

**ALLEGHENY COUNTY HEALTH DEPARTMENT
SUGGESTED RULES AND PRACTICES FOR
ADMINISTRATIVE HEARINGS**

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Administrative Hearing Officer
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The following is an overview of the administrative hearing process of the Allegheny County Health Department (“ACHD”). Included in these materials are: (I) Information for contacting the ACHD Hearing Officer, who presides over all administrative hearings; (II) A guide to the pre-hearing process; (III) A list of useful resources for filing an appeal; (IV) A section on proper conduct and behavior during hearings; (V) An outline of the procedure for administrative hearings; and (VI) A description of what happens after the hearing concludes.

I. Contacts with the Hearing Officer

Health Department Hearing Officer John McGowan may be reached by email at john.mcgowan@alleghenycounty.us or by phone at (412)-578-8074. All mail addressed to Hearing Officer Slater should be sent to:

John McGowan, Esq.
Administrative Hearing Officer
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

Prohibition on *Ex Parte* Communications—Any communications with the Hearing Officer must also include all parties involved in the case. The purpose of this rule is to prevent *ex parte* communications, meaning communications between a party and the Hearing Officer without the presence of the other parties. *See also* 207 Pa. Code Rule 2.9 “*Ex parte* Communications,” *available at* <https://www.pacode.com/secure/data/207/chapter33/s2.9.html>.

II. Pre-Hearing Matters

- (1) **Filing an Appeal**—If a party believes that it has been aggrieved by a final agency action of the ACHD, it may appeal the ACHD’s action, and request an administrative hearing to resolve the dispute. The appeal should contain the following:
- a. All contact information for the appealing party, including name, name of business (if applicable), address, phone number, and email address.
 - b. The specific grounds on which the appeal is based.
 - c. What legal relief the Hearing Officer should grant.

The Sample Appeal Form, which parties are encouraged to use, is available at: https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Health_Department/Resources/Legal/Appeal_Notice_Form.pdf. After filling out a Sample Appeal Form, the parties should send the form by mail or email to Administrative Hearing Officer John McGowan at 542 Fourth Avenue, Pittsburgh, PA 15219, or john.mcgowan@alleghenycounty.us, respectively.

- (2) **Scheduling a Hearing**—Once the Hearing Officer receives the appeal, he will send it to the ACHD’s solicitors, and schedule an administrative hearing. The Hearing Officer will notify all parties by mail the time and location of the hearing. Usually, hearings will be held at the Clack Health Center in Lawrenceville, 301 39th Street, Building 7, Pittsburgh, PA 15201.
- (3) **Representation by Legal Counsel**—Parties are encouraged to have a lawyer represent them at a hearing. However, parties may also choose to represent themselves at a hearing. Generally, a business or organization may be represented by a lawyer, an officer, or an authorized agent of the business or organization. *See* ACHD Article XI § 1104(G) for a fuller explanation, available at https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Health_Department/Article-11-Hearing-and-Appeals.pdf.
- (4) **Settlement and Compromise Negotiations**—The Hearing Officer encourages parties to try to resolve the appeal informally with the ACHD’s lawyers before an administrative hearing is held. Please contact the Hearing Officer if you would like to try to settle the case, or if you believe the Hearing Officer could help mediate or otherwise resolve the case without a hearing.
- (5) **Discovery**—Discovery is governed by ACHD Article XI § 1107(A). Parties are highly encouraged to formulate a case management order so that they can make the discovery process fit the needs of their case. Parties are also encouraged to develop a plan for the discovery of electronically stored information if they believe that such information is likely to occur in a case. The Hearing Officer is willing to help parties develop and implement a case management order and discovery plan, if the parties so wish. If the parties have a dispute involving discovery, the parties shall notify the Hearing Officer. The Hearing Officer will consider the arguments submitted by the parties, and if necessary, schedule oral argument.
- (6) **Motions**—There are numerous motions that parties can file before a hearing. The types of motions a party can file include:
 - a. Procedural Motions, such as motions for continuance, for expedited consideration, for extensions of time, or for a stay of proceedings. These motions should include a specific date for the extension or continuance

and include a proposed order. *See* 25 Pa. Code § 1021.92, *available at* <https://www.pacode.com/secure/data/025/chapter1021/s1021.92.html>.

