



# **Environmental Appeal Board**

## **RULES**

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# Environmental Appeal Board RULES

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### FORMS

**Form 1** – Notice of Appeal

# Environmental Appeal Board RULES

## INTRODUCTION

The Environmental Appeal Board has made these Rules pursuant to [section 11\(1\) of the \*Administrative Tribunals Act\*](#). If a matter arises during the appeal process that is not envisioned by these Rules, the Board will take steps to ensure that the appeal process is fair and expeditious and in accordance with the applicable legislation and the principles of natural justice.

In the case of a conflict with any applicable statute or regulation, the statute or regulation will override these Rules.

In addition to these Rules, the Board has prepared a comprehensive [Practice and Procedure Manual](#) which describes the general practices, procedures and policies that have been adopted by the Board to fill in the gaps left by the legislation and the Rules. The Board has also created [Information Sheets](#) on discrete subjects.

## GENERAL

### Rule 1 – Definitions

1. In these Rules:

“**address for delivery**” means the specific location where documents are to be sent during the appeal as identified by a party or participant, or as may be inferred from the party or participant’s usual method of delivering documents to the Board and/or to the other parties and participants, and may be the person’s current postal address, fax number, or email address;

“**appellant**” means the person bringing an appeal;

“**Board**” means the Environmental Appeal Board, and includes a member of the Board;

“**business day**” means 8:30 am to 4:30 pm, Monday through Friday, excluding public holidays;

“**calendar day**” is each day shown on a calendar and includes weekends and holidays;

“**day**” means “calendar day” unless it is expressly stated to be a “business day”;

“**document**” includes a letter, email, application, submission, reply, notice, photograph, chart, report, plan, sound recording, videotape, or other thing upon which information is communicated or recorded, but does not include a notice of appeal;

“**file**” or “**filing**” means effective delivery of a document to the Board;

“**member**” means a person appointed by Order in Council as a member of the Board;

“**oral hearing**” means an in-person hearing;

“**panel**” means those members (1 or 3 members) designated by the Board Chair to hear an appeal;

“**participant**” means a person invited by the Board to participate in an appeal under section 94 of the *Environmental Management Act*, or an intervener added to a *Mines Act* appeal under pursuant to section 33 of the *Administrative Tribunals Act*, that is not a party to the appeal; [amended 02/17]

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“**party**” means an appellant, respondent or third party in an appeal;

“**representative**” includes a lawyer or agent authorized to represent a person in an appeal;

“**respondent**” means the person who made the decision being appealed;

“**submission**” means written information or argument filed by a party or participant for consideration by the Board in support of, or in response to, an application or appeal; and

“**third party**” means a person invited by the Board to be a third party in an appeal.

### **Rule 2 – Applying the rules**

1. All parties and participants must comply with these Rules unless the Board orders or directs otherwise under [section 11\(3\) of the Administrative Tribunals Act](#).
2. Unless otherwise stated, a Board member may exercise any power under these Rules on the member’s own initiative or on the application of a party or participant.
3. Unless otherwise directed by the Board, these Rules apply to all appeals before the Board, whether commenced before or after the date of these Rules.

### **Rule 3 – Effect of non-compliance**

1. In addition to the Board’s powers under [section 18 of the Administrative Tribunals Act](#), if a party or participant fails to comply with these Rules or a procedural order or direction of the Board, the Board may:
  - a. make an order for costs; and/or
  - b. make any other decision or order the Board considers appropriate in the circumstances.
2. Despite Rule 3(1), any technical defect or irregularity in form will not invalidate the Board’s proceedings and does not constitute non-compliance with these Rules.

### **Rule 4 – Calculating time**

1. To calculate deadlines under these Rules, or in any order or direction of the Board, the days are counted as calendar days.
2. When a due date is to be counted forward in time (e.g., 10 calendar days to do something), the calendar days are counted by excluding the first day and including the last day. If the due date falls on a Saturday, Sunday or public holiday, the due date will be the next calendar day that is not a Saturday, Sunday or public holiday.
3. When counting backward from a hearing date to determine a due date (e.g., notice of expert reports and statement of points), the calendar days are counted by excluding the first day of the hearing and including the last day (i.e., the last day is the due date). If the due date falls

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on a Saturday, Sunday or public holiday, the due date will be the calendar day that falls before the Saturday, Sunday or public holiday (e.g., the Friday before the weekend).

