

# ARKANSAS STATE CLAIMS COMMISSION

## RULES

The following General Rules of Practice and Procedure before the Arkansas State Claims Commission are adopted in accordance with Act 462 of 1949 as amended and Ark. Code Ann. §19-10-201 *et seq.*

### GENERAL INFORMATION

The Commission shall designate the Director of the Commission. The Commission may appoint as many parties as necessary to effectuate the operations of the Commission and as may be authorized by appropriation by biennial appropriation of the General Assembly.

#### **Rule 1.1 Scope of Rules**

These general rules shall govern practice and procedure before the Arkansas State Claims Commission in proceedings under Act 462 of 1949 as amended and Arkansas Code Annotated § 19-10-201 *et seq.*, passed by the General Assembly of the State conferring the existence, composition, powers, duties and jurisdiction upon the Commission, unless otherwise directed by the Commission in any proceeding.

#### **Rule 1.2 Liberal Construction**

These rules and regulations shall be liberally construed to secure a simple, just and expeditious method for the consideration of claims against the State that because of the provisions of Article 5, Section 20 of the State Constitution cannot be determined in the regular courts of the State; and to provide for proceedings in which the State has a special interest.

#### **Rule 1.3 Information, Special Instructions**

Information as to practice and procedure under these rules and instructions supplementing these rules in special instances will be furnished upon application to the Director of the Claims Commission.

#### **Rule 1.4 Office of the Commission, Business Hours**

The principal office of the Arkansas State Claims Commission is in Little Rock. The office will be open during business hours each day between 7:30 a.m. and 4:30 p.m. (4:00 p.m. on Friday). Filings are accepted no later than 3:30 p.m. Monday - Friday. Legal holidays, those special holidays by proclamation of the Governor, Saturday and Sunday are excepted.

#### **Rule 1.5 Communications and Pleadings Generally**

(a) **How Addressed.** All communications should be addressed to the Commission as follows: Arkansas State Claims Commission, 101 East Capitol Avenue, Suite 410. Little Rock, AR 72201-3823

(b) **Complaint Form and Contents.** All claims filed with the Commission must be typewritten, printed or legibly written on forms provided by the Commission office. The original copy must be filed with the Commission office within the statutory time limits for filing. **If attachments to the provided forms exceed six (6) pages, three copies of each attachment must be submitted.** The date of receipt in the Commission office and not the date of deposit in the mail is determinative. (See "j." Defective Complaints)

(c) **Numbers Assigned to Complaint.** The Director of the Commission shall assign to each proceeding filed a claim number consisting of the year filed, title descriptive of the type of claim, which number and title will be placed on all notices issued, orders made and subsequent papers filed in each proceeding.

(d) **Cause of Action to be Stated.** Each complaint filed with the Commission must state a cause of action against the State in ordinary and concise language.

(e) **Monetary Damages Stated.** A demand for monetary damages must be perfected in the complaint, if known. An itemized outline of the damages sought and the overall total claimed in monetary figures is required prior to a hearing on the merits of a claim.

(f) **Specific Agency Named.** The specific agency, board, Commission, or institution of the "State" must be stated within the complaint and all known officers and/or agents of the State named.

(g) **Notary Seal Required.** Each complaint filed with the Commission must bear the seal and signature of a Notary Public.

(h) **Attorney's Signature.** If a party is represented by an attorney, each complaint, pleading or paper of such party shall be signed in ink by one such attorney whose address and phone number shall be stated. The signature of an attorney constitutes a certificate by him that he has read the pleading, document or paper; that he is authorized to file it; that to the best of his knowledge, information and belief there is good ground for it; and that, with respect to a complaint, he files it with the distinct knowledge and specific consent of his client. The complaint shall have the seal of a Notary Public affixed.

(i) **No Attorney.** A complaint, pleading or paper not signed by an attorney must be signed in ink by the Claimant with the address and phone number stated. The facts alleged in the pleading must be verified by the seal and signature of a Notary Public. Any pleading, complaint or paper filed on behalf of a corporation or other organization must be verified by an executive officer of such corporation or organization and have the seal of a Notary Public affixed.

