

ALABAMA DEPARTMENT OF SENIOR SERVICES  
ADMINISTRATIVE CODECHAPTER 70-X-5  
FORMAL HEARINGS

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70-X-5-.01	<u>Request For Formal Hearing And Appointment Of Hearing Officer.</u>

(1) If a complainant is dissatisfied with the decision of an informal, administrative review hearing, or if an applicant, client or direct service provider chooses to forego their right to request an informal administrative review, he or she may request a formal hearing by submitting a written request for a hearing addressed to the Commissioner of the Department. Requests for formal hearings shall be limited to actions of the Department which are claimed to be:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the Department;
- (c) in violation of a Department rule;
- (d) made upon unlawful procedure;
- (e) affected by other error of law; or
- (f) unreasonable, arbitrary or capricious or characterized by an abuse of discretion or unwarranted exercise of discretion.

(2) The request shall specify the reason(s) why the hearing is requested, shall state with reasonable particularity the relief sought, and shall not be authorized with respect to generalized grievances not directly related to the provision of services. At a minimum, the written request shall:

- (a) Identify the action being challenged;
- (b) Identify the parties to the action being challenged;
- (c) Identify the role of each party to the action being challenged;
- (d) Include a short and plain statement to the matters asserted; and
- (e) Identify the outcome desired.

(3) The request for a formal hearing must be received by the Commissioner of the Department within fourteen (14) calendar days of the date of receipt of the notice of proposed action or within fourteen (14) calendar days of receipt of an informal administrative review decision when one has been requested. Any individual who has requested an informal administrative review may withdraw such request at any time prior to the issuance of the informal administrative review decision. Failure of an individual or party to request a hearing within fourteen days shall constitute a waiver of the right to demand a formal hearing and shall cause the Department action to become final without further review.

(4) If a hearing is requested within the above time period, the Commissioner shall, as may be otherwise provided by law, appoint an impartial hearing officer to conduct the hearing.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-12.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

#### **70-X-5-.02      Notice Of Hearing.**

Notification of a formal hearing shall include, at a minimum:

- (1) The time, date and place of the hearing;
- (2) The statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A short and plain statement as to the matters asserted.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-12.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.03      Conduct Of Hearing.**

(1) In the conduct of a hearing, a hearing officer shall have the following authority:

- (a) establish a date, time and place for the hearing;
- (b) maintain order;
- (c) make a record of the proceedings;
- (d) establish reasonable time limits for the conduct of the proceedings;
- (e) rule on the admissibility of evidence;
- (f) hold a prehearing conference, if necessary, to clarify the matters in dispute; establish the order of presentation; allow and establish time limits for the exchange of exhibits and names of witnesses;
- (g) issue subpoenas, discovery orders related to relevant matters, and protective orders in accordance with the Alabama Rules of Civil Procedure, subject to the reasonable costs of issuance of the subpoenas as may be set from time to time by the Commissioner; and
- (h) enter any order on any other matter which will effectuate the conduct of the hearing.

(2) A party may be represented by counsel at his or her own expense.

(3) Unless a party otherwise requests, the hearing shall be open to the public.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§ 38-3-8 through 38-3-9; §41-22-12.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.04      Conflict And Bias.**

(1) A party to any formal action or contested case who intends to assert bias or conflict on the part of any hearing officer appointed by the Commissioner must do so by filing an affidavit and suggestion of disqualification together with the underlying factual basis for the assertion. The affidavit and suggestion of disqualification must be received by the Commissioner of the Department at least three days before the scheduled hearing. In the absence of actual or constructive bias or prejudice, the failure to timely file an affidavit and suggestion of disqualification shall be deemed a waiver of such grounds as error in any appeal.

(2) The hearing officer shall consider the assertion of disqualification on the record as a preliminary matter at the hearing before any other question is decided.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; §41-22-18.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.05      Settlement And Informal Disposition.**

Informal dispositions may be made of any matter set for hearing by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties.

An informal disposition shall be reduced to writing, signed by the parties, and made a part of the party's file.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; §41-22-12, 41-22-16.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.06      Record Of Proceedings.**

(1) The record of a hearing shall include:

- (a) the notice of proposed action;
- (b) the request for a hearing;
- (c) the administrative review decision, if any;

- (d) all pleadings, motions and intermediate rulings;
- (e) all evidence received or considered and all other submissions including staff memoranda or data submitted; provided, in the event that evidence in any proceeding may contain proprietary and confidential information, steps shall be taken to prevent public disclosure of that information;
- (f) a statement of all matters officially noticed;
- (g) a transcript of the proceedings;
- (h) all questions and offers of proof, objects and rulings thereon;
- (i) all proposed findings and exceptions;
- (j) any decision, opinion or report by the hearing officer at the hearing;
- (k) the written decision and recommendation of the hearing officer; and
- (l) the decision and final order of the Commissioner, if applicable.

