
Rules of Office of Administration

Division 15—Administrative Hearing Commission

Chapter 5—Certificate of Need Cases

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**Title 1—OFFICE OF
ADMINISTRATION**

**Division 15—Administrative Hearing
Commission**

Chapter 5—Certificate of Need Cases

1 CSR 15-5.010 Definitions

(Rescinded February 6, 1992)

1 CSR 15-5.020 Powers and Duties

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1 CSR 15-5.025 Expedited Filing

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1 CSR 15-5.030 Complaints

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**1 CSR 15-5.035 Answers and Supplemen-
tary Pleadings**

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(Rescinded February 6, 1992)

**1 CSR 15-5.150 Disposition of Contested
Case Without Hearing**

(Rescinded February 6, 1992)

**1 CSR 15-5.160 Bench Rulings and
Memorandum Decisions**

(Rescinded February 6, 1992)

**1 CSR 15-5.170 Applications for Attor-
ney's Fees**

(Rescinded February 6, 1992)

1 CSR 15-5.210 Definitions

*PURPOSE: This rule sets out the defini-
tions of terms used in the rules of the
Administrative Hearing Commission.*

(1) As used in this chapter, the following terms mean:

(A) Commission—the Administrative Hear-
ing Commission or any commissioner;

(B) Commissioner—any administrative
hearing commissioner, including any acting
commissioner;

(C) Commission's office—the Adminis-
trative Hearing Commission's official resi-
dence in Jefferson City, MO 65101;

(D) Complaint—the initial pleading, other
than a motion for a stay, or any amended
complaint;

(E) Committee—the Missouri Health Facili-
ties Review Committee;

(F) Hearing—any presentation to, or con-
sideration by, the commission of evidence or
argument on a complaint, motion or applica-
tion;

(G) Petitioner—the party filing the com-
plaint;

(H) Pleading—a complaint or a responsive
pleading;

(I) Responsive pleading—an answer and
any motion directed to the contents or form of
the complaint, including, without limitation,
motions to dismiss, motions for more definite
statement or to make more definite and
certain, or any combination of these pleadings;
and

(J) Stay—any stay or a suspension of the
committee's action.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective
Feb. 6, 1992.

**Original authority 1965, amended 1978.*

**1 CSR 15-5.230 Computation of Time;
Extensions of Time**

*PURPOSE: This rule sets forth the
manner in which time periods will be
computed.*

(1) In computing any period of time prescribed or allowed by these rules or by order of the commission, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(2) The commission may extend the time set by these rules or by order of the commission either before or after the time period has expired.

(3) A party may move for an extension of the time set by these rules or by order of the commission. The motion shall be in writing and shall state whether any party objects or that attempts to contact the parties have been futile.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective
Feb. 6, 1992.

**Original authority 1965, amended 1978.*

**1 CSR 15-5.250 Practice by a Licensed
Attorney; When Required**

*PURPOSE: This rule states when and
how a party must be represented by a
licensed attorney.*

(1) Any individual may represent him/herself without a licensed attorney.

(2) Any individual may file a complaint on behalf of another person, including a corporation.

(3) Except as set forth in section (2) of this rule, only a licensed attorney may represent any other person, including a corporation.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective
Feb. 6, 1992.

**Original authority 1965, amended 1978.*

**1 CSR 15-5.270 Service of Filings Other
Than the Original Complaint**

*PURPOSE: This rule requires that any-
one filing anything other than a com-
plaint with the commission send copies
to all parties.*



(1) Unless otherwise provided by these rules or by other law, any party to a proceeding before the commission, or any person who seeks to become a party, shall serve upon all attorneys of record and unrepresented parties a copy of any document or item the party files.

(2) Methods of Service.

(A) A person may serve a document on an attorney by—

- 1. Delivering it to the attorney;
2. Leaving it at the attorney's office with a secretary, clerk or attorney associated with or employed by the attorney served;
3. Mailing it to the attorney's last known address; or
4. Facsimile transmitting (faxing) it to the attorney's last known fax number.

