**Statutes, Administrative Rules, and Court Rules**

**Applicable to**

**STATE TAX COMMISSION APPEALS**



**Missouri Revised Statutes**

  138.360.  Issuance of subpoenas — fees — costs. — 1.  The commission may subpoena witnesses.  All subpoenas shall be signed and issued by a commissioner or by the secretary of the commission, and shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record or by any person of full age designated for that purpose by the commission or by a commissioner.

  2.  The person executing any such process shall receive the fees now prescribed by law for similar services in civil cases in the circuit courts in this state, and shall be paid in the same manner as provided herein for the payment of the fees of the witnesses.

  3.  Each witness who shall appear before the commission or a commissioner by its or his order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the circuit courts of this state, which shall be audited and paid by the state in the same manner as other expenses of the commission are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the commission.

  4.  Whenever a subpoena is issued at the instance of a complainant, respondent, or other party to any proceeding before the commission, the cost of service thereof and the fee of the witness shall be borne by the party at whose instance the witness is summoned.

  5.  Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance.  If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner, as directed in the subpoena.  No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.

138.370.  Examination of witnesses and books. — 1.  The commission shall have power to examine witnesses under oath.  Any member of the commission is hereby empowered to administer oaths.

  2.  The commission, or any member, or authorized representative thereof, shall have the right to examine books, papers or accounts of any corporation, firm or individual owning property liable for assessment for taxation, general or specific, under the laws of this state.

138.430.  Right to appeal, procedure, notice to collector, when — investigation — costs and attorney's fees awarded, when. — 1.  Every owner of real property or tangible personal property shall have the right to appeal from the local boards of equalization to the state tax commission under rules prescribed by the state tax commission, within the time prescribed in this chapter or thirty days following the final action of the local board of equalization, whichever date later occurs, concerning all questions and disputes involving the assessment against such property, the correct valuation to be placed on such property, the method or formula used in determining the valuation of such property, or the assignment of a discriminatory assessment to such property.  The commission shall investigate all such appeals and shall correct any assessment or valuation which is shown to be unlawful, unfair, improper, arbitrary or capricious.  Any person aggrieved by the decision of the commission may seek review as provided in [chapter 536](http://revisor.mo.gov/main/OneChapter.aspx?chapter=536).

  2.  In order to investigate such appeals, the commission may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property.  The commission may make its decision regarding the assessment or valuation of the property based solely upon its inquiry and any evidence presented by the parties to the commission, or based solely upon evidence presented by the parties to the commission.

  3.  Every owner of real property or tangible personal property shall have the right to appeal to the circuit court of the county in which the collector maintains his office from the decision of the local board of equalization not later than thirty days after the final decision of the board of equalization concerning all questions and disputes involving the exclusion or exemption of such property from assessment or from the tax rolls pursuant to the Constitution of the United States or the constitution or laws of this state, or of the taxable situs of such property.  The appeal shall be as a trial de novo in the manner prescribed for nonjury civil proceedings.  Upon the timely filing of the appeal, the clerk of the circuit court shall send to the county collector to whom the taxes on the property involved would be due a notice that an appeal seeking exemption has been filed, which notice shall contain the name of the taxpayer, the case number assigned by the court, and the parcel or locator number of the property being appealed.  The notice to the collector shall state that the taxes in dispute are to be impounded in accordance with subsection 2 of section [139.031](http://revisor.mo.gov/main/OneSection.aspx?section=139.031).

  4.  Upon the timely filing of an appeal to the state tax commission as provided in this section, or the transfer of an appeal to the commission in accordance with subsection 5 of this section, the commission shall send to the county collector to whom the taxes on the property involved would be due a notice that an appeal has been filed or transferred as the case may be, which notice shall contain the name of the taxpayer filing the appeal, the appeal number assigned by the commission, the parcel or locator number of the property being appealed, the assessed value by the board of equalization and the assessed value proposed by the taxpayer, if such values have been provided to the commission when the appeal is filed.  The notice to the collector shall state that the taxes in dispute are to be impounded in accordance with subsection 2 of section [139.031](http://revisor.mo.gov/main/OneSection.aspx?section=139.031).  Notice to the collector of an appeal filed in an odd-numbered year shall also serve as notice to the collector to impound taxes for the following even-numbered year if no decision has been rendered in the appeal.  The state tax commission shall notify the collector once a decision has been rendered in an appeal.

  5.  If the circuit court, after review of the appeal, finds that the appeal is not a proper subject for the appeal to the circuit court as provided in subsection 3 of this section, it shall transfer the appeal to the state tax commission for consideration.

  6.  If an assessor classifies real property under a classification that is contrary to or in conflict with a determination by the state tax commission or a court of competent jurisdiction of said property, the taxpayer shall be awarded costs of appeal and reasonable attorney's fees on a challenge of the assessor's determination.

138.431.  Hearing officers of tax commission to hear appeals, when, procedure — appeal of hearing officer's decision, how. — 1.  To hear and decide appeals pursuant to section [138.430](http://revisor.mo.gov/main/OneSection.aspx?section=138.430), the commission shall appoint one or more hearing officers.  The hearing officers shall be subject to supervision by the commission.  No person shall participate on behalf of the commission in any case in which such person is an interested party.

  2.  The commission may assign such appeals as it deems fit to a hearing officer for disposition.

  (1)  The assignment shall be deemed made when any scheduling order is first issued by the commission, however, if no scheduling order has been issued, then a hearing officer shall be assigned no later than sixty days after the appeal is filed by the taxpayer.

  (2)  A change of hearing officer, or a reservation of the appeal for disposition as described in subsection 3 of this section, shall be ordered by the commission in any appeal upon the timely filing of a written application by a party to disqualify the hearing officer assigned.  The application shall be filed within thirty days from the assignment of any appeal to a hearing officer and need not allege or prove any cause for such change and need not be verified.  No more than one change of hearing officer shall be allowed for each party in any appeal.

  3.  The commission may, in its discretion, reserve such appeals as it deems fit to be heard and decided by the full commission, a quorum thereof, or any commissioner, subject to the provisions of section [138.240](http://revisor.mo.gov/main/OneSection.aspx?section=138.240), and, in such case, the decision shall be final, subject to judicial review in the manner provided in subsection 4 of section [138.470](http://revisor.mo.gov/main/OneSection.aspx?section=138.470).

  4.  The manner in which appeals shall be presented and the conduct of hearings shall be made in accordance with rules prescribed by the commission for determining the rights of the parties; provided that, the commission, with the consent of all the parties, may refer an appeal to mediation.  The commission shall promulgate regulations for mediation pursuant to this section.  No regulation or portion of a regulation promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of [chapter 536](http://revisor.mo.gov/main/OneChapter.aspx?chapter=536).  There shall be no presumption that the assessor's valuation is correct.  A full and complete record shall be kept of all proceedings.  All testimony at any hearing shall be recorded but need not be transcribed unless the matter is further appealed.

  5.  Unless an appeal is voluntarily dismissed, a hearing officer, after affording the parties reasonable opportunity for fair hearing, shall issue a decision and order affirming, modifying, or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious.  The commission may, prior to the decision being rendered, transfer to another hearing officer the proceedings on an appeal determination before a hearing officer.  The complainant, respondent-assessor, or other party shall be duly notified of a hearing officer's decision and order, together with findings of fact and conclusions of law.  Appeals from decisions of hearing officers shall be made pursuant to section [138.432](http://revisor.mo.gov/main/OneSection.aspx?section=138.432).

  6.  All decisions issued pursuant to this section or section [138.432](http://revisor.mo.gov/main/OneSection.aspx?section=138.432) by the commission or any of its duly assigned hearing officers shall be issued no later than sixty days after the hearing on the matter to be decided is held or the date on which the last party involved in such matter files his or her brief, whichever event later occurs.

138.432.  Decisions and orders of hearing officers, appeal of, procedure — when deemed final. — A complainant, respondent-assessor, or other party subject to a decision and order of a hearing officer, may file with the commission, within thirty days following the date of notification or mailing of such decision and order, an application to have such decision and order reviewed by the commission.  Such application shall contain specific detailed grounds upon which it is claimed the decision is erroneous.  The commission may summarily allow or deny an application for review.  If an application is allowed, the commission may affirm, modify, reverse, or set aside the decision and order of the hearing officer on the basis of the evidence previously submitted in such case, may take additional evidence, or may remand the matter to the hearing officer with directions.  Any additional hearing shall be conducted in accordance with the requirements of subsection 3 of section [138.431](http://revisor.mo.gov/main/OneSection.aspx?section=138.431).  The commission shall promptly notify the parties of its decision and order, together with its findings of fact and conclusions of law.  The decision of the commission shall be subject to judicial review in the manner provided by subsection 4 of section [138.470](http://revisor.mo.gov/main/OneSection.aspx?section=138.470).  If an application for review is denied, the decision and order of the hearing officer shall be deemed to be the final decision of the commission for the purpose of judicial review and shall be subject to the judicial review within the time and in the manner provided for with respect to decisions of the commission pursuant to subsection 4 of section [138.470](http://revisor.mo.gov/main/OneSection.aspx?section=138.470); except that, the time limitations shall run from the date of notice or mailing of the order of the commission denying the application for review.

138.433.  Pleadings, when deemed filed. — In determining whether pleadings are filed within the time allowed by law, such pleadings may be transmitted to the state tax commission by registered mail.  Pleadings so filed shall be deemed filed with the commission as of the date deposited with the United States Postal Service as shown by the record of such mailing.

138.434.  Attorney fees and other costs awarded taxpayers on appeal in charter counties, St. Louis City, certain railroad and subclass three property, when. — Any first class charter county or a city not within a county may require by ordinance or charter the reimbursement to a taxpayer for the amount of just and reasonable appraisal costs, attorney fees and court costs resulting from an evidentiary hearing before the state tax commission or a court of competent jurisdiction if such appeal results in a final decision reducing the appraised value of residential property by at least fifteen percent or the appraised value of utility, industrial railroad and other subclass three property by at least twenty-five percent from the appraised value determined by the board of equalization for that tax year.  The commission or court awarding such fees and costs shall consider the reasonableness of the fees and costs within the context of the particular case.  Such fees and costs shall not exceed one thousand dollars for a residential property appeal.  Such fees and costs for utility, industrial railroad or other subclass three property appeals shall not exceed the lesser of four thousand dollars or twenty-five percent of the tax savings resulting from the appeal.  The provisions of this section shall only apply to the first contested year when cases are tried on a consolidated basis.

**Administrative Rules**

**12 CSR 30-3.001 Two-Year Assessment Cycle**

*PURPOSE: This rule establishes the method assessors shall use to determine assessed value of real property under the two-year assessment cycle.*

(1) The assessed value of real property shall be calculated by determining its true value in money on January 1 of each odd-numbered year. The value shall remain the same for the subsequent even-numbered year unless there has been new construction or property improvements between January 1 of the odd-numbered year and January 1 of the following even-numbered year.

(2) In those instances in which new construction or property improvements have occurred between January 1 of an odd-numbered year and January 1 of an even-numbered year, the true value in money of the property as newly constructed or improved shall be determined as of January 1 of the odd-numbered year.

(A) The valuation of the property shall take into consideration the new construction or property improvements and shall assign to that new construction or property improvements the value which would have been attributed to new construction or improvements on January 1 of the odd-numbered year as though they had existed on that date.

(B) Examples.

1. On January 1, 1991, the subject property is a five (5)-acre vacant lot. On December 1, 1991, construction of a strip shopping center is completed. For the 1992 tax year, the assessed value is calculated by determining the true value in money of a shopping center of the same size, construction, location and use as the subject property as of January 1, 1991, and multiplying that amount by the appropriate statutory assessed value percentage.

2. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house with thirteen hundred (1300) square feet. On August 1, 1991, the addition of a second story and seven hundred (700) square feet is completed. For the 1992 tax year, the assessed value is calculated by determining the true value in money of a two (2)-story, two-thousand (2000) square foot residence of the same construction and location as the subject as of January 1, 1991, and multiplying that amount by the appropriate statutory assessed value percentage.

(3) A property improvement consists of any change to the physical characteristics of the property, whether that change is one that causes an increase or a reduction in value. Changes in zoning, neighborhood conditions or economic conditions which directly or indirectly affect the property will not warrant a change in the assessed value for the even-numbered year.

(A) Examples.

1. Assuming value is affected, a change in the assessed value for the 1992 tax year is warranted (see paragraph (2)(B)2.)

2. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house with thirteen hundred (1300) square feet. On December 1, 1991, the house burns to the ground. A change in the assessed value for the 1992 tax year is warranted.

3. On January 1, 1991, the subject property is a five (5)-acre vacant lot zoned agricultural. On December 1, 1991, the property is rezoned commercial. No new construction is added to the property. A change in the assessed value for the 1992 tax year is not warranted.

4. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house located on ten (10) acres of land in the rural area of the county. On December 1, 1991, the county began operation of a landfill on property adjacent to the subject property. The location and operation of the landfill negatively affect the value of the subject property. A change in the value for the 1992 tax year is not warranted.

5. On January 1, 1991, the subject property is a three (3)-bedroom ranch style house with thirteen hundred (1300) square feet which is twenty (20) years old. On January 1, 1992, the subject property is twenty-one (21) years old. It is generally recognized in the appraisal of property that as property ages it physically deteriorates and it may be necessary to make a deduction for physical depreciation under the cost approach for value. A change in value for the 1992 tax year is not warranted.

(4) The examples used in this rule are by way of illustration only and not to be deemed to be the only instances to which this rule applies.

*AUTHORITY: sections 137.115, RSMo Supp. 1992 and 138.320, RSMo 1986.\* Original rule filed May 14, 1991, effective Oct. 31, 1991.*

*\*Original authority: 137.115, RSMo 1939, amended 1945, 1951, 1959, 1972, 1973, 1981, 1983, 1985, 1985, 1986, 1987, 1989, 1990, 1991, 1992 and 138.320, RSMo 1939, amended 1945.*

**12 CSR 30-3.005 Appeals of the Assessment of Real Property to the Local Board of Equalization Under the Two-Year Assessed Value Cycle**

*PURPOSE: This rule establishes how appeals of the assessment of real property to the local boards of equalization are to be accomplished under the two-year assessed value cycle and to ensure that the commission's authority to render decisions and orders in appeals from local boards of equalization is not compromised at the local level.*

(1) Appeals to the Local Board of Equalization in Odd-Numbered Years. Appeals to the local board of equalization in odd-numbered years from assessment placed on real property by the county assessor shall be made by the aggrieved taxpayer in the manner required by law.

(2) Appeals to the Local Board of Equalization in Even-Numbered Years.

(A) If a taxpayer did not file an appeal of an assessment of real property from the local board of equalization to the State Tax Commission in the odd-numbered year, the appeal to the local board of equalization in the even-numbered year shall be made by the aggrieved taxpayer in the manner required by law.

