



COMMONWEALTH RULES OF PROCEDURE FOR ADMINISTRATIVE APPEALS

COMMONWEALTH SUPREME COURT

EFFECTIVE DATE SEPTEMBER 07, 2010



E-FILED
CNMI SUPREME COURT
E-filed: Sep 7 2010 3:56PM
Clerk Review: Sep 7 2010 4:04PM
Filing ID: 33055619
Case No.: ADM-Administrative Orders
Lynette Camacho

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**IN RE THE COMMONWEALTH RULES
OF PROCEDURE FOR ADMINISTRATIVE APPEALS.**

JUDICIAL ADMINISTRATIVE ORDER NO. 2010-ADM-0003-RUL

On July 6, 2010, the attached *Rules of Procedure for Administrative Appeals* were submitted to the Seventeenth Northern Mariana Islands legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the Rules.

IT IS HEREBY ORDERED that the *Rules of Procedure for Administrative Appeals* are permanent Rules pursuant to Article 4, § 9 of the N.M.I. Constitution.

Dated this 7th day of September, 2010.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice

NORTHERN MARIANA ISLANDS RULES OF PROCEDURE FOR ADMINISTRATIVE APPEALS

Rule 1. Scope of Rules, Title, Authority, Forms, Time Computation, and Definitions.

(a) *Scope of Rules.* These rules govern the procedures in the Superior Court for judicial review of final orders or decisions from an agency in contested cases that are governed by the Administrative Procedures Act, 1 CMC §§ 9101-15.

(b) *Title.* These rules are to be known as the Northern Mariana Islands Rules of Procedure for Administrative Appeals and shall be cited as “NMI R. P. Admin. App.”

(c) *Authority.* These rules are promulgated pursuant to Article IV, Section 9 of the Constitution of the Northern Mariana Islands.

(d) *Forms.* Unless otherwise noted, all forms contained in the Appendix of Forms are maintained by the Supreme Court and may be modified by the Supreme Court at any time without notice.

(e) *Time Computation.* The time for filing documents under these rules shall be computed according to the guidelines set forth in Commonwealth Rule of Civil Procedure 6(a).

(f) *Definitions.* The following definitions are intended to supplement those provided in 1 CMC § 9101, and to provide clarification for terms used throughout these procedural rules. To the extent that a definition herein conflicts with a provision of the Administrative Procedures Act, the definition in the Act shall govern.

(1) “Appeal” means the procedure by which a case is brought from an agency to a trial court.

(2) “Certificate of Service” means the statement signed by a party or counsel for a party describing the date and manner of serving a particular pleading on the opposing party or counsel for the opposing party.

(3) “Contested case” means a proceeding before an agency in which the legal rights, duties, interests or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing, but does not include cases in which an agency issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and shall not include agency rule making or applications for extraordinary remedies.

(4) “Petition” means the original pleading seeking judicial review by the trial court of a final order or decision of an agency in a contested case.

(5) “Petitioner” means the party who files a petition for judicial review.

(6) “Respondent” means the party against whom the appeal is taken and other necessary parties.

(7) “Trial court” means the Commonwealth Superior Court.

Rule 2. Commencement of Appeal.

(a) *Petition.* An appeal from an agency final order or decision in a contested case is commenced by

filing a petition for judicial review in the office of the clerk of the Superior Court. Only issues set forth in the petition or fairly comprised therein will be considered by the trial court on review.

(b) *Time for Petition:*

(1) A petition shall be filed from an agency decision or final order in a contested case within thirty days of the entry of that order as provided in 1 CMC § 9112 (b), unless otherwise specified by statute.

(2) Upon filing of the petition, the clerk shall set a case management conference before the trial court at least 60 days, but no more than 90 days, from the filing date of the petition.

(c) *Form of Petition.* The petition shall state the following in the order indicated:

(1) Case title as it was before the agency to the extent possible. The title shall include the names of the agency and the parties to the proceeding regardless of whether the title of the agency proceeding included the names of the parties, and the administrative case number, if any.

