

Guidelines for Practice Of Personnel Board Appeals



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These guidelines for practice are for general informational purposes only and are not intended to be relied upon as, convey, or otherwise constitute specific legal advice. Personnel Board Appellants have the right to be represented by counsel. The Personnel Board advises seeking a qualified attorney to counsel over specific, individual matters.

Primary statutes and regulations relevant to practice in front of KYPB:

- 1) KRS Chapter 18A. State Personnel.
- 2) Title 101 of KAR. Personnel.
- 3) KRS Chapter 13B. Administrative Hearings.

NOTE: Other statutes and regulations may be relevant depending on the surrounding facts and circumstances of each appeal.

BACKGROUND AND GENERAL FACTS

What to Expect

The Kentucky Personnel Board's (hereinafter "KYPB" or the "Board") appeal process is an adversarial process that leads to an opportunity for the Appellant/employee to present their case during an Evidentiary hearing. An evidentiary hearing is like a trial, where testimony is given, evidence is taken, a record is made, and after which a decision is issued. KRS 13B.080 and 101 KAR1:365 govern the conduct and procedures of administrative hearing in front of the KYPB and its hearing officers. Generally, at the conclusion of an evidentiary hearing, the preliminary decision comes in the form of a hearing officer's Findings of Fact, Conclusions of Law, and Recommended Order (Hereinafter "FOF, COL, & RO"). However, the Final Order of the KYPB only issues after parties to the hearing have an opportunity to file written exceptions to FOF, COL, & RO and, if appropriately requested, to present oral arguments to the Board during its next monthly meeting [KRS 13B.110(4)]. Exceptions and requests for oral arguments to the Board must be filed in writing within fifteen (15) days of the date the Recommended Order is mailed. After oral arguments are dispensed with, the Board issues its final order containing its administrative remedies based on the record, the FOF, COL, & RO, and the exceptions and oral arguments. KYPB Final Orders are subject to judicial review upon appeal to Circuit Court by one (or both) of the parties in accordance with KRS 13B.160.

Important participation considerations for litigants and their representatives

Every litigant appearing before the KYPB **may be represented by private counsel**. KRS 13B.080(5). However, employee litigants are also permitted to represent themselves and act *pro se* in their administrative proceedings. *Pro se* is a Latin term meaning “for oneself” or “on one’s own behalf.” The term refers to the act of representing oneself in court *without the aid of an attorney*. Representing yourself comes with certain advantages, such as cost savings and personal involvement, but it also comes with substantial risks, including the lack of legal expertise and the potential for procedural mistakes. Weighing these benefits and drawbacks is important for anyone involved in litigation in front of the KYPB.

Jurisdictional limitations:

Because the Kentucky Personnel Board (“KYPB”) is an adjudicative body of limited jurisdiction created by the legislature in KRS 18A.095, it is critical that Appellants properly allege appealable employment actions that fit into KYPB’s jurisdiction for the case to move forward in this forum.

KRS 18A.095 makes clear that:

The action of “dismissal” is appealable pursuant to KRS 18A.095 (7)(c).

The actions of being “demoted, suspended without pay, or involuntarily transferred” are appealable pursuant to KRS 18A.095(8)(d).

Discrimination- adverse employment “action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, age forty (40) and above, or any other category protected under state or federal civil rights laws.” KRS 18A.095(11)(a). Such actions must be appealed to the KYPB within thirty (30) days of the alleged discriminatory act.

“Any applicant for employment in a classified position under KRS Chapter 18A may appeal the hiring agency’s non-selection based on an alleged violation of appointment and promotion provisions contained in this chapter or administrative regulations promulgated under this chapter to the board.” KRS 18A.095 (12)(b).

“The board shall deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief.” KRS 18A.095 (16)(a).

“Unless otherwise provided by this chapter, the board shall not have jurisdiction over any appeal except as authorized by this section.” KRS 18A.095(30)

Failure to properly allege or establish that an Appellant’s case fits into one of the KRS 18A.095 categories may result in summary dismissal of the case by the KYPB because the legislature did not grant it the power and authority to adjudicate the case:

Generally, the Personnel Board does not have jurisdiction over the following types of employment actions **(please note that this list is not exhaustive)**:

- a. **Untimely appeals.** When an employee is duly notified of a particular employment action, the employee generally has thirty (30) days after notification to file an appeal (not including the date of notification) with the Personnel Board.

-NOTE: state employees should bear in mind that filing a grievance within the agency by which they are employed does not toll (temporarily stop the clock) the time for filing an appeal. Additionally,

filing an appeal with the Personnel Board does not toll the time for an employee to file a discrimination action with the EEOC or the Kentucky Human Rights Commission nor is there any prohibition on an employee having concurrent administrative actions with the Personnel Board and a state or federal administrative agency.

