

Chapter 01.50

ADMINISTRATIVE APPEAL PROCEDURES*

* **Charter References:** Municipal proceedings, § 15.6.
State Law References: Administrative appeals, AS 44.62.340 et seq.

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01.50.010 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agency means a division, department, board, commission, body, officer or employee with the authority to:

- (1) Make decisions from which an appeal may be taken to another municipal agency;
- (2) Hear appeals of decisions of a municipal agency; or
- (3) Initiate hearings which may result in the revocation of a right.

Appeal agency means the agency which will hear the appeal or the assembly, if the assembly is to hear the appeal.

Hearing officer means a qualified, unbiased, and impartial individual assigned by the assembly to

conduct hearings and perform other duties in connection with the administration of this chapter.

Pleadings means the notice of appeal, memoranda, briefs, and any motions required or permitted to be submitted to the appeal agency.

Presiding officer means the presiding officer of the appeal agency or the presiding officer's designee.

Right whether used singly or in combination with other similar words, means and includes authority, license, permit and privilege. Where an appeal hearing under the chapter is authorized, it shall be assumed that a right exists.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(Serial No. 92-36, § 2, 1992)

Cross References: Definitions generally, CBJ Code § 01.15.010.

01.50.020 Application of chapter.

(a) The provisions of this chapter shall apply to the following administrative and quasi-judicial proceedings in which legal rights, duties and privileges or penalties of persons are to be determined:

- (1) The appeal to the assembly of the decision of any board or commission under Section 3.16(b) of the Charter;
- (2) Appeals or other actions to which this chapter is made applicable by other provisions of this Code, the Charter or resolution approved by the assembly. In such cases, all procedures of this chapter shall apply unless modified or made not applicable by the Code, Charter section or resolution approved by the assembly.

(b) An appeal shall be filed only from a final agency decision. Decisions which are not appealable include, but are not limited to, decisions to recommend, advise or request an action, even if the recommendation, advice or request is procedurally required as a prerequisite to some other decision, which latter decision is dispositive of the matter.

(Serial No. 92-36, § 2, 1992; Serial No. 96-30, § 2, 1996)

01.50.030 Commencement of action.

(a) *Forfeiture of the office.* Forfeiture of the office of mayor or any other assemblymember shall be declared by the assembly, as provided in Charter section 3.7.

(b) *Other appeals.* All other appeals shall be initiated by filing a notice of appeal with the municipal clerk. The notice of appeal shall include the following:

- (1) The name, mailing address, telephone and facsimile numbers, if any, of each appellant;
- (2) The signature of the appellant or the appellant's representative;

- (3) If the notice of appeal is signed by a representative of the appellant, a notarized statement signed by the representative that the representative is authorized to sign and file the appeal on behalf of the appellant;
- (4) A copy of the decision being appealed;
- (5) A concise statement of the legal and factual errors in the decision that form the basis of the appeal;
- (6) The relief requested by the appellant; and
- (7) A filing fee established by the assembly by resolution. The assembly may establish additional fees and charges for particular appellate services. The assembly may as part of any relief awarded to the appellant, order a refund of all or a portion of any such fee.

(c) *Time for filing a notice of appeal.* Unless otherwise provided in the Code, ordinance, resolution, or other provision which creates the right of appeal, no person shall be entitled to an appellate review of a decision who fails to file a proper notice of appeal with the municipal clerk within 20 days of the date the decision is filed with the municipal clerk if the decision is one which is required to be so filed; or, if the decision is not one which is required to be filed with the municipal clerk, then within 20 days of the later of:

- (1) The date the decision becomes effective; or
- (2) The date the appellant received personal notice of the decision, if such notice is required.

(d) *Action by municipal clerk upon receiving a notice of appeal.* The municipal clerk shall deliver copies of the notice of appeal to the City and Borough manager, the City and Borough attorney, the agency whose action is challenged, other parties to the agency action challenged, and to the presiding officer of the appeal agency.

(e) *Action by appeal agency upon receipt of a notice of appeal.*

- (1) Within 30 days of the first regular meeting after receipt of a notice of appeal by the municipal clerk, the appeal agency shall notify the appellant of the acceptance or rejection of the appeal and, if rejected, the reasons for the rejection.
- (2) The notice of appeal shall be liberally construed in order to preserve the rights of the appellant. The appeal agency may reject the appeal for failure to comply with these rules or if the notice of appeal does not state grounds upon which any of the relief requested may be granted.
- (3) When more than one notice of appeal has been accepted on the same agency decision, including appeals on different issues related to the same agency decision, the appeal agency may consolidate the appeals in a single proceeding. Notice of consolidation will be given to all parties within 30 days after the acceptance of the last notice of appeal.
- (4) If the appeal is accepted, the appeal agency shall:

- (A) Determine whether the appeal agency will conduct the hearing or whether the appeal will be assigned to a hearing officer;
- (B) If the appeal is to be heard by the appeal agency, it shall:
 - (i) Schedule a prehearing conference to be conducted by the presiding officer,
 - (ii) Schedule and conduct a hearing and issue a written decision;
- (C) If the appeal is assigned to a hearing officer, the hearing officer shall schedule and conduct a prehearing conference and a hearing, and shall issue a proposed decision to the appeal agency.