4. The Board may modify a time limit in the Rules or in any order or direction of the Board, whether or not the time limit has already expired, if the Board determines that it is fair and appropriate in the circumstances. The Board cannot modify time limits in legislation.

### **APPEALS AND PARTIES**

#### **Rule 5 – Starting an appeal**

1. A person must file a notice of appeal with the Board, which may be in [Form 1](#), containing the information required by [section 22 of the Administrative Tribunals Act](#) accompanied by the filing fee required by [section 2 of the Environmental Appeal Board Procedure Regulation](#).
2. The notice of appeal may be filed with the Board by regular mail, registered or certified mail, courier, hand delivery, fax or email. If the notice of appeal is filed by fax or email, the filing fee must be sent to the Board separately.
3. A notice of appeal must be filed within the appeal period specified in the particular statute. The Board has no power to extend the statutory time period to appeal.

#### ***Deemed date of receipt of notice of appeal sent by registered or certified mail***

4. If a notice of an appeal is sent to the Board by registered or certified mail, the appeal is deemed to be received by the Board on the official date stamp showing Canada Post's receipt of the document. For all other methods of delivery of a notice of appeal, the date of receipt is set out in Rule 10(9)-(10) [When documents are deemed to be delivered to the Board].

#### **Rule 6 – Acknowledgement of appeal**

1. Following receipt of a notice of appeal, the Board will:
  - a. notify the appellant that the appeal has been received;
  - b. provide a copy of the notice of appeal and any documents included with it to the respondent, who will immediately be added as a party to the appeal, and to any ministers required to be notified under the legislation;
  - c. if applicable, provide a copy of the notice of appeal and any documents included with it to the person who is the subject of the decision, if different from the appellant, and offer that person third party status in the appeal; and
  - d. notify any other persons identified as being potentially affected by the Board's decision on the appeal, and determine whether these persons will be offered third party or participant status in the appeal.

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### **Rule 7 - Representation before the Board**

1. If a party or participant appoints a representative, the following information for the representative must be provided to the Board:
  - a. full name of the representative;
  - b. the name of the party or participant that the person is representing;
  - c. the representative's address;
  - d. the representative's daytime telephone number;
  - e. the representative's fax number and email address (if any); and
  - f. the representative's address for delivery [defined in Rule 1].
2. If a party or participant has a representative, the address for delivery of the representative will be the address for delivery of the party or participant.
3. A representative who withdraws or ceases to represent a party or participant must immediately notify the Board, in writing.

### **Rule 8 – Change in contact information**

1. A party or participant must immediately notify the Board, in writing, of a change to the contact information for the party or participant.

### **Rule 9 – Adding or removing parties or participants to an appeal**

1. On its own initiative, or on the application of a person, the Board may add, substitute or remove a person as a party or a participant to an appeal.
2. In addition to the requirements of Rule 16 [General application procedure], an application to be added as a party or participant must include the following information:
  - a. The applicant's full name, address for delivery, telephone number, fax number and email address (if any);
  - b. an explanation of how the applicant will be impacted or affected by the subject matter of the appeal and/or what information the applicant can provide on an issue in the appeal;
  - c. the reasons why the applicant should be added as a party or allowed to participate in the appeal; and
  - d. the amount of participation that the applicant seeks (e.g., to make written submissions only, to present evidence on a particular subject or issue, the ability to cross-examine witnesses, the ability to present opening and closing arguments).

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3. If the application is allowed, the Board will advise of any terms, conditions or limitations placed on the person's participation or status in the appeal.
4. The Board will not substitute a person as an appellant without the consent of that person.
5. An application to remove a party or a participant must explain why the person to be removed is not, or has ceased to be, a proper or necessary party or participant to the appeal.

