle the dispute with the Chief of Labor must precede the commencement of a labor case.
- (e) A \$20.00 filing fee unless a written determination of indigency is made by the Chief of Labor or his designee, or the Director of Labor in which case the petitioner shall be permitted to proceed in forma pauperis.

Modified, 1 CMC § 3806(f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-110 Required Investigations

Upon receipt of a written complaint or confidential oral complaint, later reduced to writing, the Chief of Labor or his designee shall immediately conduct an investigation concerning an alleged violation of any rules or regulations promulgated or contracts or agreements entered, pursuant to the Nonresident Worker’s Act, 3 CMC §§ 4411, et seq., or the Minimum Wage and Hour Act, 4 CMC §§ 9211, et seq., or any injury to a nonresident worker, or working conditions, or employer- provided housing conditions. Within ten days of the initiation of an investigation the Chief of Labor or his designee shall either:

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- (a) Issue a warning and request to correct the violation of the alleged violator, in which the alleged violator shall comply within ten days of receipt of the issuance of the warning or the Director of Labor shall immediately issue a notice of violation and conduct a hearing pursuant to 1 CMC § 9109, or
- (b) Issue a notice of violation and conduct a hearing pursuant to 1 CMC § 9109.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-115 Issuance of Notices of Warnings and Violations; Service and Time Limit for Complaints and Answers

- (a) Notice of Warning: Issuance. The issuance of a notice of warning shall occur upon the service of the notice of warning on the named respondent(s). The Chief of Labor, his designee, or an interested or disinterested third party shall be responsible for prompt service of the notice of warning.
- (b) Notice of Violation: Issuance. The issuance of a notice of violation shall occur upon the service of the notice of violation on the named respondent(s). The Chief of Labor, his designee, or an interested or disinterested third party shall be responsible for prompt service of the notice of violation.
- (c) Service of Complaint. Upon the issuance of a notice of warning or notice of violation, a complainant, his counsel, or an interested or disinterested third party shall serve, no later than five days following the issuance of a notice of warning or notice of violation, upon the named respondent(s) a copy of the complaint meeting the requirements of § 80-20.2-101(a)-(d). Service of a complaint shall be made anywhere within the territorial limits of the Commonwealth of the Northern Mariana Islands.
- (d) Service of Complaint: Person to Be Served. The service of a complaint by a complainant, his counsel, or an interested or disinterested third party shall be upon the named respondent(s) in the following manner:
 - (1) By delivery at the dwelling house(s) or usual place(s) of abode with some person of suitable age and discretion then residing therein or to an agent authorized by appointment or law to receive such service;
 - (2) By mailing to a respondent(s) at the address provided by the respondent(s) on the employment contract, unless the respondent(s) has notified Labor in writing of a change of address in which case the service by mailing shall be made to the address last provided by a party;
 - (3) Where a party is represented by an attorney, service may be made upon the attorney in lieu of service upon the party, by delivery or mailing, to the attorney or office of the attorney.
- (e) Service of Answer. Upon the receipt of a complaint from a complainant, his counsel, or an interested or disinterested third party, the named respondent(s) shall,

within ten calendar days, file an answer in writing with the Division of Labor and serve such answer on the complainant or his counsel.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-120 Time

(a) Computation. In computing any period of time prescribed or allowed by the rules in this subchapter, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday; or, when the act to be done is the filing of a paper at Labor, a day in which weather or other conditions have made the offices of Labor inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's Day, Commonwealth Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Citizenship Day, Veteran's Day, Thanksgiving Day, Constitution Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the Northern Mariana Islands.

(b) Enlargement. When by the rules in this subchapter or by a notice given thereunder or by administrative order an act is required or allowed to be done at or within a specified time, the administrative hearing officer, for good cause shown, may at any time in his discretion:

(1) With or without motion or notice, by administrative order, enlarge the period if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, provided:

(i) A request for continuance of an administrative hearing must be submitted in writing at least five days prior to the hearing and at least one day prior in "emergency" situations. The requesting party shall serve notice on all parties including the agency, and unless the parties stipulate to the continuance, a hearing on the request for continuance shall be mandatory.

