

IN THE SUPREME COURT OF OHIO

PATRICIA CRAWFORD-COLE,

\*

Case No. 2008-0462

\*

Appellant,

\*

On Appeal from the Lucas  
County Court of Appeals,  
Sixth Appellate District

\*

\*

Court of Appeals  
C.A. No. L-07-1188

-vs-

\*

LUCAS COUNTY DEPARTMENT OF  
JOB AND FAMILY SERVICES,

\*

Appellee.

\*

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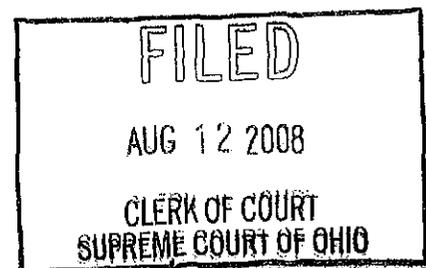
MERIT BRIEF OF APPELLANT LUCAS COUNTY DEPARTMENT OF  
JOB AND FAMILY SERVICES

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JULIA R. BATES, PROSECUTING ATTORNEY  
LUCAS COUNTY, OHIO

By: John A. Borell (0016461)  
Karlene D. Henderson (0076083)  
Assistant Lucas County Prosecutors  
Lucas County Courthouse, Suite 250  
Toledo, Ohio 43604  
Telephone: 419.213.2001  
Facsimile: 419.213.2011  
E-mail: [jaborell@co.lucas.oh.us](mailto:jaborell@co.lucas.oh.us)  
Counsel for Appellant Lucas County  
Department of Job and Family Services

Terry Lodge  
315 N. Michigan St. Ste 350  
Toledo, Ohio 43604  
Counsel for Appellee Crawford-Cole



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A court of common pleas does not have subject matter jurisdiction to hear an appeal under R.C.119.12 if the appellant has failed to exhaust her administrative remedies. A party fails to exhaust when she does not request an administrative hearing by the relevant deadline; such a hearing is necessary to develop the case's factual and legal issues and to allow any agency to apply its expertise to a case.....10

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## INTRODUCTION

The decision of the Ohio Sixth District Court of Appeals, Lucas County, has undermined the process of administrative appeals from the revocation of home day care certificates at the county level. The decision declaring an Ohio Department of Job and Family Services ("ODJFS") regulation unconstitutional and-in conflict with a statute needlessly affects hundreds of county level hearings in all 88 counties in the State of Ohio.

This Court now has the opportunity clarify the administrative appeal process under the Ohio Revised Code and the Ohio Administrative Code for home day care providers whose certificates have been revoked. This is a significant issue because the implications of the Appellate Court's decision affect every county Type B day care certificate revocation in Ohio<sup>1</sup>.

The regulation, O.A.C. 5101:2-14-40(C), requires a Type B day care certificate ("Certificate") holder to appeal revocation of the Certificate to the county department of job and family services (hereinafter "CDJFS") no later than ten days following the mailing date of the notification of the CDJFS' action. The Appellate Court ruled that the ten-day deadline conflicted with R.C. 119.07, which provides a thirty-day deadline to appeal a state agency's administrative decision. However, R.C. 5101.09, which governs the adoption of rules by the ODJFS director, specifically exempts ODJFS from the notice, hearing or other requirements of R.C. Sections 119.06 to 119.13. Thus, the Appellate Court was incorrect in determining that the Lucas County Department of Job

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<sup>1</sup> A "Type B Certificate" refers to a family day-care home that is certified by the director of a county department of job and family services pursuant to R.C. Section 5104.11 and O.A.C. Chapter 5101:2-14 to

and Family Services ("LCDJFS") must give a Certificate holder whose Certificate has been revoked thirty days to appeal.

The ten-day deadline for appeal at the local CDJFS level allows for quick adjudication and solutions to a day care provider who has had their Certificate revoked. The Appellate Court's decision in extending the county appeal deadline to thirty days causes undue delay in the hearing process for both the CDJFS and the affected party. The ramifications of this ruling affect all 88 county job and family services departments. *There is no conflict between the regulation and statute as the Appellate Court has ruled, because the statute cited by the appellate court is inapplicable to the regulation.*

Nowhere in its decision does the Appellate Court cite the applicability or effect of R.C. 5101.09 which specifically exempts rules promulgated by the department of job and family services from the notice, hearing and other requirements of sections 119.06 to 119.13. It is a significant issue as the decision impacts hundreds of appeal hearing dates set by all Ohio county job and family services agencies.

## STATEMENT OF THE CASE AND FACTS

**A. Crawford-Cole willfully violated the provisions of her contract with LCDJFS placing children at risk.**

On or about July 1, 2006, LCDJFS entered into a "Contract for Purchase of Publicly Funded Child Care Services" which set forth that Crawford-Cole, a Certificate holder would provide child care service and LCDJFS would pay her for rendering those services. The contract period was from July 1, 2006 through June 30, 2007 and consisted of eight pages of terms. App. Op. ¶ 2.

On July 20, 2006, LCDJFS conducted a home visit of Patricia Crawford-Cole's home. Ten violations of O.A.C. Chapter 5101:2-14 were observed. These included the absence of any authorized caregivers, including Crawford-Cole, and fourteen children in the home, more than double the approved number of six children as permitted by her Certificate. App. Op. ¶ 3.

On July 24, 2006, Serena Rayford, LCDJFS Support Services Coordinator, sent Crawford-Cole a letter, via certified mail, informing her that LCDJFS was revoking her Certificate effective August 3, 2006. The letter detailed the violations observed during the July 20, 2006 home visit and set forth her right to appeal the revocation "in accordance with O.A.C. Section 5101:2-14-40, "a copy of which is enclosed for your convenience." Someone in the household signed for the certified mail. App. Op. ¶ 4.

**B. Crawford-Cole failed to request any administrative hearing and appealed her certificate revocation directly to the trial court.**

In correspondence dated August 10, 2006, Crawford-Cole wrote to Deborah Ortiz, Director of LCDJFS, stating that she had only just received the revocation letter from LCDJFS on August 9, 2006, and learned that the appeal period had expired on August 3, 2006. She additionally stated that she had received a voicemail from the agency which informed her she had missed the deadline for an administrative appeal. App. Op. ¶ 5.

No administrative appeal for the revocation of her license was ever attempted by Crawford-Cole. Instead, on September 27, 2006, she filed her notice of appeal in Lucas County Common Pleas Court. The appeal directly to common pleas court ignored all administrative processes. App. Op. ¶ 6.

**C. LCDJFS' motion to dismiss was granted but reversed by the court of appeals.**

LCDJFS filed its motion to dismiss Crawford-Cole's appeal on October 23, 2006 on grounds that she failed to exhaust administrative remedies and for lack of subject matter jurisdiction. The motion to dismiss was granted on or about May 1, 1007. App. Op. ¶ 7.

Crawford-Cole appealed to the Sixth District Court of Appeals, Lucas County which reversed the trial court's decision on the basis that the O.A.C. 5101:2-14-40 appeal deadline of 10 days was not the correct time limit that governed appeals of a CDJFS hearing and that the thirty-day time limit under R.C. 119.07 applied instead. App. Op. ¶ 24. The Appellate Court incorrectly concluded that a conflict existed

between the regulation and the statute. App. Op. ¶¶ 23-24.

But the Appellate Court either ignored or did not consider the fact that the administrative code regulation is not subject to the provisions of R.C. 119.07 due to the specific exemption granted by R.C. 5101.09. The ruling by the Appellate Court forces a delay on both parties to adjudicate the revocation of a Certificate, affecting hundreds of hearings both at the CDJFS level.

