

RULES OF THE ALABAMA BOARD OF ADJUSTMENT

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History: Table of Contents Repealed and Replaced 8-21-12; effective 8-21-12.

Chapter I

INTRODUCTION

1. **Purpose.** The Alabama Board of Adjustment (BOA) was established to provide a method of payment by the State for injuries, property damage, death or contract claims, 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.

ORGANIZATION

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.

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

- (a) The Chair of the Board shall be selected by majority vote of the Board from its members. The Secretary of State shall be the Secretary of the Board.
- (b) Should the person holding the office of chair cease to hold such office by reason of death, resignation, expiration of his/her term of office, or for another reason, then the Board shall select a new chair as provided in 4 (a) above.

5. **Chief Legal Advisor.** 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.

6. The Legal Division of the Department of Finance provides administrative support for the Board.

ADMINISTRATION

6. **Rules of Order.** Voting Sessions of the Board of Adjustment shall be governed by *Robert's Rules of Order, Newly Revised, 11th 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.** The Board will conduct hearings on claims to receive evidence from the parties.

(a) Regular hearing sessions may be called by the Chair, 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 Chair or the Board's attorney.

(c) Each Member of the Board shall be given at least seven (7) days prior notice of the time, place and purpose of any regular or special hearing session by the Chair 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.

(f) All hearing sessions will be noticed on the website of the Secretary of State (www.sos.alabama.gov) in compliance with the Alabama Open Meetings Act (Act 2005-40).

History: Rule 8 amended 8-21-12; effective 8-21-12.

9. **Voting Sessions.** Upon the call of the Chair or the Board's attorney, the Board shall meet in a Voting Session to render final decisions on claims presented during regular or special hearing sessions, to approve consent orders, and other matters requiring a decision of the Board. Voting Sessions may be held at any time or place designated by the Chair or the Board's attorney.

(a) All Voting Sessions are noticed on the website of the Secretary of State (www.sos.alabama.gov) in compliance with the Alabama Open Meetings Act (Act 2005-40).

History: Rule 9 Amended 8-24-21; effective 8-24-21.

10. **Voting.** All members of the Board, including the Chair are entitled to vote and to make or second motions. All voting on decisions or other matters shall be accomplished by voice voting. The Chair 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 Chair 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 Office of the Clerk at www.bdadj.alabama.gov. The Board's attorney may alter forms and instructions as deemed necessary, so long as they are consistent with these rules and the governing statutes.

History: Rule 11 Repealed and Replaced 8-21-12; effective 8-21-12.

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.

CLAIMS ADMINISTRATION PROCEDURE

14. Procedure for Filing Claims for Personal Injury; Damages; Vendor Claims.

(a) Initiating a Claim. The jurisdiction of the Board is invoked by a claim using a form provided by the Board for that purpose. Decisions relating to the board's subject matter jurisdiction or lack thereof will be made by the Board's attorney and do not require a vote of the Board. The decision of the Board's attorney shall be final and conclusive.

(b) Claims Against the Alabama Department of Transportation (ALDOT). Pursuant to Act 2017-393, claims filed against ALDOT, not exceeding \$5,000 are to be submitted to the ALDOT, Deputy Director of Administration, 1409 Coliseum Blvd., Montgomery, AL 36110. Claims exceeding \$5,000 filed against ALDOT are to be submitted to the Board of Adjustment, and are subject to the procedures in Rules 14, (c) through (k).

(c) Statement of Claim. The claim must describe facts which provide details that demonstrate to the Board that the claim should be approved. The claim must include the mailing address of the claimant, last four digits of the claimant's Social Security Number or Federal Employer Identification Number (FEIN), and any other information required by the Board or the Board's attorney.

(d) Signature and Verification. The claim form must bear the original or electronic signature of claimant, his/her attorney-in-fact, guardian or other authorized personal representative. Certified copies of documents granting authority to the representative must be included. The claimant or authorized representative must verify the truth of the facts stated under oath, in the presence of a Notary Public or other person authorized to administer oaths by the laws of the State of Alabama.

(e) Caption for Documents. Supporting documents provided in each claim shall bear the name of claimant and the claim number assigned to the claim when the original claim is filed in the Office of the Clerk.