(2) The type of proceeding and nature of the ruling by the agency.

(3) A concise statement of the facts of the case and the facts showing why the petitioner is a person or entity aggrieved by the decision.

(4) The grounds upon which the petitioner claims that the decision should be reversed or modified.

(d) *Agency Determination.* The petition shall be accompanied by a copy of the decision, order, rule or ruling from which judicial review is sought.

(e) *Docketing Statement.* The petition shall be accompanied by a completed docketing statement in the form contained at Appendix A to these rules.

(f) *Service of Petition.* The petitioner shall serve a copy of the petition and the docketing statement upon the agency, the Office of the Attorney General, and all other parties and counsel of record who participated in the proceeding before the agency either by personal service or by service in accordance with the Commonwealth Rules for Electronic Filing and Services. If the petitioner serves the agency and parties by personal service, aside from specific deadlines herein, the service guidelines set forth in the Commonwealth Rules of Civil Procedure govern the procedure by which service shall be made and any remedial measure that may be sought. Regardless of any rule to the contrary, the certificate of service shall show proof of service on the agency whose final decision, order, rule or ruling is involved, unless the agency is the petitioner, even if the agency is not a party. No summons shall be issued or served in connection with the petition and docketing statement. Service upon a prosecuting attorney or the Office of the Attorney General alone is not a substitute for service upon the agency. Service must be made no later than twenty days after filing the petition.

(g) *Motions.* All motions are governed by the Commonwealth Rules of Civil Procedure except where the rules contained herein conflict or state otherwise, in which case these rules govern.

(1) *Motion to Dismiss.* Within twenty days from the date of service of a petition on a person or entity, a party may file a motion to dismiss for failure to exhaust administrative remedies or any other alleged jurisdictional defect. If the matter is dismissed, the trial court shall grant petitioner ten days within

which to amend the petition. If petitioner fails to do so within the time allotted, the matter shall be dismissed with prejudice. However, if the trial court specifically finds that an amendment cannot cure the jurisdictional defect, the matter may be immediately dismissed with prejudice.

(2) *Other Motions.* Other motions may be considered on a case by case basis, except that motions for summary judgment may not be filed.

(3) *Hearing on the Motion.* Oral arguments will be heard on motions unless the court determines that it is unnecessary because the facts and legal issues are adequately presented in the briefs and the decisional process would not be significantly aided by oral argument.

(h) *Service and Notice after Initial Petition.* All filings related to the review proceedings made after the petition is filed need only be made on the petitioner and other named parties to the judicial review.

(i) *Appeal Bond.* No appeal bond shall be required to effectuate an appeal of an agency decision or final order in a contested case.

Rule 3. Stay of Decision Pending Appeal.

(a) *Application for Stay.* The filing of the petition shall not stay enforcement of an agency's final order or decision. The petitioner may file a written motion for stay with the trial court after the petition has been filed.

(b) *Form of Application for Stay.* An application for stay filed in the trial court shall be made by written motion stating the reasons for the relief requested and the grounds for the underlying appeal.

(c) *Service of Application for Stay.* Service of a motion for stay shall be made in the same manner required by rules 2(f) and (i) of these rules.

(d) *Response to Application for Stay.* The respondent may file a written response to a motion for stay within seven days of receipt of the motion.

(e) *Hearing on Application for Stay.* In the event a party files a motion to stay the action of the administrative agency in the trial court, unless otherwise directed by statute, the trial court may hold a hearing within fifteen days. The standard for granting a stay shall be that standard which governs such motions in civil matters.

Rule 4. Designation and Filing of Record.

