

**COMMENT DUE DATE: February 16, 2021**

**Date: January 15, 2021**

**John Pettifer, Legal Services 405-521-3529**  
**Nancy Kelly, Policy Specialist, Legal Services – Policy 405-522-6703**  
**Dena Thayer, Programs Administrator, Legal Services - Policy 405-693-6542**

It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to \*STO.LegalServices.Policy@okdhs.org. The proposed amendment is **permanent**.

**SUBJECT: CHAPTER 2. ADMINISTRATIVE COMPONENTS**

Subchapter 28. Office of Administrative Hearings: Child Support  
340:2-28-4.2 through 340:2-28-4.3 [AMENDED]  
340:2-28-4.4 [REVOKED]  
340:2-28-8 [AMENDED]  
340:2-28-9 [REVOKED]  
340:2-28-11 [AMENDED]  
340:2-28-12 [REVOKED]  
340:2-28-16.1 through 340:2-28-16.2 [AMENDED]  
340:2-28-17.1 through 340:2-28-17.2 [AMENDED]  
340:2-28-18 through 340:2-28-19 [AMENDED]  
340:2-28-33 [AMENDED]  
**(Reference WF 20-2D)**

**SUMMARY:**

The proposed amendments are necessary, per the Governor's Executive Order 2020-03, to update, streamline, and improve the rules that delineate, and provide transparency to, certain functional aspects of the Office of Administrative Hearings: Child Support (OAH) operations. The administrative rules are OAH administrative court rules. The requested amendments incorporate and facilitate the repeal of some sections, in full, and the removal, by amendment or consolidation of certain subsections. In two instances, amendments created consolidation, permitting revocation of one. The amendments streamlined the rules with some exceptions. Those exceptions clarify the procedure for disqualification or recusal, allowing an OAH Administrative Law Judge (ALJ) assigned to a specific case to be replaced by a different ALJ; to provide instructions regarding video or telephonic hearings; and explain submission of proposed default and agreed orders to an ALJ.

The proposed amendments and revocations comply with Executive Order 2020-03 and are necessary to update OAH court rules to refine procedures regarding identified issues, including the disqualification/recusal of judges, video or telephonic hearings, and submission of default and agreed orders.

**PERMANENT APPROVAL:** Permanent rulemaking is requested.

**LEGAL AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162 and 237); 12 O.S. §§ 32.1, 2101 through 3011, and 3224 through 3237; 12 O.S. §§ 683 through 688; and 56 O.S. §§ 237 through 237.9a, OAC:340:2-28-1, et seq; Executive Order 2020-03; Rule 16, Rules of the Seventh and Twenty-Sixth Judicial Districts [Oklahoma and Canadian Counties]; and 21 C.J.S. Courts § 126, pp. 144-45.

While courts are very generally authorized by constitutional or statutory provisions to make their own rules for the regulation of their practice and procedure, it is also generally stated that courts have inherent or plenary authority to make their own rules.

A court, however, in promulgating its rules is subject to limitations based on reasonableness and conformity to constitutional and statutory provisions, and their validity will be tested by the same standards applicable to statutes.

(Footnotes omitted.)

## Rule Impact Statement

**To:** Programs Administrator  
Legal Services - Policy

**From:** Ron Baze, General Counsel

**Date:** December 18, 2020

**Re: TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 2. ADMINISTRATIVE COMPONENTS**  
Subchapter 28. Office of Administrative Hearings: Child Support  
340:2-28-4.2 through 340:2-28-4.3 [AMENDED]  
340:2-28-4.4 [REVOKED]  
340:2-28-8 [AMENDED]  
340:2-28-9 [REVOKED]  
340:2-28-11 [AMENDED]  
340:2-28-12 [REVOKED]  
340:2-28-16.1 through 340:2-28-16.2 [AMENDED]  
340:2-28-17.1 through 340:2-28-17.2 [AMENDED]  
340:2-28-18 through 340:2-28-19 [AMENDED]  
340:2-28-33 [AMENDED]  
**(Reference WF 20-2E)**

