

# PROPOSED AMENDMENTS TO THE HEARING EXAMINER’S RULES OF PROCEDURE

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Rules amended:	3.3 Motions 4.7(b) Pre-Filing of Evidence in Appeals
Authority:	SCC 2.02.090 (2013)
Comment Period:	Closed 15 July 2023
Effective Date of Amendment:	15 August 2023

The Hearing Examiner solicited comments on proposed changes to the Hearing Examiner’s Rules of Procedure. Comments and final text of the proposed amendments are below. The amendments will take effect on August 15, 2023. Pursuant to SCC 2.02.090 (2012), the amended rules remain in effect unless rejected or modified by County Council.

## 3.3 Motions

### Purpose

The current rules do not provide a standard period for responding and replying to non-dispositive motions (“motions”). For example, the current rule allows a non-dispositive pre-hearing motion to be filed 60 days before the hearing but does not require a response until five days before the hearing. The proposed amendment establishes deadlines for responses (five business days after service of the motion) and replies (three business days after service of the response). The amendment also proposes non-substantive editing changes for improved clarity.

The Office of Hearings Administration received one comment on the proposed amendment, expressing concern that the rule could be construed to prohibit principal parties from objecting to the introduction of evidence or testimony during a hearing. The Hearing Examiner agrees, and revised the amendment to clarify the amended rule should not be interpreted to preclude objections to evidence or testimony during a hearing by adding the sentence, “This rule does not preclude principal parties from objecting to evidence or testimony offered during the hearing.”

### Amended Rule 3.3 (Clean Text)

#### 3.3 Motions

- b) Other Pre-Hearing Motions. Except as otherwise provided in these Rules or a scheduling order, non-dispositive pre-hearing motions may be filed in writing by any principal party up until the tenth (10<sup>th</sup>) business day prior to the hearing. Motions shall be concurrently served on all principal

parties as provided by Rule 1.8 (notice). Absent a showing of good cause, any motion made after the time required in this Rule shall be denied as untimely. Failure to provide notice of a motion to all other parties of record as required by these Rules may be grounds for denial of the motion. A motion to limit the introduction of testimony or other evidence (motion *in limine*) shall be filed within the time limits established in this Rule. This rule does not preclude principal parties from objecting to evidence or testimony offered during the hearing.

- c) Contents. A motion shall provide a concise statement of the relief sought and the factual and legal basis for the motion. The motion may be accompanied by a supporting legal brief. A motion and accompanying brief shall not exceed 10 pages in length without the prior permission of the Hearing Examiner upon a showing of good cause.
- d) Response to a Motion. Any response by a principal party opposing the motion is due five (5) business days after service of the motion, which response shall be served on the moving party and any other principal parties as provided in Rule 1.8 (notice). For good cause shown upon request, the Hearing Examiner may allow additional time for response. A response shall provide a concise statement setting forth the factual and legal basis as to why the motion should not be granted and may be in the form of a legal brief. Responses shall not exceed 10 pages in length without prior permission of the Hearing Examiner upon a showing of good cause. Failure to timely respond to a motion shall constitute a waiver of any objection to the motion.
- e) Reply. The moving party may reply no later than three (3) business days after service of the response which reply shall be served on the responding party and any other principal parties as provided in Rule 1.8 (notice). Replies shall not exceed five pages in length without prior permission of the Hearing Examiner upon a showing of good cause.
- f) Decision. Motions will be decided without oral argument, unless specifically requested by the Hearing Examiner. The Examiner will make every effort to rule on each motion by issuance of a written Order prior to the start of the hearing. However, in some circumstances, such as the late filing of a motion, the Examiner may rule on a motion at the start of the hearing or in the Examiner's written decision. Where efficiency would be served, the Hearing Examiner may consolidate multiple motions for purposes of issuing a single Order.

### Existing Rule 3.3 with Amendment Red-lined

#### **3.3 Motions**

- b) Other Pre-Hearing Motions. ~~A principal party may request a limitation on the introduction of evidence or testimony or other matters through a timely filed motion.~~ Except as otherwise provided in these Rules or a scheduling order, non-dispositive pre-hearing motions may be filed in writing by any principal party ~~any time up until the tenth (10<sup>th</sup>) calendar~~ business day prior to the hearing. Motions shall be concurrently served on all principal parties as provided by Rule 1.8 (notice). ~~by email (unless a principal party previously filed an objection to receiving documents by email), by certified mail with a return receipt requested, or personal service.~~ ~~The opposing party or parties may file a responsive pleading with the Hearing Examiner no later than five (5) days prior to the hearing, which response shall be served on the moving party. A reply may be filed no later than three (3) business days prior to the hearing.~~ Absent a showing of good cause,

any ~~such~~ motion made after the time required in this Rule shall be denied as untimely. Failure to provide notice of a motion to all other parties of record as required by these Rules may ~~also~~ be grounds for denial of the motion. A motion to limit the introduction of testimony or other evidence (motion *in limine*) shall be filed within the time limits established in this Rule. This rule does not preclude principal parties from objecting to evidence or testimony offered during the hearing.

