

Regulations of Connecticut State Agencies

TITLE 31. Labor

Agency

Department of Labor/Employment Security Board of Review

Subject

**Registration and Rules of Conduct for Authorized Agents Providing Representation
for a Fee**

Inclusive Sections

§§ 31-272-1—31-272-18

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Registration and Rules of Conduct for Authorized Agents Providing Representation for a Fee

Sec. 31-272-1. Definitions

As used in sections 31-272-1 through 31-272-18 of these regulations, inclusive, unless the context clearly indicates otherwise:

“Administrator” means the Labor Commissioner of the State of Connecticut, whose mailing address is 200 Folly Brook Boulevard, Wethersfield, Connecticut, 06109.

“Agency complaint” means a Board finding of probable cause of authorized agent misconduct from which further proceedings will follow.

“Appeals Division” means the Employment Security Appeals Division consisting of the Board members, the Referees employed in the Referee Section and all other supporting staff members employed in that division for discharge of its responsibilities.

“Attorney” means an attorney-at-law admitted to practice law in Connecticut.

“Authorized agent” means an individual, organization or business that provides representation to parties before a Referee or the Board for a fee. In the case of an individual authorized agent representing an organization or business that provides representation to parties for a fee, both the individual and the organization or business must register with the Board and both will be held responsible as the authorized agents. An attorney is not an authorized agent for purposes of these regulations. If an attorney provides service to an organization or business which is an authorized agent, the organization or business must register with the Board and will be considered the authorized agent for purposes of these regulations.

“Board” means the Employment Security Board of Review.

“Chairperson” means the Chairperson of the Employment Security Board of Review.

“Client” means the party being represented by the authorized agent.

“Filed” means the receipt of a document by the office authorized and designated to receive such document.

“Party” means the following parties to an appeal:

- (a) the claimant whose unemployment compensation claim is involved;
- (b) any employer (1) against whom charges may be made or tax liability assessed due to a decision by the Administrator or the Appeals Division and who has appealed that decision; or (2) from whom the claimant’s separation is an issue in the appeal;
- (c) the Administrator.

“Referee” means an Employment Security Appeals Division Referee.

(Effective July 1, 1992)

Sec. 31-272-2. Registration

(a) An authorized agent who represents a party for a fee may not appear before a Referee or the Board after July 1, 1992, unless the agent is registered with the Board.

(b) Each authorized agent shall register at any Appeals Division office or with the Board. An authorized agent who is an individual shall provide the registrant’s name, permanent

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address and telephone number. An authorized agent which is an organization or business shall provide the name, local address and telephone numbers, and address and telephone number of the principal place of business, if different, and the names of principals or others authorized to act on behalf of the organization and to receive notice. Any changes in identifying information shall be promptly reported to the Board.

(c) Upon registration, an authorized agent will be assigned a registration number that should be used in all appearances before a Referee and the Board. An individual appearing on behalf of an organization or business providing representation to parties before a Referee or the Board for a fee must indicate the registration number of the individual, unless that individual is an attorney, as well as the registration number of the organization or business. An individual may indicate only the registration number of the organization or business if that number reflects both the organization or business and the individual agent.

(d) An authorized agent shall provide the Appeals Division notice of its status as a representative of record for a party either by filing a power of attorney with the Administrator or by submitting a written statement to the Appeals Division, signed by the party and designating the individual or organization as the authorized agent.

(e) Each registrant shall file notice with the Board within thirty days after the agent ceases activity as an authorized agent.

(Effective July 1, 1992)

Sec. 31-272-3. Communication with the client

(a) An authorized agent shall keep a client reasonably informed about the status of any matter before the Appeals Division. An authorized agent shall verify with the client the accuracy of any information it provides to the Appeals Division.

(b) An authorized agent shall promptly notify the client of any scheduled proceedings before the Appeals Division to allow time for case preparation and the scheduling of witnesses. An authorized agent will ensure that the client is familiar with the contents of “An Employer’s Guide to the Appeals Process,” “A Claimant’s Guide to the Appeals Process,” and any other relevant information that the Board provides for the education of parties. Clients should be apprised of the consequences of not appearing and the importance of participation at all stages of the proceedings and of producing first-hand testimony.