**Contact:** John Pettifer 405-255-9460

**A. Brief description of the purpose of the proposed rules:**

**Purpose.** The proposed amendments are necessary, per the Governor's Executive Order 2020-03, to update, streamline, and improve the rules that delineate, and provide transparency to, certain functional aspects of the Office of Administrative Hearings: Child Support (OAH) operations. The administrative rules are OAH administrative court rules. The requested amendments incorporate and facilitate the repeal of some sections, in full, and the removal, by amendment or consolidation of certain subsections. In two instances, amendments created consolidation, permitting revocation of one. The amendments streamlined the rules with some exceptions. Those exceptions clarify the procedure for disqualification or recusal, allowing an OAH Administrative Law Judge (ALJ) assigned to a specific case to be replaced by a different ALJ; to provide instructions regarding video or telephonic hearings; and explain submission of proposed default and agreed orders to an ALJ.

**Strategic Plan Impact.**

The proposed amendments and revocations comply with Executive Order 2020-03 and are necessary to update OAH court rules to refine procedures regarding identified issues, including the disqualification/recusal of judges, video or telephonic hearings, and submission of default and agreed orders.

### **Substantive changes.**

Subchapter 28. Office of Administrative Hearings: Child Support

Oklahoma Administrative Code (OAC) 340:2-28-4.2 and 340:2-28-4.3 amends the rules to streamline the rules without substantive change.

OAC 340:2-28-4.4 is revoked as it is obsolete; "electronic filing" is no longer a new concept.

OAC 340:2-28-8 amends the rule to include one new subsection regarding the "power" of an ALJ, creating a consolidation with OAC 340:2-28-9, which then allowed for the repeal of OAC 340:2-28-9. The consolidation creates one new subsection within the amended rule and eliminates 25 subsections.

OAC 340:2-28-9 is revoked because it was consolidated with OAC 340:2-28-8.

OAC 340:2-28-11 is amended to explain how an ALJ may step aside from adjudicating an assigned case and how a substitute ALJ is selected.

OAC 340:2-28-12 is revoked as it was consolidated with OAC 340:2-28-16.1.

OAC 340:2-28-16.1 is amended and governs the docketing of cases; this rule includes OAC 340:2-28-12 by reserving the second Friday of every month as a non-docket day to permit OAH staff to meet.

OAC 340:2-28-16.2 is amended to clarify the time in which an order must be mailed to the parties in specific cases and to authorize administration orders, addressing court functions, be provided upon request.

OAC 340:2-28-17.1 is amended to clarify that, if participants are instructed to appear by video or telephonic means, Child Support Services (CSS) staff may utilize the hearing room in the district child support office to participate, without giving access to the room to other participants.

OAC 340:2-28-17.2 is amended to facilitate video or telephonic hearings by providing an alternative to a physical street address for notification and participation in hearings, such as instructions to participants for video or telephonic appearance at hearing. This amended rule reinforces OAH's authority to require hearings be conducted through video or telephonic means, instead of in-person.

OAC 340:2-28-18 is amended to authorize discovery in OAH proceedings and incorporates the instructions regarding discovery removed from OAC 340:2-28-17.2.

OAC 340:2-28-19 is amended to clarify the degree to which the Oklahoma Evidence Code plays a role in OAH proceedings and to enhance readability.

OAC 340:2-28-29 is revoked because of duplicative language governing dismissals, per 12 O.S. 683, et seq., and is unnecessary.

OAC 340:2-28-33 is amended to clarify the process of obtaining default and agreed judgments in OAH proceedings, including a broad authorization of the practice of allowing individuals to waive signature on agreed orders, to expedite the processing of orders negotiated by video or telephonic means.

### **Reasons.**

The changes to OAH court rules and operational procedures are mandated, in part, by Executive Order 2020-03; and the remainder are needed to enhance OAH operational efficiency.

### **Repercussions.**

No negative repercussions have been identified.

