

RULES OF THE BOARD OF ADJUSTMENT

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Chapter I

Organization, Administration and Procedure

1. **Purpose.** The Alabama Board of Adjustment was established to provide a method of payment by the State for injuries or property damage or death, which the State has a legal or moral obligation to pay in those cases where legal action against the State is barred by the doctrine of sovereign immunity. This purpose is achieved through adoption of rules providing for efficient disposition of claims.

2. **Composition of Board.** The Board is composed of four ex-officio members as follows: the Director of Finance, the State Treasurer, the Secretary of State, and the State Auditor.

3. **General Description of Organization and Operation.** The Board of Adjustment is an independent quasi-judicial agency of the Legislative Branch of the State of Alabama. The Board of Adjustment is not subject to the Alabama Administrative Procedures Act. The Legal Division of the Department of Finance provides clerical support for the Board, and its operations are conducted by this Division.

4. **Officers.** Selection of Officers will be as follows:

(a) The Chairman of the Board shall be selected by majority vote by the Board from its members. The Secretary of State shall be the Secretary of the Board.

(b) Should the person holding the office of chairman cease to hold such offices by reason of death, resignation, expiration of his/her term of office, or for an other reason, then the Board shall select a new chairman as provided in 4 (a) above.

5. **Chief Legal Advisor and Receipt of Correspondence.** The Chief of the Legal Division of the Department of Finance is the chief legal advisor for the Board and is designated as agent of the Board for service of legal process upon the Board. All correspondence to the Board, including requests for information and all submissions and other requests should be made to the Board's attorney at the Board's headquarters as follows:

Board of Adjustment
Alabama State Capitol
Third Floor
Montgomery, AL 36130-1435

6. **Rules of Order.** Voting Sessions of the Board of Adjustment shall be governed by *Robert's Rules of Order, Newly Revised, 10th Edition*.

7. **Quorum.** Three members of the Board shall constitute a quorum for conducting business in a Voting Session.

8. **Regular Hearing Sessions and Special Hearing sessions.**

(a) Regular hearing sessions may be called by the Chairperson, by a majority of the Board, or the Board's attorney. Regular hearing sessions shall be held in Montgomery, Alabama, and may continue from day to day until the business of each session is finished.

(b) Special hearing sessions may be held at other places and times on call of the Chairperson or the Board's attorney.

(c) Each Member of the Board shall be given at least three (3) days notice of the time, place, and purpose of any regular or special hearing session by the Chairperson or the Board's attorney, unless such notice is waived by the individual Member or unless such Member is present at the called hearing.

(d) Members may designate representatives to attend regular or special hearing sessions in their place. These sessions constitute investigative or fact-finding hearings, which are held to ascertain the facts surrounding each claim upon which the Board may base its decision.

(e) The attorney for the Board or his/her designee, who must be an attorney licensed to practice law in the State of Alabama, shall conduct, control, and preside over the proceedings at hearing sessions.

9. **Voting Sessions.** Upon the call of the Chairperson or the Board's attorney, the Board shall meet in Voting Session to render final decisions on claims presented during regular or special hearing sessions, on issues of jurisdiction or other matters requiring a decision of the Board and to ratify the entry of consent orders entered between Voting Sessions. Voting Sessions may be held at anytime or place designated by the Chairperson or the Board's attorney.

10. **Voting.** All members of the Board, including the Chairperson, are entitled to vote and to make or second motions. All voting on decisions or other matters shall be accomplished by voice voting. The Chairperson shall vote as a member of the Board, and his/her vote shall count no more than the vote of any other member, except in the event of a tie vote on a decision or claim that the Board is authorized to hear. The Chairperson shall break the tie vote and determine the decision of the Board in such instance.

11. **Use of Forms.** All claims, applications and requests for which the Board has prescribed a form, must be made on the prescribed form. These forms are available from the Clerk of the Board. The Board's attorney may alter forms and instructions as determined necessary so long as they are consistent with these rules and the governing statutes.

12. **Records.**

(a) "Public Record" for the purpose of these rules means all of the Board's records that are reasonably necessary to record the business and activities required to be done or carried on by the Board so that the public can know the status and condition of such business and activities. However, records that do not constitute "public records" and which are not subject to

disclosure are those that relate to the character or good name of a woman or man, those the disclosure of which is prevented under any privilege protected under statute or law, or records expressly exempt from disclosure under public record laws.