(f) *Scope of review.* The appeal will be heard on the record supplemented by such new information as the appeal agency or hearing officer finds relevant and admissible under section 01.50.110. "New information" means information that was not presented to the agency whose decision is being appealed and which the appeal agency finds could not have been so presented for reasons beyond the control of the party seeking to submit it to the appeal agency.

(g) *Preparation of record on appeal.* The municipal clerk, with the assistance of the agency whose action is being appealed, shall prepare the record and an index of the record. The record shall consist of the decision being appealed, written public comment received thereon by the agency, and memoranda, minutes and other related materials collected by the agency as part of the proceeding challenged in the appeal. The appeal agency, the hearing officer, or a party at that party's expense, may request a transcript of all or part of the proceeding challenged be made a part of the record.

(h) *Stay pending appeal.* Unless ordered otherwise by the appeal agency, the decision being appealed shall not be stayed pending appeal but action by any person in reliance on the decision shall be at the risk that the decision may be set aside on appeal.

(i) *Additional advise.* The appeal agency may appoint or retain an attorney or other person to advise the appeal agency.

(Serial No. 92-36, § 2, 1992; Serial No. 96-30, § 3, 1996; Serial No. 97-01, § 2, 1997)

01.50.040 Appointment of hearing officers.

The assembly may assign a qualified, unbiased and impartial hearing officer to conduct hearings under this chapter. The hearing officer may perform other duties in connection with the administration of this chapter. (Serial No. 92-36, § 2, 1992)

01.50.050 Prehearing conference.

(a) The presiding officer of the appeal agency or the hearing officer shall, unless the parties agree otherwise, conduct a prehearing conference with the parties to consider and issue orders related to the following:

- (1) Intervention by additional parties;
- (2) Simplification or settlement of the issues;
- (3) Preparation and distribution of the record;
- (4) Preparation and submission of stipulations, admissions, depositions, subpoenas, affidavits, exhibits and other forms of prefiled evidence to the extent permitted by subsection 01.50.110(e);
- (5) Briefing schedule;
- (6) Submission of witness lists;
- (7) The date for the hearing;
- (8) The order and time limits for presentation of the appeal; and
- (9) Any other matter that may assist in the disposition of the appeal.

(b) The presiding officer or the hearing officer shall issue a prehearing order setting forth the time and place of the hearing and such other information as may aid in the disposition of the appeal. The order shall be delivered to all parties no more than five days after the prehearing conference.

(Serial No. 92-36, § 2, 1992; Serial No. 95-38, § 2, 1995; Serial No. 96-30, § 4, 1996)

01.50.070 Standard of review and burden of proof.

- (a) The appeal agency or the hearing officer may set aside the decision being appealed only if:
- (1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
 - (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency or the hearing officer of the basis upon which the decision appealed from was made; or
 - (3) The appeal agency or the hearing officer failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.

(b) The burden of proof is on the appellant.

(Serial No. 92-36, § 2, 1992)

01.50.080 Subpoena.

(a) Before the hearing begins, the appeal agency or the hearing officer shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with this chapter and the Alaska Rules of Civil

Procedure. After the hearing begins, the appeal agency, if it is hearing the case, or the hearing officer may issue subpoenas and subpoenas duces tecum in accordance with this chapter and Alaska Rules of Civil Procedure.

(b) A subpoena issued under subsection (a) of this section extends to all parts of the City and Borough and shall be served in accordance with the Alaska Rules of Civil Procedure.

(c) A witness who is not a party and who appears under a subpoena is entitled to receive witness fees and expenses in accordance with the Alaska Administrative Rules, except a witness who is an officer or employee of the City and Borough. Witness fees and expenses shall be paid by the party at whose request the witness is subpoenaed.

(Serial No. 92-36, § 2, 1992)

01.50.090 Depositions.

(a) The testimony of a witness residing inside or outside the City and Borough may be taken by deposition in accordance with this chapter and in the manner prescribed by the Alaska Rules of Civil Procedure.

