



OKLAHOMA



CIVIL SERVICE DIVISION

OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
HUMAN CAPITAL MANAGEMENT

Complaint Packet

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About this packet

Please take the time to review this packet once you file your complaint with the Civil Service Division (CSD). Our administrative court proceedings are an expedited process, and CSD will have 30 business days from the date of initial filing to resolve your complaint.

Contact information

Civil Service Division
2501 N. Lincoln Blvd.
Oklahoma City, OK 73105
Phone: 405-522-1200
Email: civilservicedivision@omes.ok.gov
Website: oklahoma.gov/csd

References

[Civil Service and Human Capital Modernization Act – State Employee Dispute Resolution Program.](#)

[Oklahoma Administrative Code, Title 260 – Office of Management and Enterprise Services,
Chapter 130 – Civil Service and Human Capital Modernization Rules:](#)

- Subchapter 3 – State Employee Dispute Resolution Program.
- Subchapter 5 – Jurisdiction, Rights and Processes.
- Subchapter 7 – Hearing Process.

[2021 Oklahoma Statutes: 75 O.S. § 317.](#) Rehearing, reopening or reconsideration of agency decision.

Interpreting services

If an interpreter is needed, inform the Civil Service Division immediately and one will be provided.

Neutrality of mediators and administrative law judges

Your mediator has not worked for the employing agency within the last 20 years. As per OAC 260:130-3-4, “The Civil Service Division may approve a mediator who is a former employee of the employing agency if the former employee has not worked for the employing agency for a period of twenty (20) years and has no knowledge of or relationship to the parties involved in the complaint.”

Your administrative law judge (ALJ) is an independent contractor or has been assigned by the Office of the Attorney General. They are licensed to practice law in Oklahoma and are in good standing with the Oklahoma Bar Association. OMES Human Capital Management and the Civil Service Division of OMES shall use administrative law judges as independent contractors or administrative law judges provided by the Office of the Attorney General to exercise the provisions of this act. (62 O.S. § 34.301(B)(4))

Right to a representative

Representative refers to the designated attorney of record, who shall be licensed to practice law in the State of Oklahoma, identified in the complaint petition or through an entry of appearance or other written means, acting on behalf of a party.

An individual other than an attorney licensed to practice law in Oklahoma may act as the representative of the party if approved by the mediator or administrative law judge.

- Each party to the complaint may have a representative accompany him or her to mediation. Representatives will be expected to take an active role in mediation but will not be allowed to interrogate or question any party.
- Each party to the complaint may have a representative accompany him or her to a prehearing conference and hearing.
- Each party to the complaint may have a representative submit documents and summaries for him or her for the purposes of conducting an administrative law judge review.
- Pursuant to OAC 260:130-3-2(i), a complainant who is not represented by an attorney licensed to practice law in the state of Oklahoma will first participate in mediation before proceeding to a hearing. This provision shall only be applicable for complaints that are entitled to a hearing, such as termination, suspension without pay, involuntary demotion or punitive transfer.
NOTE: Pro Se complainants who do not wish to attend mediation may opt to have their action heard by an administrative law judge via a bench review.

Filing a complaint

You must file your complaint [online](#) with the Civil Service Division within 10 business days of when the disciplinary action was issued. Hearings must take place within 30 business days from the filing of the complaint. (62 O.S. § 34.301(C))

Late complaints will be dismissed or denied as untimely filed.

Withdrawing a complaint

If you decide you no longer want to pursue your complaint, email your written request to civilservicedivision@omes.ok.gov.

Reviewing documents uploaded to your complaint account

When a new document has been generated regarding your complaint, it is uploaded to your online complaint account that you created when you filed your complaint. You will receive an email notification that a new document has been uploaded to your account. The email will have an attachment with instructions on how to view the new documents. Due to the sensitivity of the uploaded documents, they will not be emailed directly. You must log back into your account, navigate to the User Summary screen, select the complaint number you currently have active and scroll down to the supporting documents section. You can download the uploaded documents for use in your case proceedings. You can upload new documents that you would like to have considered by the agency or the administrative law judge.

Scheduling order

A scheduling order is a notice with the dates scheduled by the CSD court to resolve your complaint. It is a court order setting certain dates for mediation, prehearing conference and hearing. Your scheduling order will be uploaded to the online complaint petition portal you created when you filed your complaint.

Failure to appear

A complaint petition or an issue in the complaint petition may be dismissed if you fail or refuse to appear for a scheduled meeting. (OAC 260:130-5-9 (a))

However, if your failure to appear is due to an extraordinary circumstance, please notify the Civil Service Division immediately. If there is time within the 30-business-day time limit, we may be able to reschedule your appointments.