(b) Public records are available for inspection at the Board's office during regular business hours and may be scheduled at the convenience of the Board's Clerk.

(c) The Board's attorney has the authority to determine what records may be disclosed under paragraph (a) above.

13. **Appeals.** The Board of Adjustment acts as an agency of the Legislature and there is no statutory right to appeal from decisions rendered by the Board pursuant to the Administrative Procedures Act, the statutes creating the Board or by the Rules of the Board.

14. **Procedure for Filing Claims.**

(a) **Claims filed with Board.** The jurisdiction of the Board shall be invoked by a claim in writing filed with the Board and verified by the affidavit of the claimant, or someone duly authorized by the claimant in writing, evidence of whose authority shall accompany the claim. The claim and all supporting documentation shall be submitted in duplicate, an original and one copy.

(b) **Claim--concise statement required; claimant's address required.** The claim must concisely state the facts constituting the same, the nature and extent thereof, the mailing address of the claimant, claimant's Social Security Number or Federal Employer Identification Number (FEIN), and any other information required by the Board or the Board's attorney.

(c) **Signature and Notarization Required.** The claim form must bear the original signature of claimant, his/her attorney, or authorized representative of record and the signature shall be notarized.

(d) **Caption for papers used in claim.** Papers in each claim shall be entitled, "Before the State Board of Adjustment, Claim of (name of claimant)." Each paper should bear the claim number assigned to the claim by the Clerk of the Board when the original claim is filed in the Office of the Clerk.

(e) **Affidavits.** Where practicable, there should be filed in support of claims such affidavits of persons having knowledge of the facts upon which the claim is based as will make out a prima facie case of liability of the State of Alabama to the claimant.

(f) **Claim to be accompanied by affidavit or report.** If the claim is based upon personal injury or death of any employee or convict of the State of Alabama, there should accompany the claim the affidavit or official report of the immediate superior of such employee or warden or other official having charge of such convict, and the recommendation of the head of the department, commission, board, agency, or institution for which such employee or convict was engaged at the time of such injuries or death.

(g) **Claim involving death to be filed by personal representative.** In the event the claim is for damages on account of the death of an employee or convict of the State, or other person, it

must be filed by the court- appointed personal representative of the deceased person and evidence of the appointment of such personal representative must accompany the claim.

(h) Claim involving constitutionality of a law, rule, or regulation. If the claim is based upon the alleged unconstitutionality or invalidity of any law, rule or regulation, it will not be passed upon by the Board of Adjustment until the constitutionality or the validity of such law, rule or regulation has been definitely determined by the Alabama appellate courts.

(i) Claims filed on behalf of minors, incompetents or persons of unsound mind. Claims involving damages to or injury to minors, incompetents or persons of unsound mind shall be filed by their duly appointed representative, parents or guardian.

(j) Disposition of copies of claim. Upon the filing of a claim, one copy thereof shall be referred to the department, commission, board, agency, or institution against which the claim is filed.

15. **Subrogation.**

(a) One subrogated to the right of another who has been injured by the State by reason of having paid or agreed to pay the loss caused by the injury pursuant to contract liability of the injured party (for example, payment by an insurance company) is not entitled to maintain a claim before the board.

(b) The Clerk of the Board shall not accept subrogation claims for filing.

16. **Statute of limitations.**

(a) The statute of limitations for claims within the jurisdiction of the Board of Adjustment serves as a complete bar thereby prohibiting the Board from hearing or considering any claim not timely filed. See Section 41-9-65, Code of Alabama (1975). All claims must be filed in the Office of the Clerk of the Board, Alabama Department of Finance Legal Division, within one year after the cause of action accrues unless:

1. The claim is for injury to the person resulting in death, in which event the claim must be filed within two (2) years after the cause of action accrues, unless the same is first carried into the courts of the state, in which event the statute of limitations shall not begin to run until the date on which a final judgment in the same, holding the claimant not entitled to relief through the courts of the state, is entered.

2. The claim pertains to a matter of escheats to the State of Alabama, in which event the claim must be filed within ten (10) years from the time of the escheat to the State of Alabama; except, that such claims of minors may be considered by the Board if the same are filed within three (3) years after such minor has reached the age of 19 years.