(ii) The request for continuance of an administrative hearing must be accompanied by a written explanation of the reasons for the continuance.

(iii) The request may be granted only for good cause shown and for no more than thirty days absent exceptional circumstances.

(iv) In the event a request for a continuance of an administrative hearing is denied, the administrative hearing officer may conduct the hearing at the scheduled date and time with or without the parties or may proceed ex parte in the case of the non-attendance of either or both of the parties in a labor or agency case, or their witnesses or counsel if notice was given, pursuant to § 80-20.2-115, to the parties at least ten days prior to the hearing either by mail.

(2) Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(c) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than fourteen days before the time specified for the hearing by Labor, unless a different period is fixed by the rules in this subchapter or by administrative order. Such an administrative order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than five days before the hearing, unless permitted by administrative order to be served at some other time.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-125 Pleadings Allowed; Form of Motions/Petitions

(a) Pleadings. There shall be notice of violation, notice of warning, complaint and an answer; a reply to a counterclaim if denominated as such in an answer; an answer to a cross-claim, if the answer contains a cross-claim. No other pleading shall be allowed, and the failure of a third-party to answer a third-party complaint shall not function as a bar to continuation of the proceedings.

(b) Motions and Petitions.

(1) An application to the administrative hearing officer for an order shall be by motion which, unless made during an administrative hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(2) A petition for a hearing with an administrative hearing officer, with the exception of a petition for a declaratory ruling pursuant to 1 CMC § 9107, shall be made by any party aggrieved by a finding or determination of the Chief or his designee within fifteen days of the issuance of such finding or determination. If no such petition is filed within fifteen days, the finding or determination shall be unreviewable administratively.

(i) Any petition filed pursuant to subsection (b)(2) shall be typewritten and signed by the petitioner or the petitioner's counsel and shall be accompanied by a \$25.00 filing fee unless a written determination of indigency is made by the Chief of Labor or his designee, or the Director of Labor in which case the petitioner shall be permitted to proceed in forma pauperis.

(ii) Any petition filed pursuant to subsection (b)(2) shall be served by the petitioner, his counsel, or an interested or disinterested third party, upon the respondent no later than five days following the filing of the petition.

(3) A petition for a declaratory ruling pursuant to 1 CMC § 9107 shall be treated as a motion, except as to the status of the disposition of the petition as provided for in 1 CMC § 9107.

(4) The rules applicable to captions and other matters of form of pleadings apply to all motions and petitions provided for by the rules in this subchapter.

(5) All motions and petitions shall be signed in accordance with § 80-20.2-140.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

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History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: In subsection (a), the Commission inserted a period between “cross claim” and “No” to correct a manifest error.

§ 80-20.2-130 Permissible Motions

(a) Submission of Motion and Opposition to Motion.

(1) Submission of Motion. A party making a motion shall file together with the motion a separate memorandum of reasons, including citation of supporting authorities, why the motion should be granted. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(2) Submission of Opposition to a Motion and Reply. A party opposing a motion may file and serve any opposition to the motion not later than five days preceding the noticed date of hearing, unless another period is fixed by administrative order. The party shall file together with the opposition to the motion a separate memorandum of reasons, including citation of supporting authorities, why the motion should not be granted. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be filed with the opposition. The movant shall serve and file any reply to the opposition not less than two days preceding the hearing date.

(b) Service. All papers filed pursuant to subsection (a) of this rule shall be served pursuant to § 80-20.2-115(d)(1)-(d)(3).

(c) Permissible Motions. The following are the only permissible motions before Labor in the practice and procedure of an agency case or a labor case:

(1) Motion to Dismiss.

(i) A motion to dismiss may be filed on the following grounds:

(A) Lack of jurisdiction over the subject matter;

(B) Lack jurisdiction over the person;

(C) Insufficiency of process;

(D) Insufficiency of service of process;

(E) Failure to state a claim upon which relief can be granted.

