

28.01.01.00¹

Title 28 OFFICE OF ADMINISTRATIVE HEARINGS

Subtitle 01 ADMINISTRATION

Chapter 01 Conflicts Policy

Authority: State Government Article, §§9-1604 and 9-1607, Annotated Code of Maryland

28.01.01.01

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “ALJ” means an individual:

(a) Appointed as an Administrative Law Judge pursuant to the requirements established under State Government Article, §9-1604(a)(2), Annotated Code of Maryland; or

(b) Designated pursuant to State Government Article, §9-1607, Annotated Code of Maryland.

(2) “Chief ALJ” means the individual appointed as head of the Office pursuant to State Government Article, §9-1603, Annotated Code of Maryland.

(3) “Employee” means a contractual, temporary, or permanent employee of the Office at the time the action that gave rise to the hearing request arose.

(4) “Member of the employee’s family or household” means:

(a) A parent, spouse, sibling, or child of the employee; or

¹ General key:

Proposed deleted items appear in brackets ([]).

Proposed amendments/additions appear in *italics*.

(b) A relative or other person who shares the employee's legal residence, or over whose affairs the employee has legal or actual control.

(5) "Office" means the Office of Administrative Hearings.

28.01.01.02

.02 Selection of Substituted ALJs.

A proceeding before the Office in which an employee of the Office or a member of the employee's household is a party may be heard by an individual designated by the Chief ALJ pursuant to State Government Article, §9-1607, Annotated Code of Maryland, who meets the requirements established under State Government Article, §9-1604(a)(2), Annotated Code of Maryland, and who is not an Office employee.

28.01.01.9999

Administrative History

Effective date: September 16, 1991 (18:18 Md. R. 2009)

Regulation .01B amended effective May 6, 1996 (23:9 Md. R. 672); January 8, 2001 (27:26 Md. R. 2360); January 10, 2020 (46:26 Md. R. 1168)

Regulation .02 amended effective January 20, 1992 (19:1 Md. R. 35)

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Regulation .02 amended effective January 10, 2020 (46:26 Md. R. 1168)

28.01.03.00

Title 28 OFFICE OF ADMINISTRATIVE HEARINGS

Subtitle 01 ADMINISTRATION

Chapter 03 Administrative Law Judge Discipline and Reassignment of Duties

Authority: State Government Article, §§9-1604 and 10-206, Annotated Code of Maryland

28.01.03.01

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “ALJ” means an individual:

(a) Appointed as an Administrative Law Judge pursuant to the requirements established under State Government Article, §9-1604(a)(2), Annotated Code of Maryland; or

(b) Designated pursuant to State Government Article, §9-1607, Annotated Code of Maryland.

[*(1) “ALJ” means an individual appointed as an Administrative Law Judge pursuant to the requirements established under State Government Article, §9-1604(a)(2), Annotated Code of Maryland.*](*2) “Charges” means a written statement of cause for imposing discipline against an ALJ pursuant to State Personnel and Pensions Article, §11-104, Annotated Code of Maryland.*

(3) “Chief ALJ” means the individual appointed as head of the Office pursuant to State Government Article, §9-1603, Annotated Code of Maryland.

(4) “Executive ALJ” means an ALJ appointed as the Director or Deputy Director of Operations, the Director or Deputy Director of Quality Assurance, or other position that the Chief ALJ designates as an executive ALJ position.

(5) “Filed” means that a document is postmarked or received in accordance with COMAR 28.02.01.04D.

(6) “Office” means the Office of Administrative Hearings.

[(7) “Probationary ALJ” means an ALJ during the first year after appointment as an ALJ.]

28.01.03.02

.02 Notice of Charges.

The Chief ALJ shall provide an ALJ with written notice of any charges.

28.01.03.03

.03 Burden of Proof.

A. An ALJ who has been notified of charges may file a written appeal with the Chief ALJ within 10 days after the Chief ALJ notifies the ALJ of the charges.

B. If the ALJ does not file a timely appeal, or does not appear at the scheduled hearing, the charges may be upheld.

C. On appeal, the Office bears the burden of proving the charges by a preponderance of the evidence.

28.01.03.04

.04 Time of Hearing.

A. Within 90 days after filing an appeal, the ALJ shall have an opportunity to be heard on the charges.

B. The Chief ALJ may postpone the hearing beyond the 90-day period for good cause.

28.01.03.05

.05 Hearing by Chief ALJ; Final Decision.

A. The Chief ALJ may conduct the hearing on an appeal of charges.

B. When the Chief ALJ conducts the hearing:

- (1) The hearing may be closed to the public; and
- (2) The Chief ALJ shall issue the final decision of the Office.