**Legal authority.**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162 and 237); 12 O.S. §§ 32.1, 2101 through 3011, and 3224 through 3237; 12 O.S. §§ 683 through 688; and 56 O.S. §§ 237 through 237.9a, OAC:340:2-28-1, et seq.; Executive Order 2020-03; Rule 16, Rules of the Seventh and Twenty-Sixth Judicial Districts [Oklahoma and Canadian Counties]; and 21 C.J.S. Courts § 126, pp. 144-45.

While courts are very generally authorized by constitutional or statutory provisions to make their own rules for the regulation of their practice and procedure, it is also generally stated that courts have inherent or plenary authority to make their own rules.

A court, however, in promulgating its rules is subject to limitations based on reasonableness and conformity to constitutional and statutory provisions, and their validity will be tested by the same standards applicable to statutes.

(Footnotes omitted.)

**Permanent rulemaking approval is requested.**

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:** The classes of persons mostly affected are CSS staff, child support obligors, and custodial persons to whom child support is to be paid. There are no identifiable costs associated with the proposed amendments and revocations.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of person who will benefit are CSS staff, child support obligors, and custodial persons to whom child support is to be paid.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:** There are no identifiable costs associated with the proposed amendments and revocations and no fee changes.
- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the Agency:** There are no identifiable costs associated with the proposed amendments and revocations. The benefit to

Oklahoma Human Services (OKDHS) and the classes of all affected persons is OAH improved operational efficiency, and the plain language revisions streamline the rules, increase compliance, and avoid delays. There is no identifiable impact upon state revenues.

- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** There is no identifiable impact on any political subdivisions nor is cooperation required.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** There is no identifiable adverse economic effect on small business per the Oklahoma Small Business Regulatory Flexibility Act.
- H. An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** There are no identifiable costs associated with the proposed amendments and revocations, and, therefore, there are no less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule.
- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:** There is no qualitative, identifiable effect or impact by the proposed amendments and revocations on the public health, safety, and environment, if the rule is implemented.
- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** There is no qualitative, identifiable effect or impact by the proposed amendments and revocations on the public health, safety, and environment, if the rule is not implemented.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared: July 15, 2020; modified: December 18, 2020.

## **SUBCHAPTER 28. OFFICE OF ADMINISTRATIVE HEARINGS: CHILD SUPPORT**

### **340:2-28-4.2. Terms and location of Office of Administrative Hearings: Child Support**

Revised 9-17-189-15-21

(a) The Office of Administrative Hearings: Child Support (OAH) is in session whenever there is a regularly- or specially-scheduled docket with participating district child support offices on days designated for administrative hearings. Pleadings, other documents, and orders may be filed with, or presented to, the administrative law judge (ALJ) at the participating district child support offices, if the ALJ is physically present, on administrative hearing docket days. On any business day, pleadings, other documents, and orders may also be filed at OAH located in the Sequoyah Building, 2400 North Lincoln Boulevard, Oklahoma City, Oklahoma. Filing may be accomplished through hand-delivery, postal or parcel delivery, facsimile transmission, and electronic transmission, if the available means are secure and compatible with OAH's docketing and case management software. Electronic transmission, in this context, does not include electronic messaging for example, email or text messaging. The OAH mailing address is Oklahoma Department of Human Services, Attn: OAH, PO Box 25352, Oklahoma City, Oklahoma 73125-0352.

(b) Proceedings cannot commence unless and until an administrative case is opened through Oklahoma Department of Human Services Child Support Services.

~~(c) All proceedings are commenced by filing pleadings at OAH. The OAH file is maintained at OAH located in the Sequoyah Building unless otherwise designated by the OAH chief ALJ.~~

~~(d) All pleadings filed and exhibits introduced are maintained exclusively by OAH. Any party seeking to remove or withdraw from the record any original exhibit must obtain authorization from an ALJ, upon a finding of good cause. The movant must file an appropriate motion and request for hearing. The moving party must give notice to non-movants and file an appropriate certificate of service. If the ALJ grants the motion, the ALJ must memorialize in a written order the basis for the good cause finding, identify the specific exhibit, require that a certified copy of that exhibit is substituted for the original in the record, and require that the substituted, certified copy is treated as if it were the original.~~