In its Notice of Appeal filed March 3, 2008, LCDJFS asked this Court to accept jurisdiction. The State of Ohio filed an amicus brief in support of LCDJFS. This Court accepted jurisdiction of the appeal and LCDJFS now files its brief. *6/18/2008 Case Announcements, 2008-Ohio-2823.*

## ARGUMENT

### Proposition of Law :

**The Appellate Court erred in applying the R.C. 119.07 thirty-day period to appeal a Certificate revocation by LCDJFS instead of the ten-day period under O.A.C. 5101:2-14-40 because although the rule may have been adopted in accordance with R.C. Chapter 119, R.C. Section 5101.09 specifically exempts the rule from the requirements of R.C. Sections 119.06 to 119.13 which include the 30-day limit.**

The creation by the Appellate Court of a thirty-day right to appeal a Certificate revocation and invalidating the use of the ten-day administrative regulation deadline has a rippling effect throughout all 88 CDJFS agencies. The declaration of O.A.C. 5101:2-14-40 as "unconstitutional" disrupts the local Certificate revocation appeal process. It creates additional delay in restoration of a Certificate as well as extending the periods of time appeals currently take.

The statutes and regulations at issue are clear when read in conjunction with one another. When broken down, it is clear no conflict exists between the statutes and administrative regulations applicable to Type B day care certificates issued by a CDJFS.

**A. R.C. 5101.09 authorizes the application of R.C. Chapter 119, with the exception of R.C. 119.06 to 119.13, to administrative reviews of certificates granted and revoked by a county department of job and family services.**

Ohio Revised Code 5101.09 provides the procedure for adoption of rules for departments of job and family services. Specifically, R.C 5101.09(A) authorizes the director of job and family services to adopt rules in accordance with R.C. Chapter 119 if the rule concerns a program administered by the department of job and family

services<sup>2</sup>. Thus, rules must be adopted pursuant to R.C. 119.03 and appeals of state agency decisions are subject to the provisions of R.C. 119.12. The 88 county departments of job and family services are the administrators of the regulations and are responsible for the payments for child day-care, the certification and revocation of certificates of Type B" homes, inspections and enforcement.

Thus, it follows that O.A.C. 5101:2-14-40, which governs the appeal review procedures for Type B day care certificates, must be adopted in accordance with R.C. Chapter 119. There is, however, a specific exception contained within R.C. 5101.09(B) which the Appellate Court failed to address in its opinion and is the turning point in LCDJFS' argument. It is this portion of the statute which substantiates LCDJFS' claim that Chapter 119 applies to the county agency and that the ten day provision for appeal time *is not in conflict* with the thirty day statutory deadline set forth in R.C. 119.07.

It is imperative that R.C. 5101.09 (A) be read in light of R.C. 5101.09 (B) which expressly states:

Except as otherwise required by the Revised Code, the adoption of a rule in accordance with Chapter 119 of the Revised Code ***does not make the department of job and family services, a county family services agency, or a workforce development agency subject to the notice, hearing or other requirements of section 119.06 to 119.13 of the Revised Code*** (Emphasis supplied).

It is a state administrative hearing pursuant to R.C. 119.07 which requires a thirty day notice for a hearing. This is appropriate for the second level of appeal but is inapplicable to the regulations authorized by R.C. 5101.09. Simply put, R.C.

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<sup>2</sup> There is an exception in this provision for rules that must be adopted in accordance with R.C. 111.15, but it does not apply in this matter.

5101.09(A) grants the director of ODJFS the authority to adopt administrative regulations. R.C. 5101.09(B) allows the administrative regulations to be exempted from the statutory requirements of R.C. 119.06 through 119.13, which obviously includes R.C. 119.07. Thus, the language clearly supports the authority of the director of job and family services to set up administrative regulations which are not all within the purview of Ohio Revised Code Chapter 119.

**B. The failure of the Appellate Court to address R.C. 5101.09 creates a conflict in the statute and administrative regulation which does not exist.**

The missing premise in the Appellate Court's opinion is its complete failure to acknowledge R.C. 5101.09(B) which provides the exception to R.C. 119.07 within the county "first-level" of appeal. For it is clear, when R.C. 5101.09 is factored in, that the county administrative review described under O.A.C. 5101:2-14-40, is specifically exempted from a R.C. 119.07 thirty-day appeal filing deadline.

The exemption from R.C. 119.07 means the R.C. 119.07 and the O.A.C. 5101:2-14-40 deadlines are mutually exclusive and not in conflict with one another. The failure of the Appellate Court to recognize the exemption of the regulation is contrary to the efficient system set up by the department of job and family services under the authority granted it by the Ohio Revised Code and the Ohio Administrative Code.

**ADOPTION OF  
AMICUS CURIAE ATTORNEY GENERAL'S PROPOSITIONS OF LAW**

**Proposition of Law 1:**

**Ohio's administrative procedure law for state agencies, R.C. Chapter 119, applies only to state agencies and not to county agencies, so it does not apply when a county department of job and family services revokes a Type B day-care license.**

**Proposition of Law 2:**

**A court of common pleas does not have subject matter jurisdiction to hear an appeal under R.C. 119.12 if the appellant has failed to exhaust her administrative remedies. A party fails to exhaust when she does not request an administrative hearing by the relevant deadline; such a hearing is necessary to develop the case's factual and legal issues and to allow any agency to apply its expertise to a case.**

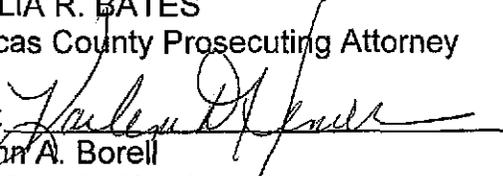
In the interest of brevity, Lucas County Department of Job and Family Services hereby adopts and incorporates herein the propositions of law and the supporting arguments as presented by the Merit Brief of Amicus Curiae of Ohio Attorney General Nancy H. Rogers, including the threshold issue of the applicability of R.C. Chapter 119.

## CONCLUSION

Patricia Crawford-Cole was timely sent, and received, the ten (10) day notification of her right to an administrative appeal under Ohio Administrative Code 5101:2-14-40. She did not request a hearing within the prescribed ten day period despite discussions with LCDJFS, thus she failed to exhaust her administrative remedies. Because no administrative hearing was requested or held, the trial court was deprived of subject matter jurisdiction and properly granted the LCDJFS' motion to dismiss. Upon Crawford-Cole's appeal, the Appellate Court erred in declaring O.A.C. 5101:2-14-40 in conflict with R.C.119.07 by failing to recognize the exemption of CDJFS appeal reviews from the hearing and notice requirements of R.C. 119.07.

WHEREFORE, in light of all of the foregoing reasons, the Lucas County Department of Job and Family Services requests that the judgment of the appeals court be reversed.

Respectfully submitted  
JULIA R. BATES  
Lucas County Prosecuting Attorney

By:   
John A. Borell  
Karlene D. Henderson  
Assistant Prosecuting Attorneys  
Counsel for Appellant Lucas County Job  
and Family Services

**CERTIFICATE OF SERVICE**

This is to hereby certify that a copy of the foregoing was sent via U.S. ordinary mail this 13<sup>th</sup> day of August, 2008 to the following:

Terry Lodge  
315 N. Michigan Street Ste 520  
Toledo, Ohio 43624  
Counsel for Appellant Crawford-Cole

By:



John A. Borell  
Karlene D. Henderson  
Assistant Prosecuting Attorneys  
Counsel for Appellee-Appellant Lucas  
County Job and Family Services

# APPENDIX

IN THE SUPREME COURT OF OHIO

PATRICIA CRAWFORD-COLE

\*

On Appeal from the Lucas  
County Court of Appeals,  
Sixth Appellate District

\*

Plaintiff-Appellant,

\*

Court of Appeals  
C.A. No. L-07-1188

-vs-

\*

LUCAS COUNTY DEPARTMENT OF  
JOB AND FAMILY SERVICES,

\*

**08-0462**

\*

Defendant-Appellee.

