

PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Board of Claims
(Amendment)

802 KAR 2:010. Negligence claims before the Board of Claims.

RELATES TO: KRS~~[12.027,]~~ 49.020, 49.040, 49.090, 49.120~~[, EO 2020-708]~~

STATUTORY AUTHORITY: KRS 49.010(4)(b), KRS 49.020(7)(a)(5)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and that the Board of Claims, and the Office of Claims and Appeals be established. The Order also sets forth the powers and duties of the Board of Claims and the Office of Claims and Appeals and authorizes the board to promulgate emergency regulations necessary to carry out the provisions and purposes of the Order and the board's statutory authority.]~~ KRS 49.020(7)(a)(5) authorizes the board to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority. KRS 49.020(5)(220(1)) authorizes the board, with exclusive jurisdiction, to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies. This administrative regulation establishes the procedures governing these claims.

Section 1. Definition.

- (1) "Board" means the Board of Claims.
- (2) "Office" means the Office of Claims and Appeals.

Section 2. Filing Claims. Form and content. A claim shall be legibly written, typed, or printed on the Board of Claims claim form, or submitted through the online portal, and contain:

- (1) The name, address, telephone number, and email address of the claimant;
- (2) The amount of the claim; and
- (3) A statement of the facts that:
 - (a) Show the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and
 - (b) Enables the agency against which a claim is made to investigate the claim and prepare its defense; ~~and~~
- (4) The signature of the claimant and counsel for claimant, if any, and; ~~and~~
- (5) Additional documents and attachments, if necessary for a full statement of the claim.

Section 3. Rules Applicable to All Filings.

- (1) Filings. All claims shall be filed either: ~~[All documents may be filed:]~~
 - (a) In person or by private delivery to the Board of Claims, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;
 - (b) By mail to the address listed above; or
 - (c) By electronic mail to <mailto:negligenceclaims@ky.gov>, if the document can be sent in one (1) electronic message; or; ~~or~~
 - (d) Through the Board's online claim filing portal: <https://kycc.ky.gov/NegClaim/>.
- (2) Service.
 - (a) Any party who files a pleading or motion with the board or hearing officer shall notify all other parties to the claim by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:
 1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and
 2. The method of service used.
 - (b) Service upon a party shall be made by delivering a copy to the attorney or party, electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing~~[,]~~ unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.
- (3) Extension of time. An extension of time to file a response, motion, other pleading, brief, proposed finding of fact, or conclusion of law shall be granted:
 - (a) On agreement of the parties; or
 - (b) Upon a showing of good cause.

Section 4. Representation in Proceedings before the Board.

- (1) If the claim is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.
- (2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to the claim.
- (3) In accordance with Supreme Court Rule 3.020, if the claimant is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1), the entity shall be represented by an attorney on all matters before the board, including filing the claim.
- (4) An attorney admitted to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).
- (5) If an attorney is not identified in the claim form or is later retained to represent a claimant after the filing of the claim form, the attorney shall enter an appearance in the record within ten (10) days of being retained.

Section 5. Response to Claims.

- (1) Upon receipt of a completed claim, the board shall submit a copy of each claim to the head of the agency against which the claim is filed, or the attorney representing the agency against which the claim is filed.
- (2) The agency against which a claim has been filed shall respond to the board and the claimant within thirty (30) days of receiving the claim.
- (3) If the agency against which a claim is filed admits liability in its response, a final order shall be entered.

Section 6. Claims Not Requiring a Hearing Under KRS 49.090(3).

- (1) If the agency against which a claim is filed fails to respond within thirty (30) days, the board or a board member assigned by the chair shall:
 - (a) Enter a show cause order;
 - (b) Recommend an order of dismissal; or
 - (c) Deem the facts contained in the claim admitted and render an award.
- (2) If the response filed by the agency denies negligence in a claim not requiring a hearing pursuant to KRS 49.090(3), the board or board member shall decide the claim and render a decision.

(3) Within fourteen (14) days of the decision, any party may request a full board review by written notice to the board.

Section 7. Claims Requiring a Hearing under KRS 49.090(3).

- (1) If the agency fails to respond within thirty (30) days, the board shall issue a show cause order or the matter shall be assigned to a hearing officer.
- (2) If the response filed by the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned, and notice of the assignment shall be provided to the parties.

Section 8. Prehearing or Status Conference and Hearing Schedule.

- (1) The hearing officer shall schedule a prehearing or status conference, which may be conducted by telephone or other electronic means:
 - (a) Within thirty (30) days of the assignment of the claim; and
 - (b) Upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless agreed to otherwise by the parties.
- (2) The hearing officer may convene the prehearing or status conference or order the affected state agency to convene the conference.
- (3) A prehearing or status conference may be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.
- (4) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed to hold the claim in abeyance.
- (5) Upon conclusion of the prehearing or status conference, the hearing officer shall issue an order including all matters determined at the prehearing or status conference.
- (6) The hearing officer shall notify the board of the date and time for the hearing. The office shall:
 - (a) Reserve a place within the proper venue to conduct the hearing;
 - (b) Select a method by which to record the proceedings, which may include court reporter, audio recording, or audiovisual recording ~~and a court reporter to be present at the hearing to record the proceedings~~; and
 - (c) Notify the parties and the court reporter, if applicable, of the date, time, and place of the hearing.