### **340:2-28-4.3. Clerk of Office of Administrative Hearings: Child Support**

Revised 9-17-189-15-21

~~The chief court clerk and court docketing clerks of the Office of Administrative Hearings: Child Support (OAH), are ~~designated and fully empowered to perform the functions of:~~ authorized to perform all non-judicial support duties, including but not limited to, maintaining case records, dockets, and calendar; filing and certifying documents; facilitating hearing arrangements; arranging for transcripts and payment; and preparing, certifying, and transmitting the record in appeals.~~

~~(1) maintaining the case records within OAH;~~

~~(2) maintaining and updating the court calendar, which consists of all approved hearing dates, and docketing cases on all these hearing dates, as contained in pleadings, orders, continuances, or prior docket sheets;~~

- ~~(3) preparing the dockets for hearing, and imaging into the electronic court file paper documents that were manually filed;~~
- ~~(4) electronically and/or manually file stamping documents;~~
- ~~(5) certifying official transcripts and documents in the court record;~~
- ~~(6) certifying and transmitting the record to the district court;~~
- ~~(7) designating a court reporter for preparation of a hearing transcript; and~~
- ~~(8) performing functions delegated by the chief administrative law judge for the implementation of rules in this Subchapter and OAH administration.~~

#### **340:2-28-4.4. Electronic filing [REVOKED]**

~~Issued 7-1-07~~

~~Court clerks of the Office of Administrative Hearings: Child Support (OAH) treat documents filed through the OAH approved electronic medium as if the documents had been filed as paper documents and affix an electronic file stamp date on the electronically filed document.~~

#### **340:2-28-8. Qualifications and power of administrative law judge**

~~Revised 7-1-039-15-21~~

- ~~(a) An administrative law judge (ALJ) must be admitted to the practice of law by the State of Oklahoma and be a member in good standing of the Oklahoma Bar Association. An ALJ must meet any other requirements prescribed by the Legal Division, Oklahoma Department of Human Services.~~
- ~~(b) All OAH ALJs, whether full-time or part-time, are subject to the requirements of the Code of Judicial Conduct. ■ 1 & 2~~
- ~~(c) All OAH ALJs are authorized pursuant to state and federal laws referenced in OAC 340:2-28-1 and the rules in this Subchapter. The duties of the ALJ are to conduct fair hearings, avoid delays, maintain order, and make a record of all proceedings arising under the ALJ's jurisdiction. The ALJ has all powers necessary to accomplish these ends, which fall within the scope of judicial functions. The chief administrative law judge has all additional powers necessary to oversee OAH functions.~~

#### **INSTRUCTIONS TO STAFF [REVOKED]**

- ~~1. A full-time administrative law judge (ALJ) must not practice law outside his or her judicial duties, except as specifically authorized by the Code of Judicial Conduct.~~
- ~~2. A part-time ALJ must refrain from involvement in any situation that might give the appearance of a conflict of interest. This includes, but is not limited to, conflicting employment.~~
  - ~~(1) A part-time ALJ must not practice law before the Office of Administrative Hearings: Child Support (OAH), and must not act as a lawyer representing one of the parties who previously appeared before the ALJ in a proceeding. For this purpose, if any pleading or motion is filed concerning the matter in OAH, the matter is considered to have been before OAH and a part-time ALJ must not serve as a lawyer for the parties.~~
  - ~~(2) A part-time ALJ must not serve as a lawyer in any proceeding in any court in which the Oklahoma Department of Human Services (OKDHS) is a~~



~~named party or, even if OKDHS is not formally named in the suit, in any proceeding in any state court which might address issues regarding the reimbursement of state monies expended on behalf of a child, including, but not limited to Temporary Aid for Needy Families, Aid to Families with Dependent Children, Medicaid, SoonerCare, Child Care, and Foster Care public monies, as OKDHS would be a necessary party in such proceedings.~~