(B) If a taxpayer did file an appeal of an assessment of real property from the local board of equalization to the State Tax Commission in the odd-numbered year, the local board of equalization shall accept as duly filed appeal of the assessment in the even-numbered year, a notice from the State Tax Commission to the county clerk that an appeal of the odd-numbered year's assessment is presently pending before the State Tax Commission. This notice shall constitute the filing of an appeal in writing to the local board of equalization on behalf of the taxpayer. The local board of equalization shall hear and decide an appeal in the same manner it would hear and decide other appeals to it. The notice filed by the State Tax Commission on behalf of the taxpayer shall be filed before April 1 of the even-numbered year.

(3) Nothing in this rule shall prevent a taxpayer from filing an appeal of the assessment of real property on his/her own behalf in the even-numbered year from dismissing an appeal before the local board of equalization filed on his/her behalf by the State Tax Commission, or from appearing and presenting evidence at a hearing on his/her appeal at the local board of equalization.

*AUTHORITY: section 137.115.1., 138.060.1., 138.431.3. RSMo Supp. 1992 and 137.275 and 137.385, RSMo 1986.\* Original rule filed May 14, 1991, effective Oct. 31, 1991.*

*\*Original authority: 137.115.1. RSMo 1939, amended 1945, 1951, 1959, 1972, 1973, 1981, 1983, 1985, 1985, 1986, 1987, 1989, 1990, 1991, 1992 and 137.275, RSMo 1939, amended 1945; 137.385, RSMo 1945; 138.060.1., RSMo 1939, amended 1945, 1992; and 138.431.3., RSMo 1983, amended 1986, 1992.*

**12 CSR 30-3.010 Appeals From the Local Board of Equalization**

*PURPOSE: This rule informs the local taxpayer of his/her right to protest by complaint or appeal an assessed value which s/he feels is unlawful, unfair, improper, arbitrary, or capricious and the procedure for filing these complaints or appeals.*

(1) Every owner of real property or tangible personal property shall have the right to appeal from the decision of the local board of equalization, upon compliance with the following rules:

(A) This appeal shall be initiated by filing a complaint on forms prescribed by this commission and directed to the State Tax Commission. No complaint will be accepted unless on forms prescribed by this commission; provided, that any complainant may attach to commission forms any additional written pleading deemed appropriate by complainant. The complaint shall specify the name of the complainant; the business address of the complainant or an attorney to whom notice of hearing may be mailed; the legal description of the real property or the complete description of the tangible personal property at issue; a brief statement of the grounds upon which the assessment of the property is claimed to be unlawful, unfair, improper, arbitrary, or capricious; a statement that the complainant had appealed to the proper local board of equalization; a statement of the relief to which complainant may feel entitled; if required, a verified statement which states facts tending to demonstrate that the commission should reconsider the appropriateness of the value in the even-numbered year; and other information as shall be requested upon the commission forms;

(B) A complaint appealing a property assessment shall be filed not later than September 30 or within thirty (30) days of the decision of the board of equalization, whichever is later.

1. In any county or the City of St. Louis, the owner may appeal directly to the State Tax Commission (a) where the assessor fails to notify the current owner of the property of an initial assessment or an increase in assessment from the previous year, prior to thirty (30) days before the deadline for filing an appeal to the board of equalization, including instances in which real property was transferred and the prior owner was notified, or (b) where a new owner purchased real property less than thirty (30) days before the deadline for filing an appeal to the board of equalization or later in the tax year, regardless if the assessment is an initial assessment, an increase or decrease in assessment, or an assessment established in the prior year. Appeals under this paragraph shall be filed within thirty (30) days after a county official mailed a tax statement or otherwise first communicated the assessment or the amount of taxes to the owner or on or before December 31 of the tax year in question, whichever is later. Proof of late notice, the date of purchase, and/or notice sent to the prior owner shall be attached to, or set forth in, the complaint.

2. A property owner who, due to lack of notice, files an appeal directly with the State Tax Commission after tax statements are mailed should pay his or her taxes under protest pursuant to the requirements of section 139.031, RSMo, and the county collector shall upon receiving either the payment under protest or the notice specified in section 138.430, RSMo, impound all portions of taxes which are in dispute;

(C) Any complaint shall be served upon the State Tax Commission personally to any commissioner or to the administrative secretary of the commission, by certified, registered, regular, private carrier service mail or electronic transmission addressed to the State Tax Commission in Jefferson City. For purposes of this rule, electronic transmission shall mean facsimile transmission or email.

1. If personal service is made, it may be proven by the affidavit of any person competent to testify, or by the official certificate of any officer authorized under the laws of Missouri to execute process. In determining whether complaints personally served are filed within the time prescribed by law, the date on which personal service is obtained shall be deemed to be the date the complaint is filed with the commission.

2. In determining whether complaints are filed within the time prescribed by law, the complaints may be transmitted to the commission by registered,certified, or regular mail or by private carrier service. Complaints filed by registered or certified mail shall be deemed filed with the commission as of the date deposited with the United States Postal Service. Complaints filed by private carrier service shall be deemed filed as of the date shown by the record of the mailing. Complaints filed by regular or metered mail shall be deemed filed on the date of post office cancellation; or three (3) daysbefore the date the commission receives the complaints if there is no dated post office cancellation.

3. In determining whether complaints filed by electronic transmission are filed within the time prescribed by law, complaints so filed shall be deemed filed with the commission as of the date the electronic transmission is received by the commission. A complaint filed by electronic transmission shall have the same effect as the filing of an original document and an electronic signature shall have the same effect as an original signature;

(D) Two (2) copies of the complaint shall be filed with the commission, one (1) copy of which will be forwarded to the assessor with notice of institution of the proceedings to review assessment; and

(E) The State Tax Commission shall set appeals for conferences and hearings in the county of assessment or in any other location in the state as the commission deems necessary for the efficient management of the appeal docket. Conferences and hearings may be conducted by electronic means where practicable.

(2) On any appeal taken to the commission from the local board of equalization, a natural person may represent him/herself in the proceedings before the commission. The county assessor, but not a deputy, may represent his/her office in such proceedings. All others must appear through an attorney licensed to practice law in Missouri or in another jurisdiction.

(A) Any person who signs a pleading or brief, or who enters an appearance at a hearing for an entity or another person, by an act expressly represents that s/he is authorized to so act and that s/he is a licensed attorney-at-law in this state or his/her state of residence.

(B) Any attorney not licensed in this state but who is a member in good standing of the bar of any court of record may be permitted to appear and participate in a particular appeal(s) before the commission under the following conditions: The visiting attorney shall file with his/her initial pleading a receipt for his/her *pro hac vice* authorization from the clerk of the Missouri Supreme Court to appear before the commission on the designated appeal or appeals along with a statement identifying each court of which s/he is a member of the bar and certifying that neither s/he nor any member of his/her firm is disqualified from appearing in any such court. Also, the statement shall designate some member of the Missouri Bar having an office in Missouri as associate counsel. This designated attorney shall enter his/her appearance as an attorney of record.

(3) When a lawyer is a witness for his/her client, except as to merely formal matters, s/he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying before this commission in behalf of his/her client.

(4) The commission shall make arrangements to have all appeal hearings suitably recorded and preserved. Upon a motion of a party filed at least seven (7) days prior to the hearing, the commission may approve the recording and transcription of any hearing by a court reporter hired by a party provided that such party shall furnish the commission and the opposing party a copy of the transcript at no cost and the party supplying the court reporter and the court reporter agree that such transcript retained by the commission shall be available for inspection and copying by the public pursuant to chapter 610, RSMo. The commission may adopt the resulting transcript as the official record of the proceeding.

(5) The fundamental rules of evidence will apply at hearings before the commission.

(6) In computing any period of time prescribed or allowed by these rules, by order of the commission, or by any applicable statute, 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 a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(7) When by these rules or by a notice given thereunder or by order of the commission an act is required or allowed to be done at or within a specified time, the commission for cause shown may at any time in its discretion 1) with or without motion or notice order the period enlarged if request is made before the expiration of the period originally prescribed or as extended by previous order or 2) upon notice and 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; but the commission may not extend the time for taking any action under rules 12 CSR 30-2.021(1)(A); 12 CSR 30-3.021(1)(C); 12 CSR 30-3.005—Appeals of the Assessment of Real Property to the Local Board of Equalization Under the Two-Year Assessed Value Cycle; 12 CSR 30-3.010—Appeals from the Local Board of Equalization; 12 CSR 30-3.020—Intervention;.

(8) Any complaint, correspondence, routine motion, or application for review shall be accepted for filing by electronic transmission. Electronic filings received by the commission before 5:00 p.m. of a regular workday are deemed filed as of that day. Filings received after 5:00 p.m. are deemed filed on the next regular commission workday. Time of receipt is determined by the commission’s facsimile machine or computer. The time when transmission began shall be used to determine if transmission occurred prior to 5:00 p.m. If a document is not received by the commission or if it is illegible, it is deemed not filed. Risk of loss in transmission, receipt, or illegibility is upon the party transmitting and filing by electronic transmission. The person filing a complaint, correspondence, motion, application for review, or other filing by electronic transmission shall retain the signed filing and make it available upon order of the commission.

(9) No cameras, lights, or mechanical recording devices shall be operated in the hearing room while the hearing is in progress, other than by personnel of the commission or by a court reporter with the permission of the commission.

AUTHORITY: section 138.430, RSMo Supp. 2012.\* This rule was previously filed as 12 CSR 30-2.030. Original rule filed Dec. 13, 1983, effective March 12, 1984. Amended: Filed April 21, 1988, effective Sept. 11, 1988. Rescinded and readopted: Filed May 14, 1991, effective Oct. 31, 1991. Amended: Filed Aug. 23, 1995, effective Jan. 30, 1996. Rescinded and readopted: Filed June 12, 2002, effective Nov. 30, 2002. Amended: Filed Oct. 7, 2004, effective May 30, 2005. Amended: Filed Dec. 21, 2007, effective June 30, 2008. Amended: Filed Oct. 2, 2008, effective May 30, 2009. Amended: Filed April 28, 2009, effective Nov. 30, 2009. Amended: Filed Dec. 21, 2009, effective June 30, 2010. Amended: Filed Jan. 27, 2011, effective July 30, 2011. Amended: Filed Aug. 16, 2012, effective Feb. 28, 2013.

\*Original authority: 138.430, RSMo 1939, amended 1945, 1947, 1978, 1983, 1989, 1999, 2008.

**12 CSR 30-3.015 Orders of the Commission Under the Two-Year Assessed Value Cycle**

PURPOSE: This rule establishes the procedure for implementing commission decisions under the two-year assessed value cycle for real property.

(1) In an appeal to the commission from the local board of equalization, the decision and order issued by the commission shall set the assessed value of the real property which is the subject of the appeal for both the first year of the two (2)-year cycle (odd-numbered year) and the second year of the two (2)-year cycle (even-numbered year), unless one (1) of the following conditions are met:

(A) The taxpayer did not file an appeal of his/her assessment to the commission in the odd-numbered year; or

(B) At the hearing before the commission or one (1) of its hearing officers on the appeal of the odd-numbered year's assessment, the assessor or the taxpayer presents evidence which shows that there has been new construction or property improvements to the subject property as defined in 12 CSR 30-3.001 during the odd-numbered year.

(2) A decision and order issued by the commission which sets the assessed value of a property for both years of the two (2)-year cycle shall be implemented for the even-numbered year as follows:

(A) If the decision and order is issued and becomes final prior to the assessor returning the assessor's book for the even-numbered year to the county governing body, the assessor shall enter the assessed value as determined by the commission into the assessor's book;

(B) If the decision and order is issued and becomes final after the assessor returns the assessor's book for the even-numbered year to the county governing body but before the local board of equalization issues a decision on an appeal of the assessment to it in the even-numbered year, the local board of equalization shall issue its decision based on the assessed value as determined by the commission; and

(C) If the decision and order is issued and becomes final after the local board of equalization issues a decision on an appeal of an assessment to it in the even-numbered year, if the assessed value is changed by the commission, the county clerk shall enter the assessed value as determined by the commission in the supplemental tax book of the county for the even-numbered year.

*AUTHORITY: sections 137.115.1. and 138.431.3., RSMo Supp. 1992. Original rule filed May 14, 1991, effective Oct. 31, 1991.*

*\*Original authority: 137.115.1., RSMo 1939, amended 1945, 1951, 1959, 1972, 1973, 1981, 1983, 1985, 1985, 1986, 1987, 1989, 1990, 1991, 1992 and 138.431.3., RSMo 1983, 1986, 1992.*

12 CSR 30-3.020 Intervention

PURPOSE: This rule establishes the procedure for nonparties to appear an be heard and for intervention.

(1) All persons affected or liable to be affected by review by the commission of any assessment, whether or not they are made parties to the appeal by intervention, may submit a memorandum setting forth their position on the issue(s) in the given appeal, and serve a copy of same upon counsel for the parties or upon the parties if there is no counsel. However, nonparties are not entitled to notice of hearings and decisions, except as provided generally by section 610.020, RSMo, unless they are made designated persons by the complainants as provided by section 536.067(3), RSMo. Nonparties are not entitled to take depositions, nor entitled to the issuance of subpoenas nor to introduce exhibits, testify, or cross-examine witnesses.

(2) Any person may apply for leave to intervene in any contested case before the commission by serving a motion for leave to intervene upon all then existing parties and upon the commission. The motion shall state the grounds for it and whether the applicant is seeking to intervene on behalf of the complainant or the respondent. The motion shall be filed within sixty (60) days of the time of the notice of institution of the case. Oral argument will be scheduled by the commission on the motion only if there is a written objection to the intervention filed by any party not later than fifteen (15) days after the filing of the motion to intervene. Upon its own motion, the commission, in any case, may order that oral argument be had on the issue of the proposed intervention. A separate motion must be filed for each contested case in which an applicant seeks to intervene.

(3) An applicant may be granted permission to become an intervenor based upon a balancing of the nature and the extent of the interest of all of the complainants, respondents, intervenors and applicants in the appeal. For example, in the case of an appeal filed pursuant to section 138.430, RSMo, the commission may grant an applicant the status of intervenor based upon the following five (5) interests if they are found to weigh in balance in favor of the applicant:

(A) Substantially all of the applicant’s operating revenues are derived from *ad valorem* tax revenues;

(B) If the decreases in assessed valuation paid by the complainants and against which the tax rate established by the applicant will be applied are granted by the commission, then decreases in assessed valuation will reduce the tax revenues available for distribution to the applicant;

(C) A reduction in the tax revenues will have a direct and immediate impact upon the applicant;

(D) The respondent, an existing party, may not adequately represent the interests of the applicant; and

(E) The complainants will not be prejudiced by intervention nor will they be precluded from protecting or asserting their interest in decreases in assessed valuation.

(4) For the purpose of this rule, person is defined as provided by section 1.020, RSMo.

AUTHORITY: sections 138.430 and 536.063(1), RSMo 2000\* and Article X, section 14, Mo. Const. 1945. This rule was previously filed as 12 CSR 30-2.050. Original rule filed Dec. 13, 1983, effective March 12, 1984. Amended: Filed Oct. 7, 2004, effective May 30, 2005.