Section 9. Motion Practice.

- (1) Any party may file a motion.
- (2) Any party affected by a motion or pleading may file a response to the motion or pleading within ~~thirty (30)~~ twenty (20) days from the date on which the motion or pleading was served.
- (3) A moving party may file a reply to another party's response. The reply shall be filed within ~~fifteen (15)~~ ten (10) days from the date the response was served. Other replies or responses shall not be filed ~~if~~ unless prior approval is granted by the board or hearing officer.
- (4) If a response is not filed within ~~thirty (30)~~ twenty (20) days, the board or hearing officer shall issue an order on the motion within sixty (60) days of the date the response was due.

Section 10. Discovery.

- (1) Discovery may be obtained without prior order of the board or hearing officer. Except to the extent the provisions of this Section differ, the Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply.
- (2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:
 - (a) Absent a stipulation between the parties or an order issued by the board providing otherwise, and at least ninety (90) days before the date set for the hearing, a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experience, training, or education the party may use at the hearing to provide expert testimony; or
 - (b) If the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.
- (3) The board or hearing officer may deny, limit, or require discovery.
- (4) If a party fails to comply with an order regarding discovery, the board or hearing officer may order that the:
 - (a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;
 - (b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;
 - (c) Claim be dismissed or relief be granted as requested by the opposing party;
 - (d) Claim be stayed until the order is obeyed; or
 - (e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.
- (5) A response to discovery under subsection (1) of this section shall not be filed with the board unless required by order of the board or hearing officer.

Section 11. Briefs. A party shall file with the board ~~and for~~ hearing officer any brief required by order of the board or hearing officer. The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 12. Summary Disposition. At any time after the commencement of the claim, a party may move for a summary disposition of the whole or a part of the claim by filing a motion that:

- (1) Asserts that there are no disputed material facts as to one (1) or more of the issues before the board or hearing officer;
- (2) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the claim, including exhibits, may be relied upon as undisputed material facts by the appellee; and
- (3) States that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.
- (4) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the claim, demonstrating the party's assertion that a material fact or facts are disputed.
- (5) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.
- (6) The board or hearing officer may grant a motion for summary disposition in whole or in part. If the board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 13. Conduct of Hearing.

- (1) Except as otherwise established in KRS Chapter 49, ~~for~~ this administrative regulation, ~~or an order from the board or hearing officer, the Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence apply to board proceedings.~~ ~~[the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.]~~
- (2) For purposes of discovery and motion practice, the Kentucky Rules of Civil Procedure shall apply to proceedings before the board.
- (3) The board or hearing officer may, at its discretion, waive application of the Kentucky Rules of Evidence as justice so requires.

Section 14. Admission of Hearsay. Notwithstanding Section 13 of this administrative regulation, during a final hearing, the board or the hearing officer may admit hearsay evidence if it is the type that a reasonable and prudent person would rely upon in daily affairs. However, this evidence shall not be sufficient in itself to support the board or hearing officer's findings of fact unless it would be otherwise admissible over objections in a civil action.

Section 15. ~~[Section 14.]~~ Board Decision.

- (1)
- (a) Each contested claim requiring a hearing pursuant to KRS 49.090(2) shall be submitted to the board at its next meeting following the submission of the recommended order, except for Agreed Orders.
- (b) The board shall issue its final order in accordance with KRS 49.080.
- (c) The stated deadlines within which the board shall render a final order shall commence upon the last filing of any exceptions to the recommendation.
- (2) The board, or a majority of its members, shall render a decision on each contested claim requiring a hearing pursuant to KRS 49.090(3) and each request for a full board review of a claim decided by an individual member.
- (3) In rendering the final order, the board shall consider the record including the recommended order and any exceptions duly filed to the recommended order.
- (4) The board may accept the recommended order of the hearing officer and adopt it as the final order of the board, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.
- (5) If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the date the board rendered the order, the date it was served on the parties, and to whom it was served, and a statement advising the parties fully of available appeal rights.
- (6) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record.
- (7) The matter shall be deemed finally adjudicated if:
- (a) In a claim under \$2,500, no full board review has been requested; ~~for~~
- (b) The claim has been the subject of full board review; or
- (c) No judicial appeal has been filed.

Section 16. ~~[Section 15.]~~ Payment of Awards. Within thirty (30) days after an order of the Board of Claims making an award has become final, the agency making payment of the award shall furnish to the Board of Claims a copy of any check reflecting the payments.

