



## Ohio Administrative Code

### Rule 5180:6-50-05 Chapter 119. hearings: appointment and powers of a hearing examiner and rules of practice.

Effective: January 1, 2024

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#### (A) Initial scheduling of the hearing

(1) When an affected party timely requests a hearing, ODJFS will set the date, time, and place for the hearing and notify the appellant of the scheduling. ODJFS will 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 will be written and sent by registered mail, return receipt requested. All subsequent letters and notices will be sent by ordinary mail.

(2) Nothing in this rule is to be construed so as to prevent ODJFS 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 is to be construed from preventing ODJFS 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, ODJFS 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 and Chapter 5101:6-50 of the Administrative Code. The time within which an act is required by law to be completed is computed by excluding the first day and including the last day. When the last day falls on a Saturday, Sunday, or legal holiday, the act may be completed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. When the last day to



perform an act that is required by law is to be performed in a public office, and that public office is closed to the public for the entire day or before its usual closing time for that day, then the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

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

In all hearings conducted under Chapter 5101:6-50 of the Administrative Code where a stenographic record is taken and where the stenographic record may be the basis of an appeal to a court of law, the following rules of practice are to be followed:

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

(2) Any person not appearing pro se and any corporation, partnership, association, or other entity is to be represented by an attorney admitted to the practice of law in this state. Persons authorized to practice law in any other jurisdiction may be permitted to represent an appellant before ODJFS upon the motion of an attorney licensed to practice before the courts of this state. When the appellant is represented by more than one attorney, one attorney is to 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 proceeding before ODJFS without prior notice being served upon ODJFS and prior approval by the hearing examiner.

(E) Authority of hearing examiners appointed by ODJFS

The director may assign a hearing examiner to conduct any hearing held subject to Chapter 5101:6-50 of the Administrative Code. Any person assigned to be a hearing examiner is to be admitted to the practice of law in the state of Ohio and have such other qualifications as the director deems necessary. The hearing examiner may be an employee of ODJFS or under contract to ODJFS. The hearing examiner has the same powers as granted to ODJFS 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 are to present testimony and be examined in a manner consistent with essential fairness and justice.
- (3) The authority to pass upon the admissibility of evidence, and 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 ODJFS rule is to be construed as granting a hearing examiner the authority to dismiss any hearing. Nothing in this rule nor in any other ODJFS rule limits the director's authority to withdraw a proposal to enter an order of adjudication or limits the



authority of the director to define the scope of any hearing.

(8) Upon the motion of the hearing examiner, ODJFS, or the appellant, 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 are to be filed with the depository agent within three days after service. 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. Service is governed by rule 5 (7/1/2023) of the Ohio Rules of Civil Procedure except that any reference to "court" in rule 5 will be interpreted to refer to the "depository agent."

(c) Only those pleadings, orders, and other papers filed with the depository agent will be a part of the official record.

(d) All briefs, memoranda, motions, or other pleadings and papers are to be on eight-and-one-half-inch by eleven-inch paper, double-spaced and can be in electronic format.

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

(F) Pre-hearing conferences

Reasonable notice of all pre-hearing conferences is to be provided to participants in advance of each such conference. Unless otherwise ordered for good cause shown, failure to attend a pre-hearing conference precludes objections to rulings made at such conference, including rulings relating to the merits of the appeal.



(1) The first pre-hearing conference is set by ODJFS. ODJFS and the appellant each may file a pre-hearing questionnaire if directed by ODJFS in the letter scheduling such conference. The hearing examiner may require the submission of a pre-hearing questionnaire before the scheduled date of any pre-hearing conference or before any scheduled hearing.

(2) Following the conclusion of any pre-hearing conference, the hearing examiner conducting the conference is to issue an appropriate pre-hearing report and order reciting or summarizing any agreements reached or rulings made. Unless otherwise ordered for good cause shown, any order issued is binding upon all participants in the hearing, and such orders control the subsequent course of the proceeding. Hearing examiner orders are to be in writing, furnished to the appellant and ODJFS, and be part of the record of the case. However, the hearing examiner may modify such orders if, at or before the hearing, modification becomes necessary or assists to preserve the essential fairness and progress of the hearing.

(3) The appellant and ODJFS are to file a final pre-hearing questionnaire at least ten business days before the final hearing. The questionnaire is to include, at a minimum, a statement of the questions of law or fact to be decided at the hearing, a list of expert and non-expert witnesses, a list of all exhibits expected to be introduced at the hearing, suggested stipulations, estimated number of days required for hearing, and a statement that all discovery, when applicable, and motion proceedings have been completed or that a reasonable opportunity has been afforded. If discovery is incomplete, a statement of an agreed cut-off date is to be included. The questionnaire is to be signed by trial counsel. No further additions to the proposed list of witnesses and exhibits will be permitted without good cause shown and the permission of the hearing examiner or the director.

(4) ODJFS, upon its own motion or that of the hearing examiner, may waive any pre-hearing conference or questionnaire and may issue a written notice to the parties scheduling the hearing and setting forth the conditions applicable to the conduct of the hearing.

(G) Withdrawal of proposed adjudication orders

ODJFS, upon its own motion, at any time before the issuance of an order of adjudication, may withdraw its proposal to implement such an order 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



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