



Ohio Administrative Code

Rule 5160-70-06 Chapter 119. hearings: conducting the hearing, report and recommendation, filing objections, adjudication order, appealing the adjudication order.

Effective: January 1, 2015

(A) Conducting the hearing

(1) The date, time, and place of any hearing before ODM is set by ODM or the hearing examiner. The hearing examiner shall provide written or electronic notice before the date of the hearing to all participants in the hearing and file a copy of the written notice with the depository agent. Hearings shall be scheduled in accordance with the following requirements.

(a) All hearings shall be conducted in Columbus during normal business hours unless other times are authorized by the director or the hearing examiner.

(b) Upon the written request of a party, the director may designate the site of the hearing to be the county seat of the county wherein a party resides or, alternately, a place within fifty miles of a party's residence. The approval of an alternative location is at the discretion of the director. Requests for an alternative hearing site must be filed with the depository agent at least forty five days before the scheduled date of the hearing and served as provided in rule 5160-70-04 of the Administrative Code.

(c) Once begun, the hearing shall continue day to day until completed, unless continued by the hearing examiner for good cause shown.

(2) Subject to the prior approval of the hearing examiner, the party may choose to present its case entirely in writing provided that a written request is made by the party no later than fourteen business days before the date scheduled for the hearing. Any request by a party to present its case entirely in writing must be filed with the depository agent and served as provided in rule 5160-70-04 of the Administrative Code. Any party who elects to present the case entirely in writing must do so in accordance with procedures ordered by the hearing examiner. The hearing examiner's order shall be in writing and filed with the depository agent. In the event that the party elects to present its case in writing, ODM may elect to present its case entirely in writing. Nothing in this rule is to be construed



as preventing ODM from compelling the attendance of the party or other witnesses at the hearing and questioning the party or other witnesses as if on cross-examination. Nothing in this rule is to be construed as preventing the party from examining any witnesses or evidence presented by ODM at the hearing.

(3) During the course of any hearing, the participants in the hearing may enter into oral stipulations of fact, procedure, or the authenticity of documents, which shall be incorporated into the record and shall bind the conduct of the participants. The hearing examiner may require oral stipulations to be reduced to writing and submitted to the hearing examiner. The hearing examiner has the power to rule on the admissibility of evidence or testimony, but a participant may make objections to the rulings. If the hearing examiner refuses to admit evidence or testimony, the participant seeking admission of same must make a proffer thereof and such proffer shall be made a part of the record of the hearing. The hearing examiner may refer to the Ohio Rules of Evidence (www.supremecourt.ohio.gov/LegalResources/Rules/evidence/evidence.pdf, July 1, 2012) as guidance in making decisions on admissibility.

(4) Any notice of intended action or any document that supports the issuance of the notice of intended action issued by ODM, if offered into evidence, constitutes, regardless of consent of any party, prima facie evidence sufficient to establish the facts contained therein and that, if not rebutted by the party, is sufficient to sustain a determination that ODM has met its burden of proof. The party carries the burden of production to rebut the prima facie evidence. Nothing in this rule prevents ODM from presenting additional evidence in reply to the rebuttal evidence presented by the party.

(B) Report and recommendation and filing objections

(1) After the conclusion of the hearing, the hearing examiner shall submit to ODM a written report setting forth the hearing examiners findings of fact and conclusions of law and a recommendation of the action to be taken by ODM. The report shall be filed with the depository agent. Within five days of the report's filing with the depository agent, as evidenced by the time stamp of the agent, ODM shall send by certified mail, return receipt requested, to the party, the partys attorney, or other authorized representative of record a copy of the hearing examiner's report. The report shall be considered to have been mailed as of the mailing date appearing on United States postal service form 3800 or any future equivalent postal service form. If delivery is not successful by certified mail, the



provisions regarding the steps subsequent to the mailing of certified mail in section 119.07 of the Revised Code shall be followed for service of the report.

(2) Any participant in the hearing may file written objections to the hearing examiner's report. Any such objections must be received no later than ten days after the participant in the hearing receives the report. The director may grant an extension of time to file objections if the participants written request for an extension is received by ODM no later than ten days after the participants receipt of the report. The date the participant in a hearing receives the hearing examiner's report is the receipt date indicated on the United States postal service form 3800, or any future equivalent postal services form. The director shall consider timely written objections before approving, modifying, or disapproving the recommendation of the hearing examiner.

(3) The director may order additional testimony to be taken by the hearing examiner and permit the introduction of further documentary evidence to the hearing examiner. The hearing examiner shall issue a revised written report and recommendation after consideration of any additional testimony and evidence. If the hearing examiner issues a revised report and recommendation, the provisions of paragraphs (B)(1) and (B)(2) of this rule shall be applied to the revised report and recommendation in the same manner as they were applied to the original report and recommendation.

(C) Adjudication order

(1) The recommendation of the hearing examiner may be approved, modified, or disapproved by the director. In those instances where the director modifies or disapproves the recommendation of the hearing examiner, the director shall include the reasons therefor and incorporate said reasons into the adjudication order.

(2) After the director enters an order approving, modifying, or disapproving the hearing examiner's recommendation on the ODM journal of proceedings, the director shall mail to any party by certified mail, return receipt requested, a copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of such order shall be mailed to the attorney or other authorized representative of record.

(D) Appeal of an adjudication order



(1) Any party adversely affected by an adjudication order, pursuant to this rule, may appeal from that order to the Franklin county court of common pleas.

(2) Any party desiring to appeal pursuant to this rule must file a notice of appeal with the depository agent setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. In order to be determined filed with ODM, the notice of appeal must be received by the depository agent, as evidenced by an ODM date and time stamp, no later than fifteen days after the mailing to the party, as evidenced by the mailing date on the United States postal service form 3800 or any future equivalent postal service form, of the adjudication order to be appealed from. The appellant shall also file the notice of appeal with the Franklin county court of common pleas no later than fifteen days after the mailing to the party, as evidenced by United States postal service form 3800 or any future equivalent postal service form, of the adjudication order to be appealed from. In filing a notice of appeal with the agency or the court, the notice that is filed may be the original notice or a copy of the original notice.

(E) Any stenographic record, including depositions, related to a hearing or an appeal pursuant to section 119.12 of the Revised Code shall not be considered a public record for purposes of section 149.43 of the Revised Code.