- b. **Verbal and written reprimands.** The Personnel Board does not have the authority to consider these employment actions. *See* KRS 18A.095; and *see* 101 KAR 1:335.
- c. **Dismissal of an employee during the employee's probationary period.** This limitation is subject to the exception when dismissal is based upon some form of illegal, protected class discrimination. KRS 18A.111.
- d. **Pay inequity or Salary claims.** Subject to the exceptions when disparity is based upon illegal, protected class discrimination and the salary adjustments provisions contained in 101 KAR 2:034 Section 1(2) for new appointments, the Personnel Board generally lacks authority to review employee claims of pay disparity.
- e. The Personnel Board generally does not have the authority to review a final, annual employee evaluation, unless the evaluation falls into one of the **two lowest rating categories**. KRS 18A.110(7)(i)(4).
- f. **The Personnel Cabinet's decision that an employee does not meet the minimum qualifications for a position.** Although an applicant for employment may ask for reconsideration by the Secretary of the Personnel Cabinet, such decisions are not appealable to the Personnel Board. KRS 18A.095(12)(a).
- g. **Actions by employees who fall outside the protections of KRS Chapter 18A.** For example, employees of the judicial branch of state government are not covered by KRS Chapter 18A.

Exhaustion of Administrative Remedies: An employee provided with a statutory or regulatory right to appeal to an administrative court, like the KYPB, **must** appeal any non-discriminatory adverse employment decision to the administrative body provided or risk foreclosure of all state court opportunities to be heard and the remedies provided therein. Generally, the plaintiff suing a government officer may not obtain judicial relief if he has not first exhausted his/her administrative remedies. Please note that Personnel Board appeals are not appeals of employees' internal grievances against an agency or its representatives. This is important because, although a grievance and an appeal may involve the same facts and/or policies, procedures or rules of law, filing a grievance within an agency process does not "stop the clock" on an employees' time to file an appeal with the Personnel Board.

Failure to attend or participate: If a party properly served under KRS 13B.050 fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. KRS 13B.080(6). If an opposing party files a written motion or request, the opposing party must file a written response or risk waiving its opposition to the request or motion.

Current contact Information. Because the process is dependent on open and reliable lines of communication, the parties are required provide and diligently update the KYPB with 1) current physical address for the timely receipt of US mail; 2) current email address for the receipt of correspondence, pleadings, orders, etc; 3) business phone number (where applicable); and 4) mobile phone numbers. This is applicable to both: a) the employee/appellants and their representatives; and b) the employer/appellee/agency and its representatives. Keeping in mind that properly served party who fails to attend or participate may have their case dismissed, an employee/Appellant **shall** notify all parties and the Board *in writing* of a change of address pursuant to 101 KAR 1:365 Section 6(4)

Mediation and Informal Settlement Options

Mediation is a voluntary process in which both parties agree to bring in a neutral third party to oversee the proceedings and help the parties involved compromise their claims and work out an agreement. The mediator does not make decisions but facilitates discussion and guides the parties toward a mutually acceptable agreement. Mediators are often lawyers or retired judges. Once the parties agree to mediate the Hearing Officer issues an Interim Order referring the matter to mediation, the parties are obligated to participate in mediation in good faith. Each party shall be required to have a person present at the mediation who can authorize settlement discussions.

The Kentucky Employee Mediation Program (KEMP)

Kentucky provides a professional, proven mediation and workplace resolution program, with trained, unbiased mediators who can assist in moving a team from conflict to shared goal. Mediation is free to Team Kentucky members and is completely voluntary.

What to expect during KEMP mediation

The mediation will not be recorded by any party and is confidential

All parties must trust in the objectivity and fairness of the mediator(s)

All parties agree that mediation is voluntary and is not adversarial

All parties must demonstrate a good faith effort, be respectful and truthful during mediation

All parties must consider and respond responsibly to proposals made by each other

Where there are areas of disagreement, the parties will work together to identify the barriers to agreement and consider their respective positions in the light of any alternative options

While it is rare, mediator(s) may decline the request to mediate, issue a continuance or terminate a mediation

The mediators will only wait 20 minutes for the parties to arrive, unless they have called to explain their delay.

Only people necessary to reach an agreement should attend the mediation. Outside parties will not be allowed in the mediation.

Preparing for mediation:

Understand your goals: Before going into mediation, clearly define your goals and what you may be willing to compromise.

Gather documentation: Organize all relevant documents and evidence that support your position.

