

GENERAL GOVERNMENT CABINET

Personnel Board

(Amendment)

101 KAR 1:367. Standards of conduct and technology governing recording~~[electronic media and still photography coverage of]~~ board proceedings.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations provisions for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation will govern any and all recordings~~[the use of electronic media and still photography coverage]~~ of ~~[board]~~Personnel Board proceedings.

Section 1. Equipment, ~~[and]~~ Personnel,~~[.]~~and Location.~~The Personnel Board, its hearing officers, and staff shall have the discretion to determine:~~

(1) The appropriate and permissible equipment used for recording Personnel Board proceedings;

(2) The appropriate and permissible personnel allowed to record Personnel Board proceedings; and

(3) The appropriate and permissible location(s) for the equipment and personnel allowed to record Personnel Board proceedings. The Personnel Board, its hearing officers, and staff may use the discretion afforded them primarily to ensure that the process of recording Personnel Board proceedings does not produce distracting sound or light, which would unduly disrupt the orderly conduct of those proceedings.~~[(1) Not more than one (1) portable television camera (film camera – sixteen (16) mm sound on film (self blimped) or video tape electronic camera), operated by not more than one (1) camera person, shall be permitted in any board proceeding. Not more than two (2) television cameras, operated by not more than one (1) camera person each, shall be permitted in any meeting of the board.]~~

~~[(2)] [Not more than one (1) still photographer, utilizing not more than two (2) still cameras with not more than two (2) lenses for each camera and related equipment for print purposes shall be permitted in any board proceeding.]~~

~~[(3)] [Not more than one (1) audio system for radio broadcast purposes shall be permitted in any board proceeding. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the hearing room. If no technically suitable audio system exists in the hearing room, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the presiding hearing officer.]~~

~~[(4)] [Requests for coverage, which need not be in any particular form, shall be made to the presiding hearing officer. Subject to the provisions of subsection (5) of this section, approval of such requests shall be regarded as approval of coverage for the print (photographs) or broadcast (radio and television) media generally.]~~

~~[(5)] [Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the hearing officer to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the hearing officer shall exclude all contesting media personnel from a proceeding.]~~

~~{Section 2.} {Sound and Light Criteria.}~~

~~{(a) [HL-74A, HL-53, HL-77, HL-33, HL-34, HL-35, HL-51, HL-79, Ikegami] HL-78A, HL-79A, HL-79D, ITC-350, ITC-240}~~

~~{(b) RCA} [TK76, TK78]~~

~~{(c) Sony} [DXC-1600 Tricon, BVP-200, BVP-3000, DXC-1640]~~

~~{(d) ASACA} [ACC-2006]~~

~~{(e) Hitachi} [SK80, SK90]~~

~~{(f) Hitachi} [FP-3030, FP3060A, FP-205, FP-405, GP7]~~

~~{(g) Philips} [LDK-25]~~

~~{(h) Sony BVP-200} [ENG Camera]~~

~~{(i) Fernseh} [Video Camera]~~

~~{(j) JVC-8800u} [ENG Camera]~~

~~{(k) AKAH} [CVC-150, VTS-150]~~

~~{(l) Panasonic} [WV-3085, NV-3085, AK-750, WV-3800]~~

~~{(m) JVC} [GC-4800u, KY-2000]~~

~~[No artificial lighting device of any kind shall be employed in connection with the television camera.]~~

~~{(1)} [Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover board proceedings. Specifically, such photographic and audio equipment shall produce no greater sound or light, when such equipment is in good working order than the following equipment:]~~

~~{(2)} [Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a thirty-five (35) mm Leica "M" Series Rangefinder camera, including blimped still reflect cameras, e.g., Nikon F2 or F3, which meet this sound and light criteria. No artificial lighting device of any kind shall be employed in connection with a still camera.]~~

~~{(3)} [It shall be the affirmative duty of media personnel to demonstrate to the hearing officer adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to obtain advance approval for equipment shall preclude its use in any proceeding.]~~

~~{Section 3.} {Location of Equipment Personnel.}~~

~~{(1)} [Television camera equipment shall be positioned in such location in the hearing room as shall be designated by the hearing officer. The area designated shall provide reasonable access to coverage. If areas remote from the hearing room which permit reasonable access to coverage are provided, all television camera and audio equipment shall be positioned only in such area. Video tape recording equipment which is not a~~

~~component part of a television camera shall be located in an area remote from the hearing room.]~~

