



Ohio Administrative Code Rule 4757-11-04 Hearing procedures.

Effective: September 20, 2007

(A) Representatives; appearances; communications; applicability

(1) As used in this chapter of the Administrative Code, "respondent" shall be defined as the person who is requesting or has requested a hearing pursuant to Chapter 119. of the Revised Code.

(2) The respondent may represent himself/herself or may be represented by an attorney admitted to the practice of law in Ohio. If the respondent does represent himself/herself, he/she shall be deemed the representative of record for purposes of this chapter of the Administrative Code.

(3) The respondent is not required to personally appear at any hearing provided he/she has not been subpoenaed and has authorized his/her representative to represent him/her in all facets of a hearing before the board.

(4) The respondent or his/her representative may present his/her position, arguments, or contentions in writing rather than personally appearing at any hearing provided the respondent has not been subpoenaed.

(5) One who has entered an appearance as representative remains the representative of record unless and until a written withdrawal is filed with the board.

(6) Except as otherwise provided under Chapter 119. of the Revised Code, communications from the board or its attorney hearing examiner shall be sent to the representative of record.

(7) The members of the board shall base their decisions on any matter subject to hearing only on the evidence of record. No information acquired by a member of the board in any way other than by review of the evidence of record shall be considered in that member's decision on a matter subject to hearing. The receipt of information about a matter subject to hearing outside the evidence of record shall not disqualify the member from participating in the decision on that matter unless that member



excuses himself/herself from participation in the decision on the ground that he/she cannot restrict his/her decision on the matter only to the evidence of record.

(8) Except as otherwise provided under this chapter or by statute, no attorney hearing examiner or member of the board shall initiate or consider ex parte communications concerning a pending or impending adjudicatory proceeding. Nothing contained herein, however, shall preclude the attorney hearing examiner from nonsubstantive ex parte communications on procedural matters and matters affecting the efficient conduct of adjudicatory hearings.

(9) Except as otherwise provided under this chapter or by statute, a rule promulgated under this chapter shall apply only to those administrative proceedings for which the notice of opportunity for hearing was mailed to the respondent, or his/her representative, on or after the effective date of this particular rule.

(10) If any provision of the rules in this chapter is held or if the application of any provision of the rules in this chapter to any person or circumstance is held invalid, the invalidity does not affect any other provision of the rules in this chapter, or the application of any other provision of the rules in this chapter, that can be given effect without the invalid provision or application, and, to this end, the provisions of the rules in this chapter are hereby declared severable.

(B) Filing request for hearing

(1) In order to request a hearing under Chapter 119. of the Revised Code, a respondent or his/her representative shall file in writing a statement requesting such adjudication hearing within thirty days of the date of mailing of the board's notice of opportunity for hearing. The date of mailing shall be the date appearing on the certified mail receipt.

(2) A respondent or his/her representative properly filing a request for an adjudication hearing shall be entitled to such adjudication hearing within fifteen days but not sooner than seven days after such request has been filed unless both parties agree or a continuance is granted pursuant to section 119.09 of the Revised Code.

(C) Authority and duties of attorney hearing examiners



- (1) Adjudication hearings may be conducted before an attorney hearing examiner pursuant to Chapters 4757. and 119. of the Revised Code.
- (2) All hearings shall be open to the public, but the hearing examiner conducting a hearing may close the hearing to the extent necessary to protect compelling interests and rights or to comply with statutory requirements. In the event the hearing examiner determines to close the hearing, the hearing examiner shall state the reasons therefore in the public record.
- (3) The hearing examiner shall conduct hearings in such a manner as to prevent unnecessary delays, maintain order, and ensure the development of a clear and adequate record.
- (4) The authority of the attorney hearing examiner shall include, but not be limited to, authority:
 - (a) Administer oaths and affirmations;
 - (b) Examine witnesses and direct witnesses to testify;
 - (c) Make rulings on the admissibility of evidence;
 - (d) Make rulings on procedural motions, whether such motions are oral or written;
 - (e) Hold prehearings and status conferences;
 - (f) Request briefs before, during or following the hearing, as well as suggested findings, orders, and conclusions of law within such time limits as the attorney hearing examiner may determine;
 - (g) Prepare entries, findings, orders, or reports and recommendations;
 - (h) Request preparation of entries, findings, or orders;
 - (i) Make rulings on requests to broadcast, record, televise or photograph the hearing;