\*Original authority: 138.430, RSMo 1939, amended 1945, 1947, 1978, 1983, 1999; and 536.063, RSMo 1957.

***State ex rel. Brentwood School District v. State Tax Commission*** *588 SW2d 613 (Mo. banc 1979). State Tax Commission rule on intervention cannot violate school district’s due process rights, since the district is not a “person” within the contemplation of the due process clause and so has no such rights.*

**12 CSR 30-3.075 Receipt of Evidence Indicating Value Greater than Assessor or Board—First Class Charter Counties**

*PURPOSE: This rule explains the procedures which hearing officers are to follow relative to evidence offered by assessors in first class charter counties which indicates a property value greater than the value that has been determined by the board of equalization or the assessor previously.*

(1) In any case in a first class charter county or a city not within a county, where the assessor presents evidence which indicates a valuation higher than the value finally determined by the assessor or the value determined by the board of equalization, whichever is higher, for that assessment period, such evidence will only be received for the purpose of sustaining the assessor’s or board’s valuation, and not for increasing the valuation of the property under appeal.

*AUTHORITY: sections 138.060 and 138.430, RSMo 2000.\* Original rule filed Oct. 24, 2000, effective June 30, 2001.*

*\*Original authority: 138.060, RSMo 1939, amended 1945, 1992, 1993; 138.430, RSMo 1939, amended 1945, 1947, 1978, 1983, 1989, 1999.*

**12 CSR 30-3.090 Determining Class Life for Tangible Personal Property**

*PURPOSE: This rule sets out the publication assessors are to use when estimating value for depreciable tangible personal property for mass appraisal purposes.*

(1) For purposes of assessors estimating the value of depreciable tangible personal property for mass appraisal purposes in accordance with section 137.122, RSMo, class life and recovery periods shall be determined by reference to Internal Revenue Service Publication 946—How to Depreciate Property or successor publications thereto. Specifically, class lives and recovery periods shall be determined by reference to Appendix B—Table of Class Lives and Recovery Periods. Class life shall be determined under Table B-1 and Table B-2 under the column—Class Life (in years). Recovery period shall be determined by the number corresponding to the Class Life number for given items of machinery, tools, appliances and equipment under the column—GDS (MACRS).

*AUTHORITY: section 138.430, RSMo 2000.\* Original rule filed April 13, 2006, effective Oct. 30, 2006.*

*\*Original authority: 138.430, RSMo 1939, amended 1945, 1947, 1978, 1983, 1989, 1999.*

**Administrative Procedure and Review**

**536.010.  Definitions. —** For the purpose of this chapter:

  (2)  **"Agency"** means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases, except those in the legislative or judicial branches;

  (4)  **"Contested case"** means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing;

  (5)  The term **"decision"** includes decisions and orders whether negative or affirmative in form;

  (8)  **"State agency"** means each board, commission, department, officer or other administrative office or unit of the state other than the general assembly, the courts, the governor, or a political subdivision of the state, existing under the constitution or statute, and authorized by the constitution or statute to make rules or to adjudicate contested cases.

*­­***536.060.  Informal disposition of case by stipulation — summary action — waiver.**

 Nothing contained in sections 536.060 to 536.095 shall be construed (1) to impair the power of any agency to take lawful summary action in those matters where a contested case is not required by law, or (2) to prevent any agency authorized to do so from assisting claimants or other parties in any proper manner, or (3) to prevent the waiver by the parties (including, in a proper case, the agency) of procedural requirements which would otherwise be necessary before final decision, or (4) to prevent stipulations or agreements among the parties (including, in a proper case, the agency).

*­­***536.063.  Contested case, how instituted — pleadings — copies sent parties. —** In any contested case:

  (1)  The contested case shall be commenced by the filing of a writing by which the party or agency instituting the proceeding seeks such action as by law can be taken by the agency only after opportunity for hearing, or seeks a hearing for the purpose of obtaining a decision reviewable upon the record of the proceedings and evidence at such hearing, or upon such record and additional evidence, either by a court or by another agency.  Answering, intervening and amendatory writings and motions may be filed in any case and shall be filed where required by rule of the agency, except that no answering instrument shall be required unless the notice of institution of the case states such requirement.  Entries of appearance shall be permitted;

  (2)  Any writing filed whereby affirmative relief is sought shall state what relief is sought or proposed and the reason for granting it, and shall not consist merely of statements or charges phrased in the language of a statute or rule; provided, however, that this subdivision shall not apply when the writing is a notice of appeal as authorized by law;

  (3)  Reasonable opportunity shall be given for the preparation and presentation of evidence bearing on any issue raised or decided or relief sought or granted.  Where issues are tried without objection or by consent, such issues shall be deemed to have been properly before the agency.  Any formality of procedure may be waived by mutual consent;

  (4)  Every writing seeking relief or answering any other writing, and any motion shall state the name and address of the attorney, if any, filing it; otherwise the name and address of the party filing it;

  (5)  By rule the agency may require any party filing such a writing to furnish, in addition to the original of such writing, the number of copies required for the agency's own use and the number of copies necessary to enable the agency to comply with the provisions of this subdivision hereinafter set forth.  The agency shall, without charge therefor, mail one copy of each such writing, as promptly as possible after it is filed, to every party or his or her attorney who has filed a writing or who has entered his or her appearance in the case, and who has not theretofore been furnished with a copy of such writing and shall have requested copies of the writings; provided that in any case where the parties are so numerous that the requirements of this subdivision would be unduly onerous, the agency may in lieu thereof (a) notify all parties of the fact of the filing of such writing, and (b) permit any party to copy such writing;

  (6)  When a holder of a license, registration, permit, or certificate of authority issued by the division of professional registration or a board, commission, or committee of the division of professional registration against whom an affirmative decision is sought has failed to plead or otherwise respond in the contested case and adequate notice has been given under section 536.067 upon a properly pled writing filed to initiate the contested case under this chapter, a default decision shall be entered against the licensee without further proceedings.  The default decision shall grant such relief as requested by the division of professional registration, board, committee, commission, or office in the writing initiating the contested case as allowed by law.  Upon motion stating facts constituting a meritorious defense and for good cause shown, a default decision may be set aside.  The motion shall be made within a reasonable time, not to exceed thirty days after entry of the default decision.  **"Good cause"** includes a mistake or conduct that is not intentionally or recklessly designed to impede the administrative process.

*­­***536.067.  Notice in contested case — mailing — contents — notice of hearing — time for. —** In any contested case:

  (1)  The agency shall promptly mail a notice of institution of the case to all necessary parties, if any, and to all persons designated by the moving party and to any other persons to whom the agency may determine that notice should be given.  The agency or its clerk or secretary shall keep a permanent record of the persons to whom such notice was sent and of the addresses to which sent and the time when sent.  Where a contested case would affect the rights, privileges or duties of a large number of persons whose interests are sufficiently similar that they may be considered as a class, notice may in a proper case be given to a reasonable number thereof as representatives of such class.  In any case where the name or address of any proper or designated party or person is not known to the agency, and where notice by publication is permitted by law, then notice by publication may be given in accordance with any rule or regulation of the agency or if there is no such rule or regulation, then, in a proper case, the agency may by a special order fix the time and manner of such publication;

  (2)  The notice of institution of the case to be mailed as provided in this section shall state in substance:

  (a)  The caption and number of the case;

  (b)  That a writing seeking relief has been filed in such case, the date it was filed, and the name of the party filing the same;

  (c)  A brief statement of the matter involved in the case unless a copy of the writing accompanies said notice;

  (d)  Whether an answer to the writing is required, and if so the date when it must be filed;

  (e)  That a copy of the writing may be obtained from the agency, giving the address to which application for such a copy may be made.  This may be omitted if the notice is accompanied by a copy of such writing;

  (f)  The location in the Code of State Regulations of any rules of the agency regarding discovery or a statement that the agency shall send a copy of such rules on request;

  (3)  Unless the notice of hearing hereinafter provided for shall have been included in the notice of institution of the case, the agency shall, as promptly as possible after the time and place of hearing have been determined, mail a notice of hearing to the moving party and to all persons and parties to whom a notice of institution of the case was required to be or was mailed, and also to any other persons who may thereafter have become or have been made parties to the proceeding.  The notice of hearing shall state:

  (a)  The caption and number of the case;

  (b)  The time and place of hearing;

  (4)  No hearing in a contested case shall be had, except by consent, until a notice of hearing shall have been given substantially as provided in this section, and such notice shall in every case be given a reasonable time before the hearing.  Such reasonable time shall be at least ten days except in cases where the public morals, health, safety or interest may make a shorter time reasonable; provided that when a longer time than ten days is prescribed by statute, no time shorter than that so prescribed shall be deemed reasonable;

  (5)  When a holder of a license, registration, permit, or certificate of authority issued by the division of professional registration or a board, commission, or committee of the division of professional registration against whom an affirmative decision is sought has failed to plead or otherwise respond in the contested case and adequate notice has been given under this section upon a properly pled writing filed to initiate the contested case under this chapter, a default decision shall be entered against the holder of a license, registration, permit, or certificate of authority without further proceedings.  The default decision shall grant such relief as requested by the division of professional registration, board, committee, commission, or office in the writing initiating the contested case as allowed by law.  Upon motion stating facts constituting a meritorious defense and for good cause shown, a default decision may be set aside.  The motion shall be made within a reasonable time, not to exceed thirty days after entry of the default decision.  **"Good cause"** includes a mistake or conduct that is not intentionally or recklessly designed to impede the administrative process.

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**536.070.  Evidence — witnesses — objections — judicial notice — affidavits as evidence — transcript. —** In any contested case:

  (1)  Oral evidence shall be taken only on oath or affirmation;

  (2)  Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not the subject of the direct examination, to impeach any witness regardless of which party first called him or her to testify, and to rebut the evidence against him or her;

  (3)  A party who does not testify in his or her own behalf may be called and examined as if under cross-examination;

  (4)  Each agency shall cause all proceedings in hearings before it to be suitably recorded and preserved.  A copy of the transcript of such a proceeding shall be made available to any interested person upon the payment of a fee which shall in no case exceed the reasonable cost of preparation and supply;

  (5)  Records and documents of the agency which are to be considered in the case shall be offered in evidence so as to become a part of the record, the same as any other evidence, but the records and documents may be considered as a part of the record by reference thereto when so offered;

  (6)  Agencies shall take official notice of all matters of which the courts take judicial notice.  They may also take official notice of technical or scientific facts, not judicially cognizable, within their competence, if they notify the parties, either during a hearing or in writing before a hearing, or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them;

  (7)  Evidence to which an objection is sustained shall, at the request of the party seeking to introduce the same, or at the instance of the agency, nevertheless be heard and preserved in the record, together with any cross-examination with respect thereto and any rebuttal thereof, unless it is wholly irrelevant, repetitious, privileged, or unduly long;

  (8)  Any evidence received without objection which has probative value shall be considered by the agency along with the other evidence in the case.  The rules of privilege shall be effective to the same extent that they are now or may hereafter be in civil actions.  Irrelevant and unduly repetitious evidence shall be excluded;

  (9)  Copies of writings, documents and records shall be admissible without proof that the originals thereof cannot be produced, if it shall appear by testimony or otherwise that the copy offered is a true copy of the original, but the agency may, nevertheless, if it believes the interests of justice so require, sustain any objection to such evidence which would be sustained were the proffered evidence offered in a civil action in the circuit court, but if it does sustain such an objection, it shall give the party offering such evidence reasonable opportunity and, if necessary, opportunity at a later date, to establish by evidence the facts sought to be proved by the evidence to which such objection is sustained;

  (10)  Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.  All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of such evidence, but such showing shall not affect its admissibility.  The term **"business"** shall include business, profession, occupation and calling of every kind;

  (11)  The results of statistical examinations or studies, or of audits, compilations of figures, or surveys, involving interviews with many persons, or examination of many records, or of long or complicated accounts, or of a large number of figures, or involving the ascertainment of many related facts, shall be admissible as evidence of such results, if it shall appear that such examination, study, audit, compilation of figures, or survey was made by or under the supervision of a witness, who is present at the hearing, who testifies to the accuracy of such results, and who is subject to cross-examination, and if it shall further appear by evidence adduced that the witness making or under whose supervision such examination, study, audit, compilation of figures, or survey was made was basically qualified to make it.  All the circumstances relating to the making of such an examination, study, audit, compilation of figures or survey, including the nature and extent of the qualifications of the maker, may be shown to affect the weight of such evidence but such showing shall not affect its admissibility;

  (12)  Any party or the agency desiring to introduce an affidavit in evidence at a hearing in a contested case may serve on all other parties (including, in a proper case, the agency) copies of such affidavit in the manner hereinafter provided, at any time before the hearing, or at such later time as may be stipulated.  Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit or some designated portion or portions thereof on the ground that it is in the form of an affidavit; provided, however, that if such affidavit shall have been served less than eight days before the hearing such objection may be served at any time before the hearing or may be made orally at the hearing.  If such objection is so served, the affidavit or the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision; provided, however, that such objection may be waived by the party or the agency making the same.  Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect to which no such objection was so served, on the ground that it is in the form of an affidavit, or that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not, the best evidence, but any and all other objections may be made at the hearing.  Nothing herein contained shall prevent the cross-examination of the affiant if he or she is present in obedience to a subpoena or otherwise and if he or she is present, he or she may be called for cross-examination during the case of the party who introduced the affidavit in evidence.  If the affidavit is admissible in part only it shall be admitted as to such part, without the necessity of preparing a new affidavit.  The manner of service of such affidavit and of such objection shall be by delivering or mailing copies thereof to the attorneys of record of the parties being served, if any, otherwise, to such parties, and service shall be deemed complete upon mailing; provided, however, that when the parties are so numerous as to make service of copies of the affidavit on all of them unduly onerous, the agency may make an order specifying on what parties service of copies of such affidavit shall be made, and in that case a copy of such affidavit shall be filed with the agency and kept available for inspection and copying.  Nothing in this subdivision shall prevent any use of affidavits that would be proper in the absence of this subdivision.

*­­***536.073.  Depositions, use of — how taken — discovery, when available — enforcement — administrative hearing commission to make rules for depositions by stipulation — rules subject to suspension by joint committee on administrative rules. —** 1.  In any contested case before an agency created by the constitution or state statute, any party may take and use depositions in the same manner, upon and under the same conditions, and upon the same notice, as is or may hereafter be provided for with respect to the taking and using of depositions in civil actions in the circuit court; provided, that any commission which may be required shall be issued\* out of the circuit court or the office of the clerk thereof, within and for the county where the headquarters of the agency is located or where the hearing is to be held; and provided further, that no commissioner shall be appointed for the taking in this state of depositions.