- b. Discovery Motions, which are governed by Section (II)(5), above.
- c. Motions to Dismiss, which are normally filed for failure to comply with requirements of ACHD Article XI, most often for untimeliness or failure to state the grounds on which the appeal is based. The Hearing Officer evaluates motions to dismiss in the light most favorable to the nonmoving party and will only grant the motion when the moving party is clearly entitled to judgment as a matter of law. This is consistent with how the Pennsylvania Environmental Hearing Board considers motions to dismiss.
- d. Miscellaneous Motions, which are motions not otherwise addressed, including motions to amend appeals, motions to strike, and motions for recusal.
 - **Time for Responding to Motions**—Once a party files a motion, the other party or parties to the case shall have ten (10) days to file a response, unless a party asks the Hearing Officer for an extension, and the Hearing Officer approves the extension.
 - **Format of Motions**—All Motions and other submissions addressed to the Hearing Officer must be formatted in either Microsoft Word or PDF. The Motion or submission must not be in the body of an email.

III. Resources

- The Sample Appeal Form, which parties are encouraged to use, is available at: https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Health_Department/Resources/Legal/Appeal_Notice_Form.pdf.
- Previous Administrative Decisions are available at: <https://www.alleghenycounty.us/Health-Department/Resources/Legal/Legal.aspx>.
- Article XI, which governs administrative hearings and appeals, is available at: https://www.alleghenycounty.us/uploadedFiles/Allegheny_Home/Health_Department/Article-11-Hearing-and-Appeals.pdf.
- Other ACHD Regulations are available at: <https://www.alleghenycounty.us/Health-Department/Health-Department-Regulations.aspx>.

IV. Hearing Decorum

- 1) Professionalism and civility are expected of counsel, parties and witnesses.
- 2) To avoid disturbance and embarrassment, please turn off or silence all electronic devices during the hearing.
- 3) Counsel and parties are expected to allow opposing counsel and opposing parties to finish their statements without interfering (other than lodging an objection) or talking at the same time.
- 4) When a court reporter is present, witnesses and counsel are instructed to speak loudly and slowly. When reading from a text or document, witnesses and counsel are reminded to speak slowly for the benefit of the court reporter.
- 5) The Hearing Officer is an active participant throughout the hearing because ultimate responsibility rests with the Hearing Officer to provide parties with a fair and efficient hearing.
- 6) The Hearing Officer sets the ground rules and intervenes to ensure that the hearing is conducted in accordance with these ground rules to ensure the fair, just and efficient resolution of the proceedings.

V. Hearing Procedure

- 1) **Settlement/Compromise Negotiations**—At the start of the hearing, the Hearing Officer will ask the parties if they have engaged or are engaging in any efforts to settle or otherwise informally resolve the case. The Hearing Officer is happy to act as a mediator to help resolve the case without a hearing, if the parties so choose.
- 2) **Opening Statements**—If the parties wish to have a hearing, the party that filed the appeal (“Appellant”) may make an opening statement of five minutes or less. The opening statement should outline the party’s position, and why it believes it should prevail. After the Appellant finishes its opening statement, the ACHD may make its opening statement.
- 3) **Direct Examination and Testimony**—After opening statements are complete, Appellant may present its witnesses and evidence. Once the Appellant puts on its case, the ACHD and all other parties to the case may present their witnesses and evidence.