Stay open-minded: Be willing to listen to the other party's perspective and consider creative solutions.

Communicate clearly: Articulate your points calmly and clearly and in a structured manner.

Keep notes: Document key points, agreements, and areas of disagreement.

Informal settlement discussions can take place at any time between the litigants or their designated representatives. This option allows the parties to discuss the issues and work out their own solutions. Settlement agreements must be filed with the KYPB for final approval and authorization by the full board.

Gathering evidence

Collecting documentation: Begin by assembling all documents related to your case. This may include things like Notices of discipline, job descriptions, and Personnel Action Notices but can include any relevant authenticated documents.

Eyewitness accounts: Witnesses can provide important, objective accounts of the incident. Gather their contact information and, if possible, secure written statements from all witnesses who can support your case.

Official reports: In cases involving workplace accidents, official reports (such as police reports and workers injury reports) are usually filed. Obtaining a copy of these reports is essential, as they offer an authoritative perspective on the event.

Discovery

The (usual) written process of exchanging information and evidence between parties in a legal case is called discovery. The goal of discovery is to help both sides understand the case and prepare for trial and to determine the best course of action such as settling or going to trial. Types of discovery include: 1) Interrogatories (written questions answered under oath); b) Requests for production of documents; and c) Requests for admissions.

Generally, discovery is scheduled at or after the initial prehearing conference. The parties are given a time to request discovery (usually between 30 and 90 days) and a time to produce the requested materials after the request (usually 30-60 days.)

The parties shall produce the requested items, subject to the limitations of KRS Chapter 13B and/or the order of the hearing officer. If they find that some items responsive to the request are privileged, or if the parties have other objections, those can be stated in a response, just as the parties must always supplement any discovery if documents are discovered or obtained after the date of the initial disclosure.

Dispositive Motions

Generally, dispositive motions are ways to resolve the case without a full evidentiary hearing when the undisputed facts show that one of the parties should win as a matter of law. Often, these motions come in the form of either: 1) Motion to dismiss; and 2) Motion for summary judgment.

Presenting case during evidentiary hearing

Usually, the party obligated to carry the burden of proof will go first in presentation of evidence.

Speak and present to the Hearing Officer and avoid crosstalk with other parties or litigants.

Present clearly: Articulate your points in a structured manner, focusing on facts and evidence.

Prepare your case: Develop a concise presentation of your case, including an opening statement, presentation of evidence, and a closing argument.

Compile and organize evidence: Gather all necessary documents, witness statements, and other evidence. Mark exhibits to be used with witnesses and the basis for their admission as evidence in the hearing. Make sure you have additional copies for all parties and the hearing officer of all documents you intend to use as exhibits. All exhibits must be appropriately redacted or sealed to protect and exclude any confidential materials or Personally Identifiable Information (“PII”). PII is defined by KRS 61.931(6). Examples include a full name, social security number, or driver's license number, but can also include information that, when combined with other data, can trace an individual's identity, such as a date of birth, home address, or medical information. Respond appropriately: Be prepared to answer questions and respond to the other party’s arguments.

NOTE: Assignment to a Hearing Officer. Participants should be aware that different hearing officers may handle their administrative proceeding. Board staff typically handle pre-hearing conferences and assign the evidentiary hearing to a contract hearing officer but this process may vary depending upon KYPB scheduling constraints, conflicts of interest and other relevant considerations. It is permissible for the Board or the Executive Director to reassign a matter to a different hearing officer at any stage of the administrative proceeding as they may deem necessary and appropriate.

PERSONNEL BOARD PROCESS(ES)

The Personnel Board process typically consists of four (4) stages: the initial appeal stage, the pre-hearing stage, the evidentiary hearing stage, and the post-hearing stage.

- A. **Initial Appeal:** The first step in this process is for the state employee to file the appeal using the Appeal Form provided by the Personnel Board. In addition to classification and background information on the appellant, the Appeal Form must contain a short, plain statement describing the employment action being appealed and the reason for the appeal, i.e., identification of the statute, regulation, policy, or rule the employee claims the agency employer violated or misapplied. The appellant must attach to the Appeal Form a copy of the notice received from the agency employer describing the employment action taken against the employee and being appealed. The appeal form must be signed by the employee. The appeal form shall be considered filed upon receipt by the Personnel Board of all required materials. Any document or appeal form or attachment, especially those that are thirty (30) or more pages in length, must be organized (tabs/index/labels) in a way that allows the hearing officer to appropriately identify and interpret the document(s). The Personnel Board reserves the right to reject an appeal that does not include required information.