### **340:2-28-9. Power of the administrative law judge [REVOKED]**

~~The administrative law judge (ALJ) is authorized pursuant to state and federal laws referenced in OAC 340:2-28-1 and the rules in this Subchapter. The duties of the ALJ are to conduct fair hearings, avoid delays, maintain order, and make a record of all proceedings arising under the ALJ's jurisdiction. The ALJ has all powers necessary to accomplish these ends, including, but not limited to:~~

- ~~(1) presiding at all hearings of the Office of Administrative Hearings: Child Support (OAH);~~
- ~~(2) changing the date, time and place of the hearing or continue matters previously scheduled upon the timely request of either party or the ALJ's own motion, with notice to the parties when required. The ALJ has the power to continue a hearing in whole or in part;~~
- ~~(3) scheduling prehearing conferences at the discretion of the ALJ, either before the ALJ or outside the ALJs' presence to consider matters that may aid in the prompt disposition of the proceeding, including but not limited to:
  - ~~(A) settling, simplifying, or clarifying issues;~~
  - ~~(B) discussing evidentiary matters;~~
  - ~~(C) exchanging documents;~~
  - ~~(D) accepting stipulations; and~~
  - ~~(E) conferring on any matter pertinent to a specific case;~~~~
- ~~(4) ordering any party, the party's attorney, or other lawfully authorized representative, to be physically present at a hearing or a prehearing conference;~~
- ~~(5) requiring participation of parties and requiring parties to state their positions with respect to the various issues in the proceeding;~~
- ~~(6) administering oaths and affirmations;~~
- ~~(7) ruling on motions or other procedural matters, including issuance of protective orders or other relief to a party against whom discovery is sought pursuant to the Oklahoma Discovery Code, Chapter 41 of Title 12 of the Oklahoma Statutes;~~
- ~~(8) regulating the course of the hearing and conduct of counsel, witnesses, and the parties. This includes the mode and order of interrogation and presentation to:
  - ~~(A) make the interrogation and presentation effective for determination of the truth;~~
  - ~~(B) avoid needless consumption of time; and~~
  - ~~(C) protect witnesses and parties from harassment or undue embarrassment;~~~~
- ~~(9) examining witnesses whether called by the ALJ or a party;~~
- ~~(10) reviewing evidence and receiving, ruling on, excluding, or limiting evidence or discovery;~~
- ~~(11) setting the time for filing motions, petitions, briefs, and other items;~~

- ~~(12) making a final decision on all issues presented that are within OAH's jurisdiction;~~
- ~~(13) compelling by subpoena the appearance of witnesses, the production of papers or other evidence, or the issuing of subpoenas with the understanding that nothing in this paragraph precludes the issuance of subpoenas by someone other than the ALJ when permitted by law;~~
- ~~(14) taking matters under advisement;~~
- ~~(15) holding hearings and prehearing conferences by telephone or other electronic means;~~
- ~~(16) permitting the substitution of original documents with copies for filing;~~
- ~~(17) permitting the filing of facsimile or electronic documents;~~
- ~~(18) requiring announcements for all cases listed on the docket;~~
- ~~(19) ordering, at the request of a party or on the ALJ's own motion, the exclusion of witnesses from the hearing room so they cannot hear the testimony of other witnesses, except a party who is a natural person or an officer or employee of a party that is not a natural person designated as its representative by its attorney;~~
- ~~(20) disposing of any matter by stipulation, agreed settlement, consent order, or default;~~
- ~~(21) recessing the hearing for a brief period of time, if a recess is necessary to facilitate the hearing process, at the request of any party, upon the ALJ's own motion, or for other good cause shown;~~
- ~~(22) directing either party to prepare the proposed journal entry for the ALJ's review. The journal entry must contain both findings of fact and conclusions of law. The ALJ may:
  - ~~(A) approve the proposed order as submitted;~~
  - ~~(B) require revisions to the proposed order; or~~
  - ~~(C) personally redraft the proposed order, in whole or in part;~~~~
- ~~(23) directing either party to prepare other orders, including, but not limited to, orders for continuance, and orders for prehearing motions;~~
- ~~(24) requesting the district child support enforcement office to provide assistance to the ALJ to expedite proceedings; and~~
- ~~(25) imposing appropriate sanctions as provided in the Code of Civil Procedure, Chapter 1 of Title 12 of the Oklahoma Statutes, and the Oklahoma Discovery Code, Chapter 41 of Title 12 of the Oklahoma Statutes.~~

