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4112-3-07 **Hearing.**

(A) Scope of rule. This rule governs the practice and procedure before ~~hearing examiners~~ administrative law judges appointed by the Ohio civil rights commission.

(B) ~~Hearing examiners~~ Administrative law judges. The commission may employ or appoint such individuals as the commission may, from time to time, determine necessary to act as administrative law judges ~~hearing examiners for all purposes and with all authority necessary to fulfill the duties of hearing examiner~~.

(C) Appearances of parties.

(1) As soon as practicable after the issuance of a complaint the commission and respondent shall each designate in writing one person to act as their representative for all matters relevant to the complaint and hearing. Copies of appearances shall be filed with the ~~hearing examiner~~ administrative law judge and served on all parties. Appearances shall include the addresses and telephone numbers of all representatives. ~~Such representatives shall thereafter be exclusively responsible for receiving from and submitting to the hearing examiner all correspondence and communication of any kind relevant to the complaint and hearing.~~

(2) ~~Such representative shall thereafter be changed only upon service of ten days notice on the hearing examiner.~~ An attorney may not withdraw his or her appearance for a party ~~within ten days prior to public hearing~~ without leave of the ~~hearing examiner~~ administrative law judge.

(3) Pursuant to rule two of the "Rules for the Government of the Bar of Ohio of the supreme court of Ohio," an ~~An~~ attorney who is not admitted to practice law in Ohio may be granted leave to appear on behalf of a party on a pro hac vice basis upon the filing of a motion indicating the attorney is admitted to practice in any of the several states. ~~or pursuant to rule two of the supreme court "Rules for the Government of the Bar of Ohio."~~

(4) The complainant shall be a party to the proceeding and may be present at the hearing. The respondent may appear at the hearing through one designated representative of the respondent. ~~The~~ Except as provided under Rule 4112-3-06(F), the respondent may examine and cross-examine witnesses and the complainant, and may submit oral testimony and other evidence.

Complainant and respondent's representative may be called to testify or be cross-examined by opposing counsel and may sit at the respective counsel tables despite a separation of witnesses. ~~Any person who has or claims an interest in the subject of the hearing and in obtaining or preventing relief against the acts or practices complained of may, at the discretion of the hearing examiner, be permitted to appear for the presentation of oral or written arguments.~~

(D) Conduct of hearings. Hearings shall be conducted consistent with this rule by the full commission or one or more commissioners or by one or more ~~hearing examiners~~ administrative law judges or any combination of the above who are designated by the commission for such purpose. If more than one commissioner or ~~hearing examiner~~ administrative law judge conducts a hearing, one of them shall be designated by the commission as the presiding member.

(E) Pre-hearing conferences. At any time before the hearing begins, the ~~hearing examiner~~ administrative law judge may direct the parties or their counsel to participate in one or more pre-hearing conferences or to submit pre-hearing ~~memorandums~~ memoranda, or both. The pre-hearing conference may be conducted by telephone or at any place selected by the ~~hearing examiner~~administrative law judge.

(1) The purpose of such conference shall be to ~~reach agreement and to ascertain the positions of the parties on the following:~~ simplify and clarify the issues and to address any other matter that will tend to expedite the proceedings, including the avoidance of undue repetition or complication in the presentation of evidence or argument. These matters may include but are not limited to:

~~(a) The simplification and clarification of the issues.~~

~~(b)~~(a) The necessity or desirability of amending the complaint or answer.

~~(c)~~(b) The possibility of obtaining stipulations of fact, or admissions of undisputed facts. The commission expects the parties to stipulate evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or fairly should not be in dispute.

~~(d)~~(c) Reviewing the contents of and establishing the authenticity of documents.

~~(e)~~(d) Requests for the issuance of subpoenas.

~~(f)~~(e) Schedules for taking of depositions and the use of depositions in the

proceeding.

~~(g)~~(f) Schedule for the completion of discovery.

~~(h)~~(g) An agreement limiting the number of expert witnesses and other witnesses and limiting the subject matter of their testimony.

~~(i)~~(h) The disclosure of the names and addresses of witnesses. Such disclosure may be withheld for good cause shown, up to five days prior to hearing.

~~(j)~~(i) The exchange of documents intended to be offered in evidence.

~~(k)~~(j) The possibility of settlement.

~~(l) Any other matter that will tend to simplify the issue or expedite the proceedings, including the avoidance of undue repetition or complication in the presentation of evidence or argument.~~

(2) Whenever a pre-hearing conference is held, the ~~hearing examiner~~ administrative law judge, at the request of any party, shall ~~may~~ issue an order which recites the matters discussed, the agreements reached and the rulings made at the pre-hearing conference. The order shall be served on the parties and shall be filed in the record of the proceedings on the complaint.