### **DOCUMENT DELIVERY**

#### **Rule 10 – Filing documents with the Board**

1. Unless otherwise ordered or directed, any document filed with the Board must also be provided to all other parties and participants to the appeal.
2. Each document filed with the Board must have all pages numbered consecutively or the documents must be organized using tabs.
3. Documents may be filed with the Board by mail, courier, hand delivery, email or fax, subject to any restrictions or conditions set out in these Rules.

##### ***Filing documents by email or fax***

4. Documents, including any attachments, with a combined total of 10 pages or less may be filed with the Board by email or by fax.
5. Documents, including any attachments, with a combined total of more than 10 pages may be sent to the Board by email or fax, provided that a printed copy is filed with the Board by mail, courier or hand delivery.
6. An email to the Board must include the name of the sender.
7. A document sent to the Board by fax must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission, and a telephone number to call if there are transmission problems.

##### ***Filing multiple copies of a document***

8. If multiple copies of a document are required to be filed with the Board by these Rules, or by direction of the Board, the required number of paper copies must be filed by mail, courier or hand delivery. The Board will not make additional copies.



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### ***When documents are deemed to be delivered to the Board***

9. A document that is received by the Board after the business day is deemed to be delivered on the next day business day.
10. If a document is sent to the Board by fax or email, the document is not deemed to be delivered to the Board until the transmission is received by the Board, regardless of the date or time that it is shown to have been sent.

### **Rule 11 – Delivering documents to parties and participants**

1. Documents must be sent to the address for delivery of a party or participant, unless the party or participant consents to an alternative address for delivery or the Board orders otherwise.
2. When an address for delivery is an email address, the sender of a document is not required to mail or otherwise provide a paper copy unless directed to do so by the Board.
3. If a party or participant does not consent to the delivery of documents by fax or email, the Board may make an order directing that documents be delivered by fax or email, subject to any terms, conditions or limitations that are appropriate in the circumstances.

### ***When delivery of a document is deemed to be complete***

4. A document that is received by email or fax after the business day is deemed to be delivered on the next business day.
5. If the Board is required to serve notice or a document on a party or other person, and that party or other person wants to establish that, pursuant to [section 19\(5\) of the Administrative Tribunals Act](#), the notice or document was not received by the deemed date of delivery due to absence, accident, illness, or other cause beyond his or her control, the person must notify the Board, in writing, as soon as practicable.

### ***Alternative method of delivery***

6. The Board may approve an alternate method of delivering documents to a party or participant if it is impractical to deliver a document to the specified address for delivery, or an alternate method is otherwise warranted in the circumstances.

## **APPEAL MANAGEMENT**

### **Rule 12 – Joining or consolidating appeals**

1. In addition to the powers under [section 37 of the Administrative Tribunals Act](#), if two or more appeals before the Board involve the same parties, the Board may direct, upon such terms as it

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considers appropriate, that the appeals be consolidated (combined), heard together with any other appeal before the Board, or the Board may direct that one appeal be heard immediately after the other.

2. The Board will notify all parties and participants if it decides to combine the appeals or use any other procedure listed above.
3. An objection to the Board's decision to consolidate an appeal must be made to the Board, in writing, as soon as practicable.

#### **Rule 13 – Pre-hearing conferences**

1. On its own initiative, or at the request of a party or participant, the Board may schedule a pre-hearing conference.
2. A request for a pre-hearing conference must be in writing, provide the reasons for the conference, potential dates, and include a list of the items to be discussed.
3. If the Board decides that a pre-hearing conference is warranted in the circumstances, it will notify the parties and participants of the time, date and place for the conference, or the dial-up instructions (if conducted by teleconference), and will advise of any terms or conditions that apply.
4. Where notice of a pre-hearing conference has been properly given and a party or participant fails to participate without advance written notice, the Board may proceed in their absence.
5. If a Board member conducts a pre-hearing conference and confidential settlement matters are discussed, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

