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## **REPRESENTING YOURSELF BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS**

This document has been prepared by the Division of Administrative Hearings (DOAH) to explain the administrative hearing process in Florida under chapter 120, Florida Statutes, and to help you prepare for a hearing.

It is important to remember that the information presented on this page is general and is intended to cover the usual situation. The explanations do not cover all of the possible situations which may arise in a case. You should also consult the rules of DOAH (Florida Administrative Code Chapter 28-106, Parts I and II).

### **WHAT IS THE DIVISION OF ADMINISTRATIVE HEARINGS?**

DOAH is a state agency that employs full-time Administrative Law Judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact. When an agency under chapter 120 proposes to take some action that is adverse to a person, the affected person normally can request an administrative hearing to determine the matter. Requests for hearings are initially made to the agency proposing the action. If the case does not involve disputed facts, the agency itself will conduct a proceeding and render a decision. If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to DOAH for a hearing. DOAH provides an independent and neutral Administrative Law Judge to conduct a hearing and write a decision, either a Recommended or Final Order, which is provided to the agency proposing the action and the parties in the case. In the case of a Recommended Order, each party may file exceptions to the Recommended Order with the agency proposing the action. The agency reviews the Recommended Order and issues a final decision, which must adopt the Judge's factual findings unless the factual findings are not supported by competent substantial evidence or the proceeding did not comply with essential requirements of law, but may under certain circumstances reject or modify certain legal conclusions of the Judge or the recommended penalty, if any. Within a limited time, a party who is adversely affected by final agency action may take an appeal to a District Court of Appeal.

### **HOW WILL I KNOW IF MY CASE HAS BEEN SENT TO DOAH?**

If a case is sent to DOAH for a hearing, the referring agency ordinarily sends a copy of the transmittal letter or order to the affected parties. In addition, DOAH will notify you of the assignment of your case to a Judge and the DOAH case number. If your address changes, be sure to notify the Division in writing so that you can be properly notified about the hearing date and other matters related to your case.

Once the case has been sent to DOAH, pleadings and other case filings go to DOAH and a copy must be served on all other parties at the same time as the filing.

## WILL I RECEIVE OTHER NOTICES FROM DOAH?

In most cases, you will receive an Initial Order which will provide procedural instructions concerning the proceeding and ask you to advise the Judge within seven days as to your preference for the date and place of hearing, and your estimate of the time necessary to conduct the hearing. Normally, the hearing will be held within 90 days after the case is referred to DOAH, and it usually will be held in your county. If you do not advise the Judge of your preferences, the hearing may be held in Tallahassee on a date that fits the Judge's schedule.

In all cases, you will receive a Notice of Hearing. In most cases, it will be sent at least 14 days prior to the date of hearing. The Notice of Hearing will advise you of the time and place of the hearing and some basic information about the issues to be considered and hearing procedures.

## WHAT IF THE HEARING IS SCHEDULED FOR A TIME WHEN I AM NOT AVAILABLE?

If it is impossible for you to attend the hearing at the scheduled time, you must immediately request a continuance, in writing. You should contact the other parties or their lawyers to see if they will agree to a continuance and to possible alternate dates for hearing before you request a continuance. You should be aware that your request for a continuance will not be granted unless you have a good reason for your request. Except for an extreme emergency, the request must be made at least five days prior to the hearing date. In the case of an extreme emergency, you may make your request by telephone, and the Judge normally will schedule a telephone conference call with the other parties to make a decision on your request for a continuance.

## DO I HAVE THE RIGHT TO SEE INFORMATION HELD BY THE OTHER PARTIES TO MY CASE?

The right to find out about another party's case is called "discovery." Discovery in DOAH hearings is governed by the Florida Rules of Civil Procedure which can be found in any law library and on the Internet. However, the rules are highly technical and you may require assistance from an attorney in properly preparing your discovery request. In general, the rules permit you to inquire into the contentions of other parties by asking them written questions, called "interrogatories"; by questioning them and prospective witnesses before the hearing by taking their deposition; or by requiring them to produce pertinent documents. You can require witnesses to appear for the taking of a deposition in the county in which they reside by a subpoena issued by the Judge upon request.

Ordinarily, you can receive most of the information you need simply by requesting the attorney for the agency proposing to take action to provide you with relevant documents concerning your case. Usually, you can also review the agency's file on the matter at the agency's office and obtain copies of documents in the file. If a party refuses to provide information after you have made a proper discovery request, or if you receive a request for discovery from the other party that you believe is unfair, you may file a motion to have the Judge determine the appropriateness of the discovery request.