**340:2-28-11. Disqualification or recusal of an administrative law judge (ALJ)**

Revised 7-1-039-15-21

Pursuant to statutory provisions and district court rules:

- ~~(1) before filing any motion to disqualify an administrative law judge (ALJ), an in camera request must first be presented to the ALJ asking the ALJ to disqualify or to transfer the matter to another ALJ. If the request is not satisfactorily resolved, a motion to disqualify the ALJ or transfer the case to another ALJ may be filed with the Office of Administrative Hearings: Child Support (OAH). A copy of the motion must also be sent to the ALJ and all parties. The motion must be filed not less than ten days prior to the hearing or it is considered waived. Parties may request permission of OAH to extend this time period; and~~

~~(2) any interested party who wishes to contest the refusal of the ALJ to grant the motion to disqualify or transfer the case to another ALJ may re-present a motion within five days of the date of refusal to the chief ALJ of OAH. A copy of the motion must also be sent to the ALJ who entered the original order and all interested parties. If the motion is to disqualify the chief ALJ, the party must re-present the motion, within the same five day limit, to OAH with a request to the general counsel, Oklahoma Department of Human Services, to assign an ALJ who is not the chief ALJ. A copy of this motion must be sent to the chief ALJ and to the opposing party. If the hearing before a second ALJ results in an adverse order, the moving party is granted five days in which to institute a proceeding in district court for a writ of mandamus. An order favorable to the moving party may not be reviewed by appeal or other method. When an ALJ disqualifies or recuses from a case, the chief ALJ assigns a different ALJ. If the chief ALJ disqualifies or recuses from a case, a different ALJ is assigned by random lot, drawn by a docketing clerk.~~

(1) Any ALJ may disqualify or recuse on their own motion.

(2) A motion to disqualify an ALJ from a case may be filed with the Office of Administrative Hearings: Child Support (OAH), stating the basis for the request. The ALJ may recuse on their own motion; grant the motion without setting for hearing; or, in the ALJ's discretion, determine the motion after a hearing.

(A) When a motion to disqualify is denied, the Chief ALJ will reconsider the motion, upon the filing of a request for review. The request for review will be determined after hearing and when the Chief ALJ disqualifies the subject ALJ, the Chief ALJ assigns a different ALJ.

(B) When the subject of a motion to disqualify is the Chief ALJ, the request for review will be decided by a different ALJ assigned by random lot, drawn by a docketing clerk. The request for review will be determined after hearing and when the reviewing ALJ disqualifies the Chief ALJ, the reviewing judge will assign a different ALJ by random lot, not to include the reviewing ALJ.

(3) No further review is available within OAH or the agency.

### **340:2-28-12. Judges' conferences [REVOKED]**

~~The second Tuesday of each month is reserved for Office of Administrative Hearings: Child Support, staff meetings. Dockets are not set on that date; matters are not set for hearings or conferences on that date.~~

### **340:2-28-16.1. Docketing cases**

Revised 7-1-079-15-21

District child support offices docket their hearing notices and continuances through an approved Office of Administrative Hearings: Child Support (OAH) docketing system available to child support enforcement. Hearing notices and continuances must be docketed a minimum of 14 days prior to the docket date. Cases not approved for the docket may be heard at the discretion of the assigned administrative law judge. The second Friday of each month is reserved for Office of Administrative Hearings: Child Support staff meetings; there are no dockets or hearings set on that date.

### **340:2-28-16.2. Service of orders**

Revised ~~7-1-07~~9-15-21

(a) Orders prepared by the administrative law judge (ALJ), in a specific case, must be mailed or hand-delivered to the parties within three business days, from the filing of the order, by the ALJ, unless the ALJ directs the mailing or delivering of an order by one party upon another. Copies of all orders must be mailed or hand-delivered to opposing parties by the preparer within three business days from the filing of the order.