(b) If the witness resides outside the City and Borough, the party seeking the deposition shall obtain an order of court by filing a petition for the taking of the deposition in the superior court in Juneau, Alaska. The proceedings on this order shall be in accordance with provisions governing the taking of depositions in a civil action in the superior court.

(Serial No. 92-36, § 2, 1992)

01.50.100 Hearing on appeal.

(a) The presiding officer or the hearing officer shall rule on the admission and exclusion of evidence.

(b) A hearing officer or appeal agency member shall voluntarily withdraw from a case in which the hearing officer or appeal agency member cannot accord a fair and impartial hearing. A party may request the disqualification of a hearing officer or appeal agency member by filing an affidavit, before the taking of evidence at the hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the request concerns an appeal agency member, the issue shall be determined by the other members of the appeal agency. If the request concerns the hearing officer, the issue shall be determined by the appeal agency.

(c) The hearing shall be tape recorded.

(Serial No. 92-36, § 2, 1992)

State Law References: Hearings, AS 44.62.450.

01.50.110 Evidence.

(a) Evidence may be taken only on oath or affirmation.

(b) Each party may:

(1) Call and examine witnesses;

- (2) Introduce exhibits;
- (3) Cross-examine opposing witnesses on matters relevant to the issues, even though that matter was not covered in any written testimony or in direct examination;
- (4) Impeach a witness regardless of which party first called the witness to testify; and
- (5) Rebut adverse evidence.

(c) If a party does not testify on the party's own behalf, the party may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence, but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded. New information is not admissible if the appeal agency finds that the party seeking to have new information admitted could have by exercising reasonable diligence presented it to the agency whose decision is being appealed.

(e) No issue, and no testimonial, physical or documentary evidence may be advanced or introduced at the hearing or included in the submission to the appeal agency or hearing officer which was not previously submitted to the agency whose decision is being appealed. The presiding officer or the hearing officer may waive this prohibition if the failure previously to submit or disclose was due to:

- (1) Newly discovered evidence which by due diligence could not have been discovered previously and disclosed during the prehearing process, and further could not have been submitted to the agency whose decision is being appealed; or
- (2) Fraud, misrepresentation, or other misconduct of an opposing party.

(f) The prohibition of subsection (e) of this section does not apply to evidence offered solely to rebut or impeach evidence admitted pursuant to subsection (e).

(Serial No. 92-36, § 2, 1992; Serial No. 95-38, § 3, 1995; Serial No. 96-30, § 6, 1996)

01.50.120 Evidence by affidavit.

Evidence by affidavit may be allowed as set forth in the prehearing order. Cross-examination of the affiant may be allowed upon a motion by the opposing party for good cause shown.

(Serial No. 92-36, § 2, 1992; repealed and reenacted by Serial No. 96-30, § 7, 1996)

01.50.130 Official notice.

In reaching a decision, the appeal agency or the hearing officer may take official notice, either before or after submission of the case for decision, of a generally accepted technical or scientific matter within the appeal agency's or hearing officer's special field, and of a fact which is judicially noticed by the courts of the state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noticed in the record, referred to in the record, or appended to it. A party present at the hearing shall, upon request, be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or oral presentation of authority.

(Serial No. 92-36, § 2, 1992)

01.50.140 Decision on the appeal.

(a) *Form and contents.* All decisions shall be written and must contain findings of fact and a determination on each of the issues presented. A decision may affirm, modify, or set aside an agency decision in whole or in part. A decision may be to remand any issue to the agency. Following adoption of the decision by the appeal agency or hearing officer, the municipal clerk shall deliver or mail the decision to the parties or their representatives.

(b) *Appeal agency decisions.* In an appeal heard by the appeal agency:

- (1) The attorney, if any, who advised the appeal agency at the hearing may be present during the deliberation on the decision of the case, and if requested, shall assist and advise the appeal agency;
- (2) A member of the appeal agency who has not heard the evidence in person at the hearing may not participate in the decision;
- (3) Deliberation shall be in executive session unless the agency votes to deliberate in open session; and
- (4) The appeal agency shall itself prepare and adopt a written decision no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any; or the appeal agency may direct the attorney who advised the appeal agency, if any, or the prevailing party to prepare a proposed decision. A proposed decision prepared by the advising attorney or the prevailing party shall be filed with the municipal clerk and served on each party to the appeal or the party's representative no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any. The parties may file written objections to the proposed decision with the municipal clerk within five days after service of the proposed decision. The proposed decision and any objections to the proposed decision shall be placed before the appeal agency at the first regular meeting at which the matter may be scheduled or at a special meeting called for that purpose.