(j) Determine the order in which any hearing shall proceed;

(k) Take such actions as may be necessary to accomplish the purpose of paragraph (C) of this rule.

(5) The authority of the attorney hearing examiner shall not include authority to:

(a) Grant motions for dismissal of charges;

(b) Modify, compromise, or settle charges or allegations.

(6) The attorney hearing examiner shall have such powers, duties, and authorities as are granted by statutes or rules.

(7) All rulings on evidence and motions and on any other procedural matters shall be subject to review by the board upon presentation of the proposed findings of fact and conclusions of law of the attorney hearing examiner. When such rulings warrant, the matter may be remanded to the attorney hearing examiner.

(D) Continuance of hearing

(1) The board shall initially continue a hearing upon its own motion for a period of not less than thirty days in order to more efficiently conduct its business unless the circumstances establish that a continuance would not serve the interest of justice.

(2) The executive director of the board may continue a hearing upon the written motion of a representative of record.

(3) Hearings shall not be continued upon motion by a representative of record unless a showing of reasonable cause and proper diligence is presented. Before granting any continuance, consideration shall be given to harm to the public that may result from delay in proceedings. In no event will a motion for a continuance by a representative of record, requested less than five days prior to the scheduled date of the hearing, be granted unless it is demonstrated that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.



(4) If a continuance is granted, the board's executive director shall immediately establish a new hearing date, unless circumstances prohibit.

(5) Hearings may be continued due to the unavailability of a subpoenaed witness at the discretion of the attorney hearing examiner. The attorney hearing examiner may hold the record open to accept a deposition in lieu of live testimony of a subpoenaed witness.

(E) Notice of hearings: notice specifying the date, time, and place set for hearing shall be mailed by certified mail to the representatives of record.

(F) Transcripts: duplicate transcripts of the stenographic record taken at hearing may be obtained directly from the court reporter at the requestor's expense.

(G) Subpoenas for purposes of hearings

(1) Upon written request of either party, the board shall issue subpoenas of hearing to compel the attendance and testimony of witnesses and production of books, records and papers at the administrative hearing. Each subpoena shall indicate on whose behalf the witness is required to testify.

(2) For purposes of a hearing conducted under Chapter 119. of the Revised Code, subpoena requests shall specify the name and address of the individual to be served and the date, time and location at which they are to appear at the administrative hearing. If the subpoena includes a duces tecum request, the specific documents or tangible things to be produced at the administrative hearing shall be listed in the request.

(3) Except upon leave of the executive director, subpoena requests are to be filed with the board at least fourteen days in advance of the requested date of compliance in order to allow sufficient time for preparation and service of the subpoenas.

(4) In the event that the number of subpoenas requested appears to be unreasonable, the board or its attorney hearing examiner may require a showing of necessity therefore, and, in the absence of such



showing, may limit the number of subpoenas. Absent such a limitation, subpoenas shall be issued within five days of request. Failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance.

(5) After the hearing has commenced, the board or its attorney hearing examiner may order the issuance of subpoenas for purposes off hearing to compel the attendance and testimony of witnesses and production of books, records, and papers.

(6) Upon motion and for good cause, the board's executive director or its attorney hearing examiner may order any subpoena be quashed. The board shall make a reasonable attempt to contact any witness whose subpoena has been quashed.