(f) Affidavits. Where practicable, there should be filed in support of claims such affidavits of persons other than the claimant, 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.

(g) Claim to be accompanied by affidavit or report. If the claim is based upon personal injury or death of any state employee or a convict of the State of Alabama, 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 must be filed with the Board.

(h) 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.

(i) 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 considered 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.

(j) 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.

(k) Disposition of copies of claim. Upon the filing of a claim, one copy thereof shall be forwarded by the Board's Claims Clerk to the department, commission, board, agency, or institution against which the claim is filed.

(l) Deficient Claims. Claims which are not properly completed or do not include the required supporting documentation will be returned to the Claimant with the deficiencies identified. These claims will be held in suspense for a total of ninety days, at which time, the claim will be administratively dismissed by the Clerk of the Board if the deficiencies have not been cured.

History: Rule 14 Amended 8-24-21; effective 8-24-21.

15. **Subrogation.**

(a) A party who has paid or agreed to pay the loss caused by a third party is not entitled to file a subrogation claim before the Board.

(b) The Board shall not accept subrogation claims.

History: Rule 15 Repealed and Replaced 8-21-12; effective 8-21-12.

16. **Statute of Limitations.** The Legislature has set time limits for filing a claim with the Board of Adjustment. See §41-9-65, Code of Alabama, 1975. The Board is prohibited from hearing or considering any claim not timely filed.

(a) The time limits set by law are:

1. A claim for personal injury, property damage or contract claims must be filed within one year after the cause of action accrues.

2. A claim for injury to a person resulting in death must be filed within two years after the cause of action accrues, unless the cause of action has been before 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 holding the claimant not entitled to relief through the courts of the state is entered.

3. A claim for a matter of escheats to the State of Alabama must be filed within ten years from the time of the escheat to the State of Alabama. The exception is that such claims of minors may be considered by the Board if the same are filed within three years after the minor has reached the age of nineteen 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 the Board's attorney determines that the claim is barred by the statute of limitations, the Clerk shall enter an Order dismissing the claim on the grounds that it was not filed within the time permitted by law. Within sixty days after the date of the Order, the Claimant may file a Request for Reconsideration of the Order. The request must include information to show that the claim was filed within the time permitted. If, upon reconsideration, 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 unclear, the Board's attorney may determine when the cause of action accrued.

History: Rule 16 Repealed and Replaced 5-22-17; effective 5-22-17.

17. **Supplemental Claims.** Supplemental claims may be filed for additional expenses related to an original claim, provided that the original claim was not denied by the Board.

(a) Supplemental claims must be filed within one year of the date on which the claimed expenses are incurred.

(b) In the event of a claim for an on-the-job injury or other personal injury claim, no supplemental claim will be considered by the Board if such supplemental claim is made subsequent to a period of twenty-four consecutive months having elapsed with no Order by the Board to pay or supplemental claims filed in relation to the original injury.

History: Rule 17 Established 8-21-12; effective 8-21-12.

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

19. **Answers to Claims.** The department or other division of the State against which a 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 Board. All allegations in the claim not denied may be treated as admitted. A copy of the answer shall be mailed or emailed to the claimant's attorney or representative of record AND to the Board. The Board's attorney may approve extensions of time to answer claims. Defendant agencies and Departments shall 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.

History: Rule 19 Repealed and Replaced 5-22-17; effective 5-22-17.

20. **Use of Appointed Hearing Officers.**

(a) The Board, acting through its Chair, may refer any claim to a specially appointed Hearing Officer 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 file from the Clerk of the Board, the Hearing Officer appointed 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 on the website of the Secretary of State (www.sos.alabama.gov) in compliance with the Alabama Open Meetings Act (Act 2005-40).

(b) Upon completion of the hearing process, the Hearing Officer shall submit a written report to the Clerk 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 Hearing Officer 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 reach a decision.

(c) All costs associated with the hearing of a claim by a Hearing Officer shall be paid by the department, board, bureau, commission or office against which the claim is filed or as otherwise ordered by the Board. 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.

History: Rule 20 Repealed and Replaced 8-21-12; effective 8-21-12.

