

4112-3-07

Hearing.

- (A) Scope of rule. This rule governs the practice and procedure of administrative hearings conducted by the commission.
- (B) 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.
- (C) Appearances of parties.
- (1) As soon as practicable after the issuance of a complaint and the notice of hearing the ~~commission and respondent parties~~ shall ~~each~~ designate in writing one person to act as their representative for all matters relevant to the complaint and hearing. A copy of this designation shall be filed with the administrative law judge and served on all parties. The designation shall include the address, email address and telephone and facsimile numbers of all representatives.
 - (2) An attorney may not withdraw his or her designation for a party without leave of the administrative law judge.
 - (3) 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 after they have satisfied the requirements specified by the Supreme Court of Ohio.
 - (4) The complainant shall be a party to the proceeding and may be present at the hearing. Each respondent may appear at the hearing through one designated representative. Except as provided under paragraph (F) of rule 4112-3-06 of the Administrative Code, the respondent may examine and cross-examine witnesses and the complainant, and may introduce documentary or 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.
 - (5) Where the complaint alleges an unlawful discriminatory practice described in division (H) of section 4112.02 of the Revised Code, an aggrieved person who intends to examine and cross-examine witnesses, introduce documentary or other evidence, or otherwise participate in the presentation of evidence in support of the complaint, must file and serve a designation as described in paragraph (C)(1) of this rule.
 - (6) A designation filed beyond the time period set forth in paragraph (C)(1) of this rule may be considered and accepted by the administrative law judge, provided that accepting the designation is necessary to effectuate justice between the

parties and will neither affect the substantial rights of, nor unduly prejudice, any of the parties.

- (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 administrative law judges or any combination of the above who are designated by the commission for such purpose. If more than one commissioner or 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 administrative law judge may direct the parties to participate in one or more pre-hearing conferences, submit pre-hearing memoranda or both. The pre-hearing conference may be conducted by telephone or at any place selected by the administrative law judge.
- (1) The purpose of ~~such~~ the conference shall be to 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 necessity or desirability of amending the complaint or answer;
 - (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;
 - (c) Reviewing the contents of and establishing the authenticity of documents;
 - (d) Requests for the issuance of subpoenas;
 - (e) Schedules for taking of depositions and the use of depositions in the proceeding;
 - (f) Schedule for the completion of discovery;
 - (g) An agreement limiting the number of expert witnesses and other witnesses and limiting the subject matter of their testimony;
 - (h) The disclosure of the names and addresses of witnesses;
 - (i) The exchange of documents intended to be offered in evidence; and
 - (j) The possibility of settlement.

- (2) Whenever a pre-hearing conference is held, the administrative law judge, at the request of any party, shall 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 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) 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 shall be filed with and ruled upon by the administrative law judge. Recommendations by the administrative law judge to grant motions to dismiss shall be forwarded to the commission for consideration.
- (2) Every motion, memorandum and supporting document filed with the administrative law judge shall be served on all the parties or their representatives with proof of service attached.
- (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 in the 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. Any party opposing a motion may file a responsive memorandum within fourteen days after service of the motion. The movant may file a reply within seven days after service of the responsive memorandum. Where the circumstances warrant and upon equitable terms and conditions, the administrative law judge may modify the time periods specified in this rule.

(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 administrative law judge as set forth below:

- (1) The 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.

- (2) A motion for postponement served less than five days in advance of a hearing or made at the hearing shall not be granted unless the movant demonstrates that an extraordinary situation exists which could not have been anticipated and which would justify the granting of the postponement.

(H) Procedure at hearings.

- (1) Except as otherwise provided in this paragraph, the evidence in support of the complaint shall be presented at the hearing by counsel for the commission pursuant to division (B)(5) of section 4112.05 and section 4112.10 of the Revised Code.

- (a) If an aggrieved person files a designation in accordance with paragraph (C)(5) of this rule, the evidence in support of the complaint shall be presented by counsel for the commission and by the aggrieved person or their counsel.

Notwithstanding the participation of the aggrieved person, counsel for the commission shall serve as lead counsel and retains the authority to manage and direct the manner of case preparation and presentation of evidence in support of the complaint at the hearing, including but not limited to the selection and use of expert and lay witnesses, as necessary or appropriate in pursuit of the public interest and the accomplishment of the purposes of Chapter 4112. of the Revised Code.

- (b) If the aggrieved person does not file a designation in accordance with paragraph (C)(5) of this rule, the evidence in support of the complaint shall be presented solely by counsel for the commission.
- (2) The person or persons conducting a hearing shall not be bound by the Ohio rules of evidence, but shall take into account all reliable, probative and substantial evidence. Irrelevant, immaterial, unreliable, and unduly repetitious evidence may be excluded.
- (3) The administrative law judge may examine witnesses, admit or exclude testimony or other evidence, rule upon objections, and take such other actions as are necessary and proper to conduct the hearing.
- (4) Where hearings are conducted by three or more commissioners and/or 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 parties to be bound thereby, or their representative. Oral stipulations may be made on the record at the hearing.
- (6) The administrative law judge may continue a hearing from day-to-day or adjourn it to a different place as is permitted by law, or by agreement of the parties, adjourn it to a later date.
- (7) The administrative law judge shall permit the parties or their representatives, and other persons permitted to appear pursuant to paragraph (C) 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 receipt by the commission's attorney of the transcript of the public hearing. The respondent and complainant or their 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. These time periods may be extended as the 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 an administrative law judge to do so. The parties may be present and be heard at ~~such~~the proceeding.
- (9) Standards of conduct and supervision:
 - (a) All persons appearing before the commission or an administrative law judge shall conform to the standards of ethical conduct required in the courts of the state of Ohio.
 - (b) An administrative law judge shall, for good cause shown, bar from participation in a particular proceeding any person who refuses to comply with ~~their~~ his or her directions or who engages in disorderly conduct, dilatory tactics, or contemptuous language in the course of the proceeding.
- (10) All hearings shall be open to the public, unless for good cause, the commission shall decide otherwise.
- (11) Any person appearing before the commission as a non-party witness in any public hearing 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.

(I) Transcript of hearing.

(1) A record shall be made of all hearings before an administrative law judge. ~~Such~~ The record may be recorded by stenographic means, by the use of audio-electronic recording devices or by video recording devices as the administrative law judge may direct. Hearings before 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 administrative law judge so directs.

(2) A party may request the administrative law judge to provide a court reporter for a hearing if the 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.

(J) Post-hearing motions. Unless the commission determines otherwise in a particular case, all post-hearing motions made before issuance of the administrative law judge's report shall be addressed to the 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.

Effective:

Five Year Review (FYR) Dates: 10/18/2018

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4112.04
Rule Amplifies: 4112.04, 4112.05
Prior Effective Dates: 11/04/1971, 11/15/1977, 12/23/1979, 07/12/1989,
10/17/2002, 10/21/2013