Ohio Administrative Code

Rule 5160-71-05 Chapter 119. hearings conducted under authority of section 5111.914 of the Revised Code: appointment and powers of a hearing examiner and rules of practice.

Effective: August 1, 2011

(A) Initial scheduling of the hearing.

(1) When an affected party timely requests a hearing, the issuing state agency shall set the date, time, and place for the hearing and notify the appellant of the scheduling. The issuing state agency shall initially schedule the hearing not earlier than seven calendar days but not later than fifteen days after the hearing was requested. The first notification concerning a scheduled hearing shall be written and sent registered mail, return receipt requested. All subsequent letters and notices shall be sent by regular U.S. mail.

(2) Nothing in this rule shall be construed so as to prevent the issuing state agency from postponing and rescheduling any hearing upon its own motion or upon the motion of any appellant who can show good cause for such a request

(3) Nothing in this rule shall be construed from preventing the issuing state agency and the appellant from entering into a written agreement establishing the time, date, and place of the hearing.

(B) Joinder of individual cases.

On its own motion, or on motion of the appellant, the issuing state agency or the hearing examiner may join any individual cases where there exist incidents of common ownership or interest and where joinder would be appropriate for efficient and economic fairness to the parties.

(C) Computation of time deadlines.

Section 1.14 of the Revised Code controls the computing of time deadlines imposed by Chapter 119. of the Revised Code.

(D) Rules of practice in hearings conducted under this chapter.

In all hearings conducted under section 5111.914 of the Revised Code, the following rules of practice shall be followed:

(1) The attorney general, or assistants or special counsel designated by the attorney general, will represent the issuing state agency. The director of the issuing state agency may designate staff members of the issuing state agency to assist the attorney general in the preparation and presentation of such hearings and to be present at all times during the hearing and any pre-hearing conferences.

(2) Any individual not appearing pro se and any corporation, partnership, association, or other entity must be represented by an attorney admitted to the practice of law in the state of Ohio. Individuals authorized to practice law in any other jurisdiction may be permitted to represent an appellant in hearings under section 5111.914 only upon order of a court of common pleas of Franklin county. When the appellant is represented by more than one attorney, one attorney must be designated by the appellant as "trial counsel" and that attorney is deemed the appellant's attorney of record and is primarily responsible for the appellant's case at the hearing. No attorney representing an appellant is permitted to withdraw from any hearing without prior notice being served upon the issuing state agency and prior approval by the hearing examiner.

(E) Authority of hearing examiners.

The issuing state agency shall assign a hearing examiner to conduct any hearing held under authority of section 5111.914 of the Revised Code. Any person assigned to be a hearing examiner must be admitted to the practice of law in the state of Ohio. The hearing examiner may be an employee of the issuing state agency or under contract to the issuing state agency. The hearing examiner has the same powers as granted to the issuing state agency in conducting the hearing. These powers include, but are not limited to, the following:

(1) The general authority to regulate the course of the hearing and to issue orders governing the conduct of the hearing.

(2) The authority to administer oaths or affirmations, order the production of documents and the

attendance of witnesses, call and examine witnesses in a reasonable and impartial manner, and to determine the order in which the participants to a hearing will present testimony and be examined in a manner consistent with essential fairness and justice.

(3) The authority to pass upon the admissibility of evidence, rule on objections, procedural motions, and other procedural matters.

(4) The authority to issue orders intended to facilitate settlement of the case, including the scheduling of settlement conferences, directing the exchange of offers and demands, and any other actions that may facilitate the prompt resolution of disputed matters.

(5) The authority to hold one or more pre-hearing conferences of the participants for the purpose of resolving issues that can be resolved by the participants including facilitation of a settlement, identifying the witnesses to be presented and the subject of their testimony, discussing possible admissions or stipulations regarding the authenticity of records, identifying and marking exhibits, and ruling on any procedural motions of the participants, resolving outstanding discovery claims, and clarifying the issues to be addressed at the hearing, and discussing any other matters deemed appropriate by the hearing examiner for the thorough and expeditious preparation and disposition of the case.

(6) The authority to take such other actions as might be necessary to avoid unnecessary delay, prevent presentation of irrelevant or cumulative evidence, prevent argumentative, repetitious, or irrelevant examination or cross-examination, and to assure that the hearing proceeds in an orderly and expeditious manner.

(7) Nothing in this rule nor in any other rule of the Administrative Code is to be construed as granting a hearing examiner the authority to dismiss any hearing. Nothing in this rule nor in any other rule of the Administrative Code limits the authority of the issuing state agency to withdraw its written notice of intended action.

(8) The hearing examiner may require the submission of briefs and memoranda at any time during the proceeding. The hearing examiner may limit these filings to one or more specific issues and may prescribe procedures and time schedules for their submission. All briefs, memoranda, motions or

other pleadings are subject to the following requirements:

(a) If any unreported court decision is cited in any brief or memorandum, a copy of such decision is to be attached to the brief or memorandum containing the citation.

(b) All briefs, memoranda, motions or other pleadings must be filed with the issuing state agency. A certificate of service is to be attached attesting both to the service of a copy of the pleading on the opposing party and the provision of a copy to the hearing examiner.

(c) Only those pleadings, orders, and other papers filed with the issuing state agency shall be a part of the official record.

(d) All briefs, memoranda, motions, or other pleadings and papers must be on eight-and-one-half-inch by eleven-inch paper and double-spaced.

(e) All orders, reports, recommendations, and rulings issued by the hearing examiner are to be signed, dated, and filed with the issuing state agency.

(f) All exhibits, or other evidence admitted into the record or proffered, shall be filed by the hearing examiner with the issuing state agency at the conclusion of the hearing.

(F) Withdrawal of notice of intended action.

The issuing state agency, upon its own motion, at any time prior to the issuance of an order of adjudication, may withdraw its written notice of intended action. Such withdrawal shall be without prejudice to the rights of the parties. An appellant may withdraw a request for a hearing only with the prior approval of the hearing examiner.