(b) For purposes of determining if a claim is barred by the statute of limitations, time shall be computed in accordance with Section 1-1-4, Code of Alabama (1975), by excluding the first day and including the last day. If the last day is Saturday, Sunday or a legal holiday as defined in Section 1-3-8, or a day on which the Office of the Clerk of the Board is closed, the

last day must also be excluded and the next succeeding working day shall be counted as the last day.

(c) Upon receipt of a claim by the Board, the Clerk of the Board shall compute the applicable statute of limitations based upon the information contained in the claim, including supplementary information attached to the claim. If it appears to the Board's attorney that said claim is barred by the statute of limitations, the Clerk shall return the claim to the claimant by first class mail, postage prepaid and properly addressed. The claimant may at anytime resubmit such claim with additional information evidencing that the claim is not barred by the statute of limitations. If, upon resubmission, it appears that the claim is not barred by the statute of limitations, the date of the initial filing of the claim with the Board, as evidenced by the Board's date stamp on the originally filed claim form, shall be deemed the date of filing for statute of limitations purposes.

(d) For claims where the date the claim accrues is questionable, the Board may determine when the cause of action accrued.

17. **Answers to Claims.** The department or other division of the State against which claim is filed is required to answer a claim in writing within thirty (30) days from the time the department receives a copy of the claim from the Clerk of the Board. All allegations in the claim not denied may be treated as admitted. A copy of the answer shall be mailed to the claimant's attorney or representative of record or to the claimant in the event the claimant is not represented. The Board's attorney may approve extensions of time to answer claims.

18. **Amendments.** Amendments to claims may be permitted by the Board at such time and upon such terms as the Board may determine.

19. **Use of Administrative Law Judge.**

(a) The Board, acting through its Chairperson, may refer any claim to the Administrative Law Judge Division of the Office of the Attorney General for the purpose of conducting fact finding hearings, investigations and otherwise ascertaining the facts and applicable law relevant to any claim. Upon receipt of the claim from the Clerk of the Board, the Administrative Law Judge assigned to the claim shall forthwith set a fact finding hearing and set a schedule for discovery or exchange of information between the parties as may be permitted by the rules of the Board. All such hearings shall be open to the public and notices of such hearings shall be posted at least three days in advance of the hearings at the place designated in the State Capitol for such notices.

(b) Upon completion of the hearing process, the Administrative Law Judge shall submit a written report to the Clerk of the Board who shall distribute the report to each Member of the Board. The report shall contain a brief synopsis of the claim, findings of fact, a discussion of any applicable law, and a recommendation for the disposition of the claim. A recommendation by the Administrative Law Judge for the disposition of a claim shall be advisory only and shall not be binding in any way on the Members of the Board. The Board may conduct additional or supplemental hearings as it may determine in its discretion to be appropriate or necessary to enable it to make a decision on any claim pending before the Board.

(c) Decision by the Board on claims heard by Administrative Law Judges shall be

made in accordance with the provisions of Rule 10, Voting Sessions.

(d) All costs associated with the hearing of a claim by an Administrative Law Judge shall be paid by the department, board, bureau, commission or office against which the claim is filed. Such costs shall be determined by the Clerk of the Board and included in the Order of the Board that makes a final disposition of the claim.

20. **Administrative Settlement.**

(a) The head of a state department, commission, board, agency or institution against which a claim has been filed may recommend settlement by an offer to pay a sum certain. If the offer to settle is accepted by the claimant, the claim may then be processed and adjudicated as a consent and an award may be made without a hearing thereon. It is the responsibility of the respondent state department to provide to the Board evidence of the claimant's agreement to settle.

(b) In the case of claims for benefits brought pursuant to Section 3 6-30-1 et seq. and 11-43-144, Code of Alabama (1975), pursuant to authority given him in Section 41-9-61, Code of Alabama (1975), the Attorney General may consent to the payment of the claim if the Attorney General determines that the claim complies with the applicable statutory requirements as set out in Sections 3 6-30-1 et seq. If the Attorney General consents to payment of the claim, the Board of Adjustment staff will apportion the benefits among the eligible beneficiaries and will obtain consent of all beneficiaries to the waiver of the hearing. All beneficiaries will be advised by the Board's staff that the final decision whether to award the benefit rests with the Board of Adjustment, but that the beneficiaries will be entitled to a hearing before the Board if the Board does not approve the proposed Consent Order.