(ii) If, on a motion to dismiss asserting the failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the agency, the motion shall be treated as one for summary disposition and disposed of as provided in subsection (c)(2), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by subsection (c)(2)(i).

(2) Motion for Summary Disposition. A motion for summary disposition may be filed with respect to the whole or part of an action taken by the Chief of Labor or with respect to a claim, counterclaim, or cross-claim on the following grounds:

(i) No genuine issue of material fact exists as to the subject matter of which the movant asserts and the movant is entitled to disposition as a matter of law as to the subject matter of the movant’s assertion.

(3) Motion for Disposition on the Pleadings. After the pleadings are closed but within such time as not to delay the hearing, any party may move for disposition on the pleadings. If, on a motion for disposition on the pleadings, matters outside the pleadings

are presented to and not excluded by the agency, the motion shall be treated as one for summary disposition and disposed of as provided in subsection (c)(2), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by subsection (c)(2)(i).

(4) Motion to Enforce Bond. A motion to enforce the liability of a surety may be filed on the following grounds:

(i) The successful conclusion of an agency case by the Chief or his designee whereby such findings of fact and conclusions of law indicate that the respondent has violated a provision of the Nonresident Worker's Act, 3 CMC §§ 4411, et seq., or the Minimum Wage and Hour Act, 4 CMC §§ 9211, et seq., or duly promulgated regulations thereto, which findings of fact and conclusions of law are not the subject of an administrative or judicial appeal.

(ii) The successful conclusion of a labor case by the complainant whereupon such findings of fact and conclusions of law indicate that the respondent has violated a provision of the Nonresident Worker's Act, 3 CMC §§ 4411, et seq., or the Minimum Wage and Hour Act, 4 CMC §§ 9211, et seq., or duly promulgated regulations thereto, which findings of fact and conclusions of law are not the subject of an administrative or judicial appeal.

(5) Motion for Sanctions. A motion to recover sanctions and attorney's fees for an opposing party's advocation of a claim or defense that is frivolous, without merit, or in bad faith shall be permitted pursuant to § 80-20.2-140 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The original paragraphs of subsection (c)(1) were not designated. The Commission designated subsections (c)(1)(i) and (ii).

§ 80-20.2-135 Application for Default

(a) Application for Default. When an application for an entry of a default or a default judgment occurs such application is a representation that due service has been made of all pleadings or papers required by these Alien Labor Rules of Practice and Procedure to be made as a condition to the relief sought.

(b) Relief from Default. A party who has been prejudiced by failure to receive due notice may apply to the agency for appropriate relief.

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-140 Frivolous, Meritless, or Bad Faith Claims or Defenses

Any complainant or respondent may by motion, file and recover sanctions and attorney's fees for an opposing party's advocation of a claim or defense that is frivolous, without merit, or in bad faith.

Modified, 1 CMC § 3806(f).

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History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-145 General Rules of Pleading

- (a) Effect of Failure to Deny. Averment in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.
- (b) Pleading to Be Concise and Direct. Each averment of a pleading shall be simple, concise, and direct. A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. All statements shall be made subject to the obligations set forth in § 80-20.2-140.
- (c) Appearance. Whenever it appears by suggestion of the parties or otherwise that the agency lacks jurisdiction of the subject matter, the agency shall dismiss the action.
- (d) Construction of Pleadings. All pleadings shall be construed as to do substantial justice.

Modified, 1 CMC § 3806(c).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-150 Pre-hearing Procedure; Formulation of Issues, Etc.; Settlement Negotiations

- (a) In any action, the agency may in its discretion or upon the request of any party to the litigation direct the attorneys for the parties to appear before it for a conference to consider simplification of the issues; the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; the limitation of the number of expert witnesses; or such other matters as may aid in the disposition of the action, to include an expedited period of discovery.
- (b) The agency shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice. The agency in its discretion may establish by rule a pre-hearing calendar on which actions may be placed for consideration as above provided.