~~[(2)] [A still camera photographer shall position himself in such location in the hearing room as shall be designated by the hearing officer. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself in a shooting position, he shall act so as not to call attention to himself through further movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of board proceedings.]~~

~~[(3)] [Broadcast media representatives shall not move about the hearing room while proceedings are in session, and microphones or taping equipment once positioned as required by Section 1(3) of this administrative regulation shall not be moved during the proceeding.]~~

Section 2. ~~[Section 4.]~~ Movement During Proceedings. At the discretion of the board, ~~recording[News media photographic or audio]~~ equipment shall not be placed in or removed from the hearing room except prior to commencement or after adjournment of proceedings each day, or during a recess. ~~[Neither television film magazines nor still camera film or lenses shall be changed in the hearing room except during a recess in the proceeding.]~~

~~[Section 5.] [Hearing Room Light Sources. With the concurrence of the hearing officer, modifications and additions may be made in light sources existing in the hearing room, provided such modifications or additions are installed and maintained without public expense.]~~

Section 3. ~~[Section 6.]~~ Conferences of Counsel. To protect the attorney-client privilege and the effective right to counsel, there shall be no audio pickup or broadcast of conferences that~~[which]~~ occur in the hearing room between attorneys and their clients, between co-counsel of a client, or between counsel and the hearing officer held at the bench.

Section 4. ~~[Section 7.]~~ Use of Media Material. Unless specifically permitted by the board, none of the recordings ~~[film, video tape, still photographs or audio reproductions]~~ developed during or by virtue of coverage of a board proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any rehearing or appeal of such proceedings.

Section 5. ~~[Section 8.]~~ Confidentiality.

(1) In order to protect the legally recognized interests in confidentiality of individuals, any party may move to exclude electronic media or still photographers from the hearing room during all or any portion of a hearing. ~~[The hearing officer shall not unreasonably refuse such a request.]~~

(2) The hearing officer, on their~~[his]~~ own motion, may exclude electronic media or still photographers from the hearing room during all or a portion of a hearing in their~~[his]~~ sound discretion.

Section 6. ~~[Section 9.]~~ Applicability. ~~[Board Meetings]~~. This administrative regulation shall apply to all Personnel Board proceedings~~[meetings of the full board]~~. Where this administrative regulation is to be applied to a meeting of the full board, the discretion afforded the board~~[any function of the hearing officer]~~ as set out herein shall be exercised~~[performed]~~ by the chairman or vice-chairman of the board or, in their absence, the member of the board who is moderating the board meeting. Where this administrative regulation is to be applied to any other Personnel Board proceeding, the discretion afforded the board as set out herein shall be exercised by the hearing officer and/or member of Personnel Board staff.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation governs all recordings of Board proceedings.

(b) The necessity of this administrative regulation:

This regulation is necessary to allow the Board to set procedures on allowable and appropriate recording equipment to be used for Board proceedings. The regulation adopts use of medial material and confidentiality requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 13a and KRS 18A.0751 requires the Personnel Board to promulgate regulations that specifies procedures to conduct Board hearings and the technology governing the recording of all Board proceedings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation will continue to provide effective administration of the statutes by its requirements to process updated recording procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment updates the authority of the Board regarding permissible recording equipment and proper procedures for all board recordings.

(b) The necessity of the amendment to this administrative regulation:

The amendment is necessary to provide updated information regarding recording equipment used for Board proceedings.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment assures the Board has updated the permissible and appropriate recording devices for board proceedings in accordance with the Statute(s).

(d) How the amendment will assist in the effective administration of the statutes:

This amendment provides clarity and guidance on recording board proceedings. (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administration: This regulation affects anyone who is authorized by the board to record board proceedings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

No answer provided.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Any entities wishing to record a board proceeding must be in compliance with the regulation regarding proper equipment and procedures. No distracting sound or light

can be produced. Any recording developed may not be admissible as evidence unless specifically permitted by the Board. Entities must comply with the times equipment may be placed and removed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will not be any costs by complying with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance will assure that only authorized persons and equipment will be allowed when recording Board proceedings.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no cost to implement this amendment.

(b) On a continuing basis:

There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

There is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will not be an increase in fees or a necessity in funding to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied?

No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

No answer provided.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 13A, 18A.005 to 18A.200 and 18A.0751.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated.

(c) How much will it cost to administer this program for the first year?

There are no estimated costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There should be no increase or decrease in the cost to administer this administrative regulation.