\*

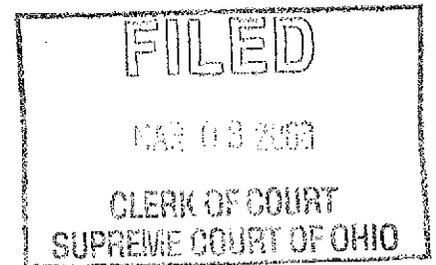
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NOTICE OF APPEAL OF APPELLEE LUCAS COUNTY DEPARTMENT  
OF  
JOB AND FAMILY SERVICES

---

JULIA R. BATES, PROSECUTING ATTORNEY  
LUCAS COUNTY, OHIO

By: John A. Borell (0016461)  
Karlene D. Henderson (0076083)  
Assistant Lucas County Prosecutors  
Lucas County Courthouse, Suite 250  
Toledo, Ohio 43624  
Telephone: 419.213.2001  
Facsimile: 419.213.2011  
E-mail: [jaborell@co.lucas.oh.us](mailto:jaborell@co.lucas.oh.us)  
Counsel for Appellee Lucas County  
Department of Job and Family Services



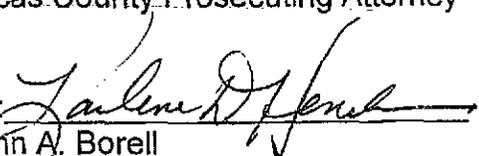
Terry Lodge  
315 N. Michigan Street Ste 520  
Toledo, Ohio 43624  
Counsel for Appellant Crawford-Cole

**Notice of Appeal of Appellee Lucas County Department of Job and Family Services**

Appellee Lucas County Department of Job and Family Services, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in Court of Appeals Case No. L-06-5976 on January 18, 2008.

This case is one of public and great general interest.

Respectfully submitted,  
JULIA R. BATES  
Lucas County Prosecuting Attorney

By:   
John A. Borell  
Karlene D. Henderson  
Assistant Prosecuting Attorneys  
Counsel for Appellee Lucas County  
Department of Job and Family Services

FILED  
COURT OF APPEALS

2008 JAN 18 A 7:59

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Patricia Crawford-Cole

Court of Appeals No. L-07-1188

Appellant

Trial Court No. CI-2006-5976

v.

Lucas County Department  
of Job & Family Services

DECISION AND JUDGMENT ENTRY

Appellee

Decided:

JAN 18 2008

\*\*\*\*\*

Terry Lodge, for appellant.

Julia R. Bates, Lucas County Prosecuting Attorney, John A. Borell and  
Karlene D. Henderson, Assistant Prosecuting Attorneys, for appellee.

\*\*\*\*\*

SKOW, J.

{¶ 1} Appellant, Patricia Crawford-Cole, appeals from a judgment entered by the Lucas County Common Pleas Court granting a motion to dismiss filed by appellee, Lucas County Department of Job & Family Services ("LCDJFS"). For the reasons that follow, we reverse the judgment of the trial court.

E-JOURNALIZED

JAN 18 2008

{¶ 2} On or about July 1, 2006, Crawford-Cole and LCDJFS entered into a one-year agreement pursuant to which Crawford-Cole, a type B home day-care provider, would provide child-care services in return for payment by LCDJFS.

{¶ 3} On July 20, 2006, LCDJFS conducted a home visit of Crawford-Cole's home. Ten violations were observed, including the presence of more than twice as many children as were permitted to be cared for at any given time, and the absence of any authorized caregivers.

{¶ 4} On July 24, 2006, Serena Rayford, Support Services Coordinator of LCDJFS, sent Crawford-Cole a letter, via certified mail, informing Crawford-Cole that LCDJFS would revoke her Type B home day-care provider certificate effective August 3, 2006. The letter detailed the violations observed during the July 20, 2006 home visit and notified Crawford-Cole of her right to appeal the revocation in accordance with O.A.C. Section 5101:2-14-40. Someone in Crawford-Cole's household signed for the certified mail.

{¶ 5} In correspondence dated August 10, 2006, Crawford-Cole wrote to Deborah Ortiz, Executive Director of LCDJFS, stating that she, Crawford-Cole, had only just received the revocation letter on August 9, 2006, and had only just learned that her appeal period had expired on August 3, 2006. She additionally stated that the LCDJFS response to a voicemail she had left earlier that day was to inform her that she had missed the appeal deadline and, "per legal," there was "absolutely no way around it."

{¶ 6} On September 27, 2006, Crawford-Cole filed a notice of administrative appeal with the Lucas County Court of Common Pleas. Attached to the notice of appeal was a letter from Ortiz-Flores, dated August 28, 2006, which stated that the letter was "a follow up" to their meeting on August 22, 2006, and provided "updated information" that she had requested, along with a summary of case notes from Crawford-Cole's file with LCDJFS.

{¶ 7} LCDJFS filed its motion to dismiss Crawford-Cole's appeal on October 23, 2006. In an opinion and judgment entry journalized on May 2, 2007, the trial court granted the motion, finding that because Crawford-Cole did not timely request a county review hearing pursuant to O.A.C. 5101:2-14-40, she failed to exhaust her administrative remedies, leaving the trial court without subject matter jurisdiction to address the appeal. Crawford-Cole timely appealed this decision, raising the following assignments of error:

{¶ 8} I. "IT IS ERROR TO NOT ENFORCE THE 30-DAY OPPORTUNITY TO INITIATE AN ADMINISTRATIVE APPEAL IN DAY CARE CERTIFICATE REVOCATION PROCEEDINGS BEFORE A COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES."

{¶ 9} II. "IT IS ERROR TO NOT STRICTLY ENFORCE THE NOTIFICATION TERMS CONTAINED IN A GOVERNMENTAL CONTRACT RESPECTING THE METHOD OF DELIVERY OF WRITTEN NOTIFICATION OF REVOCATION OF A CERTIFICATE DESPITE THE AVAILABILITY OF ALTERNATIVE METHODS OF REVOCATION."

{¶ 10} III. "IT WAS ERROR FOR THE TRIAL COURT TO FIND REVIEW OF THE NOTICE OF REVOCATION TO BE 'MOOT' AND TO REFUSE TO SCRUTINIZE ITS ADEQUACY FROM THE STANDPOINT OF DUE PROCESS CONSIDERATIONS."

{¶ 11} In her first assignment of error, Crawford-Cole argues that, pursuant to R.C. 119.07, she should have been allowed 30 days in which to file her administrative appeal of LCDJFS's decision to revoke her home day-care license. Instead, she was allowed only ten days to file her appeal, in accordance with O.A.C. 5101:2-14-40.

{¶ 12} R.C. 5104.011(G) relevantly provides that the director of job and family services shall adopt rules pursuant to Chapter 119 of the Revised Code governing the certification of type B family day-care homes.

{¶ 13} R.C. 119.06, which discusses adjudication orders, pertinently states:

{¶ 14} "No adjudication order of an agency shall be valid unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 or the Revised Code. Such opportunity for a hearing shall be given before making the adjudication order except in those situations where this section provides otherwise."

{¶ 15} "Adjudication" means the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person \* \* \*." R.C. 119.01(D).

{¶ 16} Applying the foregoing law to the facts of this case, we find that, pursuant to R.C. 119.06, LCDJFS was required to provide Crawford-Cole an opportunity for a hearing in connection with its decision to revoke her home day-care license.

{¶ 17} R.C. 119.07 deals with notice of agency adjudication hearings, and pertinently states:

{¶ 18} "[I]n all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing him of his right to a hearing. Notice \* \* \* shall include \* \* \* a statement informing the party that *he is entitled to a hearing if he requests it within thirty days of the time of the mailing of the notice.* \* \* \*" <sup>1</sup>

{¶ 19} When R.C. 119.07 is applied to the instant case, we find that Crawford-Cole was entitled to a hearing on the decision to revoke her license as long as she requested it within 30 days of the date that notice of that decision was mailed to her.

{¶ 20} O.A.C. 5101:2-14-40, the administrative rule that was relied upon both by LCDJFS and the trial court, provides a considerably shorter time for appeal, stating:

{¶ 21} "The request for a county appeal review shall be submitted in writing to the CDJFS *no later than ten calendar days* after the mailing date of the CDJFS notification that there will be an adverse action taken on his/her application for certification or his/her certification." (Emphasis added.)