- B. **The second step in the appeal process is the pre-hearing stage.** This stage consists of one or more pre-hearing conferences held before a hearing officer, either virtually or in-person, which the parties are required to appear in order to discuss the issues in the appeal, both substantive and procedural, and to discuss the steps necessary to prepare the case for an evidentiary hearing. These hearings are usually thirty (30) minutes or less and the parties may attend telephonically unless instructed otherwise by the hearing officer. During these hearings, the hearing officer will lead the discussion, which may include (but would not be limited to) discussions involving discovery (process, deadlines and scope), briefing for dispositive motions, procedural disputes, filing deadlines, mediation dates for an evidentiary hearing, next steps in the appeal and other preliminary matters. During this stage of the case, the parties may engage in discovery, file dispositive motions, engage in mediation and informal settlement negotiations, discuss rules for the evidentiary hearing and take other necessary steps to prepare the case for an evidentiary hearing. The hearing officer shall rule on matters brought forth during the hearing and

memorialize any findings or rulings in an interim order, which shall be distributed to both parties. The hearing officer shall have the authority and discretion to schedule pre-hearing dates and times and other deadlines and limitations as the hearing officer deems necessary and/or expedient, subject to any limitations in KRS Chapter 13B, but should consider the time constraints, scheduling issues and other stated interests of all parties.

- C. **The third step in the process is the evidentiary hearing.** An evidentiary hearing is the legal proceeding wherein testimonial, documentary, and other evidence is presented to a hearing officer/administrative law judge to help them make a fair and informed decision about the appeal. Prior to the evidentiary hearing, there shall be at least one final pre-hearing conference convened to discuss evidentiary issues, motions in limine, the presentation of evidence, burden(s) of proof and any other relevant procedural matters. During an evidentiary hearing, each party may present witnesses and documents, subject to evidentiary rules and standards under KRS Chapter 13B, to support their Witnesses are generally required to appear in-person but may participate virtually upon agreement by all parties involved. Witnesses shall testify under oath and are subject to cross-examination. The hearing officer may rule on motions and objections, admit or exclude evidence, and otherwise preside over the conduct of the hearing. At the conclusion of the hearing, each party shall have the opportunity to present a closing statement, which shall not exceed twenty (20) minutes, unless specifically allowed to exceed that time limit by the hearing officer.
- D. **The fourth and final step occurs after the evidentiary hearing.** During this step, the parties may file exceptions (objections) to the hearing officer's recommended order and may request oral argument on one or more exceptions. The Board will consider the hearing officer's recommended order and the parties' exceptions before rendering a final order. Either party may appeal the Board's final order to the Franklin Circuit Court within

NOTE: It should be noted that not all appeals will consist of the same steps. Prior to an evidentiary hearing, the case may be resolved through settlement negotiations, mediation, dispositive motion practice, voluntary withdrawal or dismissal by the Hearing Officer due to failure to participate in the process as required by KRS Chapter 13B.

GLOSSARY OF TERMS

Initial Prehearing Conference- After the appeal is filed with the KYPB, its scheduling administrator will set an Initial Prehearing Conference before the hearing officer. The Initial Prehearing Conference will generally be held by telephonic conference, but parties and their representatives are welcome to also attend in person at the KYPB offices. Generally, during the Initial Prehearing Conference, the hearing officer will set discovery, briefing, and motions deadlines, schedule subsequent prehearing conferences or evidentiary hearing dates, and address other preliminary matters.

Prehearing conference- A prehearing conference is a meeting before a trial to prepare for the main hearing. The purpose of a prehearing conference is to ensure that the parties involved are ready for the trial and to resolve issues before the hearing.

Evidentiary Hearing- An evidentiary hearing is the legal proceeding where testimonial, documentary, and other evidence is presented to a hearing officer/administrative law judge to help them make a fair and informed decision. During an evidentiary hearing witnesses may testify under oath and are subject to

cross-examination. The hearing officer may rule on motions and objections, admit or exclude evidence, and otherwise preside over the conduct of hearing.

Adversarial proceeding- a case in which two opposing parties resolve a dispute through a neutral third-party decider. In the KYPB setting, this involves the employee (Appellant) v. their employing agency (Appellee), presenting their sides of the appeal to a hearing officer who listens to the parties' Motions and evidence and recommends a decision to the Board. The KYPB issues its Final Order after the parties have an opportunity to file exceptions to the hearing officer's recommended decision. Upon a motion and approval from the Board, litigants may be allowed to present oral arguments to the Board before it issues a Final Order.

Pro Se- The act of representing oneself in court *without the aid of an attorney*. While every litigant appearing before the KYPB may be represented by counsel, litigants are also permitted to represent themselves. Representing yourself comes with certain advantages but also comes with substantial risks.