Section 17. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "Board of Claims claim form", January 2025;
- (b) "Board of Claims subpoena form", January 2025; and
- (c) "Agency's Answer to the Claimant and Board of Claims form", January 2025.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and is available online at: https://kycc.ky.gov/Newstatic_info.aspx?static_id=160.

SAMUEL T. WRIGHT, III, Chairperson
JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025
FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025 in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may attend the hearing in-person or via Microsoft Teams videoconferencing. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/join/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtN2JjNjFkYzgzZjcw%40thread.v2.context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79e6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) 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 11:59 PM EST on March 31, 2025. Please 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: Shelby Bevin-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601, Phone: (502) 782-3556. Fax: (502) 573-4817. Email: sbevinssullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for filing a claim with the Board of Claims, shortens periods in which to file motions, incorporates by reference the claim form and subpoena form, updates statutory references, corrects grammatical errors, and adopts the Kentucky Rules of Civil Procedure and Kentucky Rules of Evidence for the purposes of discovery, use of evidence, and motion practice. It limits the use of hearsay evidence and permits, instead of requires, the Office of Claims and Appeals to hire court reporters for final hearings. It also removes references to the Kentucky Claims Commission, which was abolished in 2020.

(b) The necessity of this administrative regulation:

The proposed amendments are necessary to provide clearer guidance to both claimants and practitioners regarding the Board of Claims' procedures and to update statutory and obsolete references. It also is necessary in order to incorporate by reference new forms for use by the agency.

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

The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and, KRS 49.020(7)(b) and KRS 49.010(4)(b), which authorize the promulgation of regulations to carry out the duties of the Board of Claims. KRS 49.020(7)(b) permits the Board of Claims to issue subpoenas. KRS 49.020(5) authorizes the Board of Claims to investigate, hear proof, and compensate persons for damages sustained as a result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, and any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its agencies.

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

The proposed amendments will increase efficiency in having claims decided faster, promotes uniformity in timelines for motion practice, clarifies the admissibility of hearsay, adopts the Rules of Civil Procedure and Rules of Evidence for certain purposes, updates statutory references to comport with amendments to KRS 49.020 that were enacted since the regulations were promulgated, and reduces costs associated with hiring court reporters.

(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:

See (1)(d).

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

See (1)(b)

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

See (1)(c).

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

See (1)(d).

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

The Public Protection Cabinet, its Office of Administrative Hearings, the Office of Claims and Appeals, the Board of Claims, all state cabinets, bureaus, and agencies, and any person or entity filing a claim with the Board of Claims and the Office of Claims and Appeals.

(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:

The Office of Claims and Appeals and the Board of Claims will update all application forms, including its online portal, and its website. Other state cabinets and agencies and individuals and entities filing claims with the Board of Claims will need to familiarize themselves with the Board's new requirements and deadlines established in this amendment, in addition to the new forms incorporated by reference.

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

There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated. There should not be a significant cost to other affected individuals and entities to implement the amendments.

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

Litigants will benefit from having shorter periods in which to file motions, responses, and replies, which will resolve claims faster by placing claims on the Board's monthly agendas sooner. Litigants will also benefit from having better guidance and uniformity on what actions, motions, and evidence can be presented to the Board. The Office of Claims and Appeals has a small portion of its budget dedicated to hiring court reporters. By permitting, instead of requiring, the Office of Claims and Appeals to hire a court reporter for final hearings, the Office will reduce said costs.

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

(a) Initially:

None. Current staff and agency funds will provide implementation.

(b) On a continuing basis:

None. The amendment likely will result in a small reduction of agency costs due to the reduced use of court reporters.

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

General fund appropriations will be used to implement and enforce this administrative 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:

No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL IMPACT STATEMENT

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

KRS 49.010(4)(b), 49.020(7)(a), and 49.030-49.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The promulgating agency is the Office of Claims and Appeals. The amendment will affect the Public Protection Cabinet, Office of Claims and Appeals, the Board of Claims, and any state agency who is a party to a Board of Claims action.

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:There will be minor cost savings for the Office of Claims and Appeals and other state agencies through not being required to hire court reporters for all administrative hearings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

See 2(a).

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

None.

(a) Estimate the following for the first year:

Expenditures:N/A.

Revenues:N/A.

Cost Savings:N/A.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

See answer to (3)(a).

(4) Identify additional regulated entities not listed in questions (2) or (3):

Individuals filing claims with the Kentucky Board of Claims

(a) Estimate the following for the first year:

Expenditures:None.

Revenues:None.

Cost Savings:None other than the cost of postage due to the ability to file claims through the online portal.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

See 4(a).

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

This regulation will have a negligible fiscal impact. It may result in small cost savings for the Office of Claims and Appeals through eliminating the requirement to hire court reporters in all Board of Claims actions.

(b) Methodology and resources used to determine the fiscal impact:

The agency estimates the fiscal impact using cost projections and calculations for expenditures under the existing regulation compared to this amendment.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

It will not have a negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

See 5(b).