(B) A person may serve a document on an unrepresented party by—

- 1. Delivering it to the party;
2. Mailing it to the party's last known address; or
3. Faxing it to the party's last known fax number.

(C) Service by mailing is complete upon placing in the mail. Service by fax is complete upon its transmission.

(3) Any document or item filed shall contain or be accompanied by a certification of how and when the filing party has met the provisions of section (1) of this rule.

(4) The commission, after due notice, may waive the requirements of section (1) of this rule either on its own motion or on the motion of any party.

(5) The requirements of this rule do not apply to an original complaint.

Auth: section 621.198, RSMo (1986).* Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

*Original authority 1965, amended 1978.

1 CSR 15-5.290 Filing of Documents; Fax Filing

PURPOSE: This rule establishes procedures for filing documents and when they are deemed filed.

(1) A party may file a document by—

(A) Registered or Certified Mail. A document filed by registered or certified mail is deemed filed on the date shown on the United States Post Office records;

(B) Electronic Facsimile Transmission (Fax). A document filed by fax is deemed filed at the time the commission receives a fax of the

document. If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday or legal holiday, it is filed on the commission's next business day, unless the commission orders otherwise; or

(C) Any Other Method. A document filed by any method other than registered mail, certified mail or fax is deemed filed on the date the commission receives the document.

(2) A party filing by fax shall—

(A) Notify the commission in advance, if possible, of its intention to file the document by fax;

(B) Fax the document to the commission's dedicated fax number;

(C) Fax the document, if possible, to all other parties having electronic facsimile equipment. If unable to fax, a party shall notify all other parties of its intention to file the document by fax. The notice need not be in writing. A good faith attempt at compliance shall satisfy the requirements of this subsection;

(D) If the commission orders, send the original signed document to the commission;

(E) Certify in the documents—

1. The method of notice used to fulfill the requirements of subsection (2)(C) of this rule; and

2. Compliance with the requirements of subsection (2)(D) of this rule; and

(F) Send a copy of the document to all parties as provided in 1 CSR 15-2.270. The commission may order the party to send a copy of the document to any party by overnight mail.

Auth: sections 621.198 and 621.205, RSMo (1994).* Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995.

*Original authority: 621.198, RSMo (1965), amended 1978 and 621.205, RSMo (1980), amended 1991.

1 CSR 15-5.320 Stays or Suspensions of Committee Action

PURPOSE: This rule describes the form and content of a motion for stay or suspension of any of the committee's actions, the number of copies required and who is served with a stay order.

(1) Content.

(A) All motions for stay of the committee's action shall be in writing.

(B) The movant shall include in the motion—

1. The full name, address and telephone number of movant, any attorney representing movant and the committee;

2. Suitable space in the caption for the commission to affix a case number;

3. A clear heading, Motion for Stay;

4. Facts showing why the commission should grant the stay, set forth in numbered paragraphs, each of which shall contain, as far as practical, a single set of circumstances; and

5. A copy of the committee's notice of the action sought to be stayed.

(C) The movant or movant's legal counsel shall sign the motion.

(2) The movant shall file the original and one (1) copy of the motion for stay with the commission.

(3) The commission, upon either parties' request, shall hold or, on its own initiative, may hold an evidentiary hearing on whether to issue or dissolve a stay order.

(4) The commission may condition its stay order on the posting of a bond or other security.

(5) The denial of a motion for stay shall not prejudice the movant's complaint on the merits.

(6) The commission's stay order shall remain effective until the commission finally disposes of the case unless the commission orders otherwise.

Auth: section 621.198, RSMo (1986).* Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

*Original authority 1965, amended 1978.

1 CSR 15-5.350 Complaints

PURPOSE: This rule describes the form and content of the complaints, the number of copies required, how the complaints are served and how they are amended.

(1) Content in General.

(A) All complaints shall be in writing.

