



Ohio Administrative Code

Rule 5160-70-04 Chapter 119. hearings: initial scheduling, joinder of cases, attorney representation, authority of hearing examiners, prehearing conference, filing with depository agent, and withdrawal of notice of intended action.

Effective: January 1, 2015

(A) Initial scheduling of the hearing

(1) When a party timely requests a hearing, ODM shall set the date, time, and place for the hearing and notify the party of the scheduling. ODM shall initially schedule the hearing not earlier than seven calendar days but not later than fifteen calendar days after the hearing was requested. The first notification concerning a scheduled hearing shall be sent by certified mail, return receipt requested. All subsequent letters and notices shall be sent by ordinary United States mail.

(2) Nothing in this rule shall be construed as preventing ODM from postponing and rescheduling any hearing upon its own motion or upon the motion of a party who can show good cause for such a request.

(3) Nothing in this rule shall be construed as preventing ODM and the party 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 a party, ODM 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 efficiency and economic fairness to the participants in the hearing.

(C) Attorney representation in hearings conducted under this chapter

(1) The attorney general, or assistants or special counsel designated by the attorney general, shall represent ODM.

(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 this state. Individuals authorized to practice law in any other jurisdiction may be permitted to represent a party before ODM upon compliance with the "Ohio Supreme Court Rules for the Government of the Bar of Ohio." When a party is represented by more than one attorney, one attorney must be designated by the party as "trial counsel," and that attorney is deemed the party's attorney of record and is primarily responsible for the party's case at the hearing. No attorney representing a party is permitted to withdraw from any hearing proceeding before ODM without prior notice being served upon ODM and prior approval by the hearing examiner.

(D) Authority of hearing examiners appointed by ODM

The director may assign a hearing examiner to conduct any hearing held subject to Chapter 5160-70 of the Administrative Code. Any person assigned to be a hearing examiner must 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 ODM or under contract with ODM. The hearing examiner has the same powers as granted to ODM in conducting the hearing; however, nothing in this rule or in any other ODM rule is to be construed as granting a hearing examiner the authority to dismiss any 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 determine the order in which the participants in the hearing present testimony and are examined in a manner consistent with essential fairness and justice;
- (3) The authority to rule on the admissibility of evidence, objections, procedural motions, and other procedural matters provided, however, that the hearing examiner shall not consider or admit into evidence documentation or information that the provider failed, upon request, to furnish to ODM or its contractor during the final fiscal audit process unless ODM agrees to the admissibility of such post final fiscal audit production of documentation or information;



(4) The authority to hold pre-hearing conferences for the purpose of resolving issues that can be resolved by the participants in the hearing, including facilitation of a settlement, identifying the witnesses to be presented and the subjects of their testimony, discussing possible admissions or stipulations regarding the authenticity of records, identifying and marking exhibits, ruling on any procedural motions of the participants in the hearing, resolving outstanding discovery claims, 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;

(5) 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;

(6) Nothing in this rule or in any other ODM rule is to be construed as granting a hearing examiner the authority to dismiss any hearing. Nothing in this rule or in any other ODM rule limits the director's authority to withdraw a notice of intended action or limits the authority of the director to define the scope of any hearing;

(7) The authority to 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;

(8) The authority to require that a copy of any unreported court decision cited in any brief or memorandum be attached to the brief or memorandum containing the citation.

(E) Pre-hearing conferences

Reasonable notice of all pre-hearing conferences shall be provided to participants in the hearing in advance of each conference. The pre-hearing conference may be conducted by phone if agreed to by the parties and the hearing examiner. Unless otherwise ordered for good cause shown, failure to attend a pre-hearing conference precludes objections to rulings made at such conference.



- (1) The first pre-hearing conference is set by ODM. The participants in the hearing shall each file a pre-hearing questionnaire if directed to do so by ODM in the letter scheduling the conference. The hearing examiner may also 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 shall 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 shall be in writing, furnished to the participants in the hearing, and be part of the record of the case. However, the hearing examiner may modify such orders if, at or before the hearing, modification assists to preserve the essential fairness and progress of the hearing.

 - (3) Each party and ODM must file a final pre-hearing questionnaire at least ten business days before the hearing or at an earlier date established by the hearing examiner. The questionnaire shall include, at a minimum, a statement of each specific question 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, stipulations, and the estimated number of days required for hearing. Only the relevant issues of law or fact set forth on the final questionnaires shall be considered or rebutted at the hearing. The party waives its right to contest any other issues of law and fact. The questionnaire shall inform the hearing examiner if discovery is complete and, if discovery is incomplete, provide a statement of an agreed upon discovery cut-off date. The questionnaire shall inform the hearing examiner whether or not any motions are yet to be filed. The questionnaire must be signed by trial counsel. After the filing of the final pre-hearing questionnaire, no further additions to the proposed list of witnesses and exhibits shall be permitted without good cause shown and the approval of the hearing examiner.

 - (4) ODM, 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 participants in the hearing scheduling the hearing and setting forth the conditions applicable to the conduct of the hearing.
- (F) Filing with depository agent



(1) All briefs, memoranda, motions, or other filings shall be filed with the depository agent within three days after service on the other participants in the hearing. A certificate of service shall be attached attesting to the service of a copy of the filing on the other participants in the hearing and the hearing examiner. Service is governed by rule 5 of the Ohio Rules of Civil Procedure (www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf, July 1, 2014) except that any reference to "court" in rule 5 will be interpreted to refer to the "depository agent."

(2) A copy of all written requests or filings that are made to the depository agent, the director, or the hearing examiner shall be served upon the other participants in the hearing and the hearing examiner. A certificate of service shall be attached attesting to the service of a copy on the other participants and the hearing examiner.

(3) Only those pleadings, orders, and other documents filed with the depository agent shall be a part of the official record.

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

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

(6) All exhibits, or other evidence admitted into the record or proffered, shall be filed by the hearing examiner with the depository agent at the conclusion of the hearing.

(G) Withdrawal of notice of intended action

ODM, upon its own motion, at any time before the issuance of an adjudication order, may withdraw its notice of intended action without prejudice to the rights of the parties. A party may withdraw a request for a hearing only with the prior approval of the hearing examiner.