Continuances

If a different time or date of a scheduled appointment is needed and good cause can be shown, submit a written request for a continuance to the Civil Service Division. The request must be received in writing at least three days prior to the scheduled appointment and shall contain a justification for the postponement **as well as a statement of agreement or disagreement by the other party**. CSD will notify the parties if the request has been granted, and amended scheduling orders will be prepared and filed in the case.

If an emergency arises immediately before the scheduled appointment and a party is unable to attend, they can call or email to notify CSD; however, a request for a continuance must be made in writing.

A request for a continuance that extends the 30-business-day limit to address a complaint will not be granted.

Preparing for mediation

If your complaint involves a written reprimand or punitive transfer, then you will have a mediation appointment scheduled. The only process for resolving a complaint about a written reprimand is through mediation unless the matter involves state employees employed to perform duties as outlined in House Bill 1138. Complaints about punitive transfers must go through mediation before being able to move on to the hearing process. Mediation is also an available option for other types of complaints. Mediation is an opportunity to be involved in the decisions surrounding your complaint—an opportunity that you will not have during the hearing process since the administrative law judge will decide for you.

If you are required to attend a mediation session or voluntarily selected mediation on your complaint form, your scheduling order will give you the date, time and location of your mediation session. This is an informal process, where you will be sitting at a table with agency representatives to discuss solutions to resolve your complaint. The mediator will explain the rules of mediation, provide all parties the opportunity to tell their stories, help clarify the issues and help identify possible solutions. The parties will have to explain their perspectives, listen carefully to the other side, help generate possible solutions and select from the different options, on which both parties agree, to reach a mutual settlement.

Before the mediation, you must provide a proposed settlement offer and the agency will provide the same. If you do not have your proposed settlement offer prepared before the mediation, the mediator will have you do that before the mediation begins. Your mediator is a neutral third party that will help facilitate a conversation between the two parties and will help the parties develop a mediation agreement.

Mediation is confidential and not open to the public. Anything discussed in mediation is confidential and all notes taken during the mediation will be shredded. Mediation sessions can only be attended by two people (you and a representative if you have one). The mediation agreement is a legally binding document and is enforceable in a court of competent jurisdiction. Sessions are conducted at a location deemed appropriate by the Civil Service Division. Please review your issued scheduling order for specific location details.

Preparing for administrative law judge review

An administrative law judge review requires no attendance at appointments. Your scheduling order will tell you the date you have to have all your documents submitted.

To prepare for your review, you need to provide a detailed explanation of your case. You also need to provide any documentation to prove your case. These documents should be uploaded to your online complaint petition account you created when you filed your complaint. The agency uploads their documents to the online complaint petition so you can review them. The ALJ will submit their final orders based on the documents you submitted within 10 calendar days.

Prehearing conference

Every complaint going to a hearing starts with a scheduled prehearing conference. Check your scheduling order for the time and date of the conference, held through Microsoft Teams. If you are unable to attend online, your meeting reminder will have a dial-in number option. At this meeting, the ALJ reviews the prehearing conference statements provided by both parties, makes any motions or rulings in regard to what will be allowed at the hearing and issues orders for the witnesses and documents that will be allowed to be presented at the hearing. The conference will be recorded.

Preparing for prehearing conference

Each party must be present, on time and prepared. Your failure to do so may result in dismissal of your complaint unless extraordinary circumstances exist and are shown. By the close of business on the day prior to the prehearing conference, each party shall file with the Civil Service Division and provide to each other party and the ALJ a copy of:

1. A brief statement of their respective case with a list of stipulations and requested remedy.
2. The names of the witnesses allowed at the hearing and their contact information.
3. A description of the documents and exhibits allowed at the hearing and a copy of each document and exhibit to be offered. (OAC 260:130-7-1 (b))

If you have an attorney, your attorney will submit the prehearing conference statement for you. If you are pro se (representing yourself), you will be required to submit the prehearing conference statement yourself.

Your scheduling order gives the date and time of your prehearing conference and where to download the [prehearing conference statement form](#) from the Civil Service Division webpage. You must provide the prehearing conference statement **by close of business on the day prior** to your prehearing conference by uploading it to your online complaint portal.

At the prehearing conference, the ALJ will make rulings and grant motions that involve conduct at the hearing. After the prehearing conference is concluded, the ALJ will issue orders that will state which witnesses and documents will be allowed at the hearing.

Witnesses

Per OAC 260:130-7-4 (f), the witnesses allowed at the hearing are limited to:

1. Human Resources director or designee.
2. Supervisor.
3. Employee bringing the complaint.
4. Additional witnesses approved by the ALJ.