(j) **Defective Complaints.** In any complaint when, upon inspection, the Commission is of the opinion that the complaint, document or pleading tendered for filing does not comply with these rules, does not sufficiently set forth required information or is otherwise insufficient, the Commission may decline to accept the complaint, document or paper and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require the deficiency be corrected. Simple "receipt" in the Commission office in no way implies an attempted claim as been "filed" with the Commission. The decision to accept or decline for filing an attempted, but deficient, claim is solely that of the Commission.

### **Rule 1.6 Meeting of the Commission**

General meetings of the Commission for the purpose of hearing testimony and taking evidence will be held each month unless scheduled differently by the Commission Chair or Commission Director.

### **Rule 1.7 Special Meetings**

Special meetings of the Commission may be held upon request by the interested parties.

### **Rule 1.8 Meeting Place of the Commission**

The Commission traditionally will meet in Little Rock, but may conduct hearings elsewhere in the State if the Commission deems such hearings relative to business before the Commission.

### **Rule 1.9 Duties of the Director**

(a) The Director shall maintain a system of filing and adjudicating of claims against the State. The Director shall keep a docket of all claims filed and shall present them to the Commission in a chronological order of filing in which they are received. The Director shall be responsible for maintenance and custody of the docket; files and records of the Commission, including the transcripts of testimony and exhibits, with all papers and requests filed in proceedings; the minutes of all actions taken and all of the Commission's findings, determinations, opinions, reports, orders, rules and regulations.

(b) The Director shall prepare the docket of claims to be considered by the Commission and shall, if at all possible, notify all parties of record of the time, date and place of hearing on a contested claim not less than ten (10) days prior to the date of such hearing. In most instances, the Director

will attempt to notify all parties at least two (2) months in advance when a claim will be docketed for hearing before the Commission.

(c) The Director or any member of the Commission shall have the authority to administer oaths, to subpoena witnesses, to examine any books, documents or records that may be relevant to any proceeding before the Commission and to require the production of any such materials.

(d) All orders and other actions of the Commission may be authenticated or signed by the Director as authorized by the Commission.

#### **Rule 1.10 Duties of Official Reporter**

The Official Reporter shall take all oral testimony before the Commission on a recording device. Said testimony will be made available for transcription at the request and expense of interested parties.

#### **Rule 1.11 Definitions**

The term "*Act*," unless the context otherwise indicates, shall mean any code or Act of the General Assembly which the Commission administers in whole or in part.

The term "*Claimant*" shall be the plaintiff bringing a claim against the State.

The term "*Respondent*" shall be the specific agency, board, commission or institution of the State a claim is lodged against.

The term "*Commission*" means the five-member panel appointed to serve as Commissioners.

The term "*claim*" means a claim authorized to be heard and considered by the Commission.

The term "*disability benefit claim*" applies to all claims filed by the governmental employees covered in Arkansas Code Annotated §21-5-701 et seq, disabled in the official line of duty and no longer working in the position held at the time of the disabling injury.

The term "*death benefit claim*" applies to all claims filed by the surviving spouse and/or dependent children of any policeman, fireman, State Highway Department employee engaged in road construction or highway maintenance, constable, game warden or others as specified in Arkansas Code Annotated §21-5-704 et seq., killed in the official line of duty.

The term "*approved claim*" is a claim found by the Commission to be one that should be paid and has received a favorable recommendation by the Respondent Agency and the Commission.

The term "*award*" means the amount recommended by the Commission to be paid in satisfaction of an approved, but contested, claim.

The term "*assumed receipt*" means within three (3) days of the date material left the Commission office.

### **PLEADING SPECIFICATIONS**

#### **Rule 2.1 Form of Claims**

Each claim shall have a statement of facts sufficiently clear to identify the Claimant, the Respondent state agency or agencies, the circumstances giving rise to the claim and the amount of monetary damages sought. The Commission reserves the right to require further information before hearing the claim when, in its judgment, justice and equity may require additional information. The original copy of each claim form must be filed with the Commission.