(B) Petitioner shall include in the complaint:

1. The full name, address and telephone number of—

A. Petitioner; and

B. Any attorney representing petitioner;

2. Suitable space in the caption for the commission to affix a case number; and

3. The identification and date of the committee's decision which the petitioner is appealing.

(C) Petitioner shall accompany the complaint with a copy of the committee's decision which gives rise to the complaint.

(D) Petitioner or petitioner's legal counsel shall sign the complaint.

(E) The complaint may contain a motion for stay.

(2) Petitioner shall file the original of the complaint at the commission's office with sufficient copies for all parties.

(3) Notice. The commission shall serve notice of and a copy of the complaint on petitioner and the committee by delivery or certified mail.

(4) Petitioner may amend the complaint without the commission's leave any time before the committee serves a responsive pleading. After the committee serves a responsive pleading, petitioner shall amend the complaint only with the commission's leave.

(5) The commission shall construe the provisions of this rule liberally if the petitioner has prepared the complaint without legal counsel.

(6) The provisions of this rule, except section (3), apply to amended complaints.

*Auth: section 621.198, RSMo (1994).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995.

**Original authority 1965, amended 1978.*

1 CSR 15-5.380 Answers and Other Responsive Pleadings

PURPOSE: This rule describes who is required to file a responsive pleading, how it shall be filed, the form and content of the answer and how an answer is amended.

(1) The committee shall file an answer.

(2) An answer shall—

(A) Be in writing;

(B) Admit those portions of the complaint the committee believes are true and deny those portions of the complaint the committee believes are not true;

(C) Assert as a defense any specific failure of the complaint to comply with 1 CSR 15-5.350 or waive the defense by not asserting it; and

(D) Be signed by the committee or its attorney.

(3) The committee shall file any responsive pleading no later than thirty (30) days after it receives the notice of complaint.

(4) The filing of a responsive pleading, other than an answer, that requests the commission to take some action shall increase the time in which the committee shall file an answer required by section (1) of this rule as follows, unless the commission orders otherwise:

(A) If the commission denies the request, the committee shall file the answer no later than ten (10) days after the commission so orders;

(B) If the commission issues an order postponing its ruling on the request until hearing, the committee shall file the answer no later than ten (10) days after the commission so orders;

(C) If the commission issues an order granting the request, but the order does not dispose of the entire complaint, the committee shall file the answer no later than ten (10) days after the commission so orders;

(D) If the commission orders petitioner to amend the complaint, the committee shall file the answer no later than ten (10) days after service of the amended complaint. In any case, the time allowed for filing an answer shall be no less than the time which remained when the responsive pleading was filed.

(5) The committee shall file an answer to an amended complaint within ten (10) days after service of the amended complaint or within the time remaining for filing an answer to the original complaint, whichever is longer, unless the commission orders otherwise.

(6) Otherwise, the committee shall amend the answer only with the commission's leave.

(7) Failure to File.

(A) The commission, on its own motion or that of any party, may order a remedy for respondent's failure to file an answer or other responsive pleading, or failure to otherwise comply with this rule.

(B) Petitioner shall file the motion not fewer than thirty (30) days before the hearing on the complaint or that motion shall be waived.

(C) Remedies under this section may include an order that respondent is deemed to have—

1. Admitted the facts pleaded in the complaint;

2. Waived any defense to the complaint; and

3. Defaulted on any issue raised in the complaint. The commission may dispose of any issue on which it deems respondent to have defaulted. The commission shall determine the appropriate remedy based on the facts of the case. Respondent's failure to file an answer or other responsive pleading or otherwise comply with this rule shall not constitute the admission of any facts or entitle petitioner to the relief requested in the complaint unless the commission so orders.

*Auth: section 621.198, RSMo (1994).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995.

**Original authority 1965, amended 1978.*

1 CSR 15-5.390 Intervention

PURPOSE: This rule describes who may intervene in an action and how to intervene.