#### **Rule 14 – Facilitated settlement (mediation)**

1. On its own initiative, or at the request of a party, the Board may conduct a settlement meeting (mediation) to resolve one or more issues in dispute.
2. The Board will not convene a settlement meeting (mediation) unless all parties to the appeal agree to participate in settlement discussions.
3. The Board may appoint a Board member or other person to conduct the facilitated settlement.
4. If a Board member conducts the settlement meeting and the appeal is not resolved, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

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## Rule 15 – Consent orders

1. If the parties request an order from the Board under [section 16\(1\)](#) or [section 17\(2\) of the \*Administrative Tribunals Act\*](#), the parties must provide the Board with a copy of the order, executed by all parties, for consideration and signing by the Board. The date must be left blank and will be filled in if the Board signs the order.
2. An unexecuted copy of the consent order must also be provided to the Board in Word format for posting on the Board’s website.

## APPLICATIONS

## Rule 16 – General procedure

1. All pre-hearing and post-hearing applications must be made to the Board in writing. Pre-hearing applications include, but are not limited to, the following matters:
  - a. extensions (excluding time to appeal), postponements, and adjournments ([section 39 \*Administrative Tribunals Act\*](#));
  - b. type of hearing (oral/written), expedited hearing, and change in the venue or location of a hearing;
  - c. stay of the decision under appeal;
  - d. summary dismissal of an appeal ([section 31 of the \*Administrative Tribunals Act\*](#));
  - e. disclosure of particulars;
  - f. production of documents or objects ([section 34\(3\) of the \*Administrative Tribunals Act\*](#));
  - g. summons for a witness (order to attend a hearing) ([section 34\(3\) of the \*Administrative Tribunals Act\*](#));
  - h. party or participant status;
  - i. costs or security for costs ([section 47 and 47.1 & 47.2 of the \*Administrative Tribunals Act\*](#));
  - j. site visits; and
  - k. evidentiary issues.
2. All applications must include:
  - a. the grounds (the reasons) for the application;
  - b. the relief requested (the nature of the order or direction);
  - c. whether the other parties agree to it (if known); and
  - d. any evidence to be relied upon.

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3. If more than 1 document is provided to the Board as part of the evidence identified in Rule 16(2)(d), the documents must be organized by either numbering all documents consecutively, or by dividing the documents using tabs.

### ***Applications for documents***

4. Before applying for an order to produce documents under [section 34\(3\)\(b\) of the \*Administrative Tribunals Act\*](#), the applicant must ask the person in possession or control of the documents, in writing, to voluntarily produce the documents.
5. In addition to the requirements in Rule 16(2), an application for an order for documents must describe the attempts made to have the person voluntarily produce the documents.

## **HEARINGS**

### **Rule 17 - Scheduling a hearing**

1. The Board will decide whether a hearing will be conducted:
  - a. orally,
  - b. by way of written submissions,
  - c. by telephone or videoconferencing, or
  - d. a combination of the above.
2. If the Board schedules an oral hearing, or a hearing by telephone or videoconference, it will notify all parties and participants of the date, time and location (or dial-in directions) of the hearing in a "notice of hearing".
3. If the Board schedules a written hearing, it will notify the parties and participants of the submission schedule.

### **Rule 18 - Failure to participate in a hearing**

1. If an appellant has been given timely notice of the hearing and fails to attend the hearing or, if a written hearing, provide submissions in support of the appeal, the Board may proceed with the hearing, dismiss the appeal as abandoned, or make any order appropriate in the circumstances.
2. If a respondent, third party, or participant has been given timely notice of the hearing and, without advance written notice and a reasonable explanation, does not attend the hearing or, if a written hearing, provide submissions, the Board may proceed with the hearing and disposition of the appeal without further notice to that party or participant.