**Rule 2.2 Responsive Pleadings**

Within thirty (30) days from the date that a claim has been served upon the Respondent agency, the Respondent shall file its responsive pleadings in original and three copies, unless granted an extension by the Director.

**Rule 2.3 Filing of Motions (After Hearing on Merits of Claim is Scheduled)**

Unless the Commission directs otherwise, all motions filed by the parties after a hearing has been scheduled shall be filed at least fifteen (15) calendar days prior to the date of hearing.

**Rule 2.4 Filing of All Motions (After Claim Filed)**

Unless the Commission directs or permits otherwise, all motions shall be filed within thirty (30) days upon service of the complaint.

**Rule 2.5 Consideration of Motions with Oral Arguments**

The Commission may, at its discretion and with proper notice to the parties, set a hearing for oral arguments on a claim motion.

**NOTICE OF HEARINGS, SUBPOENAS, DEPOSITIONS**

**Rule 3.1 Notice of Hearing on Merits of Claim (Not Motion)**

The Director shall issue all notices of hearings and other process as may be directed by the Commission. All notices of sessions and hearings shall be served upon the parties and such other interested parties as may be entitled to receive notice and shall show the date, time and place of the hearing with at least two (2) months advance notice when possible. All hearings before the Commission shall be open to the public and the press.

**Rule 3.2 Subpoenas**

(a) Subpoenas requiring the attendance of a witness, from any place in the State, at any designated place of hearing for the purpose of taking the testimony of such witness orally before the Commission, may be issued by the Director or any Commission member. Subpoenas for the production of books, accounts, records or related documents, unless directed to be issued by the Commission upon its own motion, will only be issued at the discretion of the Commission which shall state as nearly as possible the information desired to be produced and the purpose of their production. No subpoenas shall be issued by the Commission unless the applicant therefore first establishes a proper relation to the matter, provides the names and addresses of all witnesses for whose attendance the power of the Commission is invoked, and can be **issued within the time periods required by law** prior to Commission hearings.

(b) **Service.** The original subpoena shall be exhibited by those requesting the subpoena or their agents to the person served and shall be read to him if he is unable to read and a copy thereof shall be delivered to him by the person making service.

(c) **Return.** If service of a subpoena is made by an officer of the County Sheriffs Department in which a witness resides, such service shall be evidenced by his return thereon. The original

subpoena, bearing or accompanied by the required return, affidavit, statement or acceptance of service, shall be returned forthwith to the Director of the Commission.

(d) **Witness fee.** A witness who is summoned and responds thereto is entitled to the same fee as is paid for like services in the courts of the State of Arkansas, such fee to be paid by the party at whose instance the testimony is to be taken at the time the subpoena is served.

### **Rule 3.3 Depositions**

The testimony of a witness may be taken by deposition at the instance of any party in any proceeding pending before the Commission, or at the instance of the Commission. All depositions shall be taken and filed with the same formalities and notice as are required in instances where depositions are taken for use in Arkansas courts of law and equity, unless taken by consent.

## **HEARINGS**

### **Rule 4.1 How Hearings are to be Conducted**

The Commission, while not bound by the formal rules of evidence as stated in Arkansas Code Annotated §19-10-201 et seq., has adopted where applicable the procedure used by the Arkansas Circuit Courts and its hearings shall be conducted in a judicial nature. Because the Commission is a fact-finding body for the General Assembly, the simplification and defining of the issues in question before the Commission is encouraged prior to hearing. The propriety of prior mutual exchange of testimony, exhibits or such matters that may be stipulated for the purpose of clarification, amplification or limitation is strongly encouraged.

### **Rule 4.2 Pre-hearing Conferences**

If the interested parties prior to the hearing of a claim on the merits are unable to agree upon the facts or issues or cannot stipulate the questions of fact in issue, the Commission will arrange a pre-hearing conference to rule upon Motions pending or determine the evidential value to assist the parties in determining the factual basis of a claim.

### **Rule 4.3 Appearances**

Any individual may appear for himself in his own behalf or have his claim presented by counsel, duly admitted as such to practice law in the State of Arkansas. Any individual who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as qualified counsel entitled to practice before the Commission.