(a) Upon filing of the petition, the petitioner shall designate those parts of the record deemed material to the questions presented in the appeal, including the relevant proceedings to be transcribed, and serve notice of such designation upon all parties to the appeal. If the petitioner has not designated the entire record, the respondent(s) shall have ten days to file a cross-designation of additional portions of the record for review. Additionally, the parties may, by written stipulation, jointly designate the parts of the record to be prepared for appeal.

(b) Within thirty days after the filing of the petition and docketing statement, or within such further time as the trial court may allow, the agency shall file a certification of record stating that the record, including all necessary transcripts and exhibits, is complete for purposes of the appeal.

- (1) If a party who is not the agency finds it necessary to designate portions of testimony from the administrative hearing as part of the record, the requesting party shall make a showing of good cause and seek permission from the trial court to order the requested testimony from the agency. Upon approval by the trial court, the petitioner shall submit an adequate number of blank audio cassette tapes, compact discs, or other media approved by the agency to the agency within fourteen days after the court grants permission to do so. Upon receipt of the blank audio cassette tapes or compact discs from the petitioner, the agency shall, within fourteen days, transfer the recorded testimony from the administrative hearing onto the tapes or discs and make them available to the petitioner. Upon receipt of the tapes or discs from the agency, the petitioner shall, within thirty days, transcribe the relevant portions of the testimony, file them with the trial court, and notify all parties that the transcript has been filed.
- (2) If the agency finds it necessary to designate additional portions of testimony from the administrative hearing as part of the record, it shall seek permission from the trial court to submit the transcribed portions of testimony. Upon a showing of good cause and after approval by the court, the agency must submit the transcripts to the trial court within thirty days after the filing of the petition and docketing statement.
- (3) Upon a showing of good cause by either party, the trial court may modify the time to submit all or parts of the designated record.

(c) The reasonable expense of preparing such record shall be taxed as a part of the costs of the appeal, unless otherwise provided by law. Upon order of the trial court, the petitioner shall provide security for costs satisfactory to the trial court. If both parties appeal, the costs shall be shared equally. Unless otherwise prohibited by statute, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the trial court for the additional costs involved.

(d) Upon demand by any party to the appeal, the agency shall furnish a copy of the designated record. In the event such record is not filed with the trial court within the time provided for in this section, the petitioner may apply to the trial court to have the case docketed, and the court shall order such record filed. The trial court may also independently docket the case when the circumstances warrant such action.

Rule 5. Briefs.

(a) Within thirty days after the record is filed with the trial court, the petitioner shall file a brief. The brief shall contain:

- (1) a jurisdictional statement, including the basis for the trial court's subject matter jurisdiction, the filing dates establishing the timeliness of the appeal, and an assertion that the appeal is from a final order or decision of the agency;
- (2) a statement of the issues presented for review;
- (3) a statement of facts and procedural history relevant to the issues presented for review;
- (4) a separate legal argument for each issue presented for review, including the legal support upon which the party bases its contentions; and
- (5) a short conclusion stating the precise relief sought.

(b) The respondent shall file any brief in opposition within twenty days after receipt of the petitioner's brief. The brief need not duplicate subsections (a)(2), (3) and (4) if the respondent does not disagree with the assertions contained in the petitioner's brief.

(c) The petitioner may file a reply brief within ten days after receipt of the respondent's brief.

Rule 6. Hearing and Disposition.

(a) The review of the decision shall be conducted by the trial court without a jury and shall only consider evidence which was made part of the record in the proceeding before the administrative agency, unless there are alleged irregularities in the procedure before the agency not shown on the record.

(b) The trial court may, on its own motion, or motion of any party, issue a schedule providing for submission of briefs as provided herein by any party, and may hold oral argument, or may issue a ruling on the petition without oral argument.

(c) In the event a party alleges irregularities in the procedure before the agency, the trial court may hold a hearing and consider other testimony and evidence solely on that issue. A request for oral argument or an evidentiary hearing on matters not in the record below shall be made by the petitioner along with the filing of the petition. Respondent may request, and respond to petitioner's request, for oral argument or an evidentiary hearing by motion within eleven days of petitioner's request. The trial court shall rule on the request within thirty days of the petition, and the granting thereof is at the trial court's discretion.