{¶ 22} Because Crawford-Cole was only allowed 10 days in which to request her appeal in accordance with O.A.C. 5101:2-14-40, and not 30 days as permitted by R.C. 119.07, we must determine which of the two deadlines applies.

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<sup>1</sup>The applicable version of R.C. 119.07 was enacted effective March 27, 1991. A revised version was enacted effective September 29, 2007.

{¶ 23} The purpose of administrative rules is to accomplish the ends sought by legislation enacted by the General Assembly. *Hoffman v. State Med. Bd. of Ohio*, 113 Ohio St.3d 376, 2007-Ohio-2201, ¶17. Thus, "[r]ules promulgated by administrative agencies are valid and enforceable unless unreasonable or in conflict with statutory enactments covering the same subject matter." *State ex rel. Curry v. Indus. Comm.* (1979), 58 Ohio St.2d 268, 269. If an administrative rule either adds to or subtracts from a legislative enactment, it creates a clear conflict with the statute, and the rule is invalid, *Cent. Ohio Joint Vocational School Dist. Bd. of Edn. v. Ohio Bur. of Emp. Servs.* (1986), 21 Ohio St.3d 5, 10, and unconstitutional. *Midwestern College of Massotherapy v. Ohio Med. Bd.* (1995), 102 Ohio App.3d 17, 23 (stating that a rule that is in conflict with the law is unconstitutional because it surpasses administrative powers and constitutes a legislative function.)

{¶ 24} Here, O.A.C. 5101:2-14-40, which allows only ten days in which to file an county appeal review, clearly subtracts from, and therefore conflicts with, R.C. 119.07, which grants a 30-day deadline for the same activity. Given this conflict, we conclude that O.A.C. 5101:2-14-40 is invalid. Pursuant to R.C. 119.07, Crawford-Cole should have been afforded 30 days in which to file her appeal with the agency.<sup>2</sup> For the foregoing reasons, appellant's first assignment of error is found well-taken.

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<sup>2</sup>To the extent that LCDJFS argues that Crawford-Cole's appeal to the trial court was improper due to her failure to exhaust her administrative remedies, we note that failure to exhaust administrative remedies is not a necessary prerequisite to an action, such as the one at hand, which challenges the constitutionality of an administrative rule. See *Derakhshan v. State Med. Bd. of Ohio*, 10th Dist. No. 07AP-261, 2007-Ohio-5802, citing *Jones v. Village of Chagrin Falls*, 77 Ohio St.3d 456, 462, 1997-Ohio-253.

{¶ 25} Because our decision with respect to appellant's first assignment of error results in Crawford-Cole obtaining the entirety of the relief sought by her appeal, we find that her remaining assignments of error have been rendered moot.

{¶ 26} The judgment of the Lucas County Court of Common Pleas, is reversed, and the matter is remanded to LCDJFS for additional proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

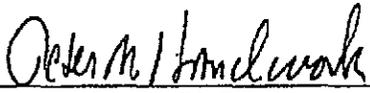
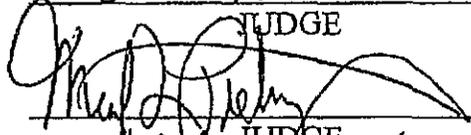
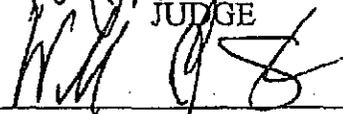
JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

William J. Skow, J.  
CONCUR.

  
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JUDGE  
  
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This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

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TOC: [Ohio Administrative Code](#) > /.../ > [Chapter 5101:2-14 Certification of Type B Family Care Homes](#) > [5101:2-14-40. Appeal review procedures for limited and professional certification as a type B home provider or in-home aide.](#)

Citation: oac 5101:2-14-40

OAC Ann. 5101:2-14-40

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\* THIS DOCUMENT IS CURRENT THROUGH OHIO REGISTER FOR THE WEEK OF JULY 7-11,  
2008 \*

5101:2 Division of Social Services  
Chapter 5101:2-14 Certification of Type B Family Care Homes

OAC Ann. 5101:2-14-40 (2008)

**5101:2-14-40. Appeal review procedures for limited and professional certification as a type B home provider or in-home aide.**

(A) An applicant, certified limited or professional type B home provider, and limited or professional certified in-home aide shall be informed in writing of the right to request a county appeal review when questioning the actions of the CDJFS with respect to their certification.

(B) The following actions of the CDJFS are subject to appeal:

(1) The CDJFS has denied an application for certification or has acted upon an application erroneously.

(2) The provider disagrees with any decision rendered on an inspection or complaint investigation conducted by the CDJFS in accordance with rule 5101:2-14-03 of the Administrative Code.

(3) The CDJFS has notified the provider that his/her certificate has been or will be revoked.

(4) The CDJFS has notified the provider that his/her certificate will not be renewed.

(5) The CDJFS has not renewed the provider's certificate within the time frames prescribed in rule 5101:2-14-04 of the Administrative Code.

(C) The request for a county appeal review shall be submitted in writing to the CDJFS no later than ten calendar days after the mailing date of the CDJFS notification that there will be an adverse action taken on his/her application for certification or his/her certification. The CDJFS shall not discourage, limit or interfere with an applicant's or provider's right to request a county appeal review.

(D) When the CDJFS receives a request for a county appeal review, the CDJFS shall date

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stamp the request, retain a copy in the applicant or provider's file, and forward the original date stamped request to the county director or designee responsible for conducting the county appeal review.

**(E)** The CDJFS, upon receipt of a request for a county appeal review, shall send a written notice of the time, date, and place of the county appeal review. The notice shall also contain the name, address, and telephone number of the person to contact in the event the applicant or provider cannot attend the scheduled county appeal review. When the applicant or provider is unable to attend the county appeal review as scheduled, documentation must be submitted to the CDJFS indicating why he/she is unable to attend. In circumstances which the CDJFS determines rescheduling is warranted, efforts shall be made to schedule the appeal at a time, date, and place convenient to all parties involved. Written notice of the new date and time shall be sent to the applicant or provider. Any disputes regarding attendance shall be resolved by the individual responsible for conducting the county appeal review. The CDJFS shall retain a copy of the written notice in the case file.

**(F)** When an applicant or provider requests a county appeal review, the CDJFS shall conduct the county appeal review within ten working days of receipt of the request, unless an extension is required pursuant to paragraph (E) of this rule.

**(G)** The county director or his designee shall be responsible for conducting the county appeal review. The individual responsible for conducting the county appeal review shall not have been a party to the decision that is the subject of the review. Evidence presented at the county appeal review shall be recorded by stenographic means or by use of audio-electronic recording devices as determined by the county director or designee at the time of the appeal review. Such record shall be made at the expense of the CDJFS and upon request, one copy of the verbatim transcript shall be provided to the applicant or provider at no cost.

**(H)** The following individuals may be present at the county appeal review:

**(1)** Legal representatives for all involved parties.

**(2)** Agency staff who are a party to the CDJFS action involving the applicant or provider.

**(3)** Witnesses called by the individual or CDJFS to present relevant testimony or evidence.

**(I)** The applicant or provider requesting a county appeal review shall have the opportunity to:

**(1)** Present the case.

**(2)** Examine the contents of the case file that are relevant to the CDJFS decision to deny or revoke the certificate, including all records and documents to be used by the CDJFS at the county appeal review, except for confidential information protected from release as addressed in rule 5101:2-14-62 of the Administrative Code, within a reasonable time prior to the county appeal review.

**(3)** Bring witnesses.

**(4)** Submit evidence to establish all pertinent facts and circumstances.

**(5)** Advance arguments without undue interference.

**(6)** Question or refute any testimony or evidence, presented by CDJFS witnesses or staff.

**(J)** If the applicant or provider requests documents that are relevant to the issue under

appeal, the CDJFS shall provide one copy of each document at no cost, except for confidential information protected from release.