21. **Administrative Consent and Settlement.**

(a) The parties are encouraged to seek resolution of claims prior to hearing or voting sessions. The following subsections allow two avenues for claims to be resolved between a claimant and an agency depending the nature of the claim: consents and settlements.

(b) Consents. Consents occur when an agency does not contest, and agrees to pay, all or a portion of a claim that the parties reasonably anticipate will be resolved with the originally filed claim, without the need for supplemental claims. The Chief Executive Officer of a state department, commission, board, agency or institution against which a claim has been filed may make a written offer to pay a sum certain, with a copy to be filed with the Board. If the offer is less than the amount sought, a written acceptance from the claimant must be filed with the Board. If the offer is accepted by the claimant, the Board will determine if the terms of the consent are justified by the facts. It is the responsibility of the respondent state agency to provide the Board

with written evidence that the consent is justified. The Board may approve the consent, modify the terms, or not approve it in its entirety. If the Board does not approve a consent in its entirety, or if the Board modifies the term of a consent agreement, the claim will be set for hearing. If a claimant refuses to accept a consent offer, the claim will be set for hearing. Verbal consents will not be considered by the Board at any point during the claims process. If an agency decides to consent to a claim that is scheduled for a hearing, a written consent agreement, including the claimant's acceptance, if applicable, must be presented to the Board at least ten days prior to the hearing. In the event an agency decides at the hearing that it would be in the best interest of the agency to consent to payment of the claim being heard, a written consent agreement, signed by both parties, must be received by the Board no later than five calendar days following the date of the hearing, or it will not be considered by the Board. Approved Consents do not preclude a claimant from filing supplement claims relating to the facts set forth in the initial filing.

(c) Settlements. Settlements occur when the parties desire to completely and permanently resolve a claim that they reasonably anticipate will result in the filing of supplemental claims after the original filing, as is often the case in personal injury claims requiring a claimant to undergo continuing medical treatment. If the parties desire to permanently settle a claim, the respondent agency must file with the Board a written settlement agreement, signed by the agency's Chief Executive Officer and the claimant, setting forth the terms of settlement. Verbal settlement agreements will not be considered by the Board. The settlement agreement must include a statement that no supplement claims will be filed relating to the original claim. The Board may approve the settlement, modify the terms, or not approve the settlement in its entirety. If the Board approves the settlement as presented, an order will be issued and the claim will be permanently closed. If the Board does not approve a settlement in its entirety, or if the Board modifies the term of the settlement, the parties must attend the next scheduled Voting Session and be prepared to give testimony to the Board regarding their position. Any decision made by the Board at the Voting Session regarding the settlement is final. No reconsiderations will be granted. Once a settlement agreement is approved, a claimant is precluded from filing supplemental claims relating to the facts set forth in the initial filing.

(d) Claims Without Hearing. A consent or settlement may be approved by the Board without hearing under the authority set forth in Section 41-9-62(d) of the Code of Alabama 1975. The Clerk of the Board must circulate any such consent or settlement among the members of the Board on a regular schedule with a deadline set by the Clerk. If no member objects to a consent or settlement before the deadline, the claim will be deemed to be approved by the Board.

(e) Emergency Claims. A consent or settlement may be approved by the Board on an emergency basis when there is a threat to the health, welfare, or safety of a claimant or the State. To receive emergency approval, the respondent agency must file with the Board a written consent or settlement agreement, signed by the agency's Chief Executive Officer and the claimant, setting forth the terms of the consent or settlement and requesting approval on an emergency basis with a written justification for the emergency. The Board's attorney shall analyze the justification for the emergency claim, and if he or she certifies to the Chair that the justification is proper, the Chair may order the claim to be paid immediately. Emergency claims approved in this manner must be reported to the Board at its next Voting Session.

History: Rule 21 Repealed and Replaced 6-20-19; effective 6-20-19; Amended 8-3-23; effective 8-3-23

22. **Disposition of Claims.**

(a) **Final Disposition.** The evidence relating to all claims not settled by consent shall be heard in accordance with these rules at any regular or special hearing session of the Board or in accordance with Rule 21.

