40 KAR 5:010. Required training.

RELATES TO: KRS 13B.030(4)
STATUTORY AUTHORITY: KRS 13B.030(4)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with KRS 13B.030(4) which requires the division to establish by administrative regulations minimum standards concerning length of training, course content and instructor qualifications for initial training and continuing education of hearing officers. The function of this administrative regulation is to establish education requirements for hearing officers.

Section 1. Definitions. (1) "Classroom hour" means fifty (50) minutes of actual classroom instruction.
(2) "Hearing officer" is defined by KRS 13B.010(7).

Section 2. A person shall not serve as a hearing officer unless he has completed eighteen (18) classroom hours, including agency specific training, of initial hearing officer instruction, and six (6) classroom hours of continuing education instruction as provided by Sections 3 and 5 of this administrative regulation.

Section 3. Approved Instruction. Approved instruction for hearing officers shall be the administrative hearings subjects established by this section.
(1) Instruction in the conduct of administrative hearings in each of the following areas:
(a) Administrative law and procedure. The course shall cover the:
1. History, origin, source, and limitations of agency authority to act;
2. Role of hearing officials;
3. Adjudicatory function as opposed to and differentiated from the regulatory and enforcement functions of an agency; and
4. Regulatory and enforcement processes of agencies.
(b) Due process. The course shall cover the fundamentals of constitutional due process concepts of adequate notice and a reasonable opportunity to be heard, and shall emphasize constitutional restrictions on notice and a hearing.
(c) Conduct and control of hearings. The course shall cover the following items and include applicable documentary samples:
1. The role of prehearing conferences and discovery;
2. Opening a hearing;
3. The conduct of a hearing;
4. The order of proof;
5. Marking and handling exhibits;
6. Ruling on objections;
7. Swearing in of witnesses;
8. Proper demeanor, dress, formality, and decorum;
9. Making the hearing accessible to handicapped persons; and
10. Closing a hearing.
(d) Credibility. The course shall cover:
1. Judging demeanor and forthrightness of witnesses, appearance and body language;
2. Sexual, racial and cultural bias, and prejudice; and
3. Judging common sense of answers, consistency, context and flow.
(e) Ethics. The course shall include:
1. The principles of:
a. Conflict of interest;
b. Ex parte contact;
2. Ethical standards to which hearing officers, judges and lawyers are held; and
3. A review of the ethical code applicable to hearing officers, judges and lawyers.
(f) Case file and docket management. The course shall cover the principles of:
1. Case file composition, handling, docketing and tracking;
2. Keeping exhibit and witness lists;
3. Motion practice;
4. Setting discovery deadlines;
5. Continuances;
6. Reviewing the record, hearing decision time limitations and extensions thereof.
(g) Evidence in administrative proceedings. The course shall include a review of the following items, and applicable samples of documentary and testimonial evidence:

1. Competency;
2. Documentary evidence;
3. Demonstrative evidence;
4. Hearsay;
5. Privileges;
6. Work product rule;
7. Oaths and swearing;
8. Establishing a foundation;
9. Cumulative, proffered, and confidential evidence;
10. Official notice;
11. Handling evidence; and
12. Standards and burdens of proof applicable in administrative proceedings.

(h) Decision writing. The course shall cover the following items and include written samples:

1. The function and purpose of the written decision;
2. The basic administrative decision format;
3. How to differentiate between factual findings and legal conclusions;
4. How to identify and establish jurisdiction over subject matter and parties;
5. How to establish the procedural history;
6. How to use an appropriate format; and
7. A review of writing style, tone and organization.

(2) The course shall include training in the application of KRS Chapter 13B, and shall consist of instruction in each of the following areas:

(a) Conflict of interest. The course shall cover conflicts of interest as addressed in KRS 13B.040 including:

1. Who is governed;
2. What kind of contact is prohibited;
3. Prohibited actions or conduct, including serving as, or assisting or advising a hearing officer;
4. The mechanics of withdrawal;
5. Determination of who is an investigator or prosecutor who acted in the same proceeding, or the preadjudicative stage of an administrative hearing; and
6. The standard to be applied.

(b) Ex parte contact. The course shall cover improper ex parte contact as defined in KRS 13B.100 including:

1. The concept of "substantive" as opposed to "procedural" inquiries and a determination of the "merits" of an administrative action;
2. Who is prohibited from making ex parte inquiries;
3. Under what circumstances hearing officials and assistants may talk ex parte with "parties" and other "interested persons";
4. Specific instruction on how to handle ex parte contact, how to train support staff and the method required to document ex parte contact in the record;
5. Contacts by agency and outside counsel, contacts by the hearing officer and contacts with the agency head or other agency personnel;
6. Case studies and written materials, including ethical opinions from the Bar, relevant case decisions, and the relevant judicial cannons and rules of professional conduct applicable to judges and attorneys.

(c) Adequate notice. The course shall cover the contents and effect of the notice of hearing required by KRS 13B.050, including:

1. Scheduling and time limits;
2. Improper mailing;
3. Incomplete or improper notice content; and
4. The effect of violation of KRS 13B.050 and remedies therefore.