(3) Should a party fail ~~substantially~~ to comply with the regulations of the commission regarding pre-hearing conferences or submission of pre-hearing memorandums, after being served with due notice and an opportunity to comply, said failure may constitute a waiver of all objections to the agreements reached, if any, and any order or ruling with respect thereto.

~~(F) The hearing examiner may require that any document intended to be introduced into evidence at a hearing be marked and provided to the other party and hearing examiner sufficiently in advance of the hearing to permit study and preparation of cross-examination and rebuttal evidence.~~

~~(G)~~(F) Pre-hearing motions.

(1) Unless the commission determines otherwise in a particular case, and prior to the hearing on any complaint, all motions made to the commission relating to the complaint and the hearing thereon ~~including, but not limited to, motions to dismiss, objections to interrogatories or other discovery procedures and~~

~~post-complaint petitions to modify or revoke subpoenas,~~ shall be filed with and ruled upon by the ~~hearing examiner~~ administrative law judge. Recommendations by the ~~hearing examiner~~ administrative law judge to grant motions to dismiss ~~may~~ shall be forwarded to the commission for consideration ~~at their next regularly scheduled meeting~~.

(2) Every motion, memorandum and supporting document filed with the ~~hearing examiner by the respondent or the respondent's attorney or the commission attorney shall be served upon respondent or the respondent's attorney, the complainant or the complainant's attorney, or the commission attorney, as the case may be~~ administrative law judge shall be served on all the parties or their representatives. Proof of ~~such~~ service ~~in writing~~ shall be attached to such motions and documents.

(3) All motions shall contain a memorandum stating the reasons in support of the motion and citing the authorities upon which the movant relies. If the motion requires consideration of facts not appearing of record, the movant shall also serve and file copies of all affidavits, depositions or other documentary evidence they desire to present in support of the motion. ~~Each party or his or her attorney or the commission attorney~~ Any party opposing ~~the~~ a motion may file ~~an answer~~ a responsive memorandum ~~by the fourteenth day after the day on which the motion was filed~~within fourteen days after service of the motion. The movant may file a reply ~~memorandum by the twenty-first calendar day after the motion was filed~~ within seven days after service of the responsive memorandum. ~~On the twenty-first calendar day after the motion was filed, the motion shall be deemed submitted to the hearing examiner; provided, however, that where~~ Where the circumstances warrant and upon equitable terms and conditions, the ~~hearing examiner~~ administrative law judge may ~~rule upon the motion prior to the expiration of this twenty-one-day period~~ modify the time periods specified in this rule.

~~(H)~~(G) Time of hearing. A hearing shall be conducted as set forth in the notice of hearing, except as such may be changed by the ~~hearing examiner~~ administrative law judge ~~at his or her discretion or~~ as set forth below:

(1) The parties to a hearing may consent by written stipulation to a hearing within less than ~~twenty-eight~~ thirty days after service of the complaint or amended complaint, but no hearing shall be scheduled within less than ten days of service of a complaint or an amended complaint.

(2) The ~~hearing examiner~~ administrative law judge may postpone or continue any hearing upon his or her own motion or upon motion of a party for good cause shown and proper diligence.

~~(3) Postponements of hearings will not be allowed on the motion of any party except upon a showing of good cause and proper diligence. A motion for postponement must be served upon all parties to the proceeding and filed with the hearing examiner at least five days prior to the date of hearing.~~

~~(4)~~(3) ~~In no case will a~~ A motion for postponement served ~~or filed~~ less than five days in advance of a hearing or made at the hearing shall not be granted unless the ~~party moving it~~ movant demonstrates that an extraordinary situation exists which could not have been anticipated and which would justify the granting of ~~a~~ the postponement. ~~In any such situation, if time does not permit the filing of such motion prior to the hearing, it may be made orally at, or prior to, the hearing.~~

~~(5) If a motion for postponement is based upon the absence of a witness, the motion must state what the substance of the testimony of the absent witness would be. No postponement will be granted if the other party files with the hearing examiner within five days after the service of a motion a statement admitting that the witness on account of whose absence the postponement is desired would, if present, testify as stated in the motion. If time does not permit the filing of such statement prior to the hearing, it may be made orally at, or prior to, the hearing.~~

~~(6) Only one postponement will be allowed to a party on account of the absence of a witness unless the party moving for a further postponement shall at the time apply for an order to take testimony of the alleged absent witness by deposition.~~

~~(7) A hearing shall not be delayed to permit discovery unless due diligence is shown.~~

~~(I)~~(H) Procedure at hearings.

(1) The case in support of the complaint shall be presented at the hearing by the ~~attorney general~~ commission's attorney.

(2) The person or persons conducting a hearing shall not be bound by the Ohio rules of evidence ~~prevailing in the courts of law and equity~~, but shall~~, in ascertaining the practices followed by the respondent,~~ take into account all reliable, probative and substantial evidence~~, statistical or otherwise, produced at the hearing which may tend to prove the existence of any act or pattern and practice of unlawful discrimination~~. Irrelevant, immaterial, unreliable, and unduly repetitious evidence ~~will~~ may be excluded.