- c) Contents. A motion shall provide a concise statement of the relief sought and the factual and legal basis for the motion. ~~The motion and~~ may be accompanied by a supporting legal brief. A motion and accompanying brief shall not exceed 10 pages in length without the prior permission of the Hearing Examiner upon a showing of good cause.
- d) Response to a Motion. ~~Any response by a principal party opposing the motion is due five (5) business days after service of the motion prior to the hearing, which response shall be served on the moving party and any other principal parties as provided in Rule 1.8 (notice). For good cause shown upon request, the Hearing Examiner may allow additional time for response.~~ A response shall provide a concise statement setting forth the factual and legal basis as to why the motion should not be granted and may be in the form of a legal brief. Responses shall not exceed 10 pages in length without prior permission of the Hearing Examiner upon a showing of good cause. Failure to timely respond to a motion shall constitute a waiver of any objection to the motion. ~~Late responses may be considered at the Examiner's discretion where good cause is shown, if received prior to issuance of a dispositive Order ruling on the motion.~~
- e) Reply. ~~The moving party may reply no later than three (3) business days after service of the response which reply shall be served on the responding party and any other principal parties as provided in Rule 1.8 (notice). A movant may file a reply to the response.~~ Replies shall not exceed five pages in length without prior permission of the Hearing Examiner upon a showing of good cause
- f) Decision. Motions will be decided without oral argument, unless specifically requested by the Hearing Examiner. The Examiner will make every effort to rule on each motion by issuance of a written Order prior to the start of the hearing. However, in some circumstances, such as the late filing of a motion, the Examiner may rule on a motion at the start of the hearing or in the Examiner's written decision. Where efficiency would be served, the Hearing Examiner may consolidate multiple motions for purposes of issuing a single Order.

## **4.7 Mandatory Pre-Filing of Evidence in Appeals**

### **Purpose**

The Hearing Examiner Rule of Procedure 4.7(b) establishes the sequence and timing of exhibit filing in such appeals as animal services notices of violation, solid waste infractions, and code enforcement citations. Rule 4.7(b) currently requires an appellant to submit evidence before the county submits its evidence, despite the burden of proof lying with the county. SCC 30.85.200 (appeals of code enforcement notices of violations) was amended in 2016 to require the party with the burden of proof to submit its evidence first. The proposed amendment aligns Rule 4.7(b) with SCC 30.85.200 to require the party with the burden of proof to file and serve its exhibits first, providing the other party time to consider what rebutting exhibits it

wishes to offer. The last paragraph will be deleted because the Clerk does not mark exhibits from county departments, only from individual hearing participants such as public who comment at land use hearings. The amendment also proposes non-substantive editing changes for improved clarity.

The Office of Hearings Administration did not receive any comments on this proposed amendment.

#### **Amended Rule 4.7(b) (Clean Text)**

4.7(b) Time for Filing. No later than 21 calendar days prior to the date of the scheduled hearing (unless another date has been established by a scheduling order), the party with the burden of proof shall have provided to all other principal parties and to the Office of Hearings Administration pursuant to Rule 1.8 (notice):

1. An original or copy of all evidence that the party desires to enter as exhibits in the appeal record, including photographs and technical or scientific documents, materials, studies, and analyses.
2. A complete list of witnesses;
3. The following information for each person the party expects to call as an expert witness: name, *curriculum vitae* (resume), the subject matter on which the expert is expected to testify, a summary of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion that is expected to be offered.

No later than 14 calendar days prior to the date of the scheduled hearing (unless another date has been established by a scheduling order), the other parties shall have provided the same information to all other principal parties and to the Office of Hearings Administration pursuant to Rule 1.8 (notice).

#### **Existing Rule 4.7(b) with Amendment Red-lined**

4.7(b) Time for Filing. ~~By not~~ No later than 21 calendar days prior to the date of the scheduled hearing (unless another date has been established by a scheduling order at a pre-hearing conference), the ~~appellant(s)~~ party with the burden of proof shall have provided to all other principal parties and to the ~~Examiner's~~ Office of Hearings Administration pursuant to Rule 1.8 (notice):

1. An original or copy of all ~~substantive/technical/scientific documents, materials, studies, analyses, photographs, or other~~ evidence that the party desires to enter as exhibits in the appeal record, including photographs and technical or scientific documents, materials, studies, and analyses.
2. A complete list of witnesses;
3. The following information for each person the party expects to call as an expert witness: name, *curriculum vitae* (resume), the subject matter on which the expert is expected to testify, a summary of the substance of the facts and opinions to which the

expert is expected to testify and a summary of the grounds for each opinion that is expected to be offered.

~~By not~~ No later than 14 calendar days prior to the date of the scheduled hearing (unless another date has been established by a scheduling order at a pre-hearing conference), the Respondent(s) other parties shall have provided the same information to all other principal parties and to the Examiner's Office of Hearings Administration pursuant to Rule 1.8 (notice):

- ~~An original or copy of all substantive/technical/scientific documents, materials, studies, analyses, photographs, or other evidence that the party desires to enter as exhibits in the appeal record;~~
- ~~A complete list of witnesses;~~
- ~~The following information for each person the party expects to call as an expert witness: name, curriculum vitae (resume), the subject matter on which the expert is expected to testify, a summary of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion that is expected to be offered.~~

~~The Clerk will sequentially mark and add each document sequentially and add it to the Exhibit List. Where multiple copies of the same document are received, only one need be marked and catalogued.~~