(b) Providing copies of the filed order, in a specific case, through an electronic means available to parties is an acceptable form of delivery. Electronic delivery of orders must be accomplished within three days of filing the order.

(c) Administration orders concerning court operations authorized by the Chief ALJ are not required to be filed in individual cases; electronic copies of any administration order will be provided upon request.

### **340:2-28-17.1. Hearing room**

Issued ~~7-1-03~~ Revised 9-15-21

~~(a) Each~~ Unless all participants in a hearing are instructed to appear by video and/or telephonic means, each district child support office or the designated Oklahoma Human Services building hub for a district child support office must provide the administrative law judge (ALJ) with a hearing room designated for the exclusive use by the ALJ ~~on~~ for the hearing days. ~~The use of the hearing room must not be preempted for any purpose on hearing days.~~ The room provided must be large enough to accommodate the ALJ and required computer equipment as well as a minimum of six additional people during the hearing.

(b) No person shall carry a firearm or other weapon into the hearing room, except for law enforcement officers or security personnel in their official capacity for the purpose of providing security in the hearing room or law enforcement officers having a prisoner in custody.

(c) Other than those items belonging to the ALJ, briefcases, boxes, bags, purses, and any and all containers of any type are not permitted in the hearing room without permission of the ALJ. The owners of those items are solely responsible for providing for the safekeeping of the items during the hearing.

(d) If all participants are instructed to appear for hearing by video and/or telephonic means, the district child support office may utilize a hearing room in compliance with those instructions but is not required to provide access to external participants.

### **340:2-28-17.2. Pleadings and motion practice**

Revised ~~9-15-20~~9-15-21

(a) **Document signatures.**

(1) **Signing pleadings.** Every pleading and motion filed with the Office of Administrative Hearings: Child Support (OAH) must be signed by an attorney of record, whose Oklahoma Bar Association (OBA) identification number must be stated, or when the party is not represented by an attorney, must be signed by the party. A pleading is any document that contains statements or allegations that constitute a cause of action or defense. Each pleading and motion must include the

signer's address and phone number, if any. Pleadings need not be supported by affidavit except as provided for by rule or statute.

(2) **Signing other documents.** Other documents, such as legally-mandated administrative notices issued by Child Support Services (CSS) to notify obligors of proposed enforcement actions, do not require an attorney's signature.

(3) **Signatures submitted through electronic means.** Electronic mediums that attach an electronic signature are acceptable to meet signature requirements. In addition to electronic transmittals of documents and electronic signatures, signatures on any document transmitted by electronic means including, but not limited to, facsimile, scan, or email have the same force and effect as an original, physical signature, per Section 237.9a of Title 56 of the Oklahoma Statutes. This provision does not authorize filing documents through email or text.

(b) **Practice.**

(1) **Form, filing, and service.**

(A) All documents, other than exhibits, are filed in the case, prior to consideration by an administrative law judge (ALJ). OAH retains all originals filed in paper form and maintains electronic submissions, per state record requirements. A pleading or motion must be filed prior to any administrative proceeding being docketed.

(B) Documents filed in OAH, in paper form, must be typewritten or legibly handwritten on white paper, size 8½ by 11 inches. All documents, other than exhibits, must contain a case style, which is a document heading containing the name of this administrative court, the parties' names, appropriate roles, and assigned case numbers. The party filing the initial request for action by OAH is generally designated as the petitioner or petitioner/plaintiff. The opposing party is usually named as the respondent or respondent/defendant. The custodian(s) must be listed, when not already included in the style as a party, under the case numbers. The case numbers listed in the style must include the OAH number and the Title IV-D, family group number (FGN), or CSS number. The associated district court case number is included, when available. Both conventional and "in re" styles are permitted. Parties are encouraged to maintain a consistent style, similar to one that may have been used in prior child support-related actions, between the same parties, provided the information is complete and accurate.

(i) When filed by an attorney