Hearing Officer- Personnel Board hearings may be conducted by the full board or one (1) or more of the following: the executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the Board pursuant to KRS 13B.030. A hearing officer is a person who presides over proceedings to resolve disputes and claims involving government agencies. They work for state, local, and federal governments, and their duties include: Scheduling proceedings; Conducting hearings; Administering oaths and affirmations; Issuing legal decisions; Ensuring proceedings are fair and impartial; and facilitating negotiations. In Kentucky, hearing officers must complete 18 hours of initial training, including agency-specific training and training in KRS Chapter 13B.

Interim Order- An interim order is a temporary decision made by a judge or administrative agency while a case is ongoing. Interim orders can be issued while waiting for a hearing, trial, or final judgment. Interim orders are often issued to set litigation schedules, define or narrow the issues for trial, and identify standards and burdens of proof. KYPB review of its hearing officer's interim Orders are governed by 101 KAR 1:365 Section 6 (2).

Consolidation- The process of combining two or more legal actions into one case. The purposes of consolidation include promoting judicial efficiency when the cases have similar issues or the same witnesses and minimizing the risk of inconsistent judgments. 101 KAR 1:365 Section 6 (7) governs the KYPB process for consolidation.

Motion- A motion is a formal request made by any party for a desired ruling, order, or judgment. The party that makes the motion is known as the movant. A motion can be written or spoken, as the relevant rules require. Various motions can be made throughout a proceeding, but only after the appeal has been filed. A motion, request, or filing shall be in writing, filed with the KYPB through the office of the executive director, and *served on all parties*. 101 KAR 1:365 Section 6(1).

Dispositive Motion- Dispositive is an adjective that describes something that has the power to determine the outcome. A dispositive motion is a legal request to a trial court to end a case or part of it without a further trial. The motion asks the court to rule in favor of one party, ending the need for more proceedings.

Motion to Dismiss- A motion attempting to get the judge to dismiss a part of or the entire case. Some cases where this may be done include matters where there is not enough evidence, the appeal lacks a legal basis even if all the allegations are true, or the KYPB lacks appropriate authority to hear and decide a case.

Motion for Summary Judgment- A written request by a party asking the judge to decide the case without going to trial/evidentiary hearing, based on the argument that there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law; essentially, the court should rule in their favor based on the existing evidence without the need for an evidentiary hearing.

Jurisdiction- Jurisdiction is the power and authority of a court to adjudicate cases and issue orders. The KYPB's jurisdiction is derived from legislative grant of authority found in KRS Chapter 18A.

Burden of Proof- The burden of proof is the obligation of a party in a dispute to provide enough evidence to support their position. The standards governing which party must carry the burden of proof in KYPB appeals are found in KRS 13B.090.

Standard of Proof- The standard of proof is the amount of evidence needed to prove a claim in a legal proceeding. It's a measure of the degree of certainty required to establish proof. Generally, in KYPB proceedings, the standard of proof is by a preponderance of the evidence. Preponderance of the evidence means the evidence in the record must support the conclusion that it is more likely than not that the allegations are true. The statutory provisions governing the standard of proof in KYPB proceedings are found in KRS 13B.090.

Evidence- An item or information proffered to make the existence of a fact more or less probable. Evidence can take the form of testimony, documents, photographs, videos, voice recordings, test results, or other tangible objects. A hearing officer may exclude evidence because it is not relevant, it is hearsay, or it is otherwise inadmissible.

Relevancy- Legal relevance is when evidence has the potential to make a fact more or less likely to be true, and that fact is important to the case. Relevant evidence is generally admissible in court. Relevant evidence is probative in that it has the potential to prove or disprove a fact that's important to the case.

Discovery- Legal discovery is a pretrial process in which parties in a lawsuit exchange information to gather evidence. It's a crucial part of preparing for trial. Parties use discovery requests to ask the other side for relevant documents, testimony, or other information. Parties exchange information to learn what the other side plans to say and what evidence they have.

Request for Documents- Written requests to the opposing party for documents, electronically stored information, or other tangible items. This request is called a Request for Production (RFP). The responding party is required to furnish copies of any documents that are responsive to the request, except for those that are legally privileged or subject to some other relevant objection.

Interrogatories- Written questions that one party in a lawsuit sends to another party. The responding party must answer the questions in writing and under oath and subject to objections. Each party shall be limited to thirty (30) interrogatories, unless the Hearing Officer, after a motion or by stipulation of the parties, allows for a number in excess of thirty (30).

