



**UPPER BIG BLUE NATURAL RESOURCES DISTRICT  
RULES AND REGULATIONS**

**RULE 3: FORMAL PUBLIC HEARINGS**

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## UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

### RULE 3: FORMAL PUBLIC HEARINGS

## RULE 3 CONDUCT OF FORMAL ADJUDICATORY HEARINGS BEFORE THE DISTRICT

### CHAPTER 1 CALLING HEARING

- 01 Within ten (10) days after the initiation of an action necessitating a formal hearing as required by statute or any rules and regulations of the district, the chairman of the board shall set a time and place for said hearing.

### CHAPTER 2 HEARING EXAMINER, HOW CHOSEN

- 01 Formal hearings shall be conducted by a hearing examiner.
- 02 The hearing examiner may be a board member, a member of the District staff or any other person deemed to be knowledgeable in the procedures set out in the rules and the subject matter being considered at the hearing.
- 03 The District board shall expressly designate the person to serve this function.

### CHAPTER 3 NOTICE

- 01 The District shall prepare an official notice setting the time and place of the formal hearing.
- 02 The notice shall contain a general description of the purpose(s) of the hearing.
- 03 This notice shall be sent by certified mail to all parties known to be involved in the subject matter of the hearing and to any parties officially notifying the District of their interests in the hearing not less than ten (10) calendar days prior to said hearing such that they may appear if they deem it necessary or appropriate.
- 04 The District shall cause this notice to be published in a legal or other newspaper of general circulation in the county or counties, district or other area with which the hearing would be concerned not less than ten (10) calendar days prior to said hearing.

### CHAPTER 4 RELATED PROCEEDINGS

- 01 Where two or more proceedings are legally or factually related they may be heard and considered together on a consolidated record.



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#### CHAPTER 5 CONTINUANCE

- 01 Any party who desires a continuance shall notify the District in writing of such desire immediately upon receipt of notice of hearing, or as soon thereafter as facts requiring such continuance come to his or her knowledge, stating in detail the reasons why such continuance is necessary.
- 02 Affidavits may be required in support of such requests.
- 03 For good cause shown, the board may grant such a continuance.
- 04 The board may at any time order a continuance of its own motion.
- 05 All requests for continuance shall be filed prior to the hearing involved.
- 06 Requests for continuance filed subsequent to the opening of any hearing will be considered only if it involves matters unknown to the person requesting a continuance prior to the date of the hearing and which could not have been ascertained prior to said date or other facts, the existence of which would prejudice the hearing and the rights of moving party.

#### CHAPTER 6 PRE-HEARING CONFERENCE

- 01 The board or the hearing examiner shall with adequate notice to the parties thereto, request informal pre-hearing conferences for the purpose of narrowing the issues involved in the dispute and exploring the possibility for a voluntary settlement of the disputed matter between the parties.
- 02 Any agreements or stipulations entered into by the parties or their representatives shall be reduced to writing, signed by the parties or their representatives and made a part of the record of the disputed matter.
- 03 Such agreements or stipulations shall thereafter be subject to review and approval by the board, which upon approval, shall be thereby bound.

#### CHAPTER 7 HEARING EXAMINER'S POWERS

- 01 The hearing examiner will, among other things:
  - 01.01 open the proceedings;
  - 01.02 enter into the record the notice of hearing;
  - 01.03 take appearances;
  - 01.04 act on pleadings not previously filed;
  - 01.05 hear the evidence as provided for in the next chapter;
  - 01.06 rule on motions and objections;
  - 01.07 interrogate any witnesses;
  - 01.08 close the proceedings.
- 02 Examiners have no power to take any action involving a final determination of the proceedings.
- 03 The record in any case shall not be affected by any change of examiners during the conduct of the hearing.



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### CHAPTER 8 ORAL ARGUMENTS

- 01 Ordinarily opening statements and/or oral arguments following the close of the presentation of evidence will be permitted only insofar as such statements and/or arguments relate to the presentation and explanation of evidence.
- 02 The board or hearing examiner may request or permit policy arguments.
- 03 The board will hear oral arguments for rehearing where there is a prior request therefore in writing.
- 04 Unless otherwise ordered by the board or hearing examiner, oral argument will be limited to thirty (30) minutes on each side.

### CHAPTER 9 SUBMISSION OF BRIEFS

- 01 Any party desiring to submit a brief concerning the matter presented at any formal hearing may do so by indicating such desire at the close of said hearing.
- 02 The time in which briefs shall be filed and the number of copies required will be fixed at the close of the hearing by the hearing examiner.
- 03 Submission of briefs may be requested by the board upon their own motion.

### CHAPTER 10 OFFICIAL RECORD OF HEARING

- 01 An official record of any formal hearing conducted pursuant to statute or the rules and regulations of the board shall be preserved in the form taken at the hearing.
- 02 The records shall include all testimony and exhibits presented at the hearing.
- 03 The record may be kept by a District employee or other board appointee unless any party to the hearing requests the use of the district court rules of evidence, in which case such records shall be kept by a court reporter to be procured by the party requesting such formal rules of evidence.
- 04 The record or a copy thereof shall be kept on file in the office of the District.