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

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Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 80-20.2-155 Depositions and Discovery

Following the commencement of an agency case or a labor case, the Chief or his designee, the respondent, the complainant, or the employee on whose behalf the Chief or his designee is acting, may take discovery by depositions upon oral examination or written questions; production of documents or things; or physical and mental examinations pursuant to § 80-20.2-160. Unless provided otherwise by the agency, the parties will, in good faith, attempt by stipulation to provide that depositions, if necessary, will be taken before any qualified person, at any reasonable time or place and upon reasonable notice.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-160 Depositions; Document Production; and Examinations

(a) **Discovery Methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; production of documents or things; or physical and mental examinations.

(b) **Depositions upon Oral Examination.** After commencement of the action and following a good faith attempt to stipulate to a deposition schedule, any party may take the testimony of any party, to include those who act in the official capacity of a party, by deposition upon oral examination.

(1) **Notice of Examination.** A party desiring to take the deposition of any party upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(2) **Non-stenographic Recording.** The testimony at a deposition may be recorded by other than stenographic means. In such a case, the notice of taking the deposition shall state the manner of recording and the methods and means of transcribing the testimony into written form to assure that the recorded testimony will be accurate and trustworthy. The party calling the deposition shall cause the same to be transcribed. The tape recording shall be made available should a question arise as to the accuracy of the written transcription. Any objections, changes made by the witness, signature identifying the deposition, or the statement of the officer that is required if the witness does not sign, or the certification of the officer shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

(3) **Production of Documents and Things.** The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition.

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(4) Deposition of Organization. A party may in his notice and in a subpoena name as a party deponent a private corporation or a partnership or association and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth for each person designated, the matters on which he will testify. A subpoena shall advise the party deponent of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

(5) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(c) Depositions upon Written Questions.

(1) Service Questions; Notice. After commencement of the action and following a good faith attempt to stipulate to a deposition schedule, any party may take the testimony of any party, by deposition upon written questions. A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(i) The name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; and

(ii) The name or descriptive title and address of the officer before whom the depositions is to be taken. A deposition upon written questions may be taken of a private corporation or a partnership or association in accordance with the provisions of subsection (b)(4).

(iii) Within ten days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within five days after being served with cross questions, a party may serve redirect questions upon all other parties. Within five days after being served with redirect questions, a party may serve recross questions upon all other parties.

(2) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

(3) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(d) Production of Documents or Things.

(1) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, or sample any tangible things which constitute or contain relevant matters which are in the possession, custody or control of the party upon whom the request is served.

(2) Procedure.

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- (i) The request may be served upon any party after commencement of the action and, if necessary, may be accompanied by a subpoena issued by the Chief for the production of documentary evidence at a deposition or at a hearing. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 10 days after the service of the request, or waive any objection to the request.
 - (ii) The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an administrative order with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection.
 - (iii) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (3) Duty to Produce Business Records. Upon the request of a party, the agency shall have the general power to order production of books, papers, documents and records required to be kept by a party by statute or regulation.

- (e) Physical and Mental Examinations.
 - (1) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the agency in which the action is pending may order the party to submit to a physical examination by a physician, or mental examination by a physician or psychologist or to produce for examination the person in his custody or legal control. The order may be made only on petition for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.
 - (2) Report of Examining Physician or Psychologist.
 - (i) If requested by the party against whom an order for an examination is made or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician or psychologist setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The agency, upon petition, may make an order against a party requiring delivery of a report, and if a physician or psychologist fails or refuses to make a report the agency may exclude his testimony if offered at the hearing.
 - (ii) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every

other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(iii) This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition of the physician or psychologist in accordance with the provisions of any other rule.

(3) Definition. For the purposes of this section, a psychologist is a psychologist licensed or certified by a state, District of Columbia, the Commonwealth of the Northern Mariana Islands, or any member country of the Commonwealth of Nations of the United Kingdom.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The original paragraphs of subsection (d)(2) were not designated. The Commission designated subsections (d)(2)(i) through (iii).