C. The final decision shall be in writing and:

- (1) Be issued within 90 days of the close of the record;
- (2) Be sent by certified mail to the ALJ and the ALJ's representative, if any; and
- (3) Include:
 - (a) Findings of fact;
 - (b) Conclusions of law; and
 - (c) Notice that an aggrieved party may seek judicial review of the decision in accordance with State Government Article, §10-222, Annotated Code of Maryland, and the Maryland Rules governing Judicial Review of Administrative Agency Decisions.

28.01.03.06

.06 Hearing by Designee; Proposed Decision.

A. The Chief ALJ may designate an individual who is not an employee *of the Office* or a member of [the]*an* employee's household [of the Office] and who meets the qualifications established under State Government Article, §9-1604(a)(2)[,] *and §9-1607* Annotated Code of Maryland, to conduct a hearing on the appeal of charges.

B. When the Chief ALJ designates an individual to conduct the hearing on an appeal of charges:

- (1) The Administrative Procedure Act, State Government Article, §10-212, Annotated Code of Maryland, shall apply; and
- (2) The designated individual shall issue a proposed decision in accordance with State Government Article, §§10-216(a) and 10-220(d), Annotated Code of Maryland.

C. The proposed decision shall be in writing and:

- (1) Be issued within 30 days of the close of the record;
- (2) Be sent by certified mail to:
 - (a) The ALJ who filed the appeal;
 - (b) The Chief ALJ; and
 - (c) The parties' counsel of record; and
- (3) Include:
 - (a) Findings of fact and conclusions of law; and
 - (b) Notice in accordance with State Government Article, §10-216(a), Annotated Code of Maryland, that:
 - (i) Written exceptions may be filed with the Office within 15 days after the proposed decision is mailed; and
 - (ii) Oral argument may be requested in writing at the time that exceptions are filed.

28.01.03.07

[.07 Oral Argument.] *Repealed* [If oral argument is requested:

A. The Chief ALJ shall notify the parties by certified mail of the date, time, and place of the argument; and

B. The argument shall be scheduled to occur within 30 days after the exceptions and request for argument were filed.]

28.01.03.[08] .07

[.08] .07 Filing of Exceptions; Oral Argument.

A. Within 15 days after the proposed decision is postmarked, a party adversely affected may:

(1) File with the Chief Judge written exceptions; [and or]*and may also*

(2) Request oral argument on the exceptions. [; or][(3) Both.]

B. *If oral argument is requested*, [T]the Chief Judge shall notify the parties of the date, time, and place of the argument. The argument shall be presented within 30 days from receipt by the Chief Judge of the exceptions and request to present argument.

28.01.03[.09].08

[.09] .08 Final Decision on Exceptions.

A. Time Periods for Issuance of Final Decision.

- (1) If oral argument is held, the Chief ALJ shall issue the final decision within 45 days after conclusion of the argument.
- (2) If written exceptions are filed, but no request for oral argument is made, the Chief ALJ shall issue the final decision within 45 days after the written exceptions were filed.
- (3) If no written exceptions are filed, the Chief ALJ shall issue the final decision within 30 days after the proposed decision was mailed to the parties.

B. In the [written] *final* decision, the Chief ALJ may:

- (1) Restore the ALJ to their position without loss of pay;
- (2) Suspend the ALJ without pay for a specified period;
- (3) Demote the ALJ;
- (4) Remove the ALJ from their position; or
- (5) Require that other action be taken as indicated by the findings in the case.

[28.01.03.10]*Repealed*

[.10 Termination on Probation.

A probationary ALJ may appeal termination only on the grounds that the termination is illegal or unconstitutional.]

28.01.03[.11].10

[.11].10 Executive Duties.

A. Executive ALJs serve at the pleasure of the Chief ALJ, who may assign, reassign, or remove executive duties without cause at any time. The assignment, reassignment, or removal of executive duties is not appealable.

B. The Chief ALJ shall notify an executive ALJ of the removal of executive duties at least 14 days prior to the effective date of the removal.

C. The Chief ALJ may permit an Executive ALJ whose executive duties have been removed to continue to serve as an ALJ.

D. If the Chief ALJ determines not to permit the individual to continue to serve as an ALJ:

(1) A Notice of Charges shall be issued in accordance with Regulation .02 of this chapter; and

(2) The procedures specified in Regulations .03 through .09 of this chapter shall apply.

28.01.03.9999

Administrative History

Effective date: September 16, 1991 (18:18 Md. R. 2009)

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