### CHAPTER 11 HEARINGS, WHEN HELD, DECISIONS MADE

- 01 Hearings may be held by the board during a regularly or specially scheduled meeting.
- 02 Whenever practicable, a decision shall be reached and an order issued if necessary on the same date as the hearing.
- 03 The board may, at its discretion, defer decision on any preceding until a later date.  
03.01 In that event, the district staff shall, at the request of the board, prepare copies of the official record of the hearing and transmit one copy, including copies of exhibits supplied in accordance with Chapter 10 of this rule, to each of the board members by certified mail not less than ten (10) days prior to the date set for the decision.



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#### CHAPTER 12 ORDERS

- 01 All orders and decisions of the board, along with an explanation of the time and requirements for appeal from any such orders or decisions, following the close of any hearings, shall be transmitted to the parties directly involved in the hearing by certified mail.

#### CHAPTER 13 MOTION FOR REHEARING

- 01 Motions for rehearing shall be received within ten (10) days after the receipt of the board's order or decision at the office of the district.

#### CHAPTER 14 BOARD'S POWER TO MAKE INVESTIGATIONS AND CALL HEARINGS

- 01 The board may at any time order the District staff to make a formal or informal investigation into any matter within the jurisdiction of the board.
- 02 Order any hearing which the board is authorized either by law or inherent power to conduct.
- 03 In the event of an investigation, the board may request the attendance of any party. In the event of such request, an order shall be entered requesting the party to appear as a witness, and said order shall:
  - 03.01 set forth the purpose or scope of their appearance;
  - 03.02 contain a statement of the issues involved and any known facts which have or will be recognized by the District;
  - 03.03 state the time and place of the hearing;
  - 03.04 be served upon the witnesses in such manner as provided for notice in Chapter 3 of this rule.
- 04 In all investigation proceedings, neither the board nor the District staff shall be bound by any strict rules of procedure except that any party called to appear shall have the right to be heard on any point raised in the investigation.



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#### CHAPTER 15 EVIDENCE AND EXHIBITS

- 01 Evidence will ordinarily be received in the following order:
  - 01.01 complainants including district staff or board member;
  - 01.02 defendants; and
  - 01.03 rebuttal.
- 02 In general, all evidence which is substantial and satisfactory, relevant, reasonable, and persuasive, though it may be technically admissible under the rules of evidence governing Nebraska civil procedure will be admissible before the board.
- 03 Any materials intended for inclusion in the record as exhibits shall be supplied to the District in a quantity capable of providing each board member with a copy in addition to the official record copy.
- 04 When any exhibit consists of three (3) or more pages, each page shall be consecutively numbered at the bottom.
- 05 Any detailed or complex exhibits consisting of more than three (3) pages or with several distinct parts shall be prefaced with an index.
- 06 Each exhibit shall be consecutively marked and numbered.
- 07 Any party desiring to introduce into evidence any part or parts of the official District files shall obtain copies thereof in advance of the hearing.
- 08 Any party proposing to introduce exhibits into evidence in any proceeding before the board shall furnish copies of the exhibits to said opposing party.
- 09 Upon proof of any failure to supply the said exhibit, it will be excluded from the hearing unless good and sufficient reason be shown by the party offering the same for the failure to furnish said exhibit to the other parties.
- 10 Relevant portions of books, papers or documents, shall be plainly designated and distinguished from all irrelevant portions before the relevant material in the book, paper or document is voluminous so as to encumber the record, the book, paper or document may be marked for identification and the relevant material read into the record.
- 11 Upon direction of the chairman of the board or the hearing examiner, a true copy of the relevant matter may be received as an exhibit in place of the original; PROVIDED THAT, copies are delivered to all parties of record and such parties are afforded an opportunity to examine the original from which the same may have been taken.
- 12 Where it may become necessary to offer exhibits in evidence which have not been specified on the list offered by the party proposing to use the same, the chairman of the board or the hearing examiner may authorize their introduction if good cause be shown.
- 13 The presiding member of the board or hearing examiner may exclude evidence which is cumulative or repetitious.
- 14 The presiding member of the board or hearing examiner may authorize any party to furnish and serve late filed exhibits within a specified time after the close of the hearing.



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#### CHAPTER 16 FAILURE OF PARTY TO APPEAR

- 01 All pre-hearing procedures in a complaint proceeding having been performed pursuant to these rules and regulations, the board may find against any party not appearing either in person or through his or her representative on the date set for the formal hearing.
- 02 The board may issue any order against such person which appears justified by the evidence presented by the appearing party.

#### CHAPTER 17 QUALIFIED REPRESENTATION

- 01 Any person may appear in his or her own behalf before the board, and may call upon witnesses in his or her own behalf.
- 02 An individual may appear on behalf of another only if:
  - 02.01 that person is admitted to practice law before the Nebraska Supreme Court, or;
  - 02.02 that person is admitted to practice law before the supreme court of any state and is accompanied by a person admitted to practice law before the Nebraska Supreme Court, or;
  - 02.03 that person has satisfactorily demonstrated to the hearing examiner that he or she is knowledgeable concerning the subject matter of the hearing, the procedures set out in this regulation and relevant state laws pertaining to the issues.

*First Adopted:* [November 11, 1975](#)  
*Revisions Adopted:* [November 15, 1979](#)  
*Revisions Adopted:* [February 17, 1994](#)