§ 80-20.2-165 Discovery Scope and Limits

(a) Discovery Scope and Limits. Unless otherwise expanded by agency order in accordance with the rules in this subchapter, the scope of discovery is limited as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of parties; to include officers, directors, managing agents of a party organization, or other persons which have the consent of the organization to testify on its behalf, having knowledge of any discoverable matter.

(2) Limitation. The frequency or extent of use of the discovery methods set forth in subsection (a)(1) shall be further limited by the agency if it determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(3) Trial Preparation: Materials.

(i) Subject to the provisions of subsection (a)(2) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (a)(1) of this section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has a clear and substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the

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materials by other means. In ordering discovery of such materials when the required showing has been made, the agency shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(ii) A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. For purposes of this subsection, a statement previously made is:

(A) A written statement signed or otherwise adopted or approved by the person making it, or

(B) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Hearing Preparation: Experts. Discovery of facts known and opinions held by experts qualified before the hearing in which the expert is expected to testify, are to be disclosed at least five days prior to the hearing in which the expert is expected to testify.

(b) Protective Orders.

(1) Upon petition by a party and for good cause shown, the agency may make any order which is required to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(iv) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.

(2) If the petition for a protective order is denied in whole or in part, the agency may, on such terms and conditions as are just, order that any party provide or permit discovery.

(c) Supplementation of Responses. A party who has responded to a request for discovery with a response when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information which shows his response was incorrect when made, or he knows that the response though correct when made is no longer true and the circumstances indicate that a failure to amend the response is in substance a knowing concealment.

(d) Discovery Conference.

(1) At any time after commencement of an action the agency may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The agency shall do so upon petition by the attorney for any party if the petition includes:

- (i) A statement of the issues as they then appear;
 - (ii) A proposed plan and schedule of discovery;
 - (iii) Any limitations proposed to be placed on discovery;
 - (iv) Any other proposed orders with respect to discovery; and
 - (v) A statement showing that the attorney making the petition has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the petition. Each party and his attorney are under a duty to participate in good faith in the framing of discovery if a plan is proposed by the attorney for any party. Notice of the petition shall be served on all parties. Objections or additions to matters set forth in the petition shall be served not later than seven days after service of the petition.
- (2) Following a discovery conference, the agency shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended upon a petition showing good cause.
- (3) Subject to the right of a party who properly petitions for a discovery conference to prompt convening of the conference, the agency may combine the discovery conference with a pre-trial hearing authorized by § 80-20.2-150.
- (e) Signing of Discovery Requests, Responses, and Objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is not in furtherance of a claim or defense that is frivolous, without merit, or in bad faith. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.
- (f) Persons Before Whom Depositions May Be Taken. Within the Northern Mariana Islands, the United States, the Trust Territory of the Pacific Islands, or a territory or insular possession subject to the dominion of the United States, or in foreign countries, depositions shall be taken on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the laws of the Northern Mariana Islands or of the United States.
- (g) Examination and Cross Examination; Record of Examination; Oath; Objections. Examination and cross- examination of witnesses may proceed as permitted at the hearing under the provisions of the Administrative Procedure Act [1 CMC §§ 9101, et seq.]. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or by

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audiotape or videotape. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in the sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(h) **Petition to Terminate or Limit Examination.** At any time during the taking of the deposition, on petition of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the agency may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided within the ambit of subsections (a)(2)(i)-(iii) and (b)(1)-(b)(4). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a petition for an order. The provisions of § 80-20.2-140 apply to the award of expenses incurred in relation to the petition.

(i) **Submission to Witness; Changes, Signing.** When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill and cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed.

(j) **Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.**

(1)(i) The officer shall certify on the deposition that a witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the agency, he shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "deposition of (here insert name of witness)" and shall promptly file it with the agency in which the action is pending.