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### **Rule 19 – Oral hearings**

#### ***Pre-hearing submissions (Statement of Points) and document disclosure***

1. All parties are required to provide:
  - a. a Statement of Points containing:
    - i. a summary of his or her case to be presented at the hearing,
    - ii. a list of the witnesses to be called by that party (if any),
    - iii. the legal authorities (e.g., case law, legislation, legal articles or excerpts from text books) that will be relied upon at the hearing (if any); and
  - b. a copy of the documents that he or she will be referring to, or relying upon, at the hearing,

in the following quantities and according to the following schedule unless the Board directs otherwise:

  - i. the appellant must deliver 2 copies of its Statement of Points and documents to the Board, and 1 copy to each party and participant, at least 30 calendar days before the hearing commences;
  - ii. the respondent and any other party must deliver 2 copies of their respective Statements of Points and documents to the Board, and 1 copy to each other party and participant, at least 15 calendar days before the hearing commences.
2. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
3. If a party intends to produce affidavit evidence at the hearing, the party must provide the affidavit evidence with the Statement of Points.
4. If a party wishes to cross-examine the affiant on the contents of the affidavit, that party must apply to the Board within a reasonable amount of time after receiving the affidavit.
5. The Board may require participants to provide a Statement of Points, witness list, authorities and documents.
6. All parties and participants must bring to the hearing 1 additional copy of all documents (excluding legal authorities and Statements of Points) intended to be tendered as evidence. This copy will be provided to the official recorder and marked as an exhibit, if and when required.
7. The Board may allow an appeal to proceed to a hearing even if an appellant has not fully complied with this Rule if it is satisfied that the other parties and participants have sufficient information to prepare for the hearing.

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#### ***Non-compliance with pre-hearing disclosure of documents, legal authorities, witnesses***

8. Despite Rule 19(1), at a hearing a party or participant may refer to, or rely upon, documents or legal authorities not previously disclosed, or hear from witnesses that were not previously identified, with the approval of the hearing panel.
9. The party relying on new documents or legal authorities must bring sufficient copies to the hearing such that there is a copy for each panel member, the Board's appeal file, and each party and participant. A copy of a new document must also be provided to the official recorder. The official recorder does not require a copy of new legal authorities.

#### ***Photographing and recording during a hearing*** [as amended 04/19]

10. Photographing, audio recording, video recording or other electronic recording of Board proceedings is prohibited without the prior approval of the Board or the panel.

### **Rule 20 - Written hearings**

1. All parties and participants are required to provide their written submissions in accordance with the submission schedule established by the Board, and in the following quantities, unless the Board directs otherwise:
  - a. 2 copies to the Board; and
  - b. 1 copy to each party and participant.
2. All evidence (including affidavits and documents) and legal authorities must be included with the written submission.
3. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
4. If a party:
  - a. seeks to cross-examine an affiant on the contents of an affidavit, or
  - b. seeks to have a portion of the written hearing conducted orally,the party must apply to the Board.

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#### **Rule 21 – Interpreters, assistance for visually and hearing impaired and other accommodations**

1. At least 30 calendar days before the hearing commences, a party or participant must notify the Board if he or she requires some type of accommodation or assistance to enable their meaningful participation at the hearing.
2. The Board will make every effort to accommodate that person's needs, as is reasonable in the circumstances.

#### **Rule 22 - Closing of the record**

1. At the conclusion of the hearing, the record will be closed unless the panel directs otherwise.
2. Once the record is closed, no additional evidence will be accepted unless the panel decides that the evidence is material, and that there is a good reason for the failure to produce it in a timely fashion.
3. If an application to reopen the hearing to allow additional evidence is granted by the panel, the other parties will have an opportunity to reply to the new evidence.
4. The hearing will not be reopened once the Board's final decision is issued.

