

4734-4-08

**Witnesses; subpoenas; witness fees.****(A) Witnesses.**

- (1) Testimony under oath: All witnesses at any administrative hearing or during any deposition in lieu of live testimony, shall testify under oath or affirmation.
- (2) Legal counsel for witness: A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that witness' rights, and the witness' legal counsel may neither examine nor cross-examine any witnesses.
- (3) Refusal by witness to testify: Should a witness refuse to be sworn, refuse to answer a question ruled proper at a hearing or disobey a subpoena, the board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.
- (4) Hearing officer/board member incompetent as witness: The presiding hearing officer, because of his duties, shall not be a competent witness nor subject to deposition in any adjudication proceeding. Unless the testimony of a board member or a hearing officer is material to the factual allegations set forth in the notice of opportunity for hearing, board members and hearing officers shall not be competent witnesses nor subject to deposition in lieu of live testimony in any adjudication proceeding. Evidence from other persons relating to the mental processes of the presiding hearing officer or board members shall not be admissible.
- (5) Recusal by hearing officer/board member: If the hearing officer/board member intends to serve as a witness, he/she shall recuse him or herself from presiding over, deliberating on, or ruling on the matter.
- (6) Separation of witnesses: Any representative of record or the hearing officer or presiding board member may move for a separation of witnesses. Expert witnesses shall not be separated. In granting a separation order, the hearing officer or presiding board member shall permit the executive director of the board and any case investigator designated by the counsel for the state, to remain present at the hearing. Notwithstanding the respondent's intent to testify, he or she may also remain present. A board member may attend a hearing as a member of the audience. Each representative of record at a hearing shall inform the hearing officer or presiding board member of the identity of each potential witness for his case present in the hearing room. Failure to so identify potential witnesses may be grounds for their later disqualification as witnesses.

- (7) Propriety of board action: No witnesses shall be permitted to testify as to the nature, extent, or propriety of disciplinary action to be taken by the board. A witness may, at the discretion of the hearing officer or presiding board member, testify as to an ultimate issue of fact.

(B) Subpoenaes.

- (1) Procedure for issuance: Upon written request of either party in a precipe filed with the board, the board shall issue subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers at the hearing. Each subpoena shall indicate on whose behalf the witness is required to testify. The precipe shall indicate the method of service of the subpoena, i.e. (personal, residence, certified mail, etc.) and who is to effect service (i.e. deputy sheriff, return to counsel for service, process server).
- (2) Process servers: Any representative of record may move the hearing officer or presiding board member for the appointment of a special process server. The motion shall state the name of the proposed process server, the process server's occupation, business address, that the process server is at least 18 years of age and not employed by or a business associate of the respondent. The hearing officer or presiding board member may then appoint such applicant as a special process server for the board, authorized to serve subpoenas for that particular case. The board's executive director may appoint special process servers to serve any process or papers issued by the board on an ongoing basis. The executive director shall enter such appointment and the particulars on the journal of the board. The respondent is responsible for payment of any special process servers working on his or her behalf.
- (3) Details of subpoena: For purposes of a hearing conducted under Chapter 119. of the Revised Code, subpoena requests shall specify the name and address of the individual to be served and the date, time and location at which they are to appear at the administrative hearing. If the subpoena includes a duces tecum request, the specific documents or tangible things to be produced at the administrative hearing shall be listed in the request.
- (4) Time to file request for subpoena: Except upon leave of the board or its hearing officer or presiding board member, subpoena requests are to be filed with the board as provided in this chapter, at least twenty-one days in advance of the requested date of compliance, in order to allow sufficient time for preparation and service of the subpoenas.

- (5) Excessive subpoenas: In the event that the number of subpoenas requested appears to be unreasonable, the board or its hearing officer or presiding board member may require a showing of necessity therefore, and, in the absence of such showing, may limit the number of subpoenas. Absent such a limitation, subpoenas shall be issued within five business days of request. Failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance.
  - (6) After the hearing has commenced, the board or its hearing officer or presiding board member may order the issuance of subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Copies of such subpoenas shall be issued to the representatives as identified by the parties.
  - (7) Quashing subpoenas: Upon motion and for good cause, the board or its hearing officer or presiding board member may order any subpoena be quashed. Motions to quash shall be made in the manner provided in this chapter, except that motions to quash shall be filed at least five days prior to the date of compliance. The non-moving party may file a response no later than four days after service of the motion to quash or at least one day prior to the date of compliance, whichever is earlier. Unless a motion to quash has been granted, a witness shall attend the hearing to which he or she was subpoenaed. The board shall make a reasonable attempt to contact any witness whose subpoena has been quashed.
  - (8) Witnesses may not be subpoenaed to prehearing conferences.
- (C) Mileage reimbursement and witness fees.
- (1) Mileage and witness fees shall be paid in the same manner as that allowed ~~in the court of common pleas in criminal cases in the county of hearing~~ pursuant to section 119.094 of the Revised Code.
  - (2) The respondent may not subpoena him or herself.
  - (3) Mileage and witness fees shall not be paid to anyone who fails to register at the hearing for which he or she was subpoenaed.

Effective:

R.C. 119.032 review dates: 09/10/2012

---

Certification

---

Date

Promulgated Under: 119.03  
Statutory Authority: 4734.10, 4734.48  
Rule Amplifies: ORC 119, 4734.31, 4734.45, 4734.46, 4734.47,  
4734.48  
Prior Effective Dates: 8/12/02