(c) The Claimant or Beneficiary has the right to refuse an offer of settlement and may request a hearing on the claim.

21. **Disposition of Claims.**

(a) Final Disposition. The evidence relating to all claims not settled administratively or by consent shall be heard in accordance with these rules at any regular or special hearing session or in accordance with Rule 18.

(b) Calendar setting claims. The Clerk of the Board shall prepare a calendar for each regular or special hearing session that shall contain a list of the claims that in the opinion of the Board's attorney, are ready for hearing or in which the Board desires to hear oral testimony or oral argument. No claim will be placed on this calendar if litigation pertaining to the same facts is pending in any court.

(c) Notice. Notice shall be furnished by first class mail to each claimant whose claim appears thereon, or his/her attorney or representative of record, and to the respondent agency, commission, board, institution, department, not less than fifteen (15) days before such session.

(d) Appearance before Board. Any claimant may appear and be heard, either orally, by written brief, or otherwise, in person or by his/her attorney or representative whether such representative is licensed to practice law or not. A copy of all papers filed with the Board

subsequent to the filing of a claim, that relates to a claim, shall be provided to all parties through their attorney or representative of record when one exists and, if not, then directly to the opposing party, postage prepaid through the U. S. Mail at the time the same is mailed to the Board. Notwithstanding the foregoing, the Board may order that all claims filed by inmates of state penal institutions may be heard on the record without a personal appearance by the claimant.

(e) Attorney General to represent State of Alabama. In all proceedings before the Board, the Attorney General, or his or her assistant or deputy, shall represent the State of Alabama.

(f) Claimant to open and close the argument. The claimant shall have the right to open and close the argument in all hearings before the Board.

(g) Rehearing. The Board may grant a rehearing or review of a claim on the ground of newly discovered evidence within 180 days of the date of the Board's order. Any request for rehearing or review must be in writing and briefly state the nature of the newly discovered evidence.

(h) Supplemental claims. Even though a successful claimant has executed the general release stamped on the back of the state warrant, the Board may accept and consider supplemental claims for damages which relate back to the original claim, provided the claimed damages arose subsequent to the consideration of the original claim.

(i) Dismissal at Request of Claimant. The Board's attorney may dismiss a claim upon written notification from the Claimant that the claim has been otherwise satisfied.

22. Procedures and Evidence at Hearing Sessions.

(a) The rules of evidence followed in civil cases will be substantially followed by the Board of Adjustment provided that the attorney for the Board or his/her designee may relax such rules when in his/her judgment such relaxation would not impair the rights of either party and would more speedily conclude the presentation of the claim.

(b) Neither claimant nor the State may introduce testimony of more than two witnesses to any one material fact at an oral hearing.

(c) Depositions may be taken or utilized for discovery in the manner prescribed by the Alabama Rules of Civil Procedure and made a part of the record.

(d) Claimant and the department or other division of the State against which the claim is filed may file an agreed statement of facts in writing or by stipulation in the record, touching matters in controversy, which will be treated in all respects as evidence.

(e) Affidavits may be admitted in evidence, provided that the party introducing an affidavit has served a copy of said affidavit on the opposing party, their attorney or representative at least ten (10) days prior to the date of the hearing at which the affidavit is to be used.

(f) The attorney of the Board or his/her designee shall, in accordance with these rules, and except as otherwise provided in these rules, rule upon all questions of procedure and, in the

event that evidence is taken, on the admissibility of the evidence. The decision of the attorney shall be final.

(g) Subject to subsection (e) of this Rule, Defendant agencies and Departments shall timely submit affidavits to state all facts upon which the agency relies to support any defense or to contradict the facts as stated in the Claimant's sworn statement or affidavits submitted by Claimant under Rule 14 (e). Oral reports of hearsay conversations shall not be accepted or otherwise considered. Likewise oral references to policies or administrative practices shall not be considered without a copy of the applicable document.

(h) Subject to the time period of subsection (e), oral references to other existing documents, written policies, administrative practices, handbooks and similar operational procedures or activities shall not be accepted without a legible copy of the applicable document.