- 4) **Cross-Examination**—After a party finishes examining its own witness, the other party or parties to the case may examine that witness. Parties are encouraged to keep cross-examination brief and focused.
- 5) **Evidence**—Any party to a hearing may introduce evidence in support of its position. Although the Hearing Officer is not bound by the technical rules of evidence at hearings, the Pennsylvania Rules of Evidence are generally adhered to, and are available at: www.pacode.com/secure/data/225/225toc.html. The party introducing the evidence must provide copies of the evidence to all opposing parties and to the Hearing Officer. Any party may lodge an objection to the admission of evidence into the record. The Hearing Officer will determine whether evidence is admissible. Generally, evidence is admissible as long as it is relevant and is authenticated.
- 6) **Ending the Hearing**—After the parties present all of their evidence and testimony, the Hearing Officer will announce that the hearing has ended. No oral closing statements are permitted. Once the hearing ends, the Hearing Officer will discuss the next steps with the parties.

VI. Post-Hearing Procedure

Following the hearing, there are four steps to consider: transcripts, briefs/position statements, the administrative decision itself, and appeals from the administrative decision. Please note that the Hearing Officer may render a decision immediately following a hearing. However, depending on the facts, complexity of the issues involved, or other legal considerations, the Hearing Officer may determine that a fair and equitable adjudication may require the following:

- 1) **Transcripts**—Approximately two weeks after the hearing, the court reporter will mail a transcript of the proceedings to the Hearing Officer. At that time, the Hearing Officer will notify all parties that the transcript is available for purchase. The Hearing Officer will then inform the parties that they have thirty (30) days from the date the transcript is available for purchase to file a brief or position statement in support of their position.
- 2) **Briefs/ Position Statements**—Parties are strongly encouraged to submit a brief or position statement articulating why they believe the Hearing Officer should rule in their favor. Briefs or position statements do not need to be any certain length, but they should explain why a party's position should prevail, based on the evidence and testimony presented at the hearing, as well as the relevant law. Parties may submit their briefs and position statements to the Hearing Officer either by email at john.mcgowan@alleghenycounty.us or by

regular mail at: Allegheny County Health Department, 542 Fourth Ave. Pittsburgh, PA 15219 Attn: Hearing Officer. Specifically, a brief or position statement should contain the following sections:

- a. An introduction, which lays out the basis for the appeal, and why a party should prevail at the hearing.
- b. A statement of the facts of the case.
- c. A discussion of the reasons why a party should prevail, based on the evidence presented at the hearing, the relevant law, and the facts of the case.
- d. A conclusion summarizing the party's position.

Generally, the party bearing the burden of proof shall file the first brief, and all other parties will file responsive briefs. The parties and the Hearing Officer should arrange the briefing schedule at the conclusion of the hearing.

- 3) **Administrative Decisions**—After the parties submit their briefs or position statements, the Hearing Officer will render an administrative decision, and mail the decision to all parties. The timing of the administrative decision will depend on the complexity of the case, the Hearing Officer's schedule, and other factors.
- 4) **Appeals**—Any party may appeal a final administrative decision by the Hearing Officer to the Allegheny County Court of Common Pleas within thirty (30) days of the date that the administrative decision is issued.
- 5) **Expedited Hearings**—In certain cases, the Hearing Officer will allow for an expedited hearing, meaning that the hearing will occur shortly after it is scheduled, and a decision will be rendered as quickly as possible. Expedited hearings generally involve requests for stays and matters concerning a party's ability to pay a fine or civil penalty. Any party requesting an expedited hearing should state the reason(s) why the hearing should be expedited, and should alert the Hearing Officer and all parties to any applicable deadlines.

VII. Media Policy

Unless otherwise noted, all hearings are open to the public. Information about upcoming hearings will be posted on the legal page of the Health Department's website, located at <https://www.alleghenycounty.us/Health-Department/Resources/Public-Health-Information/Legal/Legal.aspx>. All media inquiries should be emailed to Public Health Information Officer, Neil Ruhland (neil.ruhland@alleghenycounty.us).

Any party or person requesting a transcript should contact Nancy Grega of Adelman Reporters at njgrega@gmail.com. The price of a transcript is determined by Adelman Reporters.