(1) The commission may permit any person to intervene if the person—

(A) Files a motion for intervention within such time as not to delay unduly the hearing on the complaint; and

(B) Has an interest in the action which is different from the general public interest and which cannot be represented adequately by the parties.

(2) A motion to intervene shall—

(A) Be in writing;

(B) Set forth facts showing that the person is entitled to intervene;

(C) Be signed by the person or his/her attorney; and

(D) Be accompanied by a pleading.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

**Original authority 1965, amended 1978.*

1 CSR 15-5.410 Closing of Case Records and Hearings

PURPOSE: This rule describes the procedure for closing records or a hearing in a particular case.

Any party to a case may move to close any record or hearing in that case. The party shall make the motion in writing and file it no fewer than fourteen (14) days before the date the party wants the matter closed.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

**Original authority 1965, amended 1978.*

1 CSR 15-5.420 Discovery

PURPOSE: This rule explains the manner in which discovery may be obtained.



(1) Any party may obtain discovery in the same manner, upon or under the same conditions and upon the same notice and other requirements, as is or may be provided for with respect to discovery in civil actions by rule of the Supreme Court of Missouri for use in the circuit court.

(2) Requests for Admissions, Interrogatories and Requests for Production or Inspection.

(A) A party serving requests for admissions, interrogatories and requests for production or inspection, shall include a certificate of service in substantially the following form:

I served the original and (number of) copies of these (interrogatories/requests for admissions) on (name of parties) this _____ day of _____, 19_____.

Attorney _____

The party shall file a copy of the certificate with the commission. The party shall not file interrogatories or requests for document production or inspection with the commission unless the commission so orders. The party may file requests for admissions with the commission. The party shall serve the original discovery on the interrogated party's counsel or on an unrepresented interrogated party, and copies on all other counsel or unrepresented parties.

(B) Requests for admission and interrogatories shall include appropriate spaces for answers or objections.

(C) The party responding to requests for admissions or interrogatories shall complete them by typewriting or printing the answer or objection to each question in the space provided. If the space is insufficient, the party shall reply by affidavit, clearly indicate so in the space provided, and attach the affidavit to the interrogatories or requests for admissions. Each response shall include a certificate of service in substantially the following form:

I served the original of these completed (interrogatories/requests for admissions) on (name of party) and sent (number of) copies to (name of parties) this _____ day of _____, 19_____.

Attorney _____

The responding party shall file the certificate of service with the commission and shall not file the response unless the commission so orders. The responding party shall serve the original completed response on the interrogating party and copies on all other parties.

(3) Whenever a party files a motion to compel compliance with any discovery request, to sanction another party for failing to respond or responding inadequately to any discovery

request, or alleging violation of any discovery rule, the moving party in its motion shall certify that it has made reasonable efforts to contact the party who is the subject of the motion and inform the commission as to what steps the moving party has taken to resolve informally the discovery dispute or alleged discovery rule violation. The party seeking relief shall attach a copy of any disputed discovery to that motion.

(4) No discovery or response to discovery shall be considered as evidence unless it is admitted into evidence at hearing, or authenticated and attached to a motion for disposition without hearing, as an exhibit.

Auth: section 621.198, RSMo (1986).* Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

*Original authority 1965, amended 1978.

1 CSR 15-5.430 Dismissal

PURPOSE: This rule describes how a case may be dismissed with or without prejudice.

(1) The commission may dismiss with or without prejudice any complaint for petitioner's failure to—

- (A) Comply with any of these rules;
(B) Comply with any order of the commission;
(C) Keep the commission apprised of a current mailing address; or
(D) Appear at the hearing on the complaint.

(2) Petitioner may dismiss the complaint without prejudice without the commission's leave any time before the introduction of evidence at the hearing. After the introduction of evidence, petitioner may dismiss his/her action without prejudice only with leave of the commission or with written consent of the adverse party. The commission shall grant leave freely when justice so requires.