The administrative law judge does have the discretion to approve additional witnesses if they prove to be relevant. If you are requesting an additional witness, you must prepare and submit a request for the additional witness prior to the prehearing conference. You list the witness's name, contact information, and why they are important to proving your case. Prepare this document in addition to the prehearing conference statement that is required. The administrative law judge will hear your request during the prehearing conference and will decide to approve or deny the additional witness.

Access to disciplinary records for hearing

Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, Oklahoma Open Records Act, shall govern access to disciplinary documents. An employee shall have a right to review disciplinary documents in his or her agency personnel record. This means that a complainant can request the documents that have been placed in their disciplinary file. Please contact your agency's HR business partner or HCM Human Resources at humanresources@omes.ok.gov.

Hearing process

The Civil Service Division is a formal administrative court. If you have an attorney representing your interests, they will have knowledge of normal courtroom procedure. However, if you are representing yourself, or pro se, you should take time to familiarize yourself with courtroom procedure. You may find our Permanent Rules and other helpful material in the [Information section](#) on the CSD webpage.

Hearings are held in a location deemed appropriate by the Civil Service Division, details of which can be found in your specific scheduling order. You will be seated at a table opposite the agency representatives and expected to present and prove to the administrative law judge how and why the disciplinary action was not reasonable. The hearing will be recorded.

Preparing for hearing

As the hearing begins, you will have the opportunity to present your case, which is referred to as a case in chief, first. Both the agency and you will be asked to make opening statements. Yours can be a brief statement about why the disciplinary action was unreasonable and how you will prove that during the hearing.

After opening statements, you will begin your case. You will determine which witnesses you would like to call first. It would be helpful to have a prepared list of questions you intend to ask each witness and in the order you plan to ask them. When questioning a witness, you may only ask them direct questions; you cannot offer explanations while questioning a witness. If you have direct statements or explanations, the best time to offer those would be during your testimony or the opening or closing statement. Each side will get a chance to cross-examine a witness, which simply means you get to ask questions related to the topics they have already touched on. You may decline to cross-examine and move on to the next witness. You may call yourself as a witness or you may choose not to call yourself. However, if you decline to testify in your case in chief, the agency can call you as a witness during their case. Both sides get the opportunity to present a case and at the end of the hearing each side will get the opportunity to make a closing statement.

Final order

The ALJ will issue a final order within 10 calendar days based on what was proven at the hearing. It is important to note that the ALJ can offer reinstatement and back pay or they can lower the level of discipline received. The ALJ does not have the authority to transfer you to another agency or to another work site within your agency.

Rights at hearing

Each party has the following rights:

- To testify on their own behalf.
- To be represented by an attorney or other representative of their choosing.
- To present documents and records.
- To question all witnesses.
- To explain or rebut evidence against their case.
- To object to testimony or documents offered by the opposing party.
- To state at the end of the hearing how the evidence and the law supports their position.

Hearing conduct

The administrative law judge has the sole authority for the conduct of the hearing. In conducting the hearing, the ALJ will:

1. Explain the issues and any terms the parties do not understand.
2. Explain the order that parties will testify, ask questions and give rebuttal.
3. Help parties in asking questions of other witnesses.
4. Assist in questioning parties and witnesses to obtain necessary facts.
5. Determine if testimony and documents being offered should be received and considered.
6. Require parties to give proper background or foundation for secondary evidence, documents and opinion testimony.
7. Take official or judicial notice of well-established matters of common knowledge and public records.

Petition for rehearing, reopening or reconsideration

Within 10 calendar days after your final orders are issued, you may request that your complaint be reheard, reopened or reconsidered. This allows you the chance to point out information not considered in the hearing or administrative law judge review.

As provided in the Administrative Procedures Act, an administrative law judge can grant a rehearing, reopening or reconsideration for any one of the following reasons:

1. Newly discovered or newly available evidence relevant to the issues.
2. Need for additional evidence to adequately develop the facts essential to a proper decision.
3. Probable error committed by the agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the final agency order.
4. Need for further consideration of the issues and the evidence in the public interest.
5. Need to examine issues not previously considered in order to properly resolve the matter.

To request a petition for rehearing, reopening or reconsideration, submit a written statement showing at least one of the above five items exist. The other party will also have the chance to respond to your petition. The Civil Service Division will assign an administrative law judge to act as a hearing examiner. The hearing examiner will determine if you have satisfied proving that the complaint should be reheard, reopened or reconsidered. The hearing examiner will issue a final order with their decision to the petition. There are no time limits on a response to a petition for rehearing, reopening or reconsideration. If the hearing examiner decides that you have proven at least one of the five points exists in your case, a new hearing will be scheduled with a new administrative law judge.