Remember that there are time limits to responding to discovery requests under the Rules of Civil Procedure and if you do not receive a response to your request within the applicable time periods, you must file a Motion to Compel. The Judge will make a ruling on the motion after the other party has had an opportunity to respond in writing. If a hearing is held on the motion, it will generally be by telephone conference call.

## HOW DO I SUBPOENA A WITNESS OR OBJECT TO A SUBPOENA?

If you need the testimony of a person who has knowledge of matters concerning your case, you should ask that person to attend the hearing and testify. If the witness will not attend voluntarily, you should request a subpoena by calling the Deputy Clerk at (850) 488-9675, extension 111, or by mailing the Deputy Clerk a request in writing. Registered e-filers are able to obtain subpoenas through the eALJ link located on DOAH's website. A subpoena is a legal document which orders a person to appear at the hearing and to give testimony. You should find out as soon as possible whether you will need to subpoena anyone. You will be sent subpoena forms signed by the Judge which show the name and number of the case, but otherwise are in blank. Fill out each form as instructed and then have the subpoenas served either by an authorized process server or by the Sheriff's Office. The subpoena should be served immediately in order to give the witness time to get ready for the hearing. You must include a witness fee with the subpoena. The fee is \$5 per day plus 6 cents a mile for actual mileage. See § 92.142, Fla. Stat. Expert witnesses generally require payment of an expert witness fee. No fees need be tendered to witnesses who are employees of the state. Read the instructions on the back of the subpoena and make sure that the person who serves the subpoena executes the affidavit on the reverse side.

A person who is subpoenaed and feels that his or her presence at the hearing is unnecessary or unfair (e.g., due to short notice), can object by filing a Motion to Quash the Subpoena. The Judge will consider the objection and decide whether that person must obey the subpoena. Other questions about the subpoena, such as whether you have to be there exactly at the time specified, should be directed to the person who requested the subpoena (his/her name and telephone number are on the subpoena in the bottom left corner).

## DO I HAVE TO BE REPRESENTED BY AN ATTORNEY AT THE HEARING?

No, you may be represented by an attorney if you so choose, at your expense, or you may present the case yourself. Additionally, you may be represented at the hearing by a non-lawyer who is determined by the Judge to be qualified to protect your rights. This generally requires a pre-hearing conference or affidavit filed by the person showing enough knowledge of the law and procedures involved in your case to protect your rights. DOAH's requirements for qualification of a representative are contained in Florida Administrative Code Rule 28-106.106, which can be found in any law library or on the Internet.

## HOW SHOULD I PREPARE FOR THE HEARING?

In preparing for the hearing, it may be helpful to make a list of all the information which relates to your case and which you may want to present. Bring the originals and enough copies of all documents to the hearing so that you can give one to each of the other parties and one to the Judge.

Persons who have knowledge of your case should be asked to attend the hearing and testify on your behalf. Subpoenas should be issued for such individuals if you believe it to be necessary. If you need the testimony of a person who is an expert, such as a doctor, you may also ask that person to attend the hearing and testify. However, you may have to pay the expert a fee.

## WHERE WILL THE HEARING BE HELD?

If the hearing is held in Tallahassee, DOAH has hearing rooms at its offices. In other cities, DOAH uses courtrooms, city or county commission chambers, conference rooms in state office buildings, or similar facilities. The Notice of Hearing will tell you where the hearing will be held. The Judge may be present at the hearing or may conduct the hearing by video conferencing, telephone conference, or webcast.

## WHAT WILL HAPPEN AT THE HEARING?

In each case the Judge will decide who will present evidence first and how the hearing will proceed. This decision will be based on which party is requesting the action and on what would be the most practical and orderly way to develop the issues in the case. Before the actual presentation of the evidence begins, the Judge will explain the procedures which will be followed. If you are confused about the procedures or other matters, you should let the Judge know.

The Judge will allow each party to present witnesses and other evidence. He or she will also permit each party to question the other party's witnesses. This is called "cross-examination." All relevant evidence may be presented, including hearsay, which is, generally, a statement someone makes to the witness. However, the Judge cannot base a finding of fact on hearsay alone. The Judge may limit presentation of evidence if it is repetitive or irrelevant.