(b) **Hearings.** The Board shall schedule hearings on claims from time to time. The Clerk of the Board shall prepare a docket for each hearing session that shall contain a list of the claims that the Board's attorney has designated for hearing. No claim will be scheduled for hearing if litigation pertaining to the same facts is pending in any court.

(c) **Notice of Hearing.** Notice shall be furnished by first class mail or electronic mail if an electronic mail address is on record, to each claimant whose claim appears thereon, or his/her attorney or representative of record not less than thirty (30) days before such session. The notice shall be furnished by electronic mail to the respondent agency, commission, board, institution or department not less than thirty (30) days before such session.

(d) **Appearance Before the Board.** Any claimant or his/her attorney or representative may elect to appear and be heard. Notwithstanding the foregoing, the Board may order that all claims filed by inmates of state penal institutions be heard on the record without a personal appearance by the claimant.

A copy of all documents 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, at the time the same is mailed to the Board.

(e) **Continuance.** A Claimant represented by an attorney must submit a written Motion for Continuance to the Clerk of the Board not later than five business days prior to the date of the Claimant's hearing. The motion must state the facts and give reasons why the hearing should be continued and state when the claim will be ready for hearing. A copy of the motion must be provided to all parties. A non-represented claimant must write a letter or send an email with the same information with a copy submitted to the respondent agency not later than five business days prior to the hearing.

A respondent agency requesting a continuance must first seek and receive the agreement of the claimant before the request will be considered by the Clerk of the Board. Evidence of such agreement must accompany the request.

No continuance will otherwise be granted except in the event of an unavoidable emergency and with approval from the Board's attorney. No more than three continuances will be granted for any claim.

(f) **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 agencies of the State of Alabama.

(g) **Claimant's Statement.** A claimant shall have the right to open and close arguments in all hearings before the Board.

(h) Rehearing. The Board may grant a rehearing or review of a claim on the ground of newly discovered evidence which could not have reasonably been discovered by the claimant at the time of the original hearing, provided the request is received by the Board's attorney within 90 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. Requests for rehearing that are not timely filed or do not contain newly discovered evidence, as determined by the Board's attorney, will not be granted rehearing.

(i) Dismissal at Request of Claimant. The Board's attorney may direct entry of an Order dismissing a claim upon written notification from the Claimant that the claim is withdrawn and will not be prosecuted.

(j) Administrative Dismissals. The Clerk of the Board may enter an Order of Dismissal upon receipt of evidence that the claim has been otherwise settled or paid, that it is a duplicate claim, or the claimant has failed to provide information or documentation required by the Board after notice and opportunity to cure the deficiency.

(k) Death of Claimant Prior to Final Disposition. If a claimant dies prior to final disposition of the claim, the Claimant's personal representative or other person allowed by law, with the approval of the Board, may continue to prosecute the decedent's claim. Notice of death and substitution must be given to the Board and Respondent Agency within 180 days of death.

History: Rule 22 Amended 8-24-21; effective 8-24-21.

23. Procedures and Evidence at Hearing Sessions.

(a) Procedural Guide. The Alabama Rules of Civil Procedure for proceedings in Small Claims and District Court and the Alabama Rules of Evidence, as now in effect and as may be amended from time to time, will be the guide for proceedings at hearings before the Board, provided that the attorney for the Board may allow deviation if it would not impair the rights of either party and would expedite disposition.

(b) Testimony. Neither the claimant nor the State may introduce testimony of more than two witnesses to any one material fact at an oral hearing. The attorney for the Board shall, except as otherwise provided in these rules, rule upon all questions of procedure including without limitation those relating to pre-trial discovery and, in the event that evidence is taken, on the admissibility of the evidence. The decision of the attorney or his/her designee shall be final.

Witnesses providing testimony for either party must be in person unless, upon motion of either party, the Board's attorney determines that contemporaneous, remote testimony should be allowed during a hearing. Requests for remote testimony will be the exception, not the rule, and will only be granted for good cause in compelling circumstances and with appropriate safeguards. See Ala. R. Civ. Pro. 43(a). Requests for remote testimony must be made in writing to the Board's attorney not later than twenty-one days prior to the date of the hearing, and decisions made by the Board's attorney relating to remote testimony requests shall be final and conclusive. If the request is approved, it is the responsibility of the requesting party to ensure the witness has the required equipment and/or internet capability to provide the remote testimony. Lack of network

availability or technical issues on the part of the witness will not be a valid reason for a continuance or rehearing.