**(K)** The county director or his designee shall start the county appeal review by providing the following introductory information:

**(1)** His/her name and role.

**(2)** Explanation of how the county appeal review will be conducted, including order of presentation and questioning.

**(3)** The time frame within which a decision shall be issued.

**(4)** How the individual will be notified of the decision.

**(L)** Following the presentation of introductory information the county director or his designee shall:

**(1)** Request that CDJFS staff:

**(a)** Explain the reasons for the agency's action;

**(b)** Cite the regulations upon which the action was based;

**(c)** Provide relevant case information and documents.

**(2)** Provide the applicant or provider with the opportunity to present the case, submit evidence, establish pertinent facts, advance arguments, present witnesses, question or refute the testimony or evidence presented by the CDJFS, and question CDJFS witnesses or staff.

**(3)** Question testimony or evidence presented by the applicant or provider, witnesses, or CDJFS staff, if applicable.

**(M)** The county director or his designee is responsible for preparing and issuing a written decision to the applicant or provider within ten working days from the date of the county appeal review. The decision shall be based upon:

**(1)** Facts and evidence presented at the county appeal review; and

**(2)** ODJFS regulations governing certified limited or professional type B homes, certified limited or professional in-home aides, or any additional county requirements approved by ODJFS in accordance with rule 5101:2-14-61 of the Administrative Code.

**(N)** The county appeal review decision shall include the following information:

**(1)** The action which was appealed.

**(2)** Findings of facts:

**(a)** Indicating which facts were mutually agreed upon by all parties;

**(b)** Discussing any resolution of factual disputes; and

**(c)** Discussing facts which were not mutually agreed upon.

**(3)** Citation and summarization of relevant Administrative Code rules which support the

facts established.

**(4)** Outcome of the appeal on each issue addressed.

**(O)** When the county appeal review decision has been issued the CDJFS shall promptly implement the decision.

**(P)** The county appeal review decision is final in regards to the appeal procedures contained in rule.

**History:**Effective: 04/01/2003.

R.C. 119.032 review dates: 12/20/2002 and 04/01/2008.

Promulgated Under: 119.03.

Statutory Authority: 5104.011.

Rule Amplifies: 5104.011.

Prior Effective Dates: 3/15/96, 10/1/97 (Emer.), 12/30/97, 1/1/01.

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TOC: [Ohio Administrative Code](#) > /.../ > [Chapter 5101:2-14 Certification of Type B Family Care Homes](#) > **5101:2-14-40. Appeal review procedures for limited and professional certification as a type B home provider or in-home aide.**

Citation: oac 5101:2-14-40

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TOC: [Page's Ohio Revised Code Annotated](#) > /.../ > [AGENCY RULES](#) > § 119.03. Procedure for adoption, amendment, or rescission of rules

Citation: orc 119.03

ORC Ann. 119.03

Practitioner's Toolbox ? □

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY  
AND FILED WITH THE SECRETARY OF STATE THROUGH AUGUST 1, 2008 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH JULY 1, 2008 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 \*\*\*

TITLE 1. STATE GOVERNMENT  
CHAPTER 119. ADMINISTRATIVE PROCEDURE  
AGENCY RULES

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ORC Ann. 119.03 (2008)

§ 119.03. Procedure for adoption, amendment, or rescission of rules

In the adoption, amendment, or rescission of any rule, an agency shall comply with the following procedure:

(A) Reasonable public notice shall be given in the register of Ohio at least thirty days prior to the date set for a hearing, in the form the agency determines. The agency shall file copies of the public notice under division (B) of this section. (The agency gives public notice in the register of Ohio when the public notice is published in the register under that division.)

The public notice shall include:

- (1) A statement of the agency's intention to consider adopting, amending, or rescinding a rule;
- (2) A synopsis of the proposed rule, amendment, or rule to be rescinded or a general statement of the subject matter to which the proposed rule, amendment, or rescission relates;
- (3) A statement of the reason or purpose for adopting, amending, or rescinding the rule;
- (4) The date, time, and place of a hearing on the proposed action, which shall be not earlier than the thirty-first nor later than the fortieth day after the proposed rule, amendment, or rescission is filed under division (B) of this section.

IV

In addition to public notice given in the register of Ohio, the agency may give whatever other notice it reasonably considers necessary to ensure notice constructively is given to all persons who are subject to or affected by the proposed rule, amendment, or rescission.

The agency shall provide a copy of the public notice required under division (A) of this section to any person who requests it and pays a reasonable fee, not to exceed the cost of copying and mailing.

(B) The full text of the proposed rule, amendment, or rule to be rescinded, accompanied by the public notice required under division (A) of this section, shall be filed in electronic form with the secretary of state and with the director of the legislative service commission. (If in compliance with this division an agency files more than one proposed rule, amendment, or rescission at the same time, and has prepared a public notice under division (A) of this section that applies to more than one of the proposed rules, amendments, or rescissions, the agency shall file only one notice with the secretary of state and with the director for all of the proposed rules, amendments, or rescissions to which the notice applies.) The proposed rule, amendment, or rescission and public notice shall be filed as required by this division at least sixty-five days prior to the date on which the agency, in accordance with division (D) of this section, issues an order adopting the proposed rule, amendment, or rescission.

If the proposed rule, amendment, or rescission incorporates a text or other material by reference, the agency shall comply with sections 121.71 to 121.76 of the Revised Code.

The proposed rule, amendment, or rescission shall be available for at least thirty days prior to the date of the hearing at the office of the agency in printed or other legible form without charge to any person affected by the proposal. Failure to furnish such text to any person requesting it shall not invalidate any action of the agency in connection therewith.

If the agency files a substantive revision in the text of the proposed rule, amendment, or rescission under division (H) of this section, it shall also promptly file the full text of the proposed rule, amendment, or rescission in its revised form in electronic form with the secretary of state and with the director of the legislative service commission.

The agency shall file the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, in electronic form along with a proposed rule, amendment, or rescission or proposed rule, amendment, or rescission in revised form that is filed with the secretary of state or the director of the legislative service commission.

The director of the legislative service commission shall publish in the register of Ohio the full text of the original and each revised version of a proposed rule, amendment, or rescission; the full text of a public notice; and the full text of a rule summary and fiscal analysis that is filed with the director under this division.

(C) On the date and at the time and place designated in the notice, the agency shall conduct a public hearing at which any person affected by the proposed action of the agency may appear and be heard in person, by the person's attorney, or both, may present the person's position, arguments, or contentions, orally or in writing, offer and examine witnesses, and present evidence tending to show that the proposed rule, amendment, or rescission, if adopted or effectuated, will be unreasonable or unlawful. An agency may permit persons affected by the proposed rule, amendment, or rescission to present their positions, arguments, or contentions in writing, not only at the hearing, but also for a reasonable period before, after, or both before and after the hearing. A person who presents a position or arguments or contentions in writing before or after the hearing is not required to appear at the hearing.

At the hearing, the testimony shall be recorded. Such record shall be made at the expense of the agency. The agency is required to transcribe a record that is not sight readable only if a person requests transcription of all or part of the record and agrees to reimburse the agency for the costs of the transcription. An agency may require the person to pay in advance all or part of the cost of the transcription.

In any hearing under this section the agency may administer oaths or affirmations.

(D) After complying with divisions (A), (B), (C), and (H) of this section, and when the time for legislative review and invalidation under division (I) of this section has expired, the agency may issue an order adopting the proposed rule or the proposed amendment or rescission of the rule, consistent with the synopsis or general statement included in the public notice. At that time the agency shall designate the effective date of the rule, amendment, or rescission, which shall not be earlier than the tenth day after the rule, amendment, or rescission has been filed in its final form as provided in section 119.04 of the Revised Code.

(E) Prior to the effective date of a rule, amendment, or rescission, the agency shall make a reasonable effort to inform those affected by the rule, amendment, or rescission and to have available for distribution to those requesting it the full text of the rule as adopted or as amended.