(i) All notebooks or binders submitted shall contain a table of contents that accurately describes individual sections and all pages shall be consecutively numbered and the beginning page number of the referenced section shall be identified in the table of contents and all sections shall be tabbed for reference.

23. **Burden of Proof.**

(a) The burden of proof to establish the validity of each claim rests upon the Claimant and each claim must have necessary supporting evidence to document and substantiate the damages claimed and any commission of acts, omission or other conduct of the defendant upon which the Claimant relies in seeking relief.

(b) Attorneys representing Claimants shall submit pre-marked and numbered exhibits that accurately summarize and are cross referenced to receipts and other documentation of expenses or damages claimed in accord with the time period of ten days prior to hearing set forth in Rule 22 (e). References to specific provisions of multi-page documents shall be identified on a summary page that references the page and section which shall be highlighted for use by the Board.

(c) Organization of receipts for drugs, travel, et cetera and related calculations are the sole responsibility of the unrepresented Claimant or the attorney representing the Claimant as part of the burden of proof. For example, claims for medications shall be cross referenced to the medical condition for which they are prescribed in order for the Board to make a determination on burden of proof.

24. **Witnesses and Subpoenas.**

(a) Any party may require the attendance of witnesses upon a claim regularly set for hearing by filing a written request with the Clerk of the Board stating that the presence of the witnesses named by him/her are necessary for a fair and just hearing upon the claim.

(b) Subpoenas for the production of books, papers, or documents may be issued upon written request specifying the books, papers, or documents desired and specifying the purpose or purposes for which such books, papers or documents are needed in the prosecution of the claim.

(c) Subpoenas either for the attendance of witnesses or for the production of documents will be issued upon a determination by the Board's attorney that the witnesses or documents are necessary for the proper disposition of the claim and his or her recommendation to the Secretary of the Board.

(d) Subpoenas may be served by the sheriff of the county of residence of the person or entity to whom the subpoena is directed, by his or her deputy, or by any other person who is not a party and is not less than 19 years of age.

(e) Return of service endorsed upon a copy of the subpoena shall be proof of service, or the witness may acknowledge service in writing on the subpoena. Service of the subpoena may be executed upon the witness either personally or by leaving a copy at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(f) A copy of all subpoenas evidencing the service and return thereof shall be provided to the Board at least two days after service has been accomplished.

25. **Administrative Time Periods.** The Board's attorney for good cause shown may waive all time limits imposed by these rules that are not prescribed by law.

26. **Prior Year Invoices**

(a) Prior year invoice "Consents" will be reviewed with close scrutiny for accurate supporting documentation and strict compliance with State Purchasing laws and procedures.

(b) Supporting documentation shall include submission of authorization by purchase order, telephone authorization or letter of emergency authorization.

(c) Claims that are not compliant with purchasing laws will be denied or deferred and reported to the Examiners of Public Accounts for further attention. No further action, hearing or disposition shall be taken by the Board on any claim deferred until submission of a responsive report from the Examiners of Public Accounts.

(d) Agencies and Departments are strongly encouraged to encumber funds to avoid the necessity of submitting prior year invoice claims. Each claim shall include a written detailed explanation why funds were not encumbered and why the purchasing process was not followed with a copy of the explanation provided to the vendor of the services or product.

(e) The Board may set non-compliant Consents for hearing or refer them to the Administrative Law Judge in accord with Rule 19.

(f) Each hearing on non-compliant Consents shall require attendance and testimony of the agency chief accountant or its senior fiscal officer or such other designated person responsible for fiscal matters.

(g) Invoices properly submitted prior to the end of the 13th accounting period and not paid may be reported to the Examiners of Public Accounts. The Board may approve consent payment of such invoices upon receipt of a sufficiently documented and detailed explanation that adequately explains and justifies the inability to timely pay such invoices.

(h) It is the responsibility of the Agency or Department submitting Consent to document that the claiming vendor received written instructions that all vendors are obligated to provide agencies and departments with timely and accurate billing. Likewise, it is the responsibility of the Vendor to document with its claim that it has timely submitted proper invoices to the agency that accurately detail its charges and demand for payment.

