

4112-3-12

Discovery.

- (A) ~~In general. Rights of discovery. After issuance of a complaint and receipt of the commission's file by the commission's attorney, the commission~~ The commission and respondent shall both enjoy the same rights of discovery as are provided for in division (B)(3) of section 4112.04 of the Revised Code, and in rules 26 through 37 of the "Ohio Rules of Civil Procedure except to the extent that the civil rules by their nature would be inapplicable or Chapter 4112. of the Revised Code or this rule provides otherwise ."
- (1) All costs associated with discovery shall be paid by the party conducting or seeking discovery.
- (B) ~~Civil rules govern discovery. The "Ohio Rules of Civil Procedure" governing discovery shall be applicable to discovery under this rule, except to the extent that the civil rules by their nature would be inapplicable and except to the extent that Chapter 4112. of the Revised Code provides otherwise, as in division (B)(3) of section 4112.04 of the Revised Code.~~ Evidence of damages. Except as otherwise ordered by the administrative law judge, a party or aggrieved person shall, upon proper discovery request, provide a computation of each category of damages claimed or incurred by a party or aggrieved person and a copy of, or a description by category and location of, all documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.
- (C) Except as set forth in paragraph (A) of this rule, an ~~administrative law judge~~ administrative law judge has the discretion to control the scope of discovery, including, but not limited to, issuing protective orders on his or her own motion.
- (D) Sanctions. If a party or aggrieved person fails to provide or permit discovery, the party seeking discovery may file a motion to compel discovery. If the motion is granted, in whole or in part, and the party or aggrieved person fails to produce the discovery as ordered, the administrative law judge may take such action as is just, including, but not limited to, the following:
- (1) Inferring that the admission, testimony, document or other evidence would have been adverse to the party or aggrieved person;
- (2) Ordering that, for purposes of the adjudication, the matters regarding which the order was made shall be taken to be established in accordance with the claim of the party obtaining the order;
- (3) Prohibiting the party or aggrieved person failing to comply with the order from introducing evidence concerning, or otherwise relying upon, documents or other evidence withheld;

- (4) Ordering that the party or aggrieved person withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery;
 - (5) Permitting the requesting party to introduce secondary evidence concerning the information sought;
 - (6) Striking any appropriate part of the pleadings or other submissions of the party or aggrieved person failing to comply with such order;
 - (7) Recommending dismissal of the complaint for failure to cooperate; or
 - (8) Taking such other action as may be appropriate.
- (E) Any sanctions taken against a complainant or aggrieved person shall not impact the commission's ability to present evidence in any manner other than excluding the testimony of the sanctioned complainant or aggrieved person.

Effective:

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Certification

Date

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