(3) The commission shall allow a party who has dismissed a complaint and after that filed another complaint upon the same claim to dismiss the complaint without prejudice only—

- (A) With the signed consent of the opposing party; or
(B) By leave of the commission. The commission shall make this order only upon the party's motion. The motion shall state the reason for the dismissal.

(4) If the parties settle their dispute on the condition that petitioner dismiss his/her case with prejudice, petitioner shall file a motion to that effect. The motion may include a copy of any document embodying the settlement terms.

(5) The commission may treat any respondent's motion to dismiss that includes matters outside the pleadings as a motion for summary determination under 1 CSR 15-5.450(4).

Auth: section 621.198, RSMo (1994).* Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995.

*Original authority 1965, amended 1978.

1 CSR 15-5.450 Determination of Cases Without Hearing

PURPOSE: This rule provides for disposition of a contested case by stipulation, agreed settlement, or by disposition in the nature of default judgment, judgment on the pleadings or summary judgment as required by section 536.073, RSMo (Cum. Supp. 1991).

(1) Stipulation. The parties may waive hearing before the commission or consent to a finding of any fact.

(A) The parties may file a stipulation of facts. The parties or their attorneys shall sign the stipulation. The stipulation may include suggested conclusions of law. The stipulation shall contain sufficient facts to support the conclusions of law.

(B) The commission's findings of fact and conclusions of law may incorporate the parties' stipulation.

(2) Failure to Appear at Hearing.

(A) If a party without the burden of proof fails to appear at hearing, the party with the burden of proof may present evidence in support of its position which shall constitute the sole evidentiary basis for disposition, and the party without the burden of proof shall have waived any objection to the evidence.

(B) A respondent with the burden of proof who fails to appear at hearing shall be deemed to have abandoned its argument.

(3) Determination on the Pleadings.

(A) Any party may move for determination on the pleadings no fewer than thirty (30) days before a hearing on the complaint, or ten (10) days after respondent files an amended answer, whichever is later. The motion shall admit, for purposes of the motion, all factual allegations of the opposing party's pleadings

and show that under the law the moving party is entitled to relief.

(B) The commission shall give the opposing party a reasonable time within which to file suggestions in opposition to the motion. If the opposing party amends its pleadings in response to the motion, it shall accompany the amended pleadings by suggestions showing how the pleadings, as amended, cure the deficiencies alleged in the motion for determination on the pleadings.

(C) A party may file, with the commission's leave, further written arguments. If a party presents matters outside of the pleadings and the commission does not exclude those matters, the commission shall dispose of the motion as one for summary determination. The commission shall give all parties reasonable opportunity to present all matters pertinent to the motion. Matters which may be raised in a motion for determination on the pleadings may include those set forth in Supreme Court Rule 55.27(a).

(D) The provisions of 1 CSR 15-5.480 govern whether the commission will hear oral argument or evidence on the motion.

(4) Summary Determination.

(A) For Petitioner. Petitioner may move for a summary determination on all or any part of the complaint after the time has passed for the committee to file a responsive pleading or in response to this motion filed by the committee.

(B) For the Committee. The committee may move for a summary determination on all or any part of the complaint.

(C) Motion and Proceedings. The movant shall serve the motion for summary determination upon an adverse party no fewer than thirty (30) days before the time fixed for hearing on the complaint. The opposing party may serve opposing affidavits before the day of any hearing on the motion. The commission shall grant the motion if the pleadings and evidence on file show that there is no genuine issue as to any material fact and that any party is entitled to relief as a matter of law as to all or any part of the complaint. The commission may order summary determination against the moving party.

(D) Case Not Fully Adjudicated on Motion. If the commission grants the motion, but not as to the entire complaint, it shall issue an order finding facts. Those facts shall be established for purposes of the hearing on the complaint.

(E) Form of Affidavits—Further Testimony. A party filing a motion under this section may file with or without affidavits. The commission may permit a party to supplement or oppose affidavits by depositions or further affidavits. Affidavits filed by any party shall be made on personal knowledge, shall set forth facts which would be admissible in evidence and shall

show affirmatively that the affiant is competent to testify to the matters stated. The affiant shall attach sworn or certified copies of all documents referred to in the affidavit.