(F) If the governor, upon the request of an agency, determines that an emergency requires the immediate adoption, amendment, or rescission of a rule, the governor shall issue an order, the text of which shall be filed in electronic form with the agency, the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review, that the procedure prescribed by this section with respect to the adoption, amendment, or rescission of a specified rule is suspended. The agency may then adopt immediately the emergency rule, amendment, or rescission and it becomes effective on the date the rule, amendment, or rescission, in final form and in compliance with division (A)(2) of section 119.04 of the Revised Code, are \* filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. If all filings are not completed on the same day, the emergency rule, amendment, or rescission shall be effective on the day on which the latest filing is completed. The director shall publish the full text of the emergency rule, amendment, or rescission in the register of Ohio.

The emergency rule, amendment, or rescission shall become invalid at the end of the ninetieth day it is in effect. Prior to that date the agency may adopt the emergency rule, amendment, or rescission as a nonemergency rule, amendment, or rescission by complying with the procedure prescribed by this section for the adoption, amendment, and rescission of nonemergency rules. The agency shall not use the procedure of this division to readopt the emergency rule, amendment, or rescission so that, upon the emergency rule, amendment, or rescission becoming invalid under this division, the emergency rule, amendment, or rescission will continue in effect without interruption for another ninety-day period, except when division (I)(2)(a) of this section prevents the agency from adopting the emergency rule, amendment, or rescission as a nonemergency rule, amendment, or rescission within the ninety-day period.

This division does not apply to the adoption of any emergency rule, amendment, or rescission by the tax commissioner under division (C)(2) of section 5117.02 of the Revised Code.

(G) Rules adopted by an authority within the department of job and family services for the administration or enforcement of Chapter 4141. of the Revised Code or of the department of taxation shall be effective without a hearing as provided by this section if the statutes pertaining to such agency specifically give a right of appeal to the board of tax appeals or to

a higher authority within the agency or to a court, and also give the appellant a right to a hearing on such appeal. This division does not apply to the adoption of any rule, amendment, or rescission by the tax commissioner under division (C)(1) or (2) of section 5117.02 of the Revised Code, or deny the right to file an action for declaratory judgment as provided in Chapter 2721. of the Revised Code from the decision of the board of tax appeals or of the higher authority within such agency.

(H) When any agency files a proposed rule, amendment, or rescission under division (B) of this section, it shall also file in electronic form with the joint committee on agency rule review the full text of the proposed rule, amendment, or rule to be rescinded in the same form and the public notice required under division (A) of this section. (If in compliance with this division an agency files more than one proposed rule, amendment, or rescission at the same time, and has given a public notice under division (A) of this section that applies to more than one of the proposed rules, amendments, or rescissions, the agency shall file only one notice with the joint committee for all of the proposed rules, amendments, or rescissions to which the notice applies.) If the agency makes a substantive revision in a proposed rule, amendment, or rescission after it is filed with the joint committee, the agency shall promptly file the full text of the proposed rule, amendment, or rescission in its revised form in electronic form with the joint committee. The latest version of a proposed rule, amendment, or rescission as filed with the joint committee supersedes each earlier version of the text of the same proposed rule, amendment, or rescission. An agency shall file the rule summary and fiscal analysis prepared under section 121.24 or 127.18 of the Revised Code, or both, in electronic form along with a proposed rule, amendment, or rescission, and along with a proposed rule, amendment, or rescission in revised form, that is filed under this division.

This division does not apply to:

(1) An emergency rule, amendment, or rescission;

(2) Any proposed rule, amendment, or rescission that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:

(a) A statement that it is proposed for the purpose of complying with a federal law or rule;

(b) A citation to the federal law or rule that requires verbatim compliance.

If a rule or amendment is exempt from legislative review under division (H)(2) of this section, and if the federal law or rule pursuant to which the rule or amendment was adopted expires, is repealed or rescinded, or otherwise terminates, the rule or amendment, or its rescission, is thereafter subject to legislative review under division (H) of this section.

(I) (1) The joint committee on agency rule review may recommend the adoption of a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof if it finds any of the following:

(a) That the rule-making agency has exceeded the scope of its statutory authority in proposing the rule, amendment, or rescission;

(b) That the proposed rule, amendment, or rescission conflicts with another rule, amendment, or rescission adopted by the same or a different rule-making agency;

(c) That the proposed rule, amendment, or rescission conflicts with the legislative intent in enacting the statute under which the rule-making agency proposed the rule,

amendment, or rescission;

(d) That the rule-making agency has failed to prepare a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission as required by section 121.24 or 127.18 of the Revised Code, or both, or that the proposed rule, amendment, or rescission incorporates a text or other material by reference and either the rule-making agency has failed to file the text or other material incorporated by reference as required by section 121.73 of the Revised Code or, in the case of a proposed rule or amendment, the incorporation by reference fails to meet the standards stated in section 121.72, 121.75, or 121.76 of the Revised Code.

The joint committee shall not hold its public hearing on a proposed rule, amendment, or rescission earlier than the forty-first day after the original version of the proposed rule, amendment, or rescission was filed with the joint committee.

The house of representatives and senate may adopt a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof. The concurrent resolution shall state which of the specific rules, amendments, rescissions, or parts thereof are invalidated. A concurrent resolution invalidating a proposed rule, amendment, or rescission shall be adopted not later than the sixty-fifth day after the original version of the text of the proposed rule, amendment, or rescission is filed with the joint committee, except that if more than thirty-five days after the original version is filed the rule-making agency either files a revised version of the text of the proposed rule, amendment, or rescission, or revises the rule summary and fiscal analysis in accordance with division (I)(4) of this section, a concurrent resolution invalidating the proposed rule, amendment, or rescission shall be adopted not later than the thirtieth day after the revised version of the proposed rule or rule summary and fiscal analysis is filed. If, after the joint committee on agency rule review recommends the adoption of a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof, the house of representatives or senate does not, within the time remaining for adoption of the concurrent resolution, hold five floor sessions at which its journal records a roll call vote disclosing a sufficient number of members in attendance to pass a bill, the time within which that house may adopt the concurrent resolution is extended until it has held five such floor sessions.

Within five days after the adoption of a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof, the clerk of the senate shall send the rule-making agency, the secretary of state, and the director of the legislative service commission in electronic form a certified text of the resolution together with a certification stating the date on which the resolution takes effect. The secretary of state and the director of the legislative service commission shall each note the invalidity of the proposed rule, amendment, rescission, or part thereof, and shall each remove the invalid proposed rule, amendment, rescission, or part thereof from the file of proposed rules. The rule-making agency shall not proceed to adopt in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, any version of a proposed rule, amendment, rescission, or part thereof that has been invalidated by concurrent resolution.

Unless the house of representatives and senate adopt a concurrent resolution invalidating a proposed rule, amendment, rescission, or part thereof within the time specified by this division, the rule-making agency may proceed to adopt in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, the latest version of the proposed rule, amendment, or rescission as filed with the joint committee. If by concurrent resolution certain of the rules, amendments, rescissions, or parts thereof are specifically invalidated, the rule-making agency may proceed to adopt, in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, the latest version of the proposed rules,

amendments, rescissions, or parts thereof as filed with the joint committee that are not specifically invalidated. The rule-making agency may not revise or amend any proposed rule, amendment, rescission, or part thereof that has not been invalidated except as provided in this chapter or in section 111.15 of the Revised Code.

(2) (a) A proposed rule, amendment, or rescission that is filed with the joint committee under division (H) of this section or division (D) of section 111.15 of the Revised Code shall be carried over for legislative review to the next succeeding regular session of the general assembly if the original or any revised version of the proposed rule, amendment, or rescission is filed with the joint committee on or after the first day of December of any year.

(b) The latest version of any proposed rule, amendment, or rescission that is subject to division (I)(2)(a) of this section, as filed with the joint committee, is subject to legislative review and invalidation in the next succeeding regular session of the general assembly in the same manner as if it were the original version of a proposed rule, amendment, or rescission that had been filed with the joint committee for the first time on the first day of the session. A rule-making agency shall not adopt in accordance with division (D) of this section, or file in accordance with division (B)(1) of section 111.15 of the Revised Code, any version of a proposed rule, amendment, or rescission that is subject to division (I)(2)(a) of this section until the time for legislative review and invalidation, as contemplated by division (I)(2)(b) of this section, has expired.