(c) If a client determines that it does not wish to pursue an appeal, a request for withdrawal of the appeal should be made in writing, or communicated orally and followed by a writing, in a timely fashion. If the client and the authorized agent determine that there is no basis for an appeal, that the appeal is frivolous, or that the client is not interested in pursuing the appeal, the appeal should be withdrawn. The appeal should be withdrawn as soon as possible, preferably prior to the scheduling of a hearing.

(Effective July 1, 1992)

Sec. 31-272-4. Postponement requests

(a) Requests to postpone a hearing for good cause must be made as soon as possible after

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the issuance of the notice of hearing before the Referee or Board. Last minute requests will not be granted except under extraordinary circumstances.

(b) If an authorized agent believes that a critical witness will not be available for a scheduled hearing and requests a postponement in order to produce the witness, the authorized agent shall, after consulting with the client, provide the Appeals Division with the name, address, and title of the witness, the reason the witness is unable to attend, the general nature of the witness's testimony, and the reason another witness would not testify. Upon request, the authorized agent shall submit a written statement of its request and supporting documentation or sworn affidavit to the Appeals Division.

(c) If a postponement request is denied, the authorized agent shall notify the client that the hearing will go forward as scheduled and advise the client to appear. In the event that a postponement request made pursuant to subsection (b) of this section is denied, the client should be advised to appear with or without the critical witness or another witness. The client should be advised that it may renew the postponement request at the hearing by requesting a continuance of the hearing.

(d) In the event that a postponement request is properly denied and the agent or the client does not appear, no further hearings will be scheduled at the client's request.

(Effective July 1, 1992)

Sec. 31-272-5. Preparation of the case

(a) An authorized agent shall provide competent representation to a client. The authorized agent shall explain the proceedings and prepare the case with the client and any witnesses before the hearing is called, shall be acquainted with the facts and legal issues involved, and shall arrange for producing witnesses and documentary evidence at the Referee's hearing.

(b) An authorized agent shall make a reasonable effort to produce the testimony of the first-hand witnesses in the case.

(c) An authorized agent who wants to inspect or review a case file may do so prior to the date of the Referee's hearing. If it is necessary for the agent to review the file on the day of the hearing, the agent must make arrangements with the Appeals Division in advance of the scheduled hearing time.

(d) An authorized agent shall not delay the hearing or disturb the progress of other cases or the functioning of the Appeals Division in an effort to view a case file or consult with its client or witnesses.

(Effective July 1, 1992)

Sec. 31-272-6. Conduct of the hearing

(a) An authorized agent shall be prepared to go forward with its case and to produce all necessary evidence and witnesses at the time the Referee's hearing is scheduled to commence.

(b) An authorized agent shall provide to all parties copies of any documentary evidence

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to be admitted into the record.

(c) An authorized agent shall not engage in conduct that disrupts the proceedings.

(Effective July 1, 1992)

Sec. 31-272-7. Prohibited conduct in the course of representing a party at a hearing

(a) An authorized agent shall not counsel a client to engage, or assist a client in engaging, in conduct the agent knows or should know to be criminal, or fraudulent, or in violation of these regulations.

(b) An authorized agent shall not knowingly or intentionally:

(1) make a false statement or representation of material fact or law to the Administrator or the Appeals Division;

(2) offer evidence it knows to be false or counsel a witness or party to testify falsely;

(3) fail to disclose a material fact or statement;

(4) unlawfully obstruct another party's access to evidence or destroy or conceal evidence;

(5) assert personal knowledge of the facts unless testifying as a witness;

(6) refer at a hearing to a matter which the agent does not reasonably believe is relevant or is not supported by evidence;

(7) seek to improperly influence the Administrator or the Appeals Division.

(c) An authorized agent shall not engage in any *ex parte* communication with the Administrator or the Appeals Division concerning the merits of any appeal pending before the Appeals Division unless all other parties have waived their right to participate. Questions relating strictly to the procedural aspects of a case may be directed to the Appeals Division and the communication will be documented for the record.

(Effective July 1, 1992)

Sec. 31-272-8. Misconduct

It is misconduct for an authorized agent to:

(a) violate or attempt to violate the rules of conduct set forth in these regulations or knowingly assist or induce another to do so, or disobey an obligation under the rules of conduct or an order by the Board;

(b) commit a criminal act in the course of the representation;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct which is prejudicial to the administration of the Unemployment Compensation Act;

(e) state or imply an ability to, or attempt to, improperly influence the Administrator or the Appeals Division, or improperly influence any other state agency or official in a matter before the Appeals Division.