(3) ~~The person or persons conducting a hearing shall have full authority to control the procedure at the hearing. They~~ The administrative law judge may ~~call and~~ examine witnesses, ~~including expert witnesses,~~ admit or exclude testimony or other evidence, rule upon ~~all~~ objections and take such other actions as are necessary and proper ~~for the conduct of such hearing including, but not limited to, ordering the appearance of any person and directing the production of any books, papers, documents or tangible things at the hearing, introducing them into the record, and ruling upon any petition to revoke or modify a subpoena or other demand for discovery pending at the commencement of the hearing. However, a hearing examiner shall make no finding at the hearing that the respondent has engaged in any unlawful discriminatory practice or that the complaint should be dismissed~~ to conduct the hearing.

(4) Where hearings are conducted by three or more commissioners and/or ~~hearing examiners~~administrative law judges, all rulings and determinations shall be made by majority rule.

(5) Written stipulations of fact may be introduced in evidence, if signed by the persons sought to be bound thereby, or their ~~attorney~~ representative. Oral stipulations may be made on the record at the hearing.

(6) The ~~person or persons conducting a hearing~~ administrative law judge may continue a hearing from day-to-day or adjourn it to a ~~later date or to such~~ different place~~,~~ as is permitted by law, ~~by announcing such action at the hearing, or by appropriate notice to all parties~~ or by agreement of the parties adjourn it to a later date.

(7) The ~~person or persons conducting the hearing~~ administrative law judge shall permit the parties or their ~~attorneys~~ representatives, ~~the commission attorney,~~ and other persons permitted to appear pursuant to paragraph (C)(4) of this rule to argue orally and/or to submit written briefs. The commission's attorney may file a written brief within twenty-one days after ~~delivery to~~ receipt by the commission's attorney of the transcript of the public hearing. The respondent and complainant or their ~~attorneys~~ representatives may file briefs within twenty-one days of being served with the brief of the commission's attorney, and the commission's attorney may file a reply brief within ten days of being served with the brief of the respondent. ~~and complainant or their attorneys; provided, however, that these~~ These time periods may be extended as the ~~hearing examiner~~ administrative law judge may determine for good cause shown.

(8) The testimony taken at the hearing shall be under oath and shall be reduced to writing and filed with the commission. Thereafter, at its discretion, the

commission, upon notice to the parties, may take further testimony or hear arguments, or order ~~a hearing examiner~~ an administrative law judge to do so. The parties may be present and be heard at such proceeding.

(9) Standards of conduct and supervision:

(a) All persons appearing before the commission or ~~a hearing examiner~~ an administrative law judge shall conform to the standards of ethical conduct required in the courts of the state of Ohio.

(b) ~~A hearing examiner~~ An administrative law judge shall, for good cause ~~stated in the record~~ shown, bar from participation in a particular proceeding any person who ~~shall refuse~~ refuses to comply with ~~his or her~~ their directions or who ~~shall be guilty of~~ engages in disorderly conduct, dilatory tactics or contemptuous language in the course of ~~such a~~ the proceeding.

(10) All hearings shall be open to the public, unless for good cause, the commission shall decide otherwise.

~~(11) Any party to a hearing may be represented by counsel who may appear on behalf of such party during the hearing.~~

~~(12)~~(11) Any person appearing before the commission as a witness in any public hearing~~, including, but not limited to the complainant,~~ shall have a right to be accompanied, represented and advised by an attorney whose participation in the hearing, or other proceeding, shall be limited to the protection of the rights of the witness and who may not examine or cross-examine witnesses.

~~(J)~~(I) Transcript of hearing.

(1) A record shall be made of all hearings before ~~a hearing examiner~~an administrative law judge. Such record may be recorded by stenographic means, by the use of audio-electronic recording devices or by video recording devices as the ~~hearing examiner~~ administrative law judge may direct. Hearings before ~~a hearing examiner~~ an administrative law judge which are recorded electronically shall be transcribed into written form. Opening and closing statements shall not be included in the transcripts unless the ~~hearing examiner~~ administrative law judge so directs.

(2) A party may request the ~~hearing examiner~~ administrative law judge to provide a court reporter for a hearing if the ~~hearing examiner~~ administrative law judge has not elected to do so. In such case, the requesting party shall be

responsible for payment of the court reporter's fees and expenses, including the cost of production of the transcript, the original of which shall become the official transcript.

~~(K)~~(J) Post-hearing motions. Unless the commission determines otherwise in a particular case, all post-hearing motions made before issuance of the ~~hearing examiner's~~ administrative law judge's report shall be addressed to the ~~hearing examiner~~ administrative law judge and shall be ruled upon by him or her subject to commission approval, modification or disapproval pursuant to rule 4112-3-09 of the Administrative Code.

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