Requests for Admission- Written requests asking another party to admit that a fact is true or a document is authentic. The purpose of a request for admission is to clarify undisputed facts and narrow the issues that need to be proven at trial. Each party shall be limited to thirty (30) requests for admissions, unless the Hearing Officer, after a motion or by stipulation of the parties, allows for a number in excess of thirty (30).

Deposition- The recorded sworn oral testimony of a party or witness before trial. Depositions are used to explore the strengths and weaknesses of the opposing party's case. 101 KAR 1:365

Section 6(6) provides that during a KYPB appeal a deposition **may only be taken in extraordinary circumstances and upon authorization by the hearing officer**. After the hearing officer decides that extraordinary circumstances are present, a request to take a deposition **shall** be filed at least fifteen (15) calendar days prior to the scheduled hearing. An objection to the request **shall** be filed prior to the scheduled hearing.

Open Records Requests- Written requests to view or obtain copies of public records. The Kentucky Open Records Act allows any Kentucky resident to request nonexempt public records. It is important to note that a requestor must submit their request to the agency that holds the records they are requesting. For example, a requestor cannot get Energy and Environment Cabinet records with a request to the Justice and Public Safety Cabinet. Open records requests can be useful in litigation but they are not the same as discovery requests.

Objection- A legal challenge to a question or answer during litigation. Some common objections include (but are not limited to): relevancy; privilege; hearsay; speculation; lack of personal knowledge; and vagueness. Although not strictly binding, parties should refer to the Kentucky Rules of Evidence for guidance on allowable evidence and objections.

Subpoena- A subpoena or witness summons is a writ issued by a government agency, most often a court, to compel testimony by a witness or production of evidence under a penalty for failure to testify or produce. The KYPB has a subpoena form that the hearing officer will authorize for use by the parties to an appeal. Generally, an agency attorney **may** accept subpoena on behalf of employees over which it has control (employed by the Appellee agency). When a subpoena is disobeyed, any party may apply to the Circuit Court of the judicial circuit in which the administrative hearing is held for an order requiring obedience. KRS 13B.080(3).

Witness- Someone who, either voluntarily or under compulsion, provides testimonial evidence, either oral or written, of what they know or claim to know.

Witness and Exhibit lists- A *required* filing ahead of evidentiary hearing that lists a party's witnesses and evidence that they expect to present during the evidentiary hearing. The purpose of the list is to ensure that both parties are prepared and that the trial is fair. Generally, the lists are required to be filed with the KYPB (and served on opposing parties) ten (10) days to two (2) weeks before the evidentiary hearing. Failing to properly designate and describe witnesses and exhibits may lead to preclusion of that evidence. If you intend to testify on your own behalf, you should be on the witness and exhibit list.

Written Stipulations of fact- A stipulation of fact is a binding voluntary agreement between parties that establishes the truth of certain facts. Stipulations of fact are used to limit the scope of a trial by removing undisputed facts from consideration. This saves time and makes the evidentiary hearing process more efficient.

Testimony- a statement made under oath by a witness in a legal proceeding. It can be written or oral and is used as evidence in court.

Exhibits- A physical or documentary piece of evidence that is presented in an evidentiary hearing. Examples of exhibits include photographs, video recordings, policy statements, position descriptions, contracts, medical records, transcripts of interviews, letters, and emails. 101 KAR 1:365. Section 7 requires that a party to a KYPB appeal **shall** provide at least four (4) copies of an exhibit that is to be introduced as evidence.

Settlement- A legal settlement is a voluntary agreement between parties that ends a dispute and resolves an appeal. It's a legally binding contract that outlines how the parties will conclude the matter. An agreed settlement in a KYPB appeal **shall** be submitted in writing for review by the Personnel Cabinet Secretary and final action by the board pursuant to 101 KAR 1:365 Section 6 (8).

Mediation- An informal process in which a neutral third person called a mediator facilitates the resolution of a dispute between two or more parties.

Post hearing or Closing Briefs- Written arguments that summarize the key points of a case and persuade the reader to adopt a favorable interpretation. They are most often written after an evidentiary hearing or trial.

Findings of Fact- Written statements that summarize the facts that a hearing officer determines to be true in a case. They must be based on evidence presented at a trial. The findings of fact support a judgment, provides context for the court's reasoning, and resolves the factual disputes in an appeal.

Conclusions of Law- A hearing officer's ruling on a legal question presented during an evidentiary hearing. It's a decision about which laws apply to a case and how they apply.

Recommended Order- A decision made by an administrative law judge or board agent that includes findings, conclusions, and recommendations. It can also include proposed rulings on motions, rulings on evidentiary matters, and remedies. Parties have fifteen (15) days to file written exceptions to the recommendations and request oral arguments.

