
**FLORIDA ADMINISTRATIVE CODES FROM DOAH
[HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT]**

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FLORIDA ADMINISTRATIVE CODES | DOAH | HEARINGS

CODES: 28-106.201 through 28-106.217

28-106.201 | INITIATION OF PROCEEDINGS

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

Rulemaking Authority 14.202, 120.54(3), (5) FS. Law Implemented 120.54(3) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 2-5-13.

28-106.2015 | AGENCY ENFORCEMENT AND DISCIPLINARY ACTIONS

(1) Prior to entry of a final order to suspend, revoke, or withdraw a license, to impose administrative fines, or to take other enforcement or disciplinary action against a licensee or person or entity subject to the agency's jurisdiction, the agency shall serve upon the licensee an administrative complaint. For purposes of this rule, an agency pleading or communication that seeks to exercise an agency's enforcement authority and to take any kind of disciplinary action against a licensee or other person shall be deemed an administrative complaint.

(2) An agency issuing an administrative complaint shall be the petitioner, and the licensee against whom the agency seeks to take disciplinary action shall be the respondent.

(3) The agency's administrative complaint shall be considered the petition, and service of the administrative complaint on the respondent shall be deemed the initiation of proceedings.

(4) The agency's administrative complaint shall contain:

(a) The name of the agency, the respondent or respondents against whom disciplinary action is sought and a file number.

(b) The statutory section(s), rule(s) of the Florida Administrative Code, or the agency order alleged to have been violated.

(c) The facts or conduct relied on to establish the violation.

(d) A statement that the respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.

(5) Requests for hearing filed by the respondent in accordance with this rule shall include:

(a) The name, address, any e-mail address, telephone number, and facsimile number, if any, of the respondent, if the respondent is not represented by an attorney or qualified representative.

(b) The name, address, e-mail address, telephone number, and facsimile number of the attorney or qualified representative of the respondent, if any, upon whom service of pleadings and other papers shall be made.

(c) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

(d) A statement of when the respondent received notice of the administrative complaint.

(e) A statement including the file number to the administrative complaint.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 1-15-07, Amended 2-5-13.

28-106.202 | AMENDMENT OF PETITIONS OR REQUESTS FOR HEARING

A petition or request for hearing may be amended prior to the designation of the presiding officer by filing and serving an amended petition or amended request for hearing in the manner prescribed for filing and serving an original petition or request for hearing. Thereafter the petitioner may amend the petition or request for hearing only upon order of the presiding officer.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07.

28-106.203 | ANSWER

A respondent may file an answer to the petition.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.204 | MOTIONS

(1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. The original written motion shall be filed with the presiding officer. When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition. No reply to the response shall be permitted unless leave is sought from and given by the presiding officer. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The presiding officer shall conduct such proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) Unless otherwise provided by law, motions to dismiss the petition or request for hearing shall be filed no later than 20 days after assignment of the presiding officer, unless the motion is based upon a lack of jurisdiction or incurable errors in the petition.

(3) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion. Any statement that the movant was unable to contact the other party or parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted.

(4) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.205 | INTERVENTION

(1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor, if the intervenor is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative; and

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding; and

(d) A statement as to whether the intervenor supports or opposes the preliminary agency action; and

(e) The statement required by subsection 28-106.204(3); and

(f) The signature of the intervenor or intervenor's attorney or qualified representative; and

(g) The date.

(3) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.206 | DISCOVERY

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.207 | VENUE

(1) Whenever practicable and permitted by statute or rule, hearings shall be held in the area of residence of the non-governmental parties affected by agency action, or at the place most convenient to all parties as determined by the presiding officer.

(2) Failure to respond timely to any order requiring or allowing the parties to suggest an appropriate locality for final hearing may constitute a waiver of venue.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.208 | NOTICE OF HEARING

The presiding officer shall set the time and place for all hearings and shall serve written notice on all parties at their address of record. No less than 14 days notice shall be given for the hearing on the merits of the petition unless otherwise agreed by the parties or unless otherwise provided by law.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.209 | PRE-HEARING CONFERENCES

At any time after a matter has been filed with the agency, the presiding officer may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.210 | CONTINUANCES

The presiding officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.211 | CONDUCT OF PROCEEDINGS

The presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.212 | SUBPOENAS

(1) Upon the request of any party, a presiding officer shall issue subpoenas for the attendance of witnesses for deposition or at the hearing. The requesting party shall specify whether the witness is also requested to bring documents.

(2) A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is 18 years of age or older. Service shall be made by delivering a copy to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if not served by a person specified by law to serve process.

(3) Any motion to quash or limit the subpoena shall be filed with the presiding officer and shall state the grounds relied upon.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.213 | EVIDENCE

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to impeach any witness regardless of which party called the witness to testify.

(3) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-.805, F.S.

(4) The rules of privilege apply to the same extent as in civil actions under Florida law.

(5) If requested and if the necessary equipment is reasonably available, testimony may be taken by means of video teleconference or by telephone.

(a) If a party cross-examining the witness desires to have the witness review documents or other items not reasonably available for the witness to review at that time, then the party shall be given a reasonable opportunity to complete the cross-examination at a later time or date for the purpose of making those documents or other items available to the witness.

(b) For any testimony taken by telephone, a notary public must be physically present with the witness to administer the oath. The notary public shall provide a written certification to be filed with the presiding officer confirming the identity of the witness, and confirming the affirmation or oath by the witness. It shall be the responsibility of the party calling the witness to secure the services of a notary public.

(6) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material. Requests for official recognition shall be by motion and shall be considered in accordance with the provisions governing judicial notice in Sections 90.201-.203, F.S.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.214 | RECORDATION

(1) Responsibility for preserving the testimony at final hearings shall be that of the agency transmitting the petition to the Division of Administrative Hearings pursuant to Sections 120.569 and 120.57, F.S., the agency whose rule is being challenged, or the agency whose action initiated the proceeding. Proceedings shall be recorded by a certified court reporter or by recording instruments.

(2) No later than 10 days prior to the final hearing, the agency shall notify the parties of the method by which the agency will record the testimony at the final hearing. Any party to a hearing may, at its own expense, provide a certified court reporter if the agency does not. The presiding officer may provide a certified court reporter. At hearings reported by a court reporter, any party who wishes a transcript of the testimony shall order the same at its own expense. If a court reporter records the proceedings, the recordation shall become the official transcript.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 3-18-98.

28-106.215 | POST-HEARING SUBMITTALS

All parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer. Unless authorized by the presiding officer, proposed orders shall be limited to 40 pages.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.216 | ENTRY OF RECOMMENDED ORDER

(1) If a hearing is conducted by other than the agency head, or member thereof, the presiding officer shall, within 30 days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for final agency action.

(2) By agreeing to a deadline for filing post-hearing submissions that is more than 10 days after the conclusion of the hearing or the filing of the hearing transcript, whichever is later, a party waives the provisions of subsection (1) above.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.217 | EXCEPTIONS AND RESPONSES

(1) Parties may file exceptions to findings of fact and conclusions of law contained in recommended orders with the agency responsible for rendering final agency action within 15 days of entry of the recommended order except in proceedings conducted pursuant to Section 120.57(3), F.S. Exceptions shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record.

(2) Exceptions shall be provided to all parties by facsimile or electronic mail, if a facsimile number or e-mail address has been provided number or address provided, the day they are filed with the agency.

(3) Any party may file responses to another party's exceptions within 10 days from the date the exceptions were filed with the agency.

(4) No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

APPENDIX

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