(F) Defense Required. When a party supports a motion under this section with affidavits or other evidence, an adverse party shall not rest upon the mere allegations or denial of its own pleadings. The adverse party's response shall set forth specific facts showing that there is a genuine issue of material fact for hearing and support these facts by affidavit or other evidence. If the adverse party does not so respond, the commission shall enter summary determination, if appropriate, against it.

(G) The provisions of 1 CSR 15-5.480 govern whether the commission will hear oral argument or evidence on the motion.

Auth: sections 536.073.2(2) and 621.198, RSMo (1994). Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995.*

**Original authority: 536.073, RSMo (1957), amended 1985, 1989 and 621.198, RSMo (1965), amended 1978.*

1 CSR 15-5.470 Prehearing Conferences

PURPOSE: This rule describes the setting and subject matter of the prehearing conference.

On its own motion or that of any party, the commission may order a prehearing conference to discuss matters pertinent to the action. All parties or their legal counsel shall attend the prehearing conference and be prepared to discuss the matters.

Auth: section 621.198, RSMo (1986). Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.*

**Original authority 1965, amended 1978.*

1 CSR 15-5.480 Hearings on Motions

PURPOSE: This rule describes how a party may obtain oral argument or an evidentiary hearing on a motion.

The commission may rule upon any motion filed with it, including a motion for summary determination, on the basis of the record before it and without oral argument. The commission shall hear oral argument or evidence only upon

a party's written motion and for good cause shown or upon the commission's own motion.

Auth: section 621.198, RSMo (1986). Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.*

**Original authority 1965, amended 1978.*

1 CSR 15-5.490 Hearings on Complaints

PURPOSE: This rule describes the procedures for the setting of, continuance of, and order of proof in hearings on complaints.

(1) Notice. The commission shall serve notice of the place, date and time upon which it will hold the hearing on a complaint, or any notice resetting the hearing, on all parties by certified mail, regular mail, personal delivery, or any other method provided by law.

(2) Location. The commission will hold all hearings in Jefferson City, Missouri, except as otherwise provided by statute or when one (1) of the parties shows good cause to hold the hearing elsewhere within the state.

(3) Date.

(A) First Setting. Unless otherwise provided by statute or with the consent of the parties, the commission shall hold no hearing fewer than twenty (20) days after the first issuance of notice.

(B) Resettings. If the commission resets the hearing, it shall send out an amended notice. If the reset date is later than the first setting, the commission may hold the hearing fewer than twenty (20) days from the date of the issuance of the amended notice.

(4) Continuances. The commission may continue the hearing date upon notice to the parties. Any party may move for a continuance. The motion shall state good cause for the continuance.

(5) Order of Proof. The petitioner shall present its case first, unless the commission orders otherwise.

Auth: section 621.198, RSMo (1994). Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995.*

**Original authority 1965, amended 1978.*

1 CSR 15-5.510 Transcripts

PURPOSE: This rule sets forth procedures for the availability and correction of a transcript and when the hearing reporter may destroy records.

(1) The parties may request, or the commission may order, that the hearing reporter make a transcript of a hearing. The hearing reporter shall file the transcript with the commission. Any person may purchase a copy of the transcript through the hearing reporter.

(2) Any party may move to correct the transcript no more than ninety (90) days after the hearing reporter files the transcript. The commission on its own motion may order the hearing reporter to correct the transcript any time before the commission finally disposes of the case.

(3) The hearing reporter may destroy any shorthand notes, audiotapes or both of a hearing in any case in which neither the commission nor any party has—

(A) Requested that a transcript be made within sixty (60) days after the commission finally disposes of the case; or

(B) Moved to correct the transcript as provided in section (2) of this rule within ninety (90) days after the court reporter files the transcript.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

**Original authority 1965, amended 1978.*

1 CSR 15-5.530 Bench Rulings and Memorandum Decisions

PURPOSE: This rule establishes a procedure for parties to obtain a bench ruling or a memorandum decision, as provided by section 536.068, RSMo (Cum. Supp. 1990).