Exceptions- A written objection that a party files to a hearing officer's recommended order. The exception may include a proposed draft final order that outlines the relief the party is requesting.

Oral Arguments- Presentations made to the KYPB, where litigants or their representatives can highlight key legal points and answer questions from the board. Exceptions are a part of the decision-making process for a case. It is important to note that litigants are prohibited from introducing new facts or new legal arguments during oral arguments.

Final Order- A binding Order issued by the KYPB after the opportunity for litigants to file exceptions and present oral arguments has passed. KYPB Final Orders are subject to judicial review by Circuit Court in accordance with to KRS 13B.160.

Intervenor: An intervenor (or intervener) is a third party—not originally named in a lawsuit—who voluntarily enters an ongoing legal proceeding because they have a personal stake or significant interest in the outcome. They join as a plaintiff or defendant to protect their rights by filing a motion to intervene

Frequently Asked Questions (FAQs)

Can I bring someone to help me in pre-hearing conferences or evidentiary hearings?

While non-lawyers are prohibited from representing you, you can bring someone for moral or logistical support. However, they cannot speak on your behalf in an administrative proceeding, including during pre-hearing conferences.

Generally, and unless actively testifying, named Witnesses are excluded from evidentiary hearings. However, the agency may have an agency representative who is not excluded and who also may also testify.

What should I do if I can't understand a legal term or procedure?

The Board always reminds litigants that they are entitled to have private legal counsel represent them if they so choose. However, if you don't have a private attorney, you must utilize all available resources, including legal dictionaries, online legal help resources, and local law libraries. Don't hesitate to ask court staff for clarification on procedural questions but remember they are very limited in what they can say and **they cannot and will not provide legal advice.**

What do I need to bring to the Initial Pre-hearing Conference?

You are not required to bring anything with you to the prehearing conference. However, it is advisable that you bring something to take notes on and your calendar so that you can set future litigation deadlines that work with your schedule.

What's the best way to stay organized with my legal documents?

Maintain a detailed file with sections for different types of documents (e.g., correspondence, filings, evidence). Keep a log of all legal activities, including dates, to stay on track.

How do I get a copy of my official Personnel file?

Any employee or former employee can request a copy of their personnel file by making an open records request to the custodian of records for the Kentucky Personnel Cabinet.

Email: PERSOOpenRecords@ky.gov
Fax: 502.564.7603

For Mail or hand-delivery:
Attn: Custodian of Records
Kentucky Personnel Cabinet
Office of Legal Services
501 High Street, 3rd Floor
Frankfort, KY 40601

How long will my appeal take?

Because thorough litigation is effortful and time consuming, the parties often want more time than they first expect to get ready for evidentiary hearing. Therefore, the appeals process is generally measured in months and years rather than days and weeks. For example, the discovery stage alone of litigation generally takes at least ninety (90) days for parties to request and then complete responses to requests. Parties are required to work with one another to resolve discovery requests and often they need additional time to do so. After discovery, parties often want time to file and respond to dispositive motions. On the other hand, some appeals have fatal flaws, like being filed outside of the time allowed for appeal, and therefore those cases may proceed to final order more quickly. It is only safe to say that each case is unique, with a unique set of facts, circumstances, witnesses, and legal posture and therefore each appeal has its own timeline.

Can I file legal documents electronically?

At the Kentucky Personnel Board pleadings, motions, notices and other filings may be submitted by emailing them to PersonnelBoard@ky.gov. However, it is very important to note that any document filed with the Personnel Board shall also be served on the opposing party.

How do I serve legal documents to the opposing party?

Generally, by agreement of the parties, notices, pleadings, motions, and discovery requests and responses can be exchanged electronically by email.

How do I request an extension if I need more time?

First- you must talk at the earliest possible time to the other side and see if they object to a continuance.

Only if the other side has failed to agree to your request for continuance, file a written motion requesting an extension (typically called a motion for a continuance), clearly stating your reasons, including proposed dates for rescheduling the hearing. A continuance of a scheduled hearing **may** be granted by a hearing officer for good cause. This should be done as early as possible and is subject to the judge's approval. The procedures for requesting continuances in front of the PB are found at 101 KAR 1:365 Section 5

What if my deadline for discovery or motion practice falls on a weekend or legal holiday?

Generally, deadlines for discovery and motion practice that fall on a weekend or legal holiday are extended to the end of the next day which is not a Saturday, a Sunday or a legal holiday.

What if I miss a deadline for filing a document?