27. **Prompt Payment.** The Board will consider and apply the provisions of the Prompt Payment Statute in consideration of prior year invoices and when a party to a contract, other than the state, has fully executed its responsibility under the contract and there remains only the payment of funds by the state and payment has not been made within 30 days after the claiming party has completed the required portions of the contract and presented a proper invoice. The interest rate shall be the as specified in the statute, which now provides the rate as, “[T]he legal amount currently charged by the state.” See Section 41-16-3, Code of Alabama (1975)

28. **Publication of Rules:**

(a) Rules of the Board of Adjustment shall be published on the website of the Finance Department under the link allocated to the Board of Adjustment.

(b) Each Agency and Department shall provide the Board of Adjustment website address/link or a physical copy of these Rules to all vendors that are referred to the Board of Adjustment or that indicate a desire to file a Board of Adjustment claim.

Chapter II

Procedure for Claims for Dependents of Deceased Policemen and Firemen

1. Filing of Claims.

(a) Jurisdiction of Board. The jurisdiction of the Board shall be invoked by a claim in writing filed with the Clerk of the Board and verified by the affidavit of the claimant, or someone duly authorized by the claimant in writing, evidence of whose authority shall accompany the claim. The claim and supporting documentation shall be submitted in duplicate.

(b) Claim--signature and notarization required. The claim filed must bear the original signature of claimant or his/her attorney of record or representative and must be notarized.

(c) Claim--concise statement. The claim must state concisely the facts constituting the same, the nature and extent of the interest of the claimant, and the mailing address of the claimant.

(d) Statute of limitations. Claims for compensation to dependents of deceased peace officers and firemen must be presented to the Board within one (1) year from the date of death of the peace officer or fireman on whom the claimant was dependent. Such death must occur proximately and within ten (10) years from date of injury.

(e) Burden of Proof. The burden of proof to establish the validity of each claim rests upon the claimant. Each claim must include:

1. Certified copy of death certificate;

2. Affidavit of head of agency or organization where deceased was employed setting out fully and in detail the facts concerning the cause of death and that deceased was employed as a peace officer or fireman and the dates of employment;

3. A full and complete list of all dependents of the deceased including any children by prior marriages. The list must include each dependent's full name, age, address, and relationship to the deceased.

4. An affidavit setting out those dependents that were actually dependent for all or part of their support from the earnings of the deceased.

(f) Form for Claim. Claims shall be submitted to the Board in the form prescribed by the Board.

(g) Disposition of copies of claim. Upon the filing of a claim, one copy thereof shall be immediately referred to the Attorney General.

2. Disposition of Claims. Disposition of claims shall be as set forth in Rules 21.

Chapter III

Procedures for Claims for Disability of Volunteer Fireman

1. Filing of Claims

(a) Jurisdiction of Board. The jurisdiction of the Board shall be invoked by a claim in writing filed with the Clerk of the Board and verified by the affidavit of the claimant, or someone duly authorized by the claimant in writing, evidence of whose authority shall accompany the claim. The claim should be submitted in duplicate.

(b) Claim-signature and notarization required. The claim filed must bear the original signature of claimant or his/her attorney of record or representative and must be notarized.

(c) Claim- concise statement. The claim must state concisely the facts constituting the same and the mailing address of the claimant therein.

(d) Statute of limitations. Claims for compensation to disabled volunteer firemen must be presented to the Board within one (1) year from the date of the decision of the State Health Officer as referred to in Section 36-30-2, Code of Alabama (1975).

(e) Burden of Proof. The burden of proof to establish the validity of each claim rests upon the claimant. Each claim must include the following: (a) an affidavit of the head of the fire department where claimant was a member setting out fully and in detail the facts concerning the cause of the disabling injury and that claimant was a member of the volunteer fire department and the dates of his or her membership; (b) a statement from the State Health Officer regarding his determination of the volunteer fireman's total disability; and (c) a statement from the Alabama Forestry Commission regarding the registry of the volunteer fire department.

(f) Form for claim. Claims shall be submitted to the Board in the form prescribed by the Board.

(g) Disposition of copies of claim. Upon the filing of a claim, one copy thereof shall be immediately referred to the Attorney General for the issuance of an opinion regarding the payment thereof.

2. Disposition of Claims. Disposition of claims shall be as set forth in Rule 21.

Chapter IV

Amendment of Rules

The Board may adopt new rules or amend existing rules from time to time that it deems necessary to carry out its duties and functions.