### **Rule 4.4 Witness Examination, Order of Procedure**

No witness will be allowed to testify unless a list of the names of any and all witnesses is furnished to the Claims Commission office and the opposing party or parties seven (7) days prior to the scheduled hearing on the merits of a claim, without leave of the Commission and upon a showing of good cause. Witnesses will be orally examined under oath before the Commission unless their testimony is taken by deposition. The procedure of direct and cross-examination of a witness shall be the same as in courts of law and equity unless the Commission directs otherwise. After questioning under direct and cross-examination, the Commission members may question the witness to ascertain any points or facts. The order of presentation may be varied by the Commission Chair, who may designate the order of witness presentation in any type of proceeding.

**Rule 4.5 Evidence, Admissibility Generally**

Any evidence which would be admissible under the general code of the State of Arkansas, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the State, shall be admissible in hearings before the Commission. The formal rules of evidence shall be applied to any proceeding to the end that needful and proper evidence shall be conveniently, inexpensively and speedily produced. The Commission may, at its own discretion, deviate from the formal rules of evidence whenever it deems necessary to ascertain all pertinent facts in any proceeding.

**Rule 4.6 Evidence, Cumulative Restriction**

The Commission reserves the right to limit the number of witnesses whose testimony may be repetitious and cumulative.

**Rule 4.7 Evidence, Exhibits**

No documents will be allowed into evidence unless an original and three (3) copies are provided to the Claims Commission office and additional copies are exchanged by the parties seven (7) days prior to the scheduled hearing of a claim, without leave of the Commission and upon a showing of good cause. Material and relevant matter offered in evidence at hearing will be received by the Commission after inspection by the opposing party and shall be designated as an exhibit by the Claimant or Respondent and received accordingly as introduced by the Commission Director. The Commission or its designee will designate each exhibit tendered with the appropriate number in the order as introduced. A reasonable number of copies shall be furnished to counsel for the opposing party at the hearing. Exhibits should not be argumentative and should be limited to statements of acts, and be relevant and material to the issue, which can better be shown in that form than by oral testimony. Documents introduced as exhibits become property of the Commission but may be returned to the interested parties upon request if so deemed by the Commission.

**Rule 4.8 Briefs, Time for Filing**

In a claim which has been the subject of hearing, the Commission may desire briefs or when good cause for the submission of briefs is shown by the interested parties the Commission may allow briefs to be submitted on points and at times as ordered by the Commission.

**Rule 5.1 Continuances**

After claims have been scheduled for hearing, continuances will be granted only upon showing of good cause by the party moving for a continuance as determined by the Commission or Commission Director.

**Rule 5.2 Dismissal of Claims**

The Commission, at its own discretion, shall dismiss claims with or without prejudice for failure to prosecute.

**Rule 6.1 Conclusion and Submission to Commission**

Upon the conclusion of all testimony and evidence-taking the Commission shall consider the claim submitted for decision, unless time has been granted for submission of additional materials.

**Rule 7.1 Re-Hearing/Reconsideration**

Petitions for Re-Hearing and/or Motions for Reconsideration will only be entertained if they set forth new or additional evidence which was not available to the moving party at the time of the scheduled hearing. Such petitions for Re-Hearing or Motions for Reconsideration shall be filed with the Commission within 40 days from the date of the assumed receipt by parties to the claim of the Commission's findings and determinations. No claim which was contested at hearing and requires subsequent action by the General Assembly will be forwarded to that body within the aforementioned 40 day period without the written approval of the Claimant(s) and Respondent(s).

**Rule 8.1 Application of Rules of Civil Procedure**

The Rules of Civil Procedure as adopted by the Circuit Courts of the State of Arkansas will apply in the Arkansas Claims Commission unless the Rules of Practice and Procedure of the Arkansas State Claims Commission are to the contrary in which cases these rules shall take priority. Two exceptions adopted by the Commission are: a) The Claims Commission staff shall prepare all subpoenas for service by the requesting party, and b) With respect to interrogatories and document production requests, there shall be filed with the Claims Commission one copy of any request(s) and four (4) copies of any response(s).