



Ohio Administrative Code

Rule 5160-70-05 Chapter 119. hearings: pre-hearing discovery and subpoenas.

Effective: January 1, 2015

(A) Pre-hearing discovery

(1) Unless otherwise ordered by the hearing examiner, pre-hearing discovery is allowed. Unless otherwise ordered by the hearing examiner or as set forth in this rule, pre-hearing discovery shall be conducted and used at the hearing in accordance with the Ohio Rules of Civil Procedure (www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf, July 1, 2014) except that any reference to court shall be interpreted to refer to the "hearing examiner".

(2) Depositions of ODM employees shall be conducted in the Columbus offices of ODM during normal business hours unless other arrangements are approved by ODM.

(3) In accordance with Civ. R. 45, depositions of persons who are not participants in the hearing shall be taken in the county where the deponent resides or is employed or transacts business in person, or at such other convenient place as agreed to by the participants in the hearing or as fixed by an order of the hearing examiner.

(4) Pre-hearing discovery may begin immediately after a hearing request is timely made and must be completed before the commencement of the hearing, unless the hearing examiner issues an order establishing a different begin date and/or end date for discovery.

(5) At a time required by the hearing examiner, a party shall provide a report prepared by every witness identified as an expert by the party. The report shall be signed by the witness and shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years or at any time if the witness testified



in any matter in which ODM or its predecessor agencies were a party or participants in a hearing. An expert witness who is an employee of ODM shall not be required to prepare an expert witness report. The participants in a hearing shall bear their own expert witness costs. Any participant in the hearing seeking discovery of an expert shall not be required to pay any portion of the fees and expenses incurred by the other participants in obtaining facts and opinions from an expert or for costs of the expert witness in responding to discovery.

(B) Subpoena issuance and enforcement

(1) ODM shall issue blank subpoena forms to a participant in the hearing requesting a subpoena. The requestor is responsible for completing the subpoena form, including the address where the person is to be served, and returning the completed subpoena form to the depository agent along with a written request for service. The written request for service and the completed subpoena must be received by the depository agent no later than twenty-one business days before the commencement of the hearing or deposition, unless otherwise ordered by the hearing examiner for good cause shown. At its discretion, ODM may make available an electronic version of the subpoena and may authorize electronic submission of a completed subpoena.

(2) For hearings, upon its own initiation or that of any participant in the hearing, ODM shall issue a subpoena to any person within the state requiring the persons attendance as a witness and/or the production of books, records or papers at the hearing. For any person subpoenaed for attendance at a hearing, at the time of service of such a subpoena upon a person outside of Franklin county, the fees for one days attendance and mileage shall be tendered, without demand by the person being subpoenaed. At the time of service of such a subpoena upon a person inside of Franklin county, the fees for one days attendance and mileage shall be tendered upon demand by the person being subpoenaed. ODM shall pay the fees and mileage as set forth in section 119.094 of the Revised Code.

(3) For depositions, upon its own initiation or that of any participant in the hearing, ODM shall issue a subpoena to any person within the state who is not a participant in the hearing, requiring his or her attendance and/or the production of books, records or papers.

(a) Participants in the hearing shall participate in depositions upon notice of opposing counsel. A



subpoena may not be used to obtain the attendance of a participant or the production of documents by a participant in discovery. Rather, a participants attendance at a deposition shall be obtained only by notice under Civ.R. 30, and the production of books, records, and papers shall be obtained from a participant in discovery only pursuant to Civ. R. 34.

(b) For any person who is not a participant in the hearing and who is subpoenaed for attendance at a deposition and/or for the production of books, records or papers, at the time of service of a subpoena upon a person outside of Franklin county, the fees for one days attendance and mileage shall be tendered, without demand by the person being subpoenaed. At the time of service of a subpoena upon a person inside of Franklin county, the fees for one days attendance and mileage shall be tendered, upon demand by the person being subpoenaed. The amount of the fees and mileage shall be the same as those set forth in section 2335.06 of the Revised Code. Sections 119.09 and 119.094 of the Revised Code require ODM to pay fees and mileage only of persons subpoenaed as witnesses in a hearing. ODM is not required to pay the fees and mileage for a person subpoenaed for a deposition. The participant in the hearing requesting ODM to issue a subpoena for a deposition shall include with the request a check for the fees and mileage made payable to the person subpoenaed.

(4) All subpoenas issued under this rule shall be directed to the sheriff of the county where the person to be served resides or is found, and the sheriff shall serve and return the subpoena in the same manner as a subpoena in a criminal case. The sheriff shall be paid by ODM the same fees for services as are allowed in the court of common pleas in criminal cases as established in section 311.17 of the Revised Code.

(5) In any case of disobedience or neglect of any subpoena served upon any person, or the refusal of any witness to testify to any matter in which there may be lawful interrogation, ODM shall apply to the court of common pleas where such disobedience, neglect, or refusal occurs for an order to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.