(c) *Hearing officer decisions.* In an appeal heard by a hearing officer, the hearing officer shall prepare a proposed decision and shall serve copies of the proposed decision with the municipal clerk and on each party in the appeal or the party's attorney no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any.

- (1) Within five days of service of the hearing officer's proposed decision on a party, a party may file a written objection to all or any part of the proposed decision. The objection shall set forth with specificity the parts of the proposed decision to which objection is taken, the basis for the objection, and the action which the objecting party seeks to have the appeal agency take. Within three days of the service on a party of objections, a party may file a written statement in support of the proposed decision. The hearing officer shall reconsider the proposed decision in light of timely filed objections and statements of support and shall promptly prepare any amendments to be made to the proposed decision or shall issue a statement that the objections to and the statements in support of the proposed decision have been considered and that no change in the proposed decision should be made. The hearing officer shall set forth the reason for any amendment or for the rejection of timely filed objections.
- (2) If no timely objections are filed, at the first regular meeting at which the matter may be scheduled or at a special meeting held for that purpose following the close of business on the last day upon which objections to the decision could have been filed, the proposed decision shall be placed before the appeal agency. If a timely objection is filed, at the first regular meeting at which the matter may be scheduled or at a special meeting held for that purpose following the day upon which the hearing officer's response to the objections is filed with the appeal agency, the proposed decision, the timely filed written objections, the timely filed statements in support, and the hearing officer's response to the objections shall be placed before the appeal agency. Unless rejected or modified by an affirmative vote of the appeal agency on a motion to reject or modify, the proposed decision, as amended by the hearing officer if such an amendment has been filed, shall be deemed adopted by the appeal agency and shall be the appeal agency decision. No testimony or evidence of any nature other than that contained in a timely filed objection may be received by the appeal agency at the meeting at which the proposed decision is presented.
- (3) If the proposed decision is rejected by the appeal agency, the matter shall be immediately referred to the hearing officer for a rehearing of the appeal after notice to the parties; provided, the appeal agency may refer the appeal to a different hearing officer, may limit the scope of the rehearing to specified issues, may request the hearing officer to reconsider the proposed decision solely in light of new evidence raised in an objection, may place similar or different limits or conditions on the rehearing or reconsideration by the hearing officer, may remand the matter, or may rehear the matter itself after notice to the parties.

(Serial No. 92-36, § 2, 1992; Serial No. 95-38, § 4, 1995)

State Law References: Decision in a contested case, AS 44.62.500.

01.50.150 Allocation of costs of appeals.

(a) The appeal agency in the decision, or hearing officer in the proposed decision, may allocate all or a portion of the costs of an appeal among the parties in such amounts or proportions as the appeal agency or hearing officer determines fairly compensates the parties for the cost of the appeal. If the decision of the appeal agency or hearing officer does not address the allocation of costs, the manager may, no later than ten days after the issuance of the decision, apply for an allocation of costs to the appeal agency. The manager shall provide to each party a copy of the application for allocation of costs. Each party shall have ten days from the date of the mailings of such application in which to file with the appeal agency written comments or objections to the proposed allocation of costs. The appeal agency may make its decision based on the written comments and objections of the parties and the application of the manager and without a hearing.

(b) A party entitled to costs may be allowed fees paid as a condition of filing the appeal; the necessary expense of taking depositions for use at the hearing and producing exhibits; the expense of service and publication of summonses or notices, and postage when the same are served by mail; filing fees and other charges made by the municipal clerk and fees for transcripts required in the appeal, and any other expenses, not including attorney's fees or the value of that party's time, necessarily incurred by that party in order to secure some right accorded that party in the action or proceeding.

(c) If a refund of an appeal filing fee is authorized by ordinance or resolution, the appeal agency shall determine whether all or a portion of the refundable part of the fee is to be refunded to the successful appellant. In making this determination, the appeal agency may consider such factors as the degree to which the appellant prevailed on all the points raised in the appeal, the degree to which the decision was changed as a result of the appeal, and similar factors.

(d) Any amount allocated to a party to an appeal shall be paid to the municipal clerk within 30 days of the date notice of the amount is mailed to the party. Amounts not paid within 30 days shall bear interest thereafter at the maximum lawful rate and may be collected in a civil action.
(Serial No. 92-36, § 2, 1992; Serial No. 94-03, §§ 2, 3, 1994)

01.50.160 Effective date of decision.

(a) A decision becomes effective 30 days after it is delivered or mailed to the parties or their representatives unless:

- (1) A reconsideration is ordered within that time;
- (2) The appeal agency orders that the decision become effective sooner; or
- (3) A stay of execution is granted for a particular purpose and not to postpone judicial review.