  2.  In addition to the powers granted in subsection 1 of this section, any agency authorized to hear a contested case may make rules to provide that the parties may obtain all or any designated part of the same discovery that any Missouri supreme court rule provides for civil actions in circuit court.  The agency may enforce discovery by the same methods, terms and conditions as provided by supreme court rule in civil actions in the circuit court.  Except as otherwise provided by law, no agency discovery order which:

  (1)  Requires a physical or mental examination;

  (2)  Permits entrance upon land or inspection of property without permission of the owner; or

  (3)  Purports to hold any person in contempt; shall be enforceable except upon order of the circuit court of the county in which the hearing will be held or the circuit court of Cole County at the option of the person seeking enforcement, after notice and hearing.

**536.075.  Discovery rule violations, sanctions. —** In any proceeding before the administrative hearing commission, where a party to the proceeding moves for sanctions for an alleged violation of any discovery rule, the moving party shall in the motion certify that reasonable efforts were made to resolve the dispute informally with the opposing party.

*­­***536.077.  Subpoenas, issuance — form — how served — how enforced. —** In any contested case before an agency created by the constitution or state statute, such agency shall upon request of any party issue subpoenas and shall in a proper case issue subpoenas duces tecum.  Subpoenas other than subpoenas duces tecum shall on request of any party be issued with the caption and number of the case, the name of the witness, and the date for appearance in blank, but such caption, number, name and date shall be filled in by such party before service.  Subpoenas shall extend to all parts of the state, and shall be served and returned as in civil actions in the circuit court.  The witness shall be entitled to the same fees and, if compelled to travel more than forty miles from his place of residence, shall be entitled to the same tender of fees for travel and attendance, and at the same time, as is now or may hereafter be provided for witnesses in civil actions in the circuit court, such fees to be paid by the party or agency subpoenaing him, except where the payment of such fees is otherwise provided for by law.  The agency or the party at whose request the subpoena is issued shall enforce subpoenas by applying to a judge of the circuit court of the county of the hearing or of any county where the witness resides or may be found for an order upon any witness who shall fail to obey a subpoena to show cause why such subpoena should not be enforced, which said order and a copy of the application therefor shall be served upon the witness in the same manner as a summons in a civil action, and if the said circuit court shall, after a hearing, determine that the subpoena should be sustained and enforced, said court shall proceed to enforce said subpoena in the same manner as though said subpoena had been issued in a civil case in the circuit court.  The court shall permit the agency and any party to intervene in the enforcement action.  Any such agency may delegate to any member, officer, or employee thereof the power to issue subpoenas in contested cases; provided that, except where otherwise authorized by law, subpoenas duces tecum shall be issued only by order of the agency or a member thereof.

*­­***536.080.  Parties may file briefs — officials to hear or read evidence. —** 1.  In contested cases each party shall be entitled to present oral arguments or written briefs at or after the hearing which shall be heard or read by each official of the agency who renders or joins in rendering the final decision.

  2.  In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs.  The parties to a contested case may by written stipulation or by oral stipulation in the record at a hearing waive compliance with the provisions of this section.

*­­***536.083.  Hearing officer not to conduct rehearing or appeal involving same issues and parties. —** Notwithstanding any other provision of law to the contrary, in any administrative hearing conducted under the procedures established in this chapter, and in any other administrative hearing conducted under authority granted any state agency, no person who acted as a hearing officer or who otherwise conducted the first administrative hearing involving any single issue shall conduct any subsequent administrative rehearing or appeal involving the same issue and same parties.

*­­***536.085.  Definitions. —** As used in section 536.087, the following terms mean:

  (1)  **"Agency proceeding"**, an adversary proceeding in a contested case pursuant to this chapter in which the state is represented by counsel, but does not include proceedings for determining the eligibility or entitlement of an individual to a monetary benefit or its equivalent, child custody proceedings, eminent domain proceedings, driver's license proceedings, vehicle registration proceedings, proceedings to establish or fix a rate, or proceedings before the state tax commission;

  (2)  **"Party"**:

  (a)  An individual whose net worth did not exceed two million dollars at the time the civil action or agency proceeding was initiated; or

  (b)  Any owner of an unincorporated business or any partnership, corporation, association, unit of local government or organization, the net worth of which did not exceed seven million dollars at the time the civil action or agency proceeding was initiated, and which had not more than five hundred employees at the time the civil action or agency proceeding was initiated;

  (3)  **"Prevails"**, obtains a favorable order, decision, judgment, or dismissal in a civil action or agency proceeding;

  (4)  **"Reasonable fees and expenses"** includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court or agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees.  The amount of fees awarded as reasonable fees and expenses shall be based upon prevailing market rates for the kind and quality of the services furnished, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the state in the type of civil action or agency proceeding, and attorney fees shall not be awarded in excess of seventy-five dollars per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee;

  (5)  **"State"**, the state of Missouri, its officers and its agencies, but shall not include political subdivisions of the state.

*­­***536.087.  Reasonable fees and expenses awarded prevailing party in civil action or agency proceeding — application, content, filed with court or agency where party appeared — appeal by state, effect — power of court or agency to reduce requested amount or deny, when — form of award — judicial review, when. —** 1.  A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

  2.  In awarding reasonable fees and expenses under this section to a party who prevails in any action for judicial review of an agency proceeding, the court shall include in that award reasonable fees and expenses incurred during such agency proceeding unless the court finds that during such agency proceeding the position of the state was substantially justified, or that special circumstances make an award unjust.

  3.  A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in an agency proceeding or final judgment in a civil action, submit to the court, agency or commission which rendered the final disposition or judgment an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.  The party shall also allege that the position of the state was not substantially justified.  The fact that the state has lost the agency proceeding or civil action creates no legal presumption that its position was not substantially justified.  Whether or not the position of the state was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by an agency upon which a civil action is based) which is made in the agency proceeding or civil action for which fees and other expenses are sought, and on the basis of the record of any hearing the court or agency deems appropriate to determine whether an award of reasonable fees and expenses should be made, provided that any such hearing shall be limited to consideration of matters which affected the agency's decision leading to the position at issue in the fee application.

  4.  A prevailing party in an agency proceeding shall submit an application for fees and expenses to the administrative body before which the party prevailed.  A prevailing party in a civil action on appeal from an agency proceeding shall submit an application for fees and expenses to the court.  The filing of an application shall not stay the time for appealing the merits of a case.  When the state appeals the underlying merits of an adversary proceeding, no decision on the application for fees and other expenses in connection with that adversary proceeding shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

  5.  The court or agency may either reduce the amount to be awarded or deny any award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

  6.  The decision of a court or an agency on the application for reasonable fees and expenses shall be in writing, separate from the judgment or order of the court or the administrative decision which determined the prevailing party, and shall include written findings and conclusions and the reason or basis therefor.  The decision of a court or an agency on the application for fees and other expenses shall be final, subject respectively to appeal or judicial review.

  7.  If a party or the state is dissatisfied with a determination of fees and other expenses made in an agency proceeding, that party or the state may within thirty days after the determination is made, seek judicial review of that determination from the court having jurisdiction to review the merits of the underlying decision of the agency adversary proceeding.  If a party or the state is dissatisfied with a determination of fees and other expenses made in a civil action arising from an agency proceeding, that party or the state may, within the time permitted by law, appeal that order or judgment to the appellate court having jurisdiction to review the merits of that order or judgment.  The reviewing or appellate court's determination on any judicial review or appeal heard under this subsection shall be based solely on the record made before the agency or court below.  The court may modify, reverse or reverse and remand the determination of fees and other expenses if the court finds that the award or failure to make an award of fees and other expenses, or the calculation of the amount of the award, was arbitrary and capricious, was unreasonable, was unsupported by competent and substantial evidence, or was made contrary to law or in excess of the court's or agency's jurisdiction.  Awards made pursuant to this act\* shall be payable from amounts appropriated therefor.  The state agency against which the award was made shall request an appropriation to pay the award.

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**536.090.  Decisions in writing — notice. —** Every decision and order in a contested case shall be in writing, and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law.  The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order.  Immediately upon deciding any contested case the agency shall give written notice of its decision by delivering or mailing such notice to each party, or his attorney of record, and shall upon request furnish him with a copy of the decision, order, and findings of fact and conclusions of law.

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**536.095.  Contempt — procedure for punishment. —** In any hearing in a contested case before an agency created by the constitution or state statute if any person acts or refuses to act in such manner that a contempt of court would have been committed if the case were a civil action before a circuit court, the agency in addition to any other powers it may have by law may apply to a judge of the circuit court of the county of the hearing or of any county where such person resides or may be found, for an order on any such person to show cause why he should not be punished as for contempt, which order and copy of the application therefor shall be served upon the person in the same manner as a summons in a civil action.  Thereafter the same proceedings shall be had in such court as in cases of contempt of a circuit court.

*­­***536.100.  Party aggrieved entitled to judicial review — waiver of independent review, when. —** Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this section.  If the agency or any board, other than the administrative hearing commission, established to provide independent review of the decisions of a department or division that is authorized to promulgate rules and regulations under this chapter fails to issue a final decision in a contested case within the earlier of:

  (1)  Sixty days after the conclusion of a hearing on the contested case; or

  (2)  One hundred eighty days after the receipt by the agency of a written request for the issuance of a final decision, *­­*then the person shall be considered to have exhausted all administrative remedies and shall be considered to have received a final decision in favor of the agency and shall be entitled to immediate judicial review as provided in sections 536.100 to 536.140 or other provision for judicial review provided by statute.  In cases, whether contested or not, where the law provides for an independent review of an agency's decision by a board other than the administrative hearing commission and further provides for a de novo review of the board's decision by the circuit court, a party aggrieved by the agency's decision may, within thirty days after it receives notice of that decision, waive independent review by the board and instead file a petition in the circuit court for the de novo review of the agency's decision.  The party filing the petition under this section shall be considered to have exhausted all administrative remedies.

*­­***536.110.  Petition, when filed — process — venue. —** 1.  Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision.

  2.  Such petition may be filed without first seeking a rehearing, but in cases where agencies have authority to entertain motions for rehearing and such a motion is duly filed, the thirty-day period aforesaid shall run from the date of the delivery or mailing of notice of the agency's decision on such motion.  No summons shall issue in such case, but copies of the petition shall be delivered to the agency and to each party of record in the proceedings before the agency or to his attorney of record, or shall be mailed to the agency and to such party or his said attorney by registered mail, and proof of such delivery or mailing shall be filed in the case.

  3.  The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence or if any plaintiff is a corporation, domestic or foreign, having a registered office or business office in this state, in the county of such registered office or business office, except that, in cases involving real property or improvements thereto, the venue shall be the circuit court of the county where such real property is located.  The court in its discretion may permit other interested persons to intervene.

*­­***536.120.  Suspension of decisions or orders. —** Pending the filing and final disposition of proceedings for review under sections 536.100 to 536.140, the agency may stay the enforcement of its order and may temporarily grant or extend relief denied or withheld.  Any court in which such proceedings for review may be pending may issue all necessary and appropriate process to stay or require the agency to stay the enforcement of its order or temporarily to grant or extend or require the agency temporarily to grant or extend relief denied or withheld, pending the final disposition of such proceedings for review.  Such stay or other temporary relief by a reviewing court may be conditioned upon such terms as shall appear to the court to be proper.  No such stay or temporary relief shall be granted by a reviewing court without notice, except in cases of threatened irreparable injury; and when in any case a stay or other temporary relief is granted without notice the court shall then make an order, of which due notice shall be given, setting the matter down for hearing as promptly as possible on the question whether such stay or other temporary relief shall be continued in effect.  No such stay or other temporary relief shall be granted or continued unless the court is satisfied that the public interest will not be prejudiced thereby.

*­­***536.130.  Record on judicial review. —** 1.  Within thirty days after the filing of the petition or within such further time as the court may allow, the record before the agency shall be filed in the reviewing court.  Such record shall consist of any one of the following:

  (1)  Such parts of the record, proceedings and evidence before the agency as the parties by written stipulation may agree upon;

  (2)  An agreed statement of the case, agreed to by all parties and approved as correct by the agency;

  (3)  A complete transcript of the entire record, proceedings and evidence before the agency.  Evidence may be stated in either question and answer or narrative form.  Documents may be abridged by omitting irrelevant and formal parts thereof.  Any matter not essential to the decision of the questions presented by the petition may be omitted.  The decision, order and findings of fact and conclusions of law shall in every case be included.

  2.  The record filed in the reviewing court shall be properly certified by the agency, and shall be typewritten, mimeographed, printed, or otherwise suitably reproduced.  In any case where papers, documents or exhibits are to be made a part of the record in the reviewing court, the originals of all or any part thereof, or photostatic or other copies which may have been substituted therefor, may, if the agency permits, be sent to the reviewing court instead of having the same copied into the record.

  3.  In any case where any party fails or refuses to agree to the correctness of a record, the agency shall decide as to its correctness and certify the record accordingly.  If any party shall be put to additional expense by reason of the failure of another party to agree to a proper shortening of the record, the court may tax the amount of such additional expense against the offending party as costs.

  4.  The record to be filed in the reviewing court shall be filed by the plaintiff, or at the request of the plaintiff shall be transmitted by the agency directly to the clerk of the reviewing court and by him filed; provided, that when original documents are to be sent to the reviewing court they shall be transmitted by the agency directly, as aforesaid.  The court may require or permit subsequent corrections of or additions to the record.

*­­***536.140.  Scope of judicial review — judgment — appeals. —** 1.  The court shall hear the case without a jury and, except as otherwise provided in subsection 4 of this section, shall hear it upon the petition and record filed as aforesaid.

  2.  The inquiry may extend to a determination of whether the action of the agency

  (1)  Is in violation of constitutional provisions;

  (2)  Is in excess of the statutory authority or jurisdiction of the agency;

  (3)  Is unsupported by competent and substantial evidence upon the whole record;

  (4)  Is, for any other reason, unauthorized by law;

  (5)  Is made upon unlawful procedure or without a fair trial;

  (6)  Is arbitrary, capricious or unreasonable;

  (7)  Involves an abuse of discretion.

*­­*The scope of judicial review in all contested cases, whether or not subject to judicial review pursuant to sections 536.100 to 536.140, and in all cases in which judicial review of decisions of administrative officers or bodies, whether state or local, is now or may hereafter be provided by law, shall in all cases be at least as broad as the scope of judicial review provided for in this subsection; provided, however, that nothing herein contained shall in any way change or affect the provisions of sections 311.690\* and 311.700\*.

  3.  Whenever the action of the agency being reviewed does not involve the exercise by the agency of administrative discretion in the light of the facts, but involves only the application by the agency of the law to the facts, the court may upon application of any party conduct a de novo review of the agency decision.

  4.  Wherever under subsection 3 of this section or otherwise the court is entitled to weigh the evidence and determine the facts for itself, the court may hear and consider additional evidence if the court finds that such evidence in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency.  Wherever the court is not entitled to weigh the evidence and determine the facts for itself, if the court finds that there is competent and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the agency, the court may remand the case to the agency with directions to reconsider the same in the light of such evidence.  The court may in any case hear and consider evidence of alleged irregularities in procedure or of unfairness by the agency, not shown in the record.