(d) Intervention. The course shall cover intervention under KRS 13B.060 and include sample petitions and orders:

1. Mandatory and permissive intervention;
2. Statutory rights to intervention;
3. The standard for permissive intervention;
4. The procedure for petitioning to intervene;
5. Structuring the intervention; and
6. Writing the order permitting or denying intervention.

(e) Prehearing conferences and discovery. The course shall cover the nature, scope and purpose of a prehearing conference under KRS 13B.070 including:

1. Its relation to settlement, alternative dispute resolution, discovery and the hearing process;
2. Methods of managing and scheduling prehearing conferences that will promote the orderly and prompt conduct of a hearing, including the filing of motions, prehearing memorandums, witness and exhibit lists, briefs, proposed findings, conclusions, and recommended orders;
3. Discovery available under KRS 13B.050, 13B.080 and 13B.090;
4. Discovery orders and problems;

5. Issuance, quashing and enforcement of subpoenas and the standards therefore;

6. The obligation to reveal documentary or tangible evidence and exculpatory evidence in the agency's possession, and the consequences of the failure to do so; and

7. Written samples of prehearing conference orders, motions and subpoenas.

(f) Hearing procedures and compiling the record. The course shall cover and include material relating to the following items:

1. Methods to ensure the orderly and prompt conduct of the hearing under KRS 13B.080;

2. The obligation to have testimony given under oath, and the swearing of witnesses;

3. Briefs;

4. Argument;

5. Testimony;

6. Marking and admission of evidence;

7. Granting defaults, and the procedures and standards for rendering defaults;

8. The meaning and composition of the record under KRS 13B.130; and

9. The method of compiling the record for review, including submission in writing, and proffers of evidence.

(g) Findings and evidence. The admissibility of hearsay and standards therefor. The course shall:

1. Cover the basic evidentiary standard for all types of evidence;

2. Constitutional, statutory grounds for exclusion and privileges recognized in Kentucky law;

3. Ruling on and memorializing objections; and

4. Taking "official notice" of facts.

(h) The recommended order and writing for judicial review. The course shall cover the following items and include samples of written findings, conclusions and recommended orders:

1. The nature, scope, and function of findings and conclusions under KRS 13B.110;

2. The interrelation with evidentiary rulings under KRS 13B.050 and 13B.090;

3. Compilation of the record under KRS 13B.130;

4. The standards for judicial review under KRS 13B.150;

5. The obligation to base findings only upon the evidence in the record, under KRS 13B.090(1); and

6. Time limits, extensions, and the consequences of the failure to file a recommended order within statutory time periods.

(3) Agency specific training. Instruction shall include agency specific training that:

(a) Covers the specific federal and state authorizing statutes and regulations under which a hearing officer will conduct hearings; and

(b) Has been approved by the agency head and the division.

Section 4. (1) An initial hearing officer instruction or continuing education course shall:

(a) Comply with the provisions of Sections 3 and 5 of this administrative regulation;

(b) Consist of topics that will enable a hearing officer to:

1. Acquire, maintain, and improve his skills as a hearing officer; and

2. Serve the public; and

(c) Consist of a minimum of two (2) hours.

(2)(a) Credit shall be granted for completion of an initial hearing officer instruction or continuing education course that has been approved by the division.

(b) A sponsor of an education course shall submit for approval by the division:

1. An outline of the course in sufficient detail to disclose the pertinent material that is to be taught; and

2. The work experience, credentials, and education background of the instructor of the course.

Section 5. Continuing Education. (1) An education year shall begin on July 1, and end on June 30 of the next calendar year.

(2) Credit shall be given for continuing education courses that have been completed on or before June 30.

(3) For each education year, a person certified as a qualified hearing officer pursuant to KRS Chapter 13B shall complete a minimum of six (6) credit hours of continuing education courses that have been approved by the division.

(4) A hearing officer who earns more than six (6) credits of continuing education may carry forward a total twelve (12) credits.

(5) A total of six (6) of the continuing education credits earned in an education year may be credited toward satisfaction of the continuing education requirement for each of the two (2) continuing education years following the education year in which they were earned.

(6) Continuing education credits earned in an education year in excess of twelve (12) credits shall:

(a) Not be carried forward; and

(b) Remain on the hearing officer's record.

(7) On or before July 1 of each year, a person certified as a qualified hearing officer under KRS Chapter 13B in this Commonwealth, shall certify to the director the number of credit hours of continuing education hours completed.

(8)(a) Certification may be submitted to the director upon completion of the continuing education activity at any time during the education year.

(b) Certification shall not be submitted later than the July 15th immediately following the education year in which the activities were completed.

(9)(a) If a hearing officer fails to comply with the provisions of this section, the division director shall notify him as soon as practicable on or after August 1 of the same year calendar year.

(b) The authority to hear administrative actions under KRS Chapter 13B shall be suspended until such time as the continuing education requirements are met. (22 Ky.R. 2189; Am. 23 Ky.R. 119; eff. 7-5-96.)