(1) As used in this rule, a bench ruling is an announcement of the ultimate disposition of the case. As used in this rule, a memorandum decision is a writing setting forth the ultimate disposition of the case and the legal analysis supporting the disposition.

(2) The parties may move for either a bench ruling or a memorandum decision to dispose of all or any part of the case. The motion shall be in writing, shall be made jointly by all parties and shall include a waiver by all parties of the provisions of section 536.090, RSMo (1986), relating to the rendering of findings of fact and

conclusions of law. The motion shall be accompanied by a brief from each party setting forth the operative facts the party expects to show, the issues those facts raise and the authorities which support the conclusion the party seeks.

(3) The commission may issue a bench ruling orally on the record. The commission shall issue a written form of the bench ruling no later than seven (7) days after the conclusion of the hearing or seven (7) days after the motion is filed, whichever is later. The commission shall deliver or send by certified mail to each party the written form of the bench ruling. The date of issuance is the date issued orally on the record or, if not issued orally, the date of the writing.

(4) The commission shall issue a memorandum decision no later than seven (7) days after the conclusion of the hearing or seven (7) days after the motion is filed, whichever is later. The commission shall deliver or send by certified mail a copy to each party.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

**Original authority 1965, amended 1978.*

1 CSR 15-5.560 Fees and Expenses

PURPOSE: This rule establishes a procedure to allow parties to make application for fees and expenses when authorized by statute or other law.

(1) Any party authorized by law to be awarded fees or expenses by the commission may apply for an award by filing a complaint with the commission no later than thirty (30) days after the final disposition of the case, unless a different procedure or time period is provided by law.

(2) The complaint shall identify the party against whom the award is sought, the commission action in which the party incurred the fees or expenses, and the provision of law which authorizes the award, and state in detail the facts which support the award including any relevant conduct by the committee.

(3) An action under this regulation shall be a contested case. The commission shall assign a separate case number to the action for fees and expenses. The provisions of this chapter, except 1 CSR 15-5.350(1)(B)3. and (1)(C), shall apply to an action under this regulation.

(4) The commission shall determine whether an award shall be made upon a record consisting of the record made in the case in which the fees were incurred and any record made on a hearing held on the application.

*Auth: section 621.198, RSMo (1994).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995.

**Original authority 1965, amended 1978.*

1 CSR 15-5.580 Certifications of Records

PURPOSE: This rule sets forth the content of the record and the procedure by which the commission shall cause the record to be certified to a court or to a licensing agency.

(1) Record Defined.

(A) As used in this rule, the term record has the meaning set forth in section 536.130.1(3), RSMo (1986), unless the parties agree otherwise as provided by section 536.130.1(1) or (2).

(B) Unless a party specifically and in writing requests otherwise before the commission has certified the record, the record shall not include:

1. Briefs;
2. Proposed findings of fact; and
3. Proposed conclusions of law.

(2) Filing With the Courts.

(A) Circuit Court. The commission shall cause the record to be certified to a circuit court as provided by Supreme Court Rule 100.01 within thirty (30) days of the date on which it receives a copy of the petition for judicial review as set forth in section 536.110, RSMo (1986).

(B) Appellate Court. The commission shall cause the record to be certified to an appellate court of original jurisdiction as provided in Supreme Court Rule 100.02 within ninety (90) days of the date on which it receives notice that a party has sought review in that court.

(C) The commission shall file the record with the court.

(3) Any party may file a motion with the commission for an amended certification. The commission may file an amended certification to include specified matters omitted from the certification. The commission shall not file an amended certification deleting matters included in the certification.

*Auth: section 621.198, RSMo (1986).**
Original rule filed Aug. 5, 1991, effective Feb. 6, 1992.

**Original authority 1965, amended 1978.*