(f) in dealing on behalf of a client with another party, to state or imply that the agent is disinterested when the agent knows or reasonably should know that the other party misunderstands the agent's role in the matter.

(Effective July 1, 1992)

Sec. 31-272-9. Penalties

(a) A failure to comply with an obligation or prohibition imposed by these rules of conduct or an order by the Board is a basis for invoking the disciplinary process set forth in these regulations.

(b) If, in its final decision, the Board concludes that an authorized agent has committed misconduct, the Board may order the agent to comply with all applicable statutory and regulatory requirements and may impose a penalty. The Board may, upon finding mitigating circumstances or that corrective action has been taken, dismiss the complaint. An authorized agent who is determined to have violated the rules of conduct or otherwise committed misconduct within the meaning of section 31-272-8 may be subjected to one or more of the following:

- (1) a letter of reprimand;
- (2) an order to comply with applicable law;
- (3) suspension of registration with the Appeals Division;
- (4) revocation of registration with the Appeals Division;
- (5) civil fines not to exceed one thousand dollars per violation.

(c) In assessing civil penalties, the Board shall distinguish between serious violations which potentially undermine the integrity of the appeals process and lesser violations. Penalties shall be assessed based on the gravity of the violation, the experience of the authorized agent, the authorized agent's history of previous violations or complaints filed of a similar or different nature, the number of violations identified, whether the authorized agent was in violation of an order previously issued by the Board, and the existence of mitigating circumstances. If the Board finds repeated violations, a serious violation, or a failure to comply with the Board's enforcement orders, the maximum penalty of revocation of registration and a civil fine of \$1,000 per violation may be imposed. For less serious violations or first offenses, a lesser penalty will be imposed.

(Effective July 1, 1992)

Sec. 31-272-10. Filing of the complaint

(a) Any person may file with the Board a written complaint alleging misconduct by an authorized agent. The administrator, any member of the Labor Department, or a member of the Appeals division, including the Board or any member, may initiate and file a complaint alleging misconduct by an authorized agent. The complaint shall contain the name of the authorized agent, the party or parties being represented, and sufficient information to identify the incident or incidents of alleged misconduct. When, during the commission of the alleged misconduct, an individual authorized agent is employed by an organization or business which is also an authorized agent, both the individual agent and the organization may be named in the complaint. The Board may seek additional information it deems necessary to initiate an investigation, and may add additional authorized agents to the complaint if it deems it appropriate.

(b) Within ten calendar days of the receipt of the complaint, the Board will mail notice

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that the complaint has been filed to the complainant, the authorized agent against whom the complaint is filed, and all parties and agency staff members directly involved in any proceeding in which misconduct is alleged. The notice shall include the name of the complainant, a copy of the complaint, notice that the authorized agent is entitled to representation in any proceeding before the Board, and instructions regarding the right to respond to the complaint in writing within twenty-one (21) calendar days of the mailing date of such notice. Such response may include any information, evidence or argument that the authorized agent deems relevant to the complaint. The continuation and completion of an investigation shall not be contingent upon such response.

(c) Any complaint filed pursuant to these regulations must be filed with the Board within ninety (90) calendar days of the conduct which is the subject of the complaint.

(d) The complainant and the authorized agent shall notify the Board in writing of any corrections or changes of identifying information, address or telephone number during the pendency of the proceedings on the complaint.

(Effective July 1, 1992)

Sec. 31-272-11. Investigation of the complaint

(a) Upon receipt of a complaint filed in accordance with section 31-272-10 of these regulations, an investigation will be undertaken. The Chairperson, as executive head of the Appeals Division, may appoint as investigator any person employed in the Appeals Division who has not been directly involved in the proceeding in which the misconduct is alleged to have occurred.

(b) The Board shall review the results of the investigation and render a determination that probable cause or no probable cause exists that the authorized agent has committed misconduct no later than ninety (90) days from the date the complaint was filed.

(c) At any point during the pendency of the investigation, the Board may effect an informal resolution of the complaint which is mutually acceptable to the complainant and the authorized agent.