(ii) Documents and things produced for inspection during the examination of the witness, shall, upon request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, yet if the documents or thing produced for inspection cannot be annexed to the deposition it shall be made available for

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the requesting party for inspection and or copying at a reasonable place and at reasonable times.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(k) **Failure to Attend; Expenses.**

If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the agency may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The original paragraphs of subsections (a)(3), (b), (d), and (j)(1) were not designated. The Commission designated subsections (a)(3)(i) and (ii), (b)(1) and (b)(2), (d)(1) through (d)(3), and (j)(1)(i) and (ii).

In subsection (j)(1), the Commission deleted the repeated phrase "record of the."

§ 80-20.2-170 Use of Depositions; Failure to Make Discovery

(a) **Use of Depositions.** At a hearing, any part or all of a deposition, so far as admissible under the Administrative Procedure Act [1 CMC §§ 9101, et seq.] as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness, or for any other purpose permitted by the Administrative Procedure Act.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, managing agent, or a person designated to testify on behalf of a private corporation, partnership or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a party may be used by any party for any purpose if the agency finds:

(i) That the witness is dead; or

(ii) That the witness is out of the Northern Mariana Islands, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

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(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of administrative efficiency and with due regard to the importance of presenting the testimony of witnesses orally in agency proceedings, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(b) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer whom it is to be taken is waived unless made before the taking of the deposition begins or as soon as thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(i) Objections to the competency of a deponent or prospective deponent or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at the time.

(ii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(iii) Objections to the form of written questions are waived unless served in writing upon the party propounding them within five days after service of the questions.

(4) As to Completion of Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with are waived unless served in writing upon the party noticing the deposition within seven days after service of the transcription.

(c) Petition for Order Compelling Discovery. A party upon reasonable notice to other parties and all persons affected thereby, may petition for an order compelling discovery as follows:

(1) Application. An application for an order compelling discovery may be made to the agency.

(2) Petition.

(i) If a party deponent fails to answer a question propounded or submitted under § 80-20.2-160, or a corporation or other entity fails to make a designation under § 80-20.2-160(b)(4), or if a party, in response to a request for inspection submitted under § 80-20.2-160(b)(3), fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may petition for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the

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request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(ii) If the agency denies the petition in whole or in part, it may make such protective order as it would have been empowered to make on a petition made pursuant to § 80-20.2-165(b).

(A) Evasive or incomplete answer. For purposes of subsection (c) an evasive or incomplete answer is to be treated as a failure to answer.

(B) Award of expenses of petition. If the petition is granted, the agency shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the petition or the party or attorney advising such conduct or both of them to pay to the petitioning party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the agency finds that the opposition to the petition was substantially justified or that other circumstances make an award of expenses an impairment to administrative efficiency.

(iii) If the petition is denied, the agency shall, after opportunity for hearing, require the petitioning party or the attorney advising the petitioning party or both of them to pay to the party who opposed the petition the reasonable expenses incurred in opposing the petition, including attorney's fees, unless the agency finds that the making of the petition was substantially justified or that other circumstances make an award of expenses an impairment to administrative efficiency.

(iv) If the petition is granted in part and denied in part, the agency may apportion the reasonable expenses incurred in relation to the petition among the parties and persons in a just manner.

(d) Failure to Comply with Order.

(1) If a party deponent fails to be sworn or to answer a question after being directed to do so by the agency, the failure may be considered a contempt of the agency and any permissible adverse inference may be drawn therefrom.

(2) If a party or an officer, director, or managing agent of a party or a person designated under § 80-20.2-160(b)(4) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (c) if this section or if a party fails to obey an order entered under § 80-20.2-165(b), the agency in which the action is pending may make such orders in regard to the failure as are necessary to aid in administrative efficiency, and among others the following:

(i) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering an order of default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of the agency the failure to obey any orders, except an order to submit to a physical or mental examination, and any permissible adverse inference may be drawn therefrom;

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(v) Where a party has failed to comply with an order under § 80-20.2-160(e)(1) requiring him to submit another to a physical or mental examination, such orders as are listed in subsection (d)(2)(i)-(iii), unless the party failing to comply shows that he is unable to produce such person for examination.