(3) Invalidation of any version of a proposed rule, amendment, rescission, or part thereof by concurrent resolution shall prevent the rule-making agency from instituting or continuing proceedings to adopt any version of the same proposed rule, amendment, rescission, or part thereof for the duration of the general assembly that invalidated the proposed rule, amendment, rescission, or part thereof unless the same general assembly adopts a concurrent resolution permitting the rule-making agency to institute or continue such proceedings.

The failure of the general assembly to invalidate a proposed rule, amendment, rescission, or part thereof under this section shall not be construed as a ratification of the lawfulness or reasonableness of the proposed rule, amendment, rescission, or any part thereof or of the validity of the procedure by which the proposed rule, amendment, rescission, or any part thereof was proposed or adopted.

(4) In lieu of recommending a concurrent resolution to invalidate a proposed rule, amendment, rescission, or part thereof because the rule-making agency has failed to prepare a complete and accurate fiscal analysis, the joint committee on agency rule review may issue, on a one-time basis, for rules, amendments, rescissions, or parts thereof that have a fiscal effect on school districts, counties, townships, or municipal corporations, a finding that the rule summary and fiscal analysis is incomplete or inaccurate and order the rule-making agency to revise the rule summary and fiscal analysis and refile it with the proposed rule, amendment, rescission, or part thereof. If an emergency rule is filed as a nonemergency rule before the end of the ninetieth day of the emergency rule's effectiveness, and the joint committee issues a finding and orders the rule-making agency to refile under division (I)(4) of this section, the governor may also issue an order stating that the emergency rule shall remain in effect for an additional sixty days after the ninetieth day of the emergency rule's effectiveness. The governor's orders shall be filed in accordance with division (F) of this section. The joint committee shall send in electronic form to the rule-making agency, the secretary of state, and the director of the legislative service commission a certified text of the finding and order to revise the rule summary and fiscal analysis, which shall take immediate effect.

An order issued under division (I)(4) of this section shall prevent the rule-making agency from instituting or continuing proceedings to adopt any version of the proposed rule,

amendment, rescission, or part thereof until the rule-making agency revises the rule summary and fiscal analysis and refiles it in electronic form with the joint committee along with the proposed rule, amendment, rescission, or part thereof. If the joint committee finds the rule summary and fiscal analysis to be complete and accurate, the joint committee shall issue a new order noting that the rule-making agency has revised and refiled a complete and accurate rule summary and fiscal analysis. The joint committee shall send in electronic form to the rule-making agency, the secretary of state, and the director of the legislative service commission a certified text of this new order. The secretary of state and the director of the legislative service commission shall each link this order to the proposed rule, amendment, rescission, or part thereof. The rule-making agency may then proceed to adopt in accordance with division (D) of this section, or to file in accordance with division (B)(1) of section 111.15 of the Revised Code, the proposed rule, amendment, rescission, or part thereof that was subject to the finding and order under division (I)(4) of this section. If the joint committee determines that the revised rule summary and fiscal analysis is still inaccurate or incomplete, the joint committee shall recommend the adoption of a concurrent resolution in accordance with division (I)(1) of this section.

### ⚔ History:

GC § 154-64; 120 v 358; 121 v 578; Bureau of Code Revision, 10-1-53; 133 v H 1 (Eff 3-18-69); 136 v H 317 (Eff 9-30-76); 137 v S 43 (Eff 9-23-77); 137 v H 257 (Eff 1-1-78); 137 v H 25 (Eff 11-4-77); 137 v S 321 (Eff 4-14-78); 138 v S 8 (Eff 9-19-79); 138 v H 204 (Eff 9-19-79); 138 v H 657 (Eff 9-24-79); 139 v H 1 (Eff 8-5-81); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 140 v H 244 (Eff 7-4-84); 140 v S 239 (Eff 1-1-85); 145 v S 33 (Eff 8-16-94); 148 v S 11, § 1 (Eff 9-15-99; 7-1-2000); 148 v H 470, § 1 (Eff 7-1-2000); 148 v S 11, § 3 (Eff 4-1-2001); 148 v H 470, § 3 (Eff 4-1-2001); 148 v S 11, § 6 (Eff 4-1-2002); 148 v H 470, § 6 (Eff 4-1-2002); 149 v S 265. Eff 9-17-2002.

### ⚔ Section Notes:

#### FOOTNOTE

\* So in enrolled bill, division (F).

The provisions of § 3 of SB 265 (149 v --) read as follows:

SECTION 3. (A)(1) Except as otherwise provided in division (A)(2) of this section, sections 111.15, 119.03, and 119.032, as amended by this act, and sections 121.71, 121.72, 121.73, 121.74, 121.75, and 121.76 of the Revised Code first apply one month after the effective date of this act. The State Library Board shall use the emergency rule-making procedure of division (F) of section 119.03 of the Revised Code to designate depository libraries under division (J) of section 3375.01 of the Revised Code in anticipation of section 121.74 of the Revised Code becoming first applicable.

(2) The amendment by this act to division (F) of section 119.03 of the Revised Code first applies on the effective date of this act.

(B) As used in Sections 4, 5, 6, and 7 of this act, "date of first applicability" means the date of first applicability specified in division (A)(1) of this section.

### ⚔ Related Statutes & Rules:

## ORC Ann. 119.07

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY  
AND FILED WITH THE SECRETARY OF STATE THROUGH AUGUST 1, 2008 \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH JULY 1, 2008 \*\*\*  
\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 20, 2008 \*\*\*

TITLE 1. STATE GOVERNMENT  
CHAPTER 119. ADMINISTRATIVE PROCEDURE  
HEARINGS

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ORC Ann. 119.07 (2008)

§ 119.07. Notice of hearing; contents; notice of order of suspension of license; publication of notice; effect of failure to give notice

Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party informing the party of the party's right to a hearing. Notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice. The notice shall also inform the party that at the hearing the party may appear in person, by the party's attorney, or by such other representative as is permitted to practice before the agency, or may present the party's position, arguments, or contentions in writing and that at the hearing the party may present evidence and examine witnesses appearing for and against the party. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party. This paragraph does not apply to situations in which such section provides for a hearing only when it is requested by the party.

When a statute specifically permits the suspension of a license without a prior hearing, notice of the agency's order shall be sent to the party by registered mail, return receipt requested, not later than the business day next succeeding such order. The notice shall state the reasons for the agency's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within thirty days of the time of mailing the notice. A copy of the notice shall be mailed to attorneys or other representatives of record representing the party.

Whenever a party requests a hearing in accordance with this section and section 119.06 of the Revised Code, the agency shall immediately set the date, time, and place for the hearing and forthwith notify the party thereof. The date set for the hearing shall be within fifteen days, but not earlier than seven days, after the party has requested a hearing, unless otherwise agreed to by both the agency and the party.

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the



Revised Code, is returned because the party fails to claim the notice, the agency shall send the notice by ordinary mail to the party at the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

If any notice sent by registered or ordinary mail is returned for failure of delivery, the agency either shall make personal delivery of the notice by an employee or agent of the agency or shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. When notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, shall be mailed by ordinary mail to the party at the party's last known address and the notice shall be deemed received as of the date of the last publication. An employee or agent of the agency may make personal delivery of the notice upon a party at any time.

Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. A party's last known address is the mailing address of the party appearing in the records of the agency.

The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised Code in the manner provided in this section shall invalidate any order entered pursuant to the hearing.

**History:**

## ORC Ann. 119.12

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TITLE 1. STATE GOVERNMENT  
CHAPTER 119. ADMINISTRATIVE PROCEDURE  
APPEAL

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ORC Ann. 119.12 (2008)

§ 119.12. Appeal by party adversely affected

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 [4301.25.2] of the Revised Code may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, except that appeals from decisions of the liquor control commission, the state medical board, state chiropractic board, and board of nursing shall be to the court of common pleas of Franklin county. If any party appealing from the order is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin county.

Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, except that appeals from orders of the fire marshal issued under Chapter 3737. of the Revised Code may be to the court of common pleas of the county in which the building of the aggrieved person is located and except that appeals under division (B) of section 124.34 of the Revised Code from a decision of the state personnel board of review or a municipal or civil service township civil service commission shall be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by the department of rehabilitation and correction, to the court of common pleas of Franklin county.

This section does not apply to appeals from the department of taxation.

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal. A copy of the notice of appeal shall also be filed by the appellant with the court. Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. For purposes of this paragraph, an order includes a determination appealed pursuant to division (C) of section 119.092 [119.09.2] of the Revised Code.

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The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms. If an appeal is taken from the judgment of the court and the court has previously granted a suspension of the agency's order as provided in this section, the suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated. No renewal of a license or permit shall be denied by reason of the suspended order during the period of the appeal from the decision of the court of common pleas. In the case of an appeal from the state medical board or state chiropractic board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order. This provision shall not be construed to limit the factors the court may consider in determining whether to suspend an order of any other agency pending determination of an appeal.

The final order of adjudication may apply to any renewal of a license or permit which has been granted during the period of the appeal.

Notwithstanding any other provision of this section, any order issued by a court of common pleas or a court of appeals suspending the effect of an order of the liquor control commission issued pursuant to Chapter 4301. or 4303. of the Revised Code that suspends, revokes, or cancels a permit issued under Chapter 4303. of the Revised Code or that allows the payment of a forfeiture under section 4301.252 [4301.25.2] of the Revised Code, shall terminate not more than six months after the date of the filing of the record of the liquor control commission with the clerk of the court of common pleas and shall not be extended. The court of common pleas, or the court of appeals on appeal, shall render a judgment in that matter within six months after the date of the filing of the record of the liquor control commission with the clerk of the court of common pleas. A court of appeals shall not issue an order suspending the effect of an order of the liquor control commission that extends beyond six months after the date on which the record of the liquor control commission is filed with a court of common pleas.

Notwithstanding any other provision of this section, any order issued by a court of common pleas suspending the effect of an order of the state medical board or state chiropractic board that limits, revokes, suspends, places on probation, or refuses to register or reinstate a certificate issued by the board or reprimands the holder of the certificate shall terminate not more than fifteen months after the date of the filing of a notice of appeal in the court of common pleas, or upon the rendering of a final decision or order in the appeal by the court of common pleas, whichever occurs first.

Within thirty days after receipt of a notice of appeal from an order in any case in which a hearing is required by sections 119.01 to 119.13 of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed, upon motion, shall cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed thirty days, when it is shown that the agency has made substantial effort to comply. The record shall be prepared and transcribed, and the expense of it shall be taxed as a part of the costs on the appeal. The appellant shall provide security for costs satisfactory to the court of common pleas. Upon demand by any interested party, the agency shall furnish at the cost of the party requesting it a copy of the stenographic report of testimony offered and evidence submitted at any hearing and a copy of the complete record.

Notwithstanding any other provision of this section, any party desiring to appeal an order or decision of the state personnel board of review shall, at the time of filing a notice of appeal with the board, provide a security deposit in an amount and manner prescribed in rules that

the board shall adopt in accordance with this chapter. In addition, the board is not required to prepare or transcribe the record of any of its proceedings unless the appellant has provided the deposit described above. The failure of the board to prepare or transcribe a record for an appellant who has not provided a security deposit shall not cause a court to enter a finding adverse to the board.

Unless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.

The court shall conduct a hearing on the appeal and shall give preference to all proceedings under sections 1-19.01 to 119.13 of the Revised Code, over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. An appeal from an order of the state medical board issued pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code, the state chiropractic board issued pursuant to section 4734.37 of the Revised Code, or the liquor control commission issued pursuant to Chapter 4301. or 4303. of the Revised Code shall be set down for hearing at the earliest possible time and takes precedence over all other actions. The hearing in the court of common pleas shall proceed as in the trial of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to a civil action. At the hearing, counsel may be heard on oral argument, briefs may be submitted, and evidence may be introduced if the court has granted a request for the presentation of additional evidence.

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.

The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. These appeals may be taken either by the party or the agency, shall proceed as in the case of appeals in civil actions, and shall be pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code. An appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules of the agency, and, in the appeal, the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record.

The court shall certify its judgment to the agency or take any other action necessary to give its judgment effect.

#### **History:**

GC § 154-73; 120 v 358; 121 v 578; 124 v 202; Bureau of Code Revision, 10-1-53; 125 v 488 (Eff 10-21-53); 128 v 1116 (Eff 11-4-59); 130 v 16 (Eff 9-2-63); 134 v S 89 (Eff 8-31-72); 137 v H 634 (Eff 8-15-77); 137 v H 590 (Eff 7-1-79); 138 v H 102 (Eff 7-1-79); 139 v H 317 (Eff 8-27-82); 140 v H 260 (Eff 9-27-83); 140 v H 67 (Eff 10-10-83); 140 v H 37 (Eff 6-22-84); 140 v S 102 (Eff 4-11-85); 141 v H 412 (Eff 3-17-87); 141 v H 769 (Eff 3-17-87);

141 v H 428 (Eff 12-23-86); 142 v H 529 (Eff 6-14-88); 142 v H 708 (Eff 4-19-88); 143 v H 282 (Eff 5-31-90); 144 v S 359 (Eff 12-22-92); 147 v H 606 (Eff 3-9-99); 147 v H 402 (Eff 3-30-99); 148 v H 506, Eff 4-10-2001; 151 v H 187, § 1, eff. 7-1-07.

#### ⚡ Section Notes:

The effective date is set by § 7 of 151 v H 187.

The provisions of § 8 of HB 506 (148 v --) read as follows:

SECTION 8. Section 119.12 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 402 and Sub. H.B. 606 of the 122nd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

#### EFFECT OF AMENDMENTS

151 v H 187, effective July 1, 2007, added the exception to the end of the second paragraph; and made minor stylistic changes.

## ORC Ann. 5101.09

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TITLE 51. PUBLIC WELFARE  
CHAPTER 5101. DEPARTMENT OF JOB AND FAMILY SERVICES -- GENERAL PROVISIONS

**Go to the Ohio Code Archive Directory**

ORC Ann. 5101.09 (2008)

## § 5101.09. Procedure for adoption of rules

(A) When the director of job and family services is authorized by the Revised Code to adopt a rule, the director shall adopt the rule in accordance with the following:

(1) Chapter 119. of the Revised Code if any of the following apply:

(a) The rule concerns the administration or enforcement of Chapter 4141. of the Revised Code;

(b) The rule concerns a program administered by the department of job and family services, unless the statute authorizing the rule requires that it be adopted in accordance with section 111.15 of the Revised Code;

(c) The statute authorizing the rule requires that the rule be adopted in accordance with Chapter 119. of the Revised Code.

(2) Section 111.15 of the Revised Code, excluding divisions (D) and (E) of that section, if either of the following apply:

(a) The rule concerns the day-to-day staff procedures and operations of the department or financial and operational matters between the department and another government entity or a private entity receiving a grant from the department, unless the statute authorizing the rule requires that it be adopted in accordance with Chapter 119. of the Revised Code;

(b) The statute authorizing the rule requires that the rule be adopted in accordance with section 111.15 of the Revised Code and, by the terms of division (D) of that section, division (D) of that section does not apply to the rule.

(3) Section 111.15 of the Revised Code, including divisions (D) and (E) of that section, if the statute authorizing the rule requires that the rule be adopted in accordance with that section and the rule is not exempt from the application of division (D) of that section.

(B) Except as otherwise required by the Revised Code, the adoption of a rule in accordance

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with Chapter 119. of the Revised Code does not make the department of job and family services, a county family services agency, or a workforce development agency subject to the notice, hearing, or other requirements of sections 119.06 to 119.13 of the Revised Code. As used in this division, "workforce development agency" has the same meaning as in section 6301.01 of the Revised Code.