(d) Where the Board finds probable cause that misconduct within the meaning of section 31-272-8 of these regulations has occurred, it may, after considering the wilfulness and seriousness of the violation alleged, the results of the investigation conducted pursuant to subsection (b), the presence of extenuating circumstances, and the existence of previous violations or complaints of similar conduct, issue an agency complaint. The complaint shall be mailed to the authorized agent. A copy of such complaint shall also be mailed to the complainant. The authorized agent will be mailed a notice of hearing before the Board or a designated hearing officer, pursuant to section 31-272-13 of these regulations. The notice shall be issued at least ten days before the scheduled hearing.

(e) Where the Board, as a result of an investigation conducted pursuant to this section, finds that there is no probable cause that misconduct by the authorized agent has occurred, or declines to issue an agency complaint, it shall so advise the complainant and the authorized agent against whom the complaint was filed, and shall dismiss the complaint.

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(f) The Board may, in its discretion, reconsider any agency complaint or dismissal issued pursuant to subsection (d) or (e) of this section, in response to a written request by the complainant or authorized agent, or on its own initiative.

(Effective July 1, 1992)

Sec. 31-272-12. Prehearing conference; resolution and reconsideration prior to an adjudicative hearing

(a) At any time after the issuance of an agency complaint and determination of probable cause of misconduct, and before the commencement of a hearing, the Board may order, or a complainant or an authorized agent may request, an informal prehearing conference. The granting or denial of a request for a prehearing conference is within the discretion of the Board or hearing officer designated by the Board.

(b) A prehearing conference may be held for any of the following purposes:

- (1) to discuss the informal disposition of the complaint;
- (2) to simplify or schedule matters to be heard at the formal hearing;
- (3) to narrow the scope of the issues in dispute;
- (4) to obtain stipulations as to matters of fact;
- (5) to stipulate as to the qualifications of expert witnesses to testify at the hearing.

(c) The prehearing conference need not be recorded, but a written record will be made as to any stipulation agreed upon.

(d) From the issuance of an agency complaint finding probable cause pursuant to subsection (b) of section 31-272-11 of these regulations until the commencement of a hearing, the Board may in its discretion effect resolution of any complaint by way of a settlement agreement. Any settlement agreement shall contain:

- (1) the signatures of the authorized agent or its representative and the Chairperson of the Board;
- (2) an express waiver of the right to challenge or contest the validity of the agreement or any order contained therein;
- (3) a statement that the agreement represents a final disposition of the complaint which shall have the same force and effect as an order entered after a formal hearing; and
- (4) any other provisions appropriate to the settlement.

(e) Once a hearing has commenced, an informal disposition may be made. A settlement agreement may be negotiated by an authorized agent and the Appeals Division. The acceptance of an agreement is within the discretion of the Board. The agreement shall contain the information required in subsection 31-272-12 (d). A settlement agreement adopted pursuant to this subsection or to subsection (d) shall be deemed to have the same force and effect as an order to comply with applicable law issued under section 31-272-9 (b) (2) of these regulations.

(Effective July 1, 1992)

Sec. 31-272-13. Conduct of hearings

(a) Hearings shall be presided over by the Board or by one or more hearing officers designated by the Chairperson. A hearing officer shall be designated in any case in which the complaint is filed by the Board or one of its members. The designated hearing officer shall not have initiated the complaint, personally carried out the function of investigator, or otherwise been personally involved with the case.

(b) An authorized agent may challenge the interest of the designated hearing officer by way of a request to the Board which specifically sets forth all reasons for the request. A written request shall be filed with the Board as soon as the hearing officer is appointed. The Board shall decide the challenge within ten days, and shall appoint another person if it grants the challenge. The mere fact that an individual has previously served as a hearing officer or decided a case involving the authorized agent or a similar issue need not, in itself, preclude the person from serving as the hearing officer.

(c) The Board or hearing officer shall have the power to:

(1) regulate the course of the hearing and the conduct of the parties and their counsel therein;

(2) insure that all testimony is given under oath or affirmation;

(3) rule upon offers of proof and receive evidence;

(4) consider and rule upon all motions; and

(5) require any additional written and/or oral argument.

(d) The Board or hearing officer shall have the power to compel attendance of witnesses by subpoena and to require the production of records, physical evidence, papers and documents.

(e) The investigator will introduce the relevant evidence produced by the investigation into the record of the hearing. The authorized agent and the investigator shall have the right to inspect and copy relevant and material records, papers and documents not in their possession; present evidence and argument on all issues involved; cross-examine witnesses; enter motions and objections; and assert other rights essential to a fair hearing.

