



Ohio Administrative Code

Rule 5160-71-06 Chapter 119. hearings conducted under authority of section 5111.914 of the Revised Code: discovery.

Effective: August 1, 2011

(A) Hearing examiner may allow pre-hearing discovery.

(1) As a part of the authority to conduct the hearing, and except as provided in paragraph (B) of this rule, the hearing examiner may allow pre-hearing discovery of any matter that is not privileged or confidential and that is relevant to the subject matter of the proceeding, provided that such discovery is necessary to facilitate the thorough and adequate preparation of the hearing. The participants to any hearing governed by this chapter may also conduct pre-hearing discovery by mutually agreeable methods or by stipulations subject to approval by the hearing examiner. When a method of pre-hearing discovery is permitted, it shall be conducted in accordance with the Ohio Rules of Civil Procedure (7/1/2000) unless the hearing examiner orders otherwise, and except as modified by paragraph (B) of this rule. Use of discovered material at any hearing shall also be governed by the Ohio Rules of Civil Procedure (7/1/2000).

(2) When permitted pursuant to this rule, pre-hearing discovery may begin immediately after a hearing request is timely made, and must be completed before the actual commencement of the hearing. The hearing examiner may limit the length of the time allowed for discovery and may shorten or lengthen the time allowed for response to discovery requests. Pre-hearing discovery may be obtained through use of interrogatories, requests for the production of documents, permission to enter upon land or other property, depositions, and requests for admissions.

(3) Nothing in this rule prohibits an appellant or the issuing state agency from gaining access to any information made public by the operation of state law.

(B) Depositions. For the purpose of conducting a hearing, the issuing state agency or any appellant may take depositions of witnesses residing within or without the state in the same manner as is prescribed by law for the taking of depositions in civil actions in the court of common pleas of this state. Depositions of state employees are to be conducted in the Columbus offices of the issuing state agency during normal business hours unless other arrangements are approved by the issuing



state agency.

(C) Subpoena issuance and enforcement.

The issuing state agency, upon its own motion or that of any appellant, shall issue a subpoena requiring the attendance of witnesses and the production of books and records as are necessary for the purpose of conducting a hearing.

(1) Upon the request of the appellant, the issuing state agency shall issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers. The issuing state agency shall issue such subpoena in blank to a party requesting it, who is solely responsible for completing the subpoena form, including the address where the person is to be served, and returning it to the issuing state agency along with a written request for service. The written request along with the completed subpoena must be received by the issuing state agency no later than twenty-one business days before commencement of the hearing or deposition, unless otherwise ordered for good cause shown. Upon its own initiative and for its own use, the issuing state agency may issue a subpoena for any purpose set forth in this rule or otherwise authorized by law. At its discretion, the issuing state agency may make available electronically a subpoena in blank and may authorize electronic submission of a completed subpoena.

(2) All subpoenas issued under this rule are to be directed to the sheriff of the county where the person to be served resides or is found. The subpoena is to be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage of the sheriff and the witness will be the same as that allowed in the court of common pleas in criminal cases. The issuing state agency will pay allowable fees and mileage.

(3) 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, the issuing state agency will 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.