(3) In lieu of any of the foregoing orders or in addition thereto, the agency shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the agency finds that the failure was substantially justified or that the other circumstances make an award of expenses an impairment to administrative efficiency.

(e) Failure for Party to Attend at Own Deposition or Respond to Request for Inspection.

(1) If a party or an officer, director, or managing agent of a party designated under § 80-20.2-160(b)(4) to testify on behalf of a party fails:

(i) To appear before the officer who is to take his deposition, after being served with a proper notice; or

(ii) To serve a written response to a request for inspection submitted under § 80-20.2-160(b)(3), after proper service of the request, the agency in which the action is pending on petition may make such orders in regard to the failure as are necessary to aid in administrative efficiency, and among others it may take any action authorized under subsection (d)(2)(i)-(iii). In lieu of any order or addition thereto, the agency shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the agency finds that the failure was substantially justified or that other circumstances make an award of expenses an impairment to administrative efficiency.

(2) The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by § 80-20.2-165(b).

(f) Failure to Take Part in the Framing of a Discovery Plan. If a party or his attorney fails to participate in a good faith attempt to stipulate to a deposition plan as is required by § 80-20.2-155, the agency may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The original paragraphs of subsections (c)(2) and (e) were not designated. The Commission designated subsections (c)(2)(i) through (iv) and (e)(1) and (e)(2). The Commission also designated subsection (d)(3).

In subsection (d)(2), the Commission changed "order" to "orders" and corrected the spelling of "administrative" to correct manifest errors.

§ 80-20.2-175 Subpoenas

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- (a) For Attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the agency, shall state the name of the agency and the title of the action, and shall command each person to whom it is directed to attend a hearing and give testimony at a time and place therein specified. The hearing officer as may be appointed by the Director, shall issue a subpoena for the attendance of witnesses at a hearing, and the Chief may issue a subpoena for the production of documentary evidence at a deposition or at a hearing.
- (b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or records designated therein; but the agency, upon petition made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may
- (1) Quash or modify the subpoena if it is unreasonable and oppressive or;
 - (2) Condition denial of the petition upon the advancement by the person in whose behalf the subpoena is issued, with the exception of the Chief or his designee, the reasonable cost of producing the books, papers, documents, or records.
- (c) Service.
- (1) A subpoena may be served by the Chief or his designee in an agency case, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.
- (i) The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by § 80-20.2-160, but in that event the subpoena will be subject to the provisions of a petition pursuant to subsection (b) of this section and subject to the proscriptions of § 80-20.2-165(a)(2)(i)-(iii) and (b)(1)-(b)(4).
 - (ii) The person to whom the subpoena is directed may, within seven days after the service thereof, or on or before the time specified in the subpoena for compliance if such time is less than seven days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the agency. The party serving the subpoena may, if objection has been made, petition upon notice to the deponent for an order at any time before or during the taking of the deposition.
- (2) A party deponent may be required to attend an examination only on the island wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the agency.
- (d) Subpoena for a Hearing. At a request of any party, a subpoena for the attendance of any witness at a hearing shall be issued by the Chief or his designee or an administrative hearing officer. A subpoena requiring the attendance of a witness at a hearing may be served anywhere within the Northern Mariana Islands.

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(e) Contempt. Failure by a person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the agency from which the subpoena issued, and a permissible adverse inference may be drawn therefrom.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The Commission designated subsection (c)(1).

In subsection (c)(1)(ii), the Commission corrected the spelling of "seven."

§ 80-20.2-180 Sureties

Execution of Bond. The Director shall provide by regulation the necessary prerequisites for the acceptance of a bond. Upon fulfillment of these prerequisites, the Chief shall accept such a bond if the bond or similar undertaking is executed by the surety or sureties alone.