(f) Persons not named in the notice of hearing may, at the discretion of the hearing officer, be given an opportunity to present oral or written statements. The hearing officer may require any such statement to be given under oath or affirmation, and shall give such statements the weight the hearing officer determines is appropriate given the nature of the complaint, the statement, and its relevance.

(g) All adjudicative hearings in matters concerning the conduct of authorized agents shall be recorded.

(h) The Appeals Division shall maintain a record which includes (1) written notices related to the case; (2) all complaints, petitions, motions, and intermediate rulings; (3) evidence received or considered; (4) offers of proof, objections and rulings thereon; (5) the recording or the transcript of the hearing; (6) the proposed final decision, if any, and any exceptions and briefs filed; (7) the final decision; and (8) any communications with the

Appeals Division which have been documented.

(Effective July 1, 1992)

Sec. 31-272-14. Transcript of the proceedings

The authorized agent, complainant or any other person may file a request for a written transcript of the proceedings. The person requesting the transcript shall pay the cost of such transcript.

(Effective July 1, 1992)

Sec. 31-272-15. Proposed decision

(a) In those cases heard by a hearing officer, the hearing officer shall make a proposed final decision. The proposed final decision shall be served by United States mail upon the authorized agent and investigator and an opportunity shall be afforded to file with the hearing officer exceptions to the proposed final decision and present briefs.

(b) A proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and findings of fact and conclusions of law necessary to the decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed.

(Effective July 1, 1992)

Sec. 31-272-16. Final decision

(a) When the hearing is conducted by a hearing officer, the final decision shall be rendered by a majority of the Board. The final decision may be based on the proposed final decision and any exceptions and briefs filed. When the hearing is conducted by the Board, the final decision shall be based on the hearing record and any briefs filed. The Board shall adopt the proposed final decision rendered by the hearing officer as its own in any case in which the complaint was filed by the Board or one of its members.

(b) A final decision shall be in writing and shall include the Board's findings of fact and conclusions of law necessary to its decision. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed.

(c) The Board shall state in the final decision the name and address of the complainant, the authorized agent, and, if appropriate, the party represented by the agent.

(d) The final decision shall be served on the authorized agent, investigator and complainant by United States mail. The final decision shall be effective when mailed or on a later date specified by the Board.

(e) When the hearing is conducted by a hearing officer, the Board shall render a final decision within ninety days from the date set for the filing of briefs by the hearing officer in the proposed final decision. When the hearing is conducted by the Board, the Board shall render a final decision within ninety days of the close of evidence or the date set by the Board for the filing of briefs, whichever is later.

(Effective July 1, 1992)

Sec. 31-272-17. Reconsideration

(a) The Board, on its own motion, or an authorized agent may, within thirty days after the issuance of the final decision, file a petition for reconsideration of the decision on the ground that: (1) an error of fact or law should be corrected; (2) new evidence has been discovered which materially affects the merits of the case and which for good cause was not presented in the earlier proceeding; or (3) other good cause for reconsideration exists. Within twenty-five days of the filing of the petition, the Board shall determine whether the ends of justice require reconsideration. If the Board does not grant the petition within twenty-five days of such filing, it shall be considered a denial of the petition. If the Board determines that reconsideration is required, the Board shall proceed to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision of the Board.

(b) At any time upon a showing of substantially changed conditions, the Board may reverse or modify any final decision to revoke or suspend an authorized agent's registration with the Appeals Division at the request of the authorized agent or on the Board's own motion. The authorized agent and complainant shall receive notice of the Board's intent to modify or reverse its prior decision and may, within ten days of the mailing of the notice, request an opportunity to be heard. The request shall state the reason the person requests the opportunity to be heard, a description of any evidence, testimony or argument that the person desires to introduce, and an explanation of the importance of such evidence, testimony or argument. If the Board determines that the ends of justice so require, the Board may order that a further hearing be scheduled before the Board or hearing officer, as the Board may direct.

(c) The Board may, without further proceedings, modify a final decision to correct any clerical error.

(Effective July 1, 1992)

Sec. 31-272-18. Record of complaints

The Board of Review shall maintain a record of all complaints filed and the disposition of each complaint. These records may be utilized in determining an appropriate penalty in any future complaints.

(Effective July 1, 1992)