(d) A final judgment shall be entered in an administrative appeal within six months of the filing of the Petitioner's Reply Brief or if none, within six months of the filing of the final brief.

(e) Trial court remedies. The trial court may:

(1) order any remedy provided for in 1 CMC § 9112; or

(2) order any other remedy appropriate to the facts and circumstances of a particular appeal, including but not limited to remanding the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure and the error cannot be corrected in the trial court proceedings.

(f) If the trial court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(g) The judgment of the trial court shall be final unless reversed, vacated or modified on appeal to the Commonwealth Supreme Court in accordance with 1 CMC § 9113.

Rule 7. Suspension of Rules.

(a) On its own for good cause or by a party's motion, and in the interests of fairness or judicial economy, the trial court may suspend or modify any provision of these rules in a particular case and order proceedings as it directs.

Appendix of Forms

Form 1.Docketing Statement

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ADMINISTRATIVE APPEALS DOCKETING STATEMENT

Name of case and case number as they appear on the agency final order:

Agency:

TIMELINESS OF APPEAL

Date of entry of order appealed from:

Date of filing of petition for appeal:

FINALITY OF ADMINISTRATIVE ORDER

Is the order appealed from a final decision on the merits as to all issues and parties?

G Yes G No

If not, what type of order are you appealing?

CASE INFORMATION

State briefly the nature of the case, the relief sought and the outcome at the agency (attach an additional sheet if necessary).

Does the agency decision contain factual (evidentiary) errors? G Yes G No

If so, please list the evidentiary errors briefly (attach an additional sheet if necessary).

Does the agency order contain legal errors (errors of law)? G Yes G No

If so, please list the errors of law briefly (attach an additional sheet if necessary).

CASE MANAGEMENT INFORMATION

Name of Party filing this appeal (petitioner):

Attorney filing the appeal on behalf of the petitioner:

Do you wish to make an oral presentation to the court? G Yes G No

List counsel for each party to the case at the agency. If a party is not represented by counsel, provide the requested information for that party. Include name, firm name, address and telephone number (attach an additional sheet if necessary).

If there are multiple petitioners add their names on an additional sheet, accompanied by a certification that all petitioners concur in this filing.

Signature: _____

Printed Name: _____

CNMI Bar Number (if applicable): _____

Date: _____

Administrative Appeal Docketing Statement Instructions:

1. A docketing statement must be filed for every administrative agency case appealed to the Superior Court.
2. Please attach additional pages, if any, containing extended answers to questions on this form, a copy of the agency final order or decision from which the appeal is taken, and a certificate of service, verifying that you have served the petition and this docketing statement upon all of the parties to the agency proceeding, the agency itself and the Office of the Attorney General.
3. The completed administrative appeal docketing statement must be served upon all parties to the agency proceeding, including those parties not represented by counsel, the agency itself, and the Office of the Attorney General. The administrative appeal docketing statement must be in the form approved by the Superior Court or in a substantially similar format.
3. Only one administrative appeal docketing statement should be filed for each petition for appeal. If more than one party joins in a petition for appeal, they must select one party who is responsible for filing the administrative appeal docketing statement.
4. The administrative appeal docketing statement should briefly address all of the points or issues to be raised in the appeal. However, it is not the appropriate document for making arguments or motions. Conclusory statements, such as “the decision of the agency is not supported by the law or the facts,” are unacceptable.
5. While every effort should be made to include in the administrative appeal docketing statement all issues to be presented to the trial court, the omission of an issue from the statement will not affect the jurisdiction of the trial court to consider all issues presented by the appeal.
6. If another party to the proceeding believes that the administrative appeal docketing statement is inaccurate or incomplete, that issue should be addressed at the first appearance before the trial court.