History: Amdts Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Amdts Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-185 Security; Proceedings Against Sureties

Whenever, by statute or regulation, a bond is required and security is given in the form of a bond with one or more sureties, each surety submits himself to the jurisdiction of the agency and irrevocably appoints the Director as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion by the agency or a prevailing complainant in a labor case without the necessity of an independent action. The motion and such notice of the motion as the agency prescribes may be served on the Director, who shall forthwith mail copies to the sureties if their addresses are known.

Modified, 1 CMC § 3806(f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

§ 80-20.2-190 Translators

In any agency or labor case which may require testimony to be translated in a language other than Chamorro, Carolinian, English or the predominant language of the Republic of the Philippines, the party who anticipates producing such testimony shall provide for the translation at his own expense.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The Commission corrected the spelling of "Philippines."

§ 80-20.2-195 Preparation of Transcripts of Court Proceedings for Appellate and Other Purposes

- (a) Upon the request of any party for a transcript of any proceedings in Labor, aside from the transcription of a proceeding for the purposes of judicial review, the agency, or the parties may transcribe the proceedings. If the agency transcribes the proceedings, the party requesting the transcript shall receive the transcription upon paying the fee established by regulation.
- (b) In the case of transcripts needed for administrative appeals or further agency proceedings, and in the event one of the parties elects to transcribe the proceedings, it shall be the sole responsibility of the party requesting the transcript to assure that the transcript is completed, certified, and returned to the agency within the time established by the agency, and any extensions thereof, and to pay for the transcription costs.
- (c) Should the party requesting the transcript fail to procure the transcript by the ordered return date, and any reasonable extensions thereof, any opposing party may petition the agency to dismiss the party's action or proceeding for which the transcript was ordered.
- (d) In the event an appellate transcript is sought for judicial review in the Commonwealth Superior Court or any successor forum, the applicable Commonwealth statute and the Commonwealth Rules of Civil Procedure shall govern the procedures concerning the production of the transcript.
- (e) If any party or the agency has any reason to doubt or question the accuracy of any transcription produced pursuant to this section, the original tape(s) shall be made available to ascertain the accuracy of the transcription. In the case of any conflict, the audio on the original tape(s), shall prevail.
- (f) In the event a person designated to do the transcription work dies, becomes incapacitated, or certifies to the court that for other reasons they are unable to complete the transcript within the time designated by the agency, it is the responsibility of the party ordering the transcript to notify the agency and opposing counsel as soon as such death, incapacity, or inability is discovered.
- (g) Extensions of time to prepare the transcript shall be given upon written request and for good cause being shown.
- (h) The agency shall confer with the party's counsel or the party if not represented by counsel and any opposing party and/or counsel as well as the person designated by the party to transcribe the cassette tape(s) into written form. As a result of the conference and if the agency is satisfied that an accurate transcript can be prepared, the agency will order a return date for the transcript, giving due consideration to available reliable transcribing services, and necessary copies if it is needed for an appeal or further agency proceedings.

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(i) Any transcript prepared shall be in a form acceptable to the agency. Any such transcript shall be accompanied by a written certification of the person actually doing the transcribing work, which certification shall be substantially in the following form:

“I, _____,
(Name)

did the actual transcription work for the above proceedings in the case of

(Title of Agency Case or Labor Case and Case #).

In performing this function I had possession of the duplicate/original (Circle One) cassette tape(s) provided to me by _____

(Name of Party)

and converted the audio content thereon to the above written form to the best of my ability without any alteration, revision or editing. If there are any places in the above transcript which are noted as “unintelligible,” “phonetic,” or “?”, I was unable to accurately determine that portion of the taped proceedings.

I further state that I have no personal interest in the above proceedings, nor does any employee of mine have any such interest. I have not been paid any bonus or gratuity for my work by anyone and have charged only what would be my normal charges.

I hereby declare under penalty of perjury that the above is true and correct.
Executed at Saipan, Northern Mariana Islands,

_____.
(Date)

Signature of Transcriber

Modified, 1 CMC § 3806(d), (f).

History: Adopted 16 Com. Reg. 12480 (Oct. 15, 1994); Proposed 16 Com. Reg. 12397 (Sept. 15, 1994).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (i).