  5.  The court shall render judgment affirming, reversing, or modifying the agency's order, and may order the reconsideration of the case in the light of the court's opinion and judgment, and may order the agency to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in the agency, unless the court determines that the agency decision was arbitrary or capricious.

  6.  Appeals may be taken from the judgment of the court as in other civil cases.

*­­***536.150.  Review by injunction or original writ, when — scope. —** 1.  When any administrative officer or body existing under the constitution or by statute or by municipal charter or ordinance shall have rendered a decision which is not subject to administrative review, determining the legal rights, duties or privileges of any person, including the denial or revocation of a license, and there is no other provision for judicial inquiry into or review of such decision, such decision may be reviewed by suit for injunction, certiorari, mandamus, prohibition or other appropriate action, and in any such review proceeding the court may determine the facts relevant to the question whether such person at the time of such decision was subject to such legal duty, or had such right, or was entitled to such privilege, and may hear such evidence on such question as may be properly adduced, and the court may determine whether such decision, in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion; and the court shall render judgment accordingly, and may order the administrative officer or body to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in such administrative officer or body, and in cases where the granting or withholding of a privilege is committed by law to the sole discretion of such administrative officer or body, such discretion lawfully exercised shall not be disturbed.

  2.  Nothing in this section shall apply to contested cases reviewable pursuant to sections 536.100 to 536.140.

  3.  Nothing in this section shall be construed to impair any power to take summary action lawfully vested in any such administrative officer or body, or to limit the jurisdiction of any court or the scope of any remedy available in the absence of this section.

*­­***536.160.  Refund of funds paid into court, when. —** In the event a reviewing court reverses a decision of a state agency, remands the matter to the agency for further proceedings and orders the payment into court of any increase in funds authorized by said decision, and thereafter, on remand, the state agency reaches the same result, reaffirms or ratifies its prior decision, then the entity which paid such funds into court shall be entitled to a refund of such funds, including all interest accrued thereon.  This provision is enacted in part to clarify and specify the law in existence prior to August 28, 2001.

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**Court Rules**

**56.01. General Provisions Governing Discovery**

(**a**) **Discovery Methods.** Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

**(b)** **Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that 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 persons having knowledge of any discoverable matter.

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The party seeking discovery shall bear the burden of establishing relevance.

(2) *Insurance Agreements.* A party may obtain discovery of the existence and contents, including production of the policy and declaration page, of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this [Rule 56.01(b)(2)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(b)%20Scope%20of%20Discovery.%20Unless%20ot), an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial Preparation: Materials.* Subject to the provisions of [Rule 56.01(b)(4)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(b)%20Scope%20of%20Discovery.%20Unless%20ot), a party may obtain discovery of documents and tangible things otherwise discoverable under [Rule 56.01(b)(1)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(b)%20Scope%20of%20Discovery.%20Unless%20ot) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative, including an attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the adverse party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court 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.

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 paragraph, 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, audio, video, motion picture or other recording, or a transcription thereof, of the party or of a statement made by the party and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Rule 56.01(b)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial by providing such expert's name, address, occupation, place of employment and qualifications to give an opinion, or if such information is available on the expert's curriculum vitae, such curriculum vitae may be attached to the interrogatory answers as a full response to such interrogatory, and to state the general nature of the subject matter on which the expert is expected to testify, and the expert's hourly deposition fee.

(B) A party may discover by a deposition the facts and opinions to which the expert is expected to testify. Unless manifest injustice would result, the court shall require that the party seeking discovery from an expert pay the expert a reasonable hourly fee for the time such expert is deposed.

(5) *Trial Preparations: Non-retained Experts.* A party, through interrogatories, may require any other party to identify each non-retained expert witness, including a party, whom the other party expects to call at trial who may provide expert witness opinion testimony by providing the expert's name, address, and field of expertise. For the purpose of this Rule 56.01(b)(5), an expert witness is a witness qualified as an expert by knowledge, experience, training, or education giving testimony relative to scientific, technical or other specialized knowledge that will assist the trier of fact to understand the evidence. Discovery of the facts known and opinions held by such an expert shall be discoverable in the same manner as for lay witnesses.

(6) *Approved Interrogatories and Request for Production.* A circuit court by local court rule may promulgate 'approved' interrogatories and requests for production for use in specified types of litigation. Each such approved interrogatory and request for production submitted to a party shall be denominated as having been approved by reference to the local court rule and paragraph number containing the interrogatory or request for production.

**(c) Protective Orders.** Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

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

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

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If a motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of [Rule 61.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/a8d444e965ce5c9586256ca600521356?OpenDocument#61.01.%20Failure%20to%20Make%20Discovery) apply to the award of expenses incurred in relation to the motion.

(**d**) **Sequence and Timing of Discovery.** Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(**e**) **Supplementation of Responses**. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(**f**) **Stipulations Regarding Discovery Procedure.** Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery. Any stipulation under subdivision (2) shall be filed.

**57.01. Interrogatories to Parties**

(**a**) **Scope.** Any party may serve upon any other party written interrogatories. Interrogatories may relate to any matter that can be inquired into under [Rule 56.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument). An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(**b**) **Issuance.**

(1) Form. Interrogatories shall be in consecutively numbered paragraphs. The title shall identify the party to whom they are directed and state the number of the set of interrogatories directed to that party.

(2) When Interrogatories May be Served. Without leave of court, interrogatories may be served on:

(A) A plaintiff after commencement of the action, and

(B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the interrogatories shall be served on all parties not in default. The party issuing the interrogatories shall also provide each answering party an electronic copy, in a commonly used medium such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state:

(A) The name of each party who is to respond to the interrogatories;

(B) The number of the set of interrogatories,

(C) The format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the interrogatories, shall be filed with the court as provided in [Rule 57.01(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/ccbd32559d4a216986256ca60052134f?OpenDocument#(d)).

(**c**) **Response.** The interrogatories shall be answered by each party to whom they are directed. If they are directed to a public or private corporation, limited liability company, partnership, association or governmental agency, they shall be answered by an officer or agent. The party answering the interrogatories shall furnish such information as is available to the party.

(1) When the Response is Due. Responses shall be served within 30 days after the service of the interrogatories. A defendant, however, shall not be required to respond to interrogatories before the expiration of 45 days after the earlier of:

(A) The date the defendant enters an appearance, or

(B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of interrogatories. The response to the interrogatories shall quote each interrogatory, including its original paragraph number, and immediately thereunder state the answer or all reasons for not completely answering the interrogatory, including privileges, the work product doctrine and objections.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for withholding information, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Option to Produce Business Records. If the answer to an interrogatory may be derived or ascertained from:

(A) The business records of the party upon whom the interrogatory has been served, or

(B) An examination, audit or inspection of such business records, or

(C) A compilation, abstract or summary based thereon,

and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(5) Signing. Answers shall be signed under oath by the person making them. Objections shall be signed by the attorney making them or by the self-represented party.

(6) Service. The party to whom the interrogatories were directed shall serve a signed original of the answers and objections, if any, on the party that issued the interrogatories and a copy on all parties not in default. The certificate of service shall state the name of the party who issued the interrogatories and the number of the set of interrogatories.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in [Rule 57.01(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/ccbd32559d4a216986256ca60052134f?OpenDocument#(d)).

(**d**) **Filing.** Interrogatories and answers under this Rule 57.01 shall not be filed with the court except upon court order or contemporaneously with a motion placing the interrogatories in issue. However, both when the interrogatories and answers are served, the party serving them shall file with the court a certificate of service.

The certificate shall show the caption of the case, the name of the party served, the date and manner of service, the designation of the document, e.g., first interrogatories or answers to second interrogatories, and the signature of the serving party or attorney. The answers bearing the original signature of the party answering the interrogatories shall be served on the party submitting the interrogatories, who shall be the custodian thereof until the entire case is finally disposed.

Copies of interrogatory answers may be used in all court proceedings to the same extent the original answers may be used.

(**e**) **Enforcement.** The party submitting the interrogatory may move for an order under [Rule 61.01(b)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/a8d444e965ce5c9586256ca600521356?OpenDocument#(b)%20Failure%20to%20Answer%20Interrogat) with respect to any objection to or other failure to answer an interrogatory.

(**f**) **Use at Trial.** Interrogatory answers may be used to the extent permitted by the rules of evidence.

**57.02. Depositions Before Action or Pending Appeal**

(**a**) **Before Action.**

(1) *Petition.* A person who desires to perpetuate testimony of any person regarding any matter that may be cognizable in any court of Missouri may file a verified petition in the circuit court in the county of the residence of any expected adverse party. The petition shall be captioned in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in a court of Missouri but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts desired to be established by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons expected to be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony that is expected to be elicited from each.

The petitioner shall ask for an order authorizing the taking of the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least thirty days before the date of hearing, the notice shall be served either within or without the state in the manner provided for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise and shall appoint, for persons not personally served with a summons in this state, an attorney who shall represent them and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of [Rule 52.02](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/401f43289f0c86dc86256ca60052150a?OpenDocument) apply.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions. The depositions may then be taken in accordance with these Rules; and the court may make orders of the kind provided for by Rules [58.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/eaf6abbe82915a0586256ca600521350?OpenDocument) and [60.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/f69f72630a5c2bb486256ca600521355?OpenDocument). For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be considered as referring to the court in which the petition for such deposition was filed.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these Rules, it may be used in any action involving the same subject matter subsequently brought in a court of Missouri, in accordance with the provisions of [Rule 57.07](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/88d6853ebcc9d08686256ca600521553?OpenDocument).

(**b**) **Pending Appeal.** If an appeal has been taken from a judgment of a circuit court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the circuit court. In such case, the party who desires to perpetuate the testimony may make a motion in the circuit court for leave to take the depositions, upon the same notice and service thereof as if the action were pending in that court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony expected to be elicited from each and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the deposition to be taken and may make orders of the character provided for in [Rule 58.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/eaf6abbe82915a0586256ca600521350?OpenDocument) and [Rule 60.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/f69f72630a5c2bb486256ca600521355?OpenDocument), a
nd thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in that court.

(**c**) **Perpetuation by Action.** This Rule does not limit the power of a court to entertain an action to perpetuate testimony.

**57.03. Depositions Upon Oral Examination**

(**a**) **When Depositions May Be Taken.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in [Rule 57.09](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/9e7713a99bc2f02a86256ca600521554?OpenDocument). The attendance of a party is compelled by notice as provided in subdivision (b) of this Rule. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court describes.

(**b**) **Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.**

(1) A party desiring to take the deposition of any person upon oral examination shall give not less than seven days notice in writing to every other party to the action and to a non-party deponent.

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. If the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs shall be stated.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

A party may attend a deposition by telephone.

(2) The court may for cause shown enlarge or shorten the time for taking the deposition.

(3) The notice to a party deponent may be accompanied by a request made in compliance with [Rule 58.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/eaf6abbe82915a0586256ca600521350?OpenDocument) for the production of documents and tangible things at the taking of the deposition. The procedure of [Rule 58.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/eaf6abbe82915a0586256ca600521350?OpenDocument) shall apply to the request.

(4) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency 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 the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This Rule 57.03(b)(4) does not preclude taking a deposition by any other procedure authorized in these rules.

(**c**) **Non-stenographic Recording - Video Tape.** Depositions may be recorded by the use of video tape or similar methods. The recording of the deposition by video tape shall be in addition to a usual recording and transcription method unless the parties otherwise agree.

(1) If the deposition is to be recorded by video tape, every notice or subpoena for the taking of the deposition shall state that it is to be video taped and shall state the name, address and employer of the recording technician. If a party upon whom notice for the taking of a deposition has been served desires to have the testimony additionally recorded by other than stenographic means, that party shall serve notice on the opposing party and the witness that the proceedings are to be video taped. Such notice must be served not less than three days prior to the date designated in the original notice for the taking of the depositions and shall state the name, address and employer of the recording technician.

(2) Where the deposition has been recorded only by video tape and if the witness and parties do not waive signature, a written transcription of the audio shall be prepared to be submitted to the witness for signature as provided in Rule 57.03(f).

(3) The witness being deposed shall be sworn as a witness on camera by an authorized person.

(4) More than one camera may be used, either in sequence or simultaneously.

(5) The attorney for the party requesting the video taping of the deposition shall take custody of and be responsible for the safeguarding of the video tape and shall, upon request, permit the viewing thereof by the opposing party and if requested, shall provide a copy of the video tape at the cost of the requesting party.

(6) Unless otherwise stipulated to by the parties, the expense of video taping is to be borne by the party utilizing it and shall not be taxed as costs.

(**d**) **Record of Examination; Oath; Objections.** The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Rule 57.03(c). 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, to the manner of taking it, to the evidence presented, to the conduct of any party, or 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 a sealed envelope on the party taking the deposition, and that party shall transmit them to the officer before whom the deposition is to be taken, who shall propound them to the witness, and the questions and answers thereto shall be recorded.

(**e**) **Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion 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 court in which the action is pending or a court having general jurisdiction in the place where the deposition is being taken 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 in [Rule 56.01(c)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(c)%20Protective%20Orders.%20Upon%20mot). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court 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 motion for an order. The provisions of [Rule 61.01(g)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/a8d444e965ce5c9586256ca600521356?OpenDocument#(g)%20Failure%20to%20Answer%20Questions) apply to the award of expenses incurred in relation to the motion.

(**f**) **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed, the officer shall make the deposition available to the witness for examination, reading and signing, unless such examination, reading, and signing are waived by the witness or by the parties. Any changes in form or substance that the witness desires to make shall be entered upon an errata sheet provided to the witness with a statement of the reasons given for making such changes. The answers or responses as originally given, together with the changes made and reasons given therefor, shall be considered as a part of the deposition. The deposition shall then be signed by the witness before a notary public unless the witness is ill, cannot be found, is dead, or refuses to sign. If the deposition is not signed by the time of trial, it may be used as if signed, unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign requires rejection of the deposition in whole or in part.

(Amended June 20, 2014, eff. Jan. 1, 2015)

(**g**) **Certification, Delivery, and Filing; Exhibits; Copies**.

(1) *Certification and Delivery.* The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall deliver the deposition to the party who requested that the testimony be transcribed.

(2) *Filing*

(a) By the Officer. Upon delivery of a deposition, the officer shall file with the court a certificate showing the caption of the case, the name of the deponent, the date the deposition was taken, the name and address of the person having custody of the original deposition, and whether the charges have been paid. The officer shall not file a copy of the deposition with the court except upon court order.

(b) By a Party. A party shall not file a deposition with the court except upon specific court order or contemporaneously with a motion placing the deposition or a part thereof in issue. The court may enact local court rules requiring a party who intends to use a deposition at a hearing or trial to file that deposition with the court on or prior to the date of the hearing or trial.

(c) Return of Deposition. At the conclusion of the hearing or trial the deposition that has been filed or delivered to the court shall be returned to the party that filed or delivered the deposition.

(d) Retention of Deposition. The original deposition shall be maintained until the case is finally disposed.

(3) *Exhibits.* Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification if the person affords to all parties fair opportunity to verify the copies by comparison with the originals and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the civil action.