As with in-person testimony, witnesses providing remote testimony must be available when the case is called from the docket on the day of the hearing. No exact time of day will be scheduled for a remote witness to testify, as the length of claims on the docket varies.

(c) Discovery. 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. In the event a party seeks to take a deposition to be admitted into evidence, the party requesting the deposition must give the other party no less than thirty days notice of such deposition.

(d) Agreed Statement of Facts. The 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. The attorney for the Board may require the parties to meet in an attempt to reach a settlement, which the parties shall submit to the Board. See Rule 21 for settlement procedures.

(e) Affidavits. Affidavits may be admitted into evidence, provided that the party introducing an affidavit has served a copy of said affidavit on the Board and the opposing party or their attorney or representative at least ten (10) days prior to the date of the hearing at which the affidavit is to be used. Counter affidavits must be served on the Board and opposing party not later than three (3) days prior to the hearing date.

(f) Evidence. All documents or photographs of any kind to be considered by the Board at a hearing session must be provided to all parties not less than ten (10) days before such session. The attorney for 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 on the admissibility of the evidence. Oral reports of hearsay conversations shall not be accepted or otherwise considered. Oral references to policies or administrative practices shall not be considered without a copy of the applicable document.

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

(h) 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.

History: Rule 23 Amended 8-24-21; effective 8-24-21.

24. **Burden of Proof.**

(a) The burden of proof to establish the validity of each claim rests upon the Claimant. A Claimant must present evidence to establish the liability of the Respondent Agency and the amount of damages being claimed.

(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 medical expenses, 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.

25. **Witnesses and Subpoenas.**

(a) Any party may require the attendance of witnesses at deposition or at a hearing on a claim by filing a written request with the Clerk of the Board using the form prescribed for that purpose.

(b) A party may request a subpoena for the production of documents or things including photographs, electronically stored data, tangible or intangible things.

(c) Subpoenas either for the attendance of witnesses or for the production of documents or things will be issued by the Clerk, upon a determination by the Board's attorney that the witnesses or documents are necessary for the proper disposition of the claim.

(d) The requesting party is responsible for the service of any subpoena and the cost of service. 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) A copy of the subpoena endorsed by the server shall be proof of service, or the witness may acknowledge service in writing on the return copy. 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 attorney for the Board not more than five days, but never later than the date of a hearing.

History: Rule 25 Repealed and Replaced 5-22-17; effective 5-22-17.

26. **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.

27. **Prior Fiscal Year Invoices**

(a) Vendor claims for payment for goods or services for which payment has been

denied by the Respondent Agency because the invoice or statement was not processed for payment in the current fiscal year are strictly scrutinized by the Board to determine if there has been compliance with the State's Fiscal Policies and Procedures. Consents for prior fiscal year invoices must include a detailed explanation by the Respondent Agency of why the claim was not paid through normal accounting processes.

(b) Supporting documentation for each claim must include submittal of contract, purchase order, telephone authorization or letter of emergency authorization.

(c) Claims that do not appear to be compliant with the State's purchasing laws may be deferred. Claims may be referred to the Department of 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) Consents for prior fiscal year invoice claims must include a detailed explanation by the Respondent Agency, of why the claim was not paid through normal accounting processes. Documentation must also be submitted with the consent showing an attempt to pay through normal processes. This may be a document provided from the Respondent Agency's accounting division, the Comptroller, or a STAARS generated document indicating that there is no way to pay the claim other than the filing of a Board of Adjustment claim.

Consents that do not include the required explanation and documentation will be considered non-compliant. The Board may set non-compliant Consents for hearing or refer them to an Appointed Hearing Officer in accord with Rule 20.

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

(f) It is the responsibility of the Agency or Department submitting a 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 invoices to the agency that accurately detail its charges and demand for payment.

History: Rule 27 Repealed and Replaced 5-22-17; effective 5-22-17.