(b) A stay of execution may be included in the decision, or if not included in it, may be granted by the appeal agency at any time before the decision becomes effective. The stay of execution may be accompanied by an express condition that the respondent comply with just and reasonable terms during the stay.
(Serial No. 92-36, § 2, 1992)

State Law References: Effective date of decision, AS 44.62.520.

01.50.170 Default.

If a party does not appear in the proceedings, the appeal agency may take action based upon the evidence presented by parties who do appear.

(Serial No. 92-36, § 2, 1992)

State Law References: Default, AS 44.62.530.

01.50.180 Reconsideration.

(a) The appeal agency may, within 30 days after the delivery or mailing of a decision to the parties, order a reconsideration of all or part of the appeal on its own motion or on petition of a party. To be considered

by the appeal agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. A petition for reconsideration filed by a party will be placed before the appeal agency at the first regular meeting at which the matter may be scheduled or at a special meeting called for that purpose. Unless granted by an affirmative vote of the appeal agency, the petition for reconsideration is deemed denied.

(b) An appeal may be reconsidered by the appeal agency on all the pertinent parts of the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer is subject to the procedure provided in section 01.50.140. If oral evidence is introduced before the appeal agency, an appeal agency member may participate in the decision only if the appeal agency member has heard the evidence in person at the initial hearing and the hearing on reconsideration.

(Serial No. 92-36, § 2, 1992)

State Law References: Reconsideration, AS 44.62.540.

01.50.190 Judicial review.

Judicial review by the superior court of a final decision of the appeal agency may be had by filing a notice of appeal in accordance with the applicable rules of court.

(Serial No. 92-36, § 2, 1992)

Charter References: Judicial review of forfeiture of office, § 3.7(d).

01.50.200 Continuances.

The appeal agency or the hearing officer may grant continuances for good cause shown.

(Serial No. 92-36, § 2, 1992)

01.50.210 Contempt.

(a) In a proceeding before an appeal agency or a hearing officer, the appeal agency or hearing officer may apply to the court in the judicial district where the proceeding is held, alleging contempt if a person in the proceedings:

- (1) Disobeys or resists a lawful order;
- (2) Refuses to respond to a subpoena;
- (3) Refuses to take oath or affirmation as a witness;
- (4) Refuses to be examined; or
- (5) Is guilty of misconduct at a hearing or so near the hearing as to obstruct the proceedings.

(b) Upon a proper showing under subsection (a) of this section, the court shall issue an order directing the person to appear before the court and show cause why the person should not be punished for contempt. The order and a copy of the motion for contempt shall be served on the person.

(c) After service under subsection (b) of this section, the court has jurisdiction of the matter.

(d) The law applicable to contempt committed by a person in the trial of a civil action before the superior court applies to contempt under this section as to:

(1) The proceedings taken; and

(2) The penalties imposed.

(Serial No. 92-36, § 2, 1992)

State Law References: Contempt, AS 44.62.590.

01.50.220 Power to administer oaths.

The presiding officer of the appeal agency, an appeal agency member, the municipal clerk, or the hearing officer may administer oaths and affirmations and certify official acts.

(Serial No. 92-36, § 2, 1992)

State Law References: Power to administer oaths, AS 44.62.620.

01.50.230 Impartiality.

The functions of hearing officers and those appeal agency members participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. Hearing officers and appeal agency members, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews concerning the appeal with, or receive evidence or argument on the appeal from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with a hearing officer or appeal agency member concerning the appeal shall be served upon all parties.

(Serial No. 92-36, § 2, 1992)

State Law References: Impartiality, AS 44.62.630.

01.50.240 Service and filing of pleadings.

(a) Where service is required under this chapter, service may be accomplished by any means authorized for service in civil actions. Service may be proved in the manner authorized for civil actions.

(b) Original copies of all pleadings or other papers must be filed with the appeal agency or the hearing officer, as allowed by Civil Rule 5(d).

(Serial No. 92-36, § 2, 1992)

01.50.250 Time limits.

(a) In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run is not to be included. The last day of the period is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(b) Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

(Serial No. 92-36, § 2, 1992)

Cross References: Computation of time, CBJ Code § 01.15.010.

State Law References: Computation of time, AS 01.10.080.

01.50.260 Relaxation of requirements.

This chapter is designed to facilitate the business of the appeal agency or hearing officer, and shall be construed to secure the reasonable, speedy and inexpensive determination of every appeal. The procedural requirements of this chapter may, in the discretion of the appeal agency or hearing officer, be relaxed in any case where it is manifest to the appeal agency that a strict adherence to them will work injustice.

(Serial No. 92-36, § 2, 1992)