(2) Oral proceedings shall be recorded either by mechanized means or by qualified shorthand reporter. Oral proceedings shall be transcribed at the request of any party with the expense of the transcript charged to the requesting party. The record of oral proceedings shall be maintained by the Department for five (5) years from the date of entry of the final order.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-12.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

#### **70-X-5-.07      Rules Of Evidence.**

The rules of evidence as provided in the Code of Ala. 1975, §41-22-13 shall apply to all hearings conducted under these rules.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-13.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.08      Hearing Officer's Decision And Recommendation.**

(1) Upon completion of a hearing, the hearing officer shall prepare a written decision and recommendation. The decision shall contain a statement of facts found by the hearing officer, a recitation of the application of the facts found to the applicable statutes, rules, regulations, policies, and procedures, and a proposed recommendation as to the merits of the matters presented for review.

(2) The hearing officer's decision and recommendation along with the record shall be submitted to the Commissioner of the Department within thirty (30) calendar days after the hearing is concluded. The hearing officer's decision and recommendation shall be communicated by the Department in person or by certified mail.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-12 through 41-22-16.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.09      Commissioner's Review And Final Order.**

(1) Within thirty (30) days of receipt by the Commissioner of the decision and recommendation of the hearing officer, the Commissioner shall notify the parties of the intent to review the decision in whole or in part.

(2) The review conducted by the Commissioner shall be limited to the issues addressed in the formal hearing before the hearing officer, and shall be based upon a review of the record, the decision and recommendation of the hearing officer, and any objections and documentary evidence submitted by the parties.

(4) In the discretion of the Commissioner, the Commissioner may personally receive additional argument or testimony or may remand the matter to the hearing officer for the submission of additional oral testimony and evidence. If the Commissioner decides to personally receive argument or additional testimony, the Commissioner shall set a date, not more than fourteen (14) days after the date of the Commissioner's notice of intent to review the decision of the hearing officer, by which time additional argument, testimony and evidence shall be received. In the event the Commissioner decides to remand the proceedings to the hearing officer, the Commissioner shall set a date, not more than fourteen (14) days after the date of the Commissioner's notice of intent to review the decision of the hearing officer, by which time

additional testimony and evidence, and an amended decision and recommendation of the hearing officer is to be received.

(5) The Commissioner may affirm in whole or in part, reject or modify this recommendation of the hearing officer; provided, however, the Commissioner may reject or modify a recommendation of the hearing officer that supports the position of the party only if it is clearly established that the hearing officer's findings, inferences, conclusions or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority;

(c) in violation of the state plan, or a department or program rule;

(d) upon unlawful procedure;

(e) affected by other error of law;

(f) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(g) unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

(6) Within thirty (30) calendar days after the hearing officer's initial decision and recommendation is received, or within twenty (20) calendar days after the receipt of an amended decision and recommendation of the hearing officer in the event of a remand, whichever is longer, the Commissioner shall enter a final written decision and order. The final decision and order shall include findings and grounds therefore and shall be communicated to the parties in the same manner as a notice of proposed action. If the Commissioner does not enter a separate written final decision and order within the time frames stated above, unless otherwise extended by agreement of the parties in writing, the decision and recommendation of the hearing officer shall be deemed the final order of the Commissioner by operation of law.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-12 through 41-22-16.

**History:** Filed May 20, 1992. **Repealed and New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.10      Application For Rehearing.**

(1) Any party may, within fifteen (15) calendar days after entry of the final order, file an application for rehearing before the Commissioner as provided by Code of Ala. 1975, §41-22-17.

(2) If the Commissioner does not grant the application within thirty (30) days from filing, and unless otherwise extended by agreement of the parties in writing, the application for rehearing shall be deemed denied by operation of law.

(3) An application for rehearing is not required as a prerequisite to proceeding under Administrative Code Rule XX-X-5-.13.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-17.

**History: New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.11      Dismissal Of Administrative Review Or Hearing.**

(1) If a party fails without good cause to appear at either an administrative review or a formal hearing after proper service of notice the review team or hearing officer may, if no adjournment is granted, proceed with the review or hearing and make a decision in the absence of the party.

(2) A request for administrative review or hearing may be denied or dismissed for the following reasons:

(a) the individual withdraws the request in writing;

(b) the individual makes a request that is contrary to the regulations of the program;

(c) the individual abandons his or her request for administrative review or a hearing when, without good cause, the applicant or client fails to appear.

(3) Good cause is defined as:

(a) death in the immediate family; or

(b) personal injury or illness which reasonably prohibits an applicant or client from attending the review or hearing.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-12.

**History: New Rule:** Filed June 5, 2009; effective July 10, 2009.



**70-X-5-.12      Computation Of Time.**

If the last day of a time period falls on a Saturday, Sunday, or holiday authorized by Code of Ala. 1975, §1-3-8, then the last day of a time period shall be the next day the Department is open for business.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §1-3-8.

**History: New Rule:** Filed June 5, 2009; effective July 10, 2009.

**70-X-5-.13      Judicial Review.**

A party who has exhausted all administrative remedies available and who is aggrieved by a final order may seek judicial review pursuant to the provisions of the Code of Ala. 1975, §§41-22-20 and 41-22-21.

**Author:** Irene B. Collins, Commissioner

**Statutory Authority:** Code of Ala. 1975, §§38-3-8 through 38-3-9; 41-22-20 through 41-22-21

**History: New Rule:** Filed June 5, 2009; effective July 10, 2009.