28. **Prompt Payment.** Upon request of the claimant, 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 provides the rate as, "[T]he legal amount currently charged by the state." See Section 41-16-3, Code of Alabama, 1975.

29. **Publication of Rules:**

(a) Rules of the Board of Adjustment shall be published on the website of the Board

of Adjustment at www.bdadj.alabama.gov.

(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.

History: Rule 29 Repealed and Replaced 8-21-12; effective 8-21-12.

Chapter II

Procedure for Claims for Dependents of Deceased Policemen and Firemen

1. Filing of Claim.

(a) Jurisdiction of Board. The jurisdiction of the Board shall be invoked by a claim in writing filed with the Clerk of the Board using a form prescribed for that purpose. The facts stated in the claim must be verified by the person duly authorized by law to make the claim. Evidence of this authority shall accompany the claim. Decisions relating to the board's subject matter jurisdiction or lack thereof will be made by the Board's attorney and do not require a vote of the Board. The decision of the Board's attorney shall be final and conclusive.

(b) Signature and Verification Required. The claim filed must bear the original signature of Claimant or his/her attorney of record or representative and must be verified before a notary public.

(c) Claim Statement and Supporting Documentation. 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. The following documents must be included with the claim form:

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 with the dates of employment included;
3. A full and complete list of all dependents or designated beneficiaries of the deceased including any children by prior marriages or parents in the event there are no other dependents. The list must include each dependent's full name, age, address, and relationship to the deceased; and
4. An affidavit setting out those persons who were actually dependent for all or part of their support from the earnings of the deceased;

(d) Deadlines for Filing. A Claim for compensation to dependents of deceased peace officers and firemen must be presented to the Board within two years from the date of death of the peace officer or fireman on whom the Claimant was dependent.

(e) Referral to the Attorney General. Upon the filing of a claim, one copy thereof shall be immediately provided to the Attorney General. Pursuant to Sections 36-30-1 et seq., 11-43-144, and 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.

History: Rule 1 Repealed and Replaced 8-21-12; effective 8-21-12, Rule 1(d) Repealed and Replaced; effective 11-14-17. Rule 1 (a) Amended 8-24-21; effective 8-24-21.

2. **Disposition of Claims.** Upon receipt of the Attorney General's report confirming that the claim is compliant with statutory requirements, the claim shall be set for consideration by the Board at the next voting session. If the Board approves payment of the claim, the benefits will be apportioned among the eligible beneficiaries.

Claims determined by the Attorney General to be non-compliant with applicable statutory requirements will be dismissed by the Clerk of the Board.

History: Rule 2 Amended 8-18-21; effective 8-18-21.

Chapter III

Procedures for Claims for Disability of Volunteer Firemen

1. **Filing of a Claim**

(a) Jurisdiction of Board. The jurisdiction of the Board shall be invoked by a claim in writing filed with the Board of Adjustment on a form prescribed for that purpose by the disabled firefighter or a person duly authorized by law to file on behalf of the Claimant. Evidence of the authority must accompany the claim. Decisions relating to the board's subject matter jurisdiction or lack thereof will be made by the Board's attorney and do not require a vote of the Board. The decision of the Board's attorney shall be final and conclusive.

(b) Signature and Verification Required. The claim filed must bear the original signature of claimant or his/her attorney of record or representative and must be verified before a notary public.

(c) Statement of Claim and Supporting Documentation. The claim must state concisely the facts constituting the same and the mailing address of the claimant therein. The following documents must be included with the claim form:

1. 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;
2. A statement from the State Health Officer regarding his determination of the volunteer fireman's total disability; and
3. A statement from the Alabama Forestry Commission regarding the registry of the volunteer fire department.

(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:

(f) Referral to State Health Officer. A copy of the claim shall be immediately referred to the State Health Officer for the issuance of an opinion regarding the eligibility for payment thereof.

Rule 1 Amended 8-24-21; effective 8-24-21.

2. **Disposition of Claims.** Upon receipt of the State Health Officer's report, the claim shall be set for consideration by the Board at the next voting session.

History: Rule 2 Amended 8-18-21; effective 8-18-21.

Chapter IV

Amendment of Rules

The Board will adopt new rules or amend existing rules as it deems necessary to carry out its duties and functions.