Missing a deadline can have serious repercussions, including the dismissal of your case. If you miss a deadline, file the document as soon as possible and request a hearing to explain the delay to the hearing officer.

Can I appeal if I lose my Personnel Board appeal?

Yes, but there are strict deadlines and procedures for filing a request for judicial review with Circuit Court. You should seek legal representation to understand the requirements for appealing any Final Order of the Personnel Board. The authorization for judicial appeals of Final Personnel Board Orders is found at KRS 13B.140.

Can the Evidentiary hearing be held by zoom or may any of the witnesses testify remotely?

If each party agrees, a hearing officer **may** conduct all or part of an administrative hearing, or a prehearing conference, by telephone, television, or other electronic means, if each party to the hearing has an opportunity to hear, and if technically feasible, to see the entire proceeding as it occurs. KRS 13B.080 (7)

Attachments:

Example: KYPB Appeal Form

Example: Requests for Discovery



APPEAL FORM

For Official Use Only

***** ALL APPEALS TO THE PERSONNEL BOARD MUST BE ON THIS FORM. *****

This appeal to the Kentucky Personnel Board is hereby filed pursuant to the provisions of KRS Chapter 18A. By law, you are required to provide the following information in order to file a Personnel Board appeal.

PERSONAL INFORMATION

Name: _____
(Last First Middle Maiden)

PERNR or Employee ID: _____

CONTACT INFORMATION

Personal Phone No.: _____ Workstation Phone No.: _____

Personal Email Address: _____

Home Address: _____
(Street City State Zip)

Workstation Address: _____
(Street City State Zip)

Check if being represented by an attorney, and complete the following:

Attorney Name: _____ Phone No.: _____ Email: _____

Mailing Address: _____
(Street City State Zip)

CABINET/AGENCY INFORMATION

Cabinet/Agency Name: _____

Appointing Authority Name: _____

APPEAL INFORMATION

Date of receipt of notice of alleged action (i.e., Agency letter of dismissal, suspension, demotion, etc.), if applicable. If you did not receive a notice, please use "n/a" to indicate that you did not receive written notice about the alleged action and then please indicate the date you first learned about the matter you wish to appeal:

Please attach a copy of any written notice that you have received relating to this Appeal.

I am a: Classified Employee Probationary Employee Unclassified Employee Applicant for Employment

I am appealing the following action(s) [Check all that apply.]

- Dismissal Demotion Involuntary Transfer Suspension
 Promotion/Non-selection Discrimination: (i.e., religious, race, color, national origin, sex, age over 40, disability, political, or other protected category. **Please circle the type(s) of discrimination claimed and/or explain other, below**)
 FFTL claim(s) Veteran's claim(s) Employee Evaluation Other/Claim not listed:

Please further explain your claim(s), if not adequately/fully identified above: _____

List the specific statute, regulation, and/or policy that was allegedly violated (required, pursuant to KRS 18A.095(14)(d)):

KRS 18A.095 101 KAR 1:345 101 KAR 1:400 101 KAR 2:095 101 KAR 2:102 101 KAR 3:050

Other: _____

The following is a short, plain, and concise statement of the facts, cause, and/or reason that relate to the action I am appealing (You may submit documents you believe to be important to your appeal now AND/OR as your appeal moves forward). **Remember you may only have thirty (30) calendar days to appeal the alleged action.**

SIGNATURES

Signature

Date

Attorney's Signature (if applicable)

Date

This form is to be mailed, emailed, or delivered to:

**Kentucky Personnel Board
1025 Capital Center Drive, Suite 105
Frankfort, KY 40601
Phone: (502) 564-7830
Fax: (502) 695-5799
PersonnelBoard@ky.gov**

For Official Use Only

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. _____**

APPELLANT

VS.

APPELLANT'S REQUEST FOR DISCOVERY

APPELLEE

Comes now the Appellant, _____, *pro se*, and hereby submits this discovery request and requests that the Personnel Board order the Appellee, _____, to produce to the Appellant copies of the following specified documents:

1. _____
_____ .
2. _____
_____ .
3. _____
_____ .
4. _____
_____ .
5. _____
_____ .

- 6. _____
_____.
- 7. _____
_____.
- 8. _____
_____.
- 9. _____
_____.
- 10*. _____
_____.

(*If the Appellant has more than ten (10) documents they wish to have produced, please feel free to add additional pages.)

Respectfully submitted,

APPELLANT, *PRO SE*

Copies hereof mailed this _____ day of _____, 20__.

Personnel Board
1025 Capital Center Drive, Suite 105
Frankfort, KY 40601

Counsel for Appellee

APPELLANT, *PRO SE*