A record of everything that is said will be made at the hearing, so it is important that you speak in an audible, clear voice. The record will be preserved by a court reporter, by a tape recording, by videotape or by some other appropriate recording device.

The Judge is an impartial, independent person who is not employed by the referring agency involved in the case and who does not have any personal interest in the outcome of the matter. The Judge will attempt to determine the truth and to understand and fairly evaluate the position of each party. In doing so, he or she may ask questions of you, the agency representative, or any witness at the hearing.

## WILL THE JUDGE ASK FOR ADDITIONAL INFORMATION AFTER THE HEARING?

You have a right to submit a proposed decision after the hearing within a time period fixed by the Judge at the close of the evidence. In some cases, the Judge may ask for or permit any of the parties to submit additional information after the hearing before the closing the evidence.

## WHEN WILL I RECEIVE THE JUDGE'S ORDER?

If the Judge does not permit additional information to be submitted after the hearing, the case ends on the last day of the hearing. Generally the parties may submit proposed orders within 10 days after the close of the hearing or the filing of the official transcript, whichever is later. Normally, the Judge will issue a written decision within 20 days after the parties filed their proposed orders. If the parties ask for and are allowed more time to file their proposed orders, the Judge will attempt to issue the written decision within 30 days after the proposed orders.

## WHAT IF I DECIDE THAT I DO NOT WISH TO PROCEED WITH MY HEARING?

If you decide, at any time, that you do not want to proceed with your hearing, file a notice stating that you are withdrawing your request for hearing, and the Judge will close the Division's file and return the case to the agency proposing to take action. You should understand that if you withdraw your hearing request, the agency probably will proceed with its proposed action.

## WHAT WILL HAPPEN IF I DO NOT APPEAR AT THE HEARING?

If you do not appear at the time and place of the hearing, you must call the Judge's office immediately to explain why. If you do not contact the Judge's office, or if you do not have an adequate explanation for not attending the hearing, the Judge may decide against you in the case.

If you are late for the hearing, you should attempt to telephone the Judge at the hearing location and explain the problem. If you cannot reach the Judge at that location, call the Judge's secretary, who will attempt to communicate with the Judge.

#### MAY I GET A TRANSCRIPT (WRITTEN RECORD) OF THE HEARING?

Yes, but you must pay the cost of preparing the transcript. If the hearing was recorded by a court reporter, it will be expensive to order a transcript. If another party orders a transcript, you can pay the court reporter for a copy, or you can contact the agency or DOAH and pay for the cost of obtaining a copy. If the hearing was videotaped or tape-recorded, you must write to the agency proposing to take action and request a transcript or a copy of the recording.

#### MAY I OBJECT TO THE MATTERS CONTAINED IN A RECOMMENDED ORDER?

Yes, such objections are called "exceptions" and must be filed with the head of the agency proposing to take action (not DOAH or the Judge), normally within 15 days after the date of a Recommended Order. The exceptions should explain the particular portions of the Recommended Order with which you disagree and the specific reasons for your disagreement. If you believe that the Judge made a mistake concerning the facts in your case, you should point out those parts of the transcript that support your argument. If you cannot meet the deadline for submitting exceptions, you should write to the agency head and ask for an extension before the deadline.

#### WHEN MUST A FINAL DECISION BE MADE?

Generally, the head of the agency proposing to take action must render a Final Order in the case within 90 days from the date the Recommended Order is filed with that agency's clerk.

#### IS THERE ANY FURTHER APPEAL FROM THE AGENCY'S FINAL DECISION?

If a final decision adversely affects you, you can appeal to an appropriate District Court of Appeal by filing a notice of appeal with the agency's clerk within 30 days of the date the Final Order is filed with the agency clerk. The Florida Rules of Appellate Procedure provide the procedures for filing the appeal.

#### CONFIDENTIAL INFORMATION

Every person filing a document at DOAH has the responsibility to ensure that no information protected by privacy or confidentiality laws is contained in the document, which will be posted to DOAH's website in the regular course of business. This means that the person filing the document has the responsibility to redact (black out) or remove any protected private or confidential information, including but not limited to a social security number.

#### AMERICANS WITH DISABILITIES ACT

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in a hearing should contact the Judge's secretary no later than seven days prior to the hearing. The Judge's secretary may be contacted at our address or telephone numbers, via 1-800-955-8771 (TDD), or 1-800-955-8770 (Voice) Florida Relay Service.