(H) Reports and recommendations

(1) Within forty-five days following the close of an adjudication hearing conducted pursuant to Chapter 119. of the Revised Code, the attorney hearing examiner shall submit a written report setting forth proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the Board.

(2) A copy of such written report shall be issued to the respondent and the representatives of record. The respondent and/or the respondent's representative of record may, within ten days of receipt of the attorney hearing examiner's report and recommendations, file written objections to the report and recommendations. Only those objections filed in a timely manner shall be considered by the board before approving, modifying, or disapproving the attorney hearing examiner's recommendations.

(3) The board shall consider the attorney hearing examiner's report and recommendations and any objections at its next regularly scheduled meeting after the time for filing objections has passed. At that time, the board may order additional testimony to be taken or permit the introduction of further documentary evidence, or act upon the report and recommendations. For purposes of taking such additional testimony or documentary evidence, the board may remand to the attorney hearing examiner

(4) Without leave of the board, the respondent or any representative of the respondent of record shall



not be permitted to address the board at the time of consideration of the attorney hearing examiner's report and recommendations. Any request for such leave shall be filed by motion no less than five days prior to the date the report and recommendations is to be considered by the board and shall be served upon the representative of record.

(5) If a request to address the board is granted, the opposing representative may also address the board.

(I) Exchange of documents and witness lists

(1) Any representative of record may serve upon the opposing representative of record a written request for a list of both the witnesses and the documents intended to be introduced at hearing. Within twelve business days of service of that request, the opposing representative shall provide a response to the requesting representative. All final lists requested under this rule shall be exchanged no later than seven business days prior to the commencement of the administrative hearing

(2) Failure without good cause to comply with paragraph (I)(1) of this rule may result in exclusion from the hearing of such testimony or documents, upon motion of the representative to whom disclosure is refused.

(J) Prior action by state of Ohio counselor, social worker and marriage and family therapist board: the attorney hearing examiner shall admit evidence of any prior action entered by the state of Ohio counselor and social worker board against the respondent, including formal disciplinary action or warning letters.

(K) Stipulation of facts: Representatives of record may, by stipulation, agree on any or all facts involved in proceedings before the attorney hearing examiner. The attorney hearing examiner may thereafter require development of any fact deemed necessary for just adjudication.

(L) Witnesses

(1) All witnesses at any administrative hearing or during any deposition in lieu of live testimony at hearing shall testify under oath or affirmation.



(2) A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that witness's rights, and that legal counsel may neither examine nor cross-examine any witness.

(3) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the state of Ohio counselor and social worker board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.

(4) Any representative of record may move for a separation of witnesses. Expert witnesses shall not be separated.

(5) No witness shall be permitted to testify as to the nature, extent, or propriety of disciplinary action to be taken by the board. A witness may, in the discretion of the attorney hearing examiner, testify as to an ultimate issue of fact.

(M) Conviction of crime: a certified copy of a plea of guilty to, or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime.

(N) Evidence: the "Ohio rules of evidence" may be taken into consideration by the board or its attorney hearing examiner in determining the admissibility of evidence, but shall not be controlling.

(O) Reinstatement of license registration: any disciplinary action taken by the board which results in suspension from practice shall either lapse by its own terms or contain a written statement of the conditions under which the license or registration may be reinstated. Such conditions may include, but are not limited to:

(1) Submission of a written application for reinstatement;

(2) Payment of all appropriate fees as provided in Chapter 4757. of the Revised Code;

(3) Mental or physical examination, at the expense of the respondent;



- (4) Additional education or training;
- (5) Re-examination;
- (6) Practice limitation;
- (7) Participation in, and successful completion of, appropriate mental health treatment programs;
- (8) Demonstration that the licensee can resume practice in compliance with acceptable and prevailing standards;
- (9) Supervision, at the respondent's expense, by an appropriate supervisor as determined by the board;
- (10) Satisfactory completion of all terms, conditions or limitations placed upon the licensee through a board approved consent agreement or adjudication order.