## **WITNESSES**

#### **Rule 23 - Oath or affirmation**

1. A person who gives evidence at an oral hearing is required to give that evidence under oath or affirmation.

#### **Rule 24 - Application for a summons (order to attend as a witness)**

1. If a proposed witness refuses to voluntarily attend a hearing to give evidence, a party may apply for an order requiring the person to attend the hearing to give evidence (a summons).
2. An application for this order must be made to the Board at least 60 calendar days before the hearing is scheduled to commence.
3. Before applying to the Board for this order, the applicant must ask the person to voluntarily attend as a witness.
4. In addition to the requirements in Rule 16 [General application procedure], an application for an order requiring a person to attend a hearing to give evidence must include the following information:

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- a. the name and address of the person wanted as a witness;
  - b. a brief summary of the evidence to be given by the person, and an explanation of why the evidence is relevant and necessary;
  - c. the attempts made to have the person voluntarily attend the hearing; and
  - d. if required, a list of the particular documents or other things the person must bring to the hearing.
5. Unless there is evidence that a proposed witness will not attend the hearing voluntarily, the Board will not issue an order under this Rule.

### ***Serving the summons (order) and witness fees and expenses***

6. The party who requested the order will be responsible for serving it on the person by leaving it with that person, or by leaving it at the person's usual residence, within a reasonable time before the date the person is required to appear.
7. The party who requested the order must pay any witness fees and expenses in accordance with [Schedule 3 of Appendix C of the BC Supreme Court Civil Rules](#), unless the witness is:
- a. a party or participant to the appeal;
  - b. a present officer, director or partner of a party or participant to the appeal;
  - c. an employee of the provincial government; or
  - d. the Board directs otherwise.

### ***Application to amend or cancel a summons***

8. A person who is subject to a summons ordered by the Board may apply to the Board for an order cancelling or varying the summons. The application must set out the reason(s) the order should be cancelled or its terms should be varied.
9. An application to vary the terms of, or to cancel, an order must also be delivered to the person that requested the order.

## **Rule 25 – Expert evidence**

### ***Expert report***

1. Unless the Board directs otherwise, a party must deliver a written statement or report by an expert at least 84 calendar days before the scheduled oral hearing date or, if the hearing is in



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writing, 84 calendar days before the appellant's first written submission is due, in the following quantities:

- a. 2 copies to the Board; and
  - b. 1 copy to each party and participant.
2. The expert's qualifications must be included with the report.
  3. If there is an oral hearing, 1 additional copy of the statement or report and the expert's qualifications must be brought to the hearing for the official recorder.

#### ***Notice of expert testimony (without report)***

4. Unless the Board directs otherwise, a party that wishes to call an expert witness to testify at a hearing without a report must provide a notice of expert testimony at least 84 calendar days before the oral hearing is scheduled to commence in the following quantities:
  - a. 2 copies to the Board; and
  - b. 1 copy to each party and participant.
5. The notice must include:
  - a. the qualifications and areas of expertise of the witness;
  - b. a written summary of the opinion to be given at the hearing; and
  - c. the facts on which the opinion is based.
6. If there is an oral hearing, 1 additional copy of this notice must be brought to the hearing for the official recorder.

#### ***Expert reply***

7. Unless the Board directs otherwise, a party must deliver an expert's reply report or notice of an expert witness in reply, without a report, at least 42 calendar days before the oral hearing is scheduled to commence or, if the hearing is in writing, then 42 calendar days before the appellant's first written submissions are due, in the following quantities:
  - a. 2 copies to the Board; and
  - b. 1 copy to each party and participant.
8. Notice of an expert reply must contain the same information required in Rule 25(2) or (5), whichever applies.

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9. If there is an oral hearing, 1 additional copy of the reply report or notice must be brought to the hearing for the official recorder.

#### ***Expert to be available for cross-examination***

10. If a party wants to cross-examine an expert on his or her report, the party must provide reasonable advance notice to the party tendering the expert report, the Board, and the other parties and participants, advising that the expert is required to attend the hearing for cross-examination.

#### ***Proving an expert's qualifications***

11. A written statement of an expert's qualifications is proof that the expert has those qualifications, unless there is evidence to the contrary and the Board finds otherwise.

#### ***Changing the dates for delivery of an expert report***

12. The parties may, by agreement, change the dates for delivery of a report or summary under this Rule, provided that they will be prepared to proceed on the date scheduled for the hearing, and advise the Board of the agreement.

## **FORMS**

[Form 1: Notice of Appeal](#)