(4) *Copies.* Upon request and payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(**h**) **Failure to Attend or to Serve Subpoena; Expenses**.

(1) 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 court may order the party giving notice to pay to such other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

(2) If a witness fails to appear for a deposition and the party giving the notice of the taking of the deposition has not complied with these rules to compel the attendance of the witness, the court may order the party giving the notice to pay to any party attending in person or by attorney the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

**57.04. Depositions Upon Written Questions**

(**a**) **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in [Rule 57.09](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/9e7713a99bc2f02a86256ca600521554?OpenDocument). The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (1) 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 the person or the particular class or group to which the person belongs and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of [Rule 57.03(b)(4](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/81458d625bf6339586256ca60052154e?OpenDocument#(4)%20A%20party%20may%20in%20the%20notice%20and)).

Within thirty days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(**b**) **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 promptly, in the manner provided by [Rule 57.03(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/81458d625bf6339586256ca60052154e?OpenDocument#(d)%20Record%20of%20Examination%3B%20Oath%3B), [(f)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/81458d625bf6339586256ca60052154e?OpenDocument#(f)%20Submission%20to%20Witness%3B%20Chang), and [(g)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/81458d625bf6339586256ca60052154e?OpenDocument#(g)%20Certification%2C%20Delivery%2C%20and), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions.

(**c**) **Notice of Delivery.** When the deposition is delivered, the party taking it promptly shall give notice thereof to all other parties.

**57.05. Persons Before Whom Depositions May Be Taken**

(**a**) **In Missouri.** Within the State of Missouri, depositions shall be taken before an officer authorized by the laws of this State to administer oaths, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(**b**) **Elsewhere in the United States**. Within other States of the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before a person authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(**c**) **In Foreign Countries.** In a foreign country, a deposition may be taken:

(1) 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 law of the United States, or

(2) Before a person commissioned by the court, and a person so commissioned has the power by virtue of his commission to administer any necessary oath and take testimony, or

(3) Pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed 'To the Appropriate Authority in [here name the country]'. Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these Rules.

(**d**) **Disqualification for Interest.** No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

**57.07. Use of Depositions in Court Proceedings**

(**a**) **Use of Depositions.** Any part of a deposition that is admissible under the rules of evidence applied as though the deponent were testifying in court may be used against any party who was present or represented at the taking of the deposition or who had proper notice thereof. Depositions may be used in court for any purpose.

(**b**) **Objections - Effect of Errors and Irregularities in Depositions.**

(1) *Regarding the Notice.* An objection to an irregularity in a deposition notice shall be made promptly by written notice served on all parties before the deposition starts; otherwise, the objection is waived.

(2)*Regarding the Officer.* An objection to a deposition because the officer before whom it is to be taken is not qualified shall be made before the deposition begins or as soon thereafter as the officer's lack of qualification becomes known or could have been discovered with reasonable diligence; otherwise, the objection is waived.

(3) *Regarding the Competency of the Deponent.* An objection to a deponent's competency is not waived by failing to make an objection before or during the deposition unless the basis for the objection could have been removed if the objection had been presented before or during the deposition.

(4) *Regarding Conduct During the Deposition.* An objection to the competency, relevancy, or materiality of testimony is not waived by failure to object before or during the deposition. Errors and irregularities 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 that might be cured if promptly presented are waived unless seasonable objection thereto is made during the deposition. Objections as to the form of written questions submitted under [Rule 57.04](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/dd88e44ea097ad5386256ca60052154f?OpenDocument) are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within ten days after service of the last questions authorized.

(5) *Regarding Irregularities in Transcription.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under [Rule 57.03](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/81458d625bf6339586256ca60052154e?OpenDocument) and [Rule 57.04](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/dd88e44ea097ad5386256ca60052154f?OpenDocument) are waived unless a motion to suppress the deposition or some party thereof is made with reasonable promptness after such defect is, or with due diligence might have been discovered.

**57.09. Subpoena for Taking Deposition**

(**a**) **For Attendance of Witnesses; Form; Issuance.** Every subpoena for a deposition shall:

(1) Be issued by the officer or person before whom depositions may be taken as designated in Rule 57.05 or Rule 57.06 or by the clerk of the court in which the civil action is pending;

(2) State the name of the court and the style of the civil action;

(3) State the name, address and telephone number of all attorneys of record and self-represented parties; and

(4) Command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(**b**) **For Production of Documents and Things.** In conjunction with a deposition properly noticed under Rule [57.03](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/81458d625bf6339586256ca60052154e?OpenDocument#57.03.%20Depositions%20Upon%20Oral%20Exa), a subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

The court may:

(1) Quash or modify the subpoena if it is unreasonable or oppressive, or

(2) Require the party who issued and served the subpoena to advance the reasonable cost of producing the books, papers, documents, or tangible things.

(**c**) **Subpoena to a Non-Party.** A subpoena to a non-party pursuant to Rule 57.09 for the production of documents and things shall be served not fewer than 10 days before the time specified for compliance. The party serving a subpoena on a non-party shall provide a copy of the subpoena to every party as if it were a pleading. A party objecting to the subpoena may seek a protective order under Rule [56.01(c)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(c)%20Protective%20Orders.%20Upon%20motio).

A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena.

With the agreement of all parties, the non-party may be excused from appearance at the deposition and may produce the subpoenaed items to the party responsible for issuance and service of the subpoena, who shall then offer to all other parties the opportunity to inspect or copy the subpoenaed items. The party responsible for issuance and service of the subpoena is responsible for obtaining the agreement of all parties and advising the non-party in writing of the agreement, with a copy to all attorneys of record and self-represented parties. Absent such an agreement, the subpoenaed items shall only be produced at the deposition.

Upon request by any party, the non-party shall also produce with the subpoenaed items a business records affidavit of the custodian of records.

A non-party commanded to produce and permit inspection and copying may serve the party who issued and served the subpoena with a written objection to inspection and copying of any or all of the designated items. The objection shall state specific reasons why the subpoena should be quashed or modified.

The objection shall be served on all parties to the action within 10 days after service of the subpoena or before the time specified for compliance, whichever is earlier.

If a timely and specific objection is made, the party who issued and served the subpoena shall not be entitled to inspect or copy the subpoenaed items except pursuant to an order of the court.

Upon notice to the non-party commanded to produce, the party who issued and served the subpoena may move at any time for an order to compel production.

(**d**) **Service.** A subpoena may be served by:

(1) The sheriff or a sheriff's deputy, or

(2) 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 and by tendering to that person the fees and mileage the witness would have been entitled to receive for attending court pursuant to subpoena.

(**e**) **Authorization to Issue Subpoena.** Proof of service of a notice to take a deposition as provided in Rules 57.03 and 57.04 is sufficient to authorize the issuance of a subpoena for taking a deposition.

(**f**) **Contempt.** Any person who without adequate excuse fails to obey a subpoena served upon the person may be held in contempt of the court in which the civil action is pending.

**57.10. Taxing and Certifying Costs**

(**a**) **Costs - How Taxed.** The costs of taking depositions shall be taxed in favor of the party paying the same and taxed as other costs in the civil action.

(**b**) **Costs - How Certified and Taxed.** The costs shall be certified by the person before whom the deposition is taken in the amount provided by law.

**58.01.** PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(**a**) **Scope.** Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or someone acting on the requesting party’s behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, electronic records, and other data compilations from which information can be obtained, translated, if necessary, by the requesting party through detection devices into reasonably usable form) or to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of [Rule 56.01(b)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(b)%20Scope%20of%20Discovery.%20Unless) and that are in the possession, custody or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, and photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of [Rule 56.01(b)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(b)%20Scope%20of%20Discovery.%20Unless).

This Rule 58.01 does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(**b**) **Issuance.**

(1) Form. In consecutively numbered paragraphs 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 title shall identify the party to whom the requests are directed and state the number of the set of requests directed to that party.

(2) When Requests May be Served. Without leave of court, requests may be served on:

(A) A plaintiff after commencement of the action, and

(B) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests,

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in [Rule 58.01(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/eaf6abbe82915a0586256ca600521350?OpenDocument#(d)).

(**c**) **Response.** The requests shall be answered by each party to whom they are directed.

(1) When Response is Due. Responses shall be served within 30 days after the service of the request. A defendant, however, shall not be required to respond to the request before the expiration of 45 days after the earlier of:

(A) The date the defendant enters an appearance, or

(B) The date the defendant is served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of the requests. The response shall quote each request, including its original paragraph number, and immediately thereunder state that the requested items will be produced or the inspection and related activities will be permitted as requested, unless the request is objected to, in which event each reason for objection shall be stated in detail.

(3) Objections and Privileges. If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for the objection, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Method of Production. 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.

(5) Signing. The response shall be signed by the attorney or by the party if the party is not represented by an attorney.

(6) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in [Rule 58.01(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/eaf6abbe82915a0586256ca600521350?OpenDocument#(d)).

(**d**) **Filing.** The request and responses thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and responses are served, the party serving them shall file with the court a certificate of service. The certificate shall show the caption of the case, the name of the party served, the date and manner of service, and the signature of the serving party or attorney. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(**e**) **Enforcement.** The party submitting the request may move for an order under Rule [61.01(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/a8d444e965ce5c9586256ca600521356?OpenDocument) with respect to any objection or other failure to respond to the request or any part thereof or any failure to permit inspection as requested.

**58.02 SUBPOENA TO NON-PARTY FOR PRODUCTION OF DOCUMENTS AND THINGS**

(**a**) **Scope.** A party may serve a subpoena on a non-party to:

(1) Produce and permit inspection and copying of any designated documents, or

(2) Permit inspection, copying testing, or sampling of any tangible things that constitute or contain matters within the scope of Rule [56.01(b)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument) and that are in the possession, custody or control of the non-party.

(3) Every such subpoena for document production and things shall:

(A) Be issued by the clerk of the court in which the civil action is pending;

(B) State the name of the court and they style of the civil action;

(C) State the name, address, and telephone number of all attorneys of record and self-represented parties.

(**b**) **Time.** A subpoena to a non-party shall be served not fewer than 10 days before the time specified for compliance.

(**c**) **Notice to Parties.** The party serving a subpoena on a non-party pursuant to Rule 58.02(a) shall provide a copy of the subpoena to every party as if it were a pleading. A party objecting to the subpoena may seek a protective order under Rule [56.01(c)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument).

(**d**) **Response.** With the agreement of all parties, the non-party may be excused from appearance at the location specified for document production and may produce the subpoenaed items to the party responsible for issuance and service of the subpoena, who shall then offer to all other parties the opportunity to inspect or copy the subpoenaed items. The party responsible for issuance and service of the subpoena is responsible for obtaining the agreement of all parties and advising the non-party in writing of the agreement, with a copy to all attorneys of record and self-represented parties. Absent such an agreement, the subpoenaed items shall only be produced at the place, date and time specified by the subpoena for all parties to inspect or copy.

Upon request by any party, the non-party shall also produce with the subpoenaed items a business records affidavit of the custodian of records.

(**e**) **Protection of Non-Party.**

(1) A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena.

(2) A non-party commanded to produce and permit inspection and copying may serve the party who issued and served the subpoena with a written objection to inspection and copying of any or all of the designated items. The objection shall state specific reasons why the subpoena should be quashed or modified. The objection shall be served on all parties to the action within 10 days after service of the subpoena or before the time specified for compliance, whichever is earlier.

(3) If a timely and specific objection is made, the party who issued and served the subpoena shall not be entitled to inspect or copy the subpoenaed items except pursuant to an order of the court.

(**f**) **Contempt.** Any person who without adequate excuse fails to obey a subpoena served upon the person may be held in contempt of the court in which the civil action is pending.

**59.01. Request for and Effect of Admissions**

(**a**) **Scope.** After commencement of an action, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of [Rule 56.01(b)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/b83f5cbe4450f09686256ca60052134e?OpenDocument#(b)%20Scope%20of%20Discovery.%20Unless) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

A failure to timely respond to requests for admissions in compliance with this Rule 59.01 shall result in each matter being admitted.

The request for admissions shall have included at the beginning of said request the following language in all capital letters, boldface type, and a character size that is as large as the largest character size of any other material in the request:

**"A FAILURE TO TIMELY RESPOND TO REQUESTS FOR ADMISSIONS IN COMPLIANCE WITH RULE 59.01 SHALL RESULT IN EACH MATTER BEING ADMITTED BY YOU AND NOT SUBJECT TO FURTHER DISPUTE."**

(**b**) **Effect of Admission.** Any matter admitted under this Rule 59.01 is conclusively established unless the court on motion permits withdrawal or amendment of the admission.

Subject to the provisions of [Rule 62.01](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/931d0e628a09f4d986256ca600521361?OpenDocument) governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits.

Any admission made by a party under this Rule 59.01 is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

(**c**) **Issuance.**

(1) Form. In consecutively numbered paragraphs, the request shall set forth each matter for which an admission is requested. Copies of documents about which admissions are requested shall be served with the request unless copies have already been furnished. The title shall identify the party to whom the request for admissions are directed and state the number of the set of requests directed to that party.

(2) When Requests May be Served. Without leave of court, requests may be served on:

(A) A plaintiff after commencement of the action,

(B) A defendant or respondent upon the expiration of 30 days after the first event of the defendant entering an appearance or being served with process, and

(C) Any other party with or after the party was served with process, entered an appearance, or filed a pleading.

(3) Service. Copies of the requests shall be served on all parties not in default. The party issuing the requests shall also provide each responding party an electronic copy in a commonly used medium, such as a diskette, CD-ROM or as an e-mail attachment, in a format that can be read by most commonly used word processing programs, such as Word for Windows or WordPerfect 5.x or higher. In addition to the information normally in a certificate of service, the certificate of service shall also state the:

(A) Name of each party who is to respond to the requests;

(B) Number of the set of requests,

(C) Format of the electronic copy and the medium used to transmit the electronic copy to the responding party.

At the time of service, a certificate of service, but not the requests, shall be filed with the court as provided in [Rule 59.01(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/599c2f573b62fd0086256ca600521354?OpenDocument#(d)).

(**d**) **Response.** The requests shall be answered by each party to whom they are directed.

(1) When Response is Due. Responses shall be served within 30 days after the service of the requests for admissions. A defendant or respondent, however, shall not be required to respond to requests for admissions before the expiration of 60 days after the earlier of the defendant:

(A) Entering an appearance, or

(B) Being served with process.

The court may allow a shorter or longer time.

(2) Form. The title of the response shall identify the responding party and the number of the set of the requests for admissions. The response shall quote each request, including its original paragraph number, and immediately thereunder specifically:

(A) Admit the matter; or

(B) Deny the matter; or

(C) Object to the matter and state each reason for the objection; or

(D) Set forth in detail the reasons why the responding party cannot truthfully admit or deny the matter.

A denial shall fairly meet the substance of the requested admission.

When good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as true and qualify or deny the remainder.

