



Ohio Administrative Code Rule 4906-2-29 Interlocutory appeals.

Effective: December 11, 2015

(A) Any party who is adversely affected thereby may take an immediate interlocutory appeal to the board from any ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference which:

- (1) Grants a motion to compel discovery or denies a motion for a protective order.
- (2) Denies a motion to intervene or terminates a party's right to participate in a proceeding.
- (3) Refuses to quash a subpoena.
- (4) Requires the production of documents or testimony over an objection based on privilege.

(B) Except as provided in paragraph (A) of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a hearing or prehearing conference unless the appeal is certified to the board by the administrative law judge. The administrative law judge shall not certify such an appeal unless he or she finds that:

- (1) The appeal presents a new or novel question of law or policy.
- (2) The appeal is taken from a ruling which represents a departure from past precedent and an immediate determination by the board is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the board ultimately reverse the ruling in question.

(C) Any party wishing to take an interlocutory appeal from any ruling must file an application for review with the board within five days after the ruling is issued. An extension of time for the filing of an interlocutory appeal may be granted only under extraordinary circumstances. The application for review shall set forth the basis of the appeal and citations of any authorities relied upon. A copy of the ruling or the portion of the record which contains the ruling shall be attached to the application



for review. If the record is unavailable, the application for review must set forth the date the ruling was issued and must describe the ruling with reasonable particularity.

(D) Any party intending to file an interlocutory appeal on the day before a day on which board offices are closed shall notify all other parties of the intent to file an interlocutory appeal by three p.m. on the day of filing. Notice may be personal or by phone or email. The party filing the interlocutory appeal shall serve, upon request, a copy of the appeal by email or fax. Unless otherwise ordered by the board, any party may file a memorandum contra within five days after the filing of any interlocutory appeal.

(E) Upon consideration of an interlocutory appeal, the board may, in its discretion:

(1) Affirm, reverse, or modify the ruling of the administrative law judge.

(2) Dismiss the appeal, if the board is of the opinion that:

(a) The issues presented are moot.

(b) The party taking the appeal lacks the requisite standing to raise the issues presented or has failed to show prejudice as a result of the ruling in question.

(c) The issues presented should be deferred and raised at some later point in the proceeding.

(F) Any party that is adversely affected by a ruling issued under rule 4906-2-28 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference and that (1) elects not to take an interlocutory appeal from the ruling or (2) files an interlocutory appeal that is not certified by the administrative law judge may still raise the propriety of that ruling as an issue for the board's consideration by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the board's order in the case.