A responding party may give lack of information or knowledge as a reason for failure to admit or deny if such party states that the party has made reasonable inquiry and the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; such party may deny the matter, subject to the provisions of [Rule 61.01(c)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/a8d444e965ce5c9586256ca600521356?OpenDocument#(c)%20Failure%20to%20Answer%20Request%20fo), or set forth reasons why the party cannot admit or deny it.

(3) Objections and Privileges. If an objection is asserted, then each reason for the objection shall be stated. If a failure to admit or deny a request is based on a privilege or the work product doctrine, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

(4) Signing. The response shall be signed by the party or the party’s attorney.

(5) Service. The party to whom the requests were directed shall serve a signed original of the response and objections, if any, on the party that issued the requests and a copy upon all parties not in default. The certificate of service shall state the name of the party who issued the requests and the number of the set of requests.

At the time of service, a certificate of service, but not the response, shall be filed with the court as provided in [Rule 59.01(d)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/599c2f573b62fd0086256ca600521354?OpenDocument#(d)).

(**e**) **Filing Request and Responses.** The request and response thereto shall not be filed with the court except upon court order or contemporaneously with a motion placing the request in issue. However, both when the request and the response are served the party serving them shall file with the court a certificate of service. Each party filing a certificate shall maintain a copy of the document that is the subject of the certificate until the case is finally disposed.

(**f**) **Enforcement.** The party who has requested the admissions may move to have determined the sufficiency of the answers or objections. Unless the court determines that an objection is proper, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule 59.01, it may order either that:

(1) The matter is admitted, or

(2) An amended answer be served.

The provisions of [Rule 61.01(c)](https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/599c2f573b62fd0086256ca600521354?OpenDocument#(c)) apply to the award of expenses incurred in relation to the motion.

**Sample Commercial Order**

**STATE TAX COMMISSION OF MISSOURI**

|  |  |  |  |
| --- | --- | --- | --- |
| COMPANY | )) | Appeal No. Parcel/locator No.  |  |
|  Complainant, | ) |  |  |
|  | ) |  |  |
| v. | ) |  |  |
|  | ) |  |  |
| ASSESSOR, | ) |  |  |
| MISSOURI, | ) |  |  |
|  | ) |  |  |
|  Respondent. | ) |  |  |

**ORDER ON FILING OF COMPLAINT, ASSIGNING HEARING OFFICER, REQUIRING GOOD FAITH MEETING, AND**

**SETTING DISCOVERY AND HEARING SCHEDULE**

 The State Tax Commission of Missouri has received a Complaint for Review of Assessment for the above referenced appeal. An appeal number has been assigned. Parties are requested to include the appeal number and parcel/locator number on any filings or communications.

Hearing Officer \_\_\_\_\_\_ has been assigned to the appeal. The State Tax Commission will send notification to the Collector so that any taxes paid will be impounded pending disposition of the appeal.

The Commission sets the following schedule and procedure:

**1. Good Faith Meeting. The parties are required to meet in person or by telephone, in good faith, no later than \_\_\_\_\_\_\_\_\_\_\_,** to attempt to resolve the appeals. It is presumed that **both Complainant’s Counsel and Counsel for Respondent** will be in possession of facts and/or documents sufficient to allow effective discussion of the parties and to identify the issues in the appeals, to simplify the issues, and to discuss all other matters that may aid in the disposition of the case.

2. **Disclosures and Exchange of Exhibits to be Used in Appeals** (**Read Carefully**). If there is no resolution of all of the appeals at the Good Faith Meeting, the parties should adhere to the following schedule:

|  |
| --- |
| **DISCOVERY AND EXCHANGE SCHEDULE** |
|  | **Date Due** |
| Good Faith Meeting |  |
| Complainant’s Written Certification to Prosecute Appeal |  |
| Initial Disclosures by Both Parties |  |
| Simultaneous Filing and Exchange of Exhibits and Written Direct Testimony and Expert Disclosures |  |
| Objections and Rebuttal Evidence |  |
| Responses to Objections and Surrebuttal Evidence |  |
| Evidentiary Hearing at X |  |

**DISCOVERY – DISCLOSURES**

1. Initial Disclosures. Except as otherwise ordered, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses;

(ii) a copy of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.

2. Time for Initial Disclosures. A party must make the initial disclosures no later than the due date provided by the schedule.

3. Disclosure of Expert Testimony. In addition to the disclosures above, a party must disclose to the other parties the identity of any witness the party may use at Evidentiary Hearing to present evidence as an expert witness and any report that may be presented as evidence at Evidentiary Hearing.

4. Time for Expert Disclosures. A party must make the expert disclosures **within thirty (30) days of an expert report being generated** by any witness the party may use at Evidentiary Hearing to present evidence as an expert witness **or no later than the date in the schedule, whichever occurs first**.

5. Other Discovery. In addition to the foregoing, the parties are free to participate in any additional discovery allowable under the Missouri Rules of Civil Procedure.

**DISCOVERY – EXHIBITS AND WRITTEN DIRECT TESTIMONY**

**Exchange Procedure**

1. Exhibits. Each party shall file with the Commission the original of all exhibits to be used in their case in chief and serve a copy upon opposing counsel. Complainant’s exhibits

shall be marked with letters beginning with the letter A, with the appeal number. Respondent’s exhibits shall be marked with numbers beginning with the number 1, with the appeal number.

 Exhibits filed with and retained by the Commission should be no larger than 8½ by 11 inches, (*standard appraisal forms on 8½ by 14 inch pages are permitted*) although for purposes of demonstration at the hearing, the parties may use larger copies of the submitted exhibits. Exhibits which consist of photographs shall be affixed to or copied on 8½ by 11 inch paper, and each photograph shall be identified in a brief statement or phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph.

 2. Written Direct Testimony. Each party shall file with the Commission the original of written direct testimony of each witness expected to be called for the party’s case in chief and serve a copy upon opposing counsel. Written direct testimony shall be in a question and answer form with each question numbered sequentially, typed on 8½ by 11 inch paper, with pages

numbered. Written direct testimony must be as complete and accurate as if it were oral testimony.

3. Objections and Rebuttal Exhibits. Objections to opposing party’s introduction of exhibits and written direct testimony and rebuttal exhibits shall be filed with the Commission. A

copy of said objections and/or exhibits shall be served upon opposing counsel.

4. Responses to Objections and Surrebuttal Exhibits. Responses to objections and surrebuttal exhibits shall be filed with the Commission. A copy of said responses to objections and/or surrebuttal exhibits shall be served upon opposing counsel.

5. Addresses for Filing and Serving Exhibits:

A. Exhibits filed with the Commission shall be mailed to: ***Missouri State Tax Commission, Legal Section, 301 W. High Street, Room 840, P.O. Box 146, Jefferson City, MO 65102-0146***

B. The parties may serve their filings to the other party at the mailing address of

record.

C. The parties may serve their filings to the Commission and to the other party by use of electronic mail (email).

6. Sanctions. Upon finding that a party has willfully failed to comply with this order, including, but not limited to failing to serve a copy of documents upon opposing party/counsel or to timely supplement those documents, sanctions may be imposed which may include exclusion of the offending party’s evidence or dismissal of the appeal. Rule 61.01; Section 138.431 RSMo; Section 536.075 RSMo.

 7. Duty to Timely Supplement. Each party shall supplement any and all discovery and disclosures in a timely fashion, i.e., as soon as the party becomes aware of the additional evidence/exhibits. Waiting to bring additional and new evidence/exhibits on or about the date of hearing will not be looked upon favorably.

 8. Motions for Continuance. Parties are expected to proceed in an expeditious manner to comply with the deadlines set herein. Motions for continuance are discouraged and will not be looked upon favorably. **The fact parties are engaged in settlement negotiations is not good cause for continuance of the discovery schedule.** Parties are in no way prevented from pursuing settlement while conducting discovery. If a motion for continuance must be filed, it is to be filed not less than five days before the date specified for the event which stands to be affected by the motion, **not including intermediate Saturdays, Sundays and legal holidays**. Rule 61.01.

SO ORDERED x

STATE TAX COMMISSION OF MISSOURI

Hearing Officer

**Sample Residential Order – Prehearing Conference**

**STATE TAX COMMISSION OF MISSOURI**

|  |  |  |  |
| --- | --- | --- | --- |
| TAXPAYER | )) | Appeal No. Parcel/locator No.  |  |
|  Complainant, | ) |  |  |
|  | ) |  |  |
| v. | ) |  |  |
|  | ) |  |  |
| ASSESSOR, | ) |  |  |
| MISSOURI, | ) |  |  |
|  | ) |  |  |
|  Respondent. | ) |  |  |

**ORDER ON FILING OF COMPLAINT, ASSIGNING HEARING OFFICER,**

**AND REQUIRING PREHEARING CONFERENCE**

 The State Tax Commission of Missouri has received a Complaint for Review of Assessment. An appeal number has been assigned. Parties are requested to include the appeal number and parcel/locator number on any filings or communications.

Hearing Officer x has been assigned to the appeal. The State Tax Commission will send notification to the Collector so that any taxes paid will be impounded pending disposition of the appeals.

The Commission sets the following schedule and procedure:

**1. Prehearing Conference. Before an Evidentiary Hearing will be scheduled in these appeals, the parties are required to meet in person, in good faith, at a Prehearing Conference with the Hearing Officer on X., at the X.** At the Prehearing Conference, **BOTH** of the parties shall be prepared to discuss the simplification of the issues and all other matters that may aid in the disposition of the cases. **BOTH** parties should present and exchange information and documentation on the issue of fair market value of the properties during the Prehearing Conference. If the parties resolve the appeals, no additional proceedings will be necessary. If the parties fail to resolve the appeals, the Hearing Officer will discuss the next steps in the process. However, the Hearing Officer will ***not*** be hearing testimony or taking evidence of value during the meeting with the parties. The Hearing Officer will ***not*** be providing legal advice to either party.

**Failure to appear at the Prehearing Conference may result in dismissal of the appeal(s) for failure to prosecute.**

2. **Evidentiary Hearing.** If there is no resolution of the appeals at the Prehearing Conference, the Hearing Officer will schedule the appeal for an Evidentiary Hearing, date and time to be determined, at the St. Louis County Government Administration Building, 41 South Central Avenue, Clayton, Missouri.

***\*\*Please read all of the information contained in this Order.\*\****

**The Role of the Hearing Officer**

The Hearing Officer is employed by the State of Missouri, not the county or Respondent. The Hearing Officer is impartial and decides the outcome of the appeal. Any communication between Complainant or Respondent and the Hearing Officer must be copied to the other party. For example, if Complainant contacts the Hearing Officer by email to ask a question about the Evidentiary Hearing, Complainant must copy Respondent on the email. The same rule applies to Respondent. The Hearing Officer may answer general questions about the manner in which the Evidentiary Hearing will be conducted but is not allowed to provide legal advice to either party.

**Being Prepared for the Evidentiary Hearing**

All parties are reminded the Evidentiary Hearing is a legal proceeding, and the fundamental rules of evidence apply. For example, evidence that is hearsay or that is based on an improper factual foundation will not be received into the record. The parties should make every effort to be prepared to present the case at the time of the Evidentiary Hearing.

Complaint should be aware that, under Missouri law, it is presumed that the Board of Equalization’s determination of true market value of the property is correct. This means that Complainant bears the initial burden of proof in the appeal. In other words, to prove his or her opinion of the true market value of the property should be adopted over the Board of Equalization’s value, Complainant must present substantial and persuasive evidence to support Complainant’s opinion of value. Complainant may visit https://stc.mo.gov/legal-decisions/ and select a search term such as “overvaluation,” “discrimination,” or “misclassification,” to learn more about the type of evidence that is presented in appeals before the STC.

PLEASE NOTE: An individual may represent himself or herself at the hearing if he or she owns the property subject to appeal. If the property is owned or held by another person or a legal entity (your relative; a trust; a corporation, partnership, or other business), a licensed attorney must enter an appearance with the State Tax Commission prior to the hearing and must present Complainant’s evidence at the hearing. NO EXCEPTIONS.

***Exhibits at the Evidentiary Hearing***

Complainant and Respondent *must* bring at least three copies of any documents which will be introduced into evidence at the evidentiary hearing that will support the party’s opinion of value. One copy is for the Hearing Officer; one copy is for the opposing party; and one copy is for the party to retain. Exhibits should be no larger than 8½ by 11 inches in size; however, larger copies of the exhibits can be used for purposes of demonstration at the hearing. Exhibits which consist of photographs must be affixed to or copied on 8½ by 11 inch paper, and each photograph must be identified in a brief statement or phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph. If you are presenting an appraisal report from a Missouri Certified Appraiser as evidence, the appraiser MUST be present to testify and to be cross-examined. If the appraiser is not present at the Evidentiary Hearing, the appraisal report cannot be received into evidence.

Complainant’s exhibits must be marked with letters in sequence beginning with the letter A, i.e. Exhibit A, Exhibit B etc., with the appeal number. Respondent’s exhibits must be marked with numbers in sequence beginning with the number 1, i.e. Exhibit 1, Exhibit 2, etc., with the appeal number.

***Testimony at the Evidentiary Hearing***

The hearing will be audio recorded. At the start of the hearing, the Hearing Officer will read information to identify the appeal and the exhibits being offered. The Hearing Officer will then swear in Complainant so that Complainant may testify under oath. First, the Hearing Officer will ask Complainant a series of questions to establish the basic facts of the case. Second, Complainant will be asked to provide his or her opinion of the true market value of the property. Complainant will be given the opportunity to present his or her exhibits and explain how the exhibits support his or her opinion of true market value. Third, Respondent will have an opportunity to cross-examine Complainant regarding his or her opinion of true market value and regarding Complainant’s exhibits. If Complainant brings witnesses, the Hearing Officer will swear in each witness, and Complainant will be allowed to ask questions of the witnesses. Respondent will have an opportunity to cross-examine Complainant’s witnesses.

Once Complainant has completed the presentation of his or her evidence, Respondent will be given the opportunity to present evidence, if he or she has any. Keep in mind that Respondent does not have the burden of proof and is not required to present evidence. If Respondent does present evidence, it will be presented in the same manner as Complainant’s. Complainant will have an opportunity to cross-examine Respondent and any witnesses who testify for Respondent.

At the end of the hearing, the Hearing Officer will make some final statements and stop the audio-recording. A decision will not be issued immediately.

***What Happens Next?***

After the hearing, a written decision by the Hearing Officer will be sent to you by email.[[1]](#footnote-1) The decision also will be published on the State Tax Commission website at https://stc.mo.gov. It is possible that the Hearing Officer will determine that the assessment should remain the same, should be lowered, or should be raised, depending upon the particular circumstances and the evidence. If either party disagrees with the decision, the party will have 30 days from the date the decision was issued to file an Application for Review with the three-member State Tax Commission. Following a decision by the Commission, if either party disagrees with that decision, the party will have 30 days from the date of the decision to appeal to the circuit court of the county in which the property is located.

**Continuances**

If you cannot attend the scheduled Prehearing Conference and need a continuance, you must put your request in **writing** and give the reason why it is necessary to reschedule the hearing. Your request for continuance must be received by the State Tax Commission Legal Section at P.O. Box 146, Jefferson City, MO 65102-0146, or by email at Legal@stc.mo.gov *no later than five (5) days before the date of conference*, **not including intermediate Saturdays, Sundays and legal holidays**.[[2]](#footnote-2) If Complainant does not appear at the conference and no timely request for continuance is made, the appeal will be dismissed for failure to prosecute.

SO ORDERED X.

STATE TAX COMMISSION OF MISSOURI

Hearing Officer

**Sample Residential Order – NO Prehearing Conference**

**STATE TAX COMMISSION OF MISSOURI**

|  |  |  |  |
| --- | --- | --- | --- |
| TAXPAYER, | ) |  |  |
|  | ) |  |  |
|  Complainants, | ) |  |  |
|  | ) |  |  |
| v. | ) | Appeal No.  |  |
|  | ) | Parcel/Locator No.  |  |
| ASSESSOR, | ) |  |  |
| COUNTY, MISSOURI, Respondent | ) |  |  |

**ORDER ASSIGNING HEARING OFFICER**

**AND SETTING DATE FOR EVIDENTIARY HEARING**

 The State Tax Commission of Missouri has received a Complaint for Review of Assessment. An appeal number has been assigned (see above). The parties are requested to reference the appeal number on any filings or communications. Hearing Officer X has been assigned to the appeal for disposition. The State Tax Commission will send notification to the Collector so that any taxes paid will be impounded pending disposition of the appeal.

The Evidentiary Hearing in this appeal will be held **at x** Respondent is requested to arrange for a suitable room in which to conduct the hearing and to notify Complainant and the Commission of its location. **At least 30 days before the date of the Evidentiary Hearing**, the parties should meet in person or confer by telephone, in good faith, to attempt to resolve the appeal. If the appeal is not resolved, the parties should be prepared to meet with the Hearing Officer on the date of the Evidentiary Hearing.

***\*\*Please read all of the information contained in this Order.\*\****

**The Role of the Hearing Officer**

The Hearing Officer is employed by the State of Missouri, not the county or Respondent. The Hearing Officer is impartial and decides the outcome of the appeal. Any communication between Complainant or Respondent and the Hearing Officer must be copied to the other party. For example, if Complainant contacts the Hearing Officer by email to ask a question about the Evidentiary Hearing, Complainant must copy Respondent on the email. The same rule applies to Respondent. The Hearing Officer may answer general questions about the manner in which the Evidentiary Hearing will be conducted but is not allowed to provide legal advice to either party.

**Being Prepared for the Evidentiary Hearing**

All parties are reminded the Evidentiary Hearing is a legal proceeding, and the fundamental rules of evidence apply. For example, evidence that is hearsay or that is based on an improper factual foundation will not be received into the record. The parties should make every effort to be prepared to present the case at the time of the Evidentiary Hearing.

Complaint should be aware that, under Missouri law, it is presumed that the Board of Equalization’s determination of true market value of the property is correct. This means that Complainant bears the initial burden of proof in the appeal. In other words, to prove his or her opinion of the true market value of the property should be adopted over the Board of Equalization’s value, Complainant must present substantial and persuasive evidence to support Complainant’s opinion of value. Complainant may visit https://stc.mo.gov/legal-decisions/ and select a search term such as “overvaluation,” “discrimination,” or “misclassification,” to learn more about the type of evidence that is presented in appeals before the STC.

PLEASE NOTE: An individual may represent himself or herself at the hearing if he or she owns the property subject to appeal. If the property is owned or held by another person or a legal entity (your relative; a trust; a corporation, partnership, or other business), a licensed attorney must enter an appearance with the State Tax Commission prior to the hearing and must present Complainant’s evidence at the hearing. NO EXCEPTIONS.

***Exhibits at the Evidentiary Hearing***

Complainant and Respondent *must* bring at least three copies of any documents which will be introduced into evidence at the evidentiary hearing that will support the party’s opinion of value. One copy is for the Hearing Officer; one copy is for the opposing party; and one copy is for the party to retain. Exhibits should be no larger than 8½ by 11 inches in size; however, larger copies of the exhibits can be used for purposes of demonstration at the hearing. Exhibits which consist of photographs must be affixed to or copied on 8½ by 11 inch paper, and each photograph must be identified in a brief statement or phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph. If you are presenting an appraisal report from a Missouri Certified Appraiser as evidence, the appraiser MUST be present to testify and to be cross-examined. If the appraiser is not present at the Evidentiary Hearing, the appraisal report cannot be received into evidence.

Complainant’s exhibits must be marked with letters in sequence beginning with the letter A, i.e. Exhibit A, Exhibit B etc., with the appeal number. Respondent’s exhibits must be marked with numbers in sequence beginning with the number 1, i.e. Exhibit 1, Exhibit 2, etc., with the appeal number.

***Testimony at the Evidentiary Hearing***

The hearing will be audio recorded. At the start of the hearing, the Hearing Officer will read information to identify the appeal and the exhibits being offered. The Hearing Officer will then swear in Complainant so that Complainant may testify under oath. First, the Hearing Officer will ask Complainant a series of questions to establish the basic facts of the case. Second, Complainant will be asked to provide his or her opinion of the true market value of the property. Complainant will be given the opportunity to present his or her exhibits and explain how the exhibits support his or her opinion of true market value. Third, Respondent will have an opportunity to cross-examine Complainant regarding his or her opinion of true market value and regarding Complainant’s exhibits. If Complainant brings witnesses, the Hearing Officer will swear in each witness, and Complainant will be allowed to ask questions of the witnesses. Respondent will have an opportunity to cross-examine Complainant’s witnesses.

Once Complainant has completed the presentation of his or her evidence, Respondent will be given the opportunity to present evidence, if he or she has any. Keep in mind that Respondent does not have the burden of proof and is not required to present evidence. If Respondent does present evidence, it will be presented in the same manner as Complainant’s. Complainant will have an opportunity to cross-examine Respondent and any witnesses who testify for Respondent.

At the end of the hearing, the Hearing Officer will make some final statements and stop the audio-recording. A decision will not be issued immediately.

If you cannot attend the scheduled Evidentiary Hearing and need a continuance, you must put your request in **writing** and give the reason why it is necessary to reschedule the hearing. Your request for continuance must be received by the State Tax Commission Legal Section at P.O. Box 146, Jefferson City, MO 65102-0146, or by email at Legal@stc.mo.gov *no later than five (5) days before the date of hearing*, **not including intermediate Saturdays, Sundays and legal holidays**.[[3]](#footnote-3) If you do not appear at the hearing and no timely request for continuance is made, your appeal will be dismissed for failure to prosecute.

***What Happens Next?***

After the hearing, a written decision by the Hearing Officer will be sent to you by email.[[4]](#footnote-4) The decision also will be published on the State Tax Commission website at https://stc.mo.gov. It is possible that the Hearing Officer will determine that the assessment should remain the same, should be lowered, or should be raised, depending upon the particular circumstances and the evidence. If either party disagrees with the decision, the party will have 30 days from the date the decision was issued to file an Application for Review with the three-member State Tax Commission. Following a decision by the Commission, if either party disagrees with that decision, the party will have 30 days from the date of the decision to appeal to the circuit court of the county in which the property is located.

SO ORDERED x

STATE TAX COMMISSION OF MISSOURI

**Sample Automobile**

|  |  |  |  |
| --- | --- | --- | --- |
| TAXPAYER | )) | Appeal No. Account No. |  |
|  Complainant, | ) |  |  |
|  | ) |  |  |
| v. | ) |  |  |
|  | ) |  |  |
| ASSESSOR, | ) |  |  |
| MISSOURI, | ) |  |  |
|  | ) |  |  |
|  Respondent. | ) |  |  |

**ORDER ASSIGNING HEARING OFFICER AND SETTING DISCOVERY AND EXHIBIT EXCHANGESCHEDULE AND PROCEDURE**

The State Tax Commission of Missouri has received a Complaint for Review of Assessment. An appeal number has been assigned. Parties are requested to reference the appeal number on any filings or communications.

Please note: Property taxes must be paid timely even if an appeal is pending. In accordance with the provisions of Sections 138.430 and 139.031.3, RSMo, the State Tax Commission will send notice of your appeal to the collector so that the taxes which you are disputing will be escrowed.

**Hearing Officer**

Hearing Officer X has been assigned to the appeal for disposition. The Hearing Officer is employed by the State of Missouri, not the county or Respondent. The Hearing Officer is impartial and decides the outcome of the appeal. Any communication between Complainant or Respondent and the Hearing Officer must be copied to the other party. For example, if Complainant contacts the Hearing Officer by email to ask a question about the Evidentiary Hearing, Complainant must copy Respondent on the email. The same rule applies to Respondent. The Hearing Officer may answer general questions about the manner in which the Evidentiary Hearing will be conducted but is not allowed to provide legal advice to either party.

**Valuation of Vehicles**

Complaint should be aware that, under Missouri law, the assessor shall use the trade-in value published in the October, prior to the valuation date of January 1, issue of the National Automobile Dealers' Association Official Used Car Guide, or its successor publication, as the recommended guide of information for determining the true value of motor vehicles described in such publication.

**Evidence Exchange**

1. Complainant must present substantial and persuasive evidence to support Complainant’s opinion of value. On or before **X**, Complainant shall file with the Commission the original of all exhibits to be used in his case in chief, including a brief Statement of Basis of Value setting forth the Complainant’s opinion of value of the vehicle under appeal as of January 1, \_\_\_\_, and the basis for that opinion **and serve a copy upon opposing party/counsel**. In the event copies of documents were filed with Complainant(s) “Complaint For Review Of Assessment”, Complainant(s) shall again file such documents specifically as exhibits and marked appropriately **and** **serve a copy upon opposing party/counsel**.. Complainant’s exhibits shall be marked with letters in sequence, i.e. Exhibit A, Exhibit B, *etc*.

Complainant should consider filing the following information with their Statement of Basis of Value:

1. How often each vehicle is driven.
2. The odometer reading of each vehicle.
3. A description of each vehicle, including:
	1. The exterior of the vehicle
	2. The interior of the vehicle
	3. The mechanical condition of the vehicle,
	4. The year of the vehicle.
	5. The make of the vehicle.
	6. The model of the vehicle.
4. At least four (4) pictures of the exterior of each vehicle, with at least one (1) each from the front, drivers side, rear and passenger side.
5. At least four (4) pictures of the interior of each vehicle, with at least one (1) each of the front drivers side, front passenger side, rear drivers side and read passenger side.
6. Respondent’s Exhibits and Statement of Basis of Value: On or before **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, Respondent shall file with the Commission the original of all exhibits to be used in his case in chief, including a brief Statement of Basis of Value setting forth the Respondent’s opinion of value of the property under appeal as of January 1, \_\_\_, and the basis for that opinion, **and** **serve a copy upon opposing party/counsel** of the Exhibits and Statement of Basis of Value. Respondent’s exhibits shall be marked with numbers in sequence, i.e. Exhibit 1, Exhibit 2, *etc*.

3. Form of Exhibits: Exhibits filed with the Commission should be no larger than 8½ by 11 inches. Exhibits which consist of photographs shall be affixed to or copied on 8½ by 11 inch paper, and each photograph shall be identified in a brief statement or descriptive phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph and provide the descriptive statement. The Statement of Basis of Value should be typewritten, but if hand-written must be ***legibly printed***.

4. Addresses for Filing and Serving Exhibits and Statements of Value, Etc.

A. Exhibits and Written Direct Testimony filed with the Commission shall be mailed to: ***Missouri State Tax Commission, Legal Section, 301 W. High Street, Room 840, P. O. Box 146, Jefferson City, MO 65102-0146***

B. Exhibits and Written Direct Testimony served upon Respondent and/or Respondent’s attorney shall be mailed to or delivered to: ***X***

C. Exhibits and Written Direct Testimony served upon Complainant shall be mailed to the Complainant at: **X**

 5. Sanctions. Upon finding that a party has willfully failed to comply with this order, including, but not limited to failing to serve a copy of documents or direct written testimony upon opposing party/counsel, sanctions may be imposed which may include exclusion of the offending party’s evidence or dismissal of the appeal. *12 CSR 30-3.060*.

 6. Settlement Conferences. The Parties may engage in prehearing conferences and settlement discussions. Parties are ordered to notify the State Tax Commission in writing if they reach a stipulation of value or determine that they no longer wish to pursue the appeal.

 7. Motions for Continuance. Parties are expected to proceed in an expeditious manner to comply with the deadlines set herein. Motions for continuance will not be looked on with favor. **The fact parties are engaged in settlement negotiations is not good cause for continuance of the discovery schedule.** Parties are in no way prevented from pursuing settlement while conducting discovery. Parties will have ample time when discovery is completed to settle the case without the need for exchange of exhibits and written direct testimony. A motion for continuance is to be filed not less than five days before the date specified for the event which stands to be affected by the motion, **not including intermediate Saturdays, Sundays and legal holidays**.[[5]](#footnote-5)

**Evidentiary Hearing**

 On or before \_\_\_\_\_\_\_\_\_\_, each party is to inform the Hearing Officer in writing if the party desires to have an evidentiary hearing in the case or if the party is willing to have the appeal decided based upon the submission of exhibits as herein ordered in lieu of an evidentiary hearing. Any party failing to respond as ordered will be deemed to have consented to a decision being rendered based upon the exhibits submitted by each party, and waived that party’s right to an evidentiary hearing.

 SO ORDERED \_\_\_\_\_\_\_, 20\_\_.

STATE TAX COMMISSION OF MISSOURI

Hearing Officer

*Please keep in mind that the information provided has been prepared for informational purposes only and is not intended to be, nor should it be considered to be, legal advice. The material is general in nature and may not apply to your circumstances, especially if you do not live in Missouri. You should consult an attorney to determine current law and how it may apply to your situation. Any delay may result in a loss of some or all of your rights.  Responding to any informational request is not intended to create, nor does it constitute, an attorney-client relationship The views and opinions expressed in this correspondence are those of the author and do not necessarily reflect the official policy or position of the State Tax Commission or any agency of the State of Missouri.*

1. To preserve resources for the taxpayers of Missouri, the State Tax Commission utilizes electronic communication when possible. If you do not have access to email, please inform the Hearing Officer that you will need a copy of the decision sent by U.S. Mail. [↑](#footnote-ref-1)
2. Missouri Rule of Civil Procedure 44.01(a) [↑](#footnote-ref-2)
3. Missouri Rule of Civil Procedure 44.01(a) [↑](#footnote-ref-3)
4. To preserve resources for the taxpayers of Missouri, the State Tax Commission utilizes electronic communication when possible. If you do not have access to email, please inform the Hearing Officer that you will need a copy of the decision sent by U.S. Mail. [↑](#footnote-ref-4)
5. Missouri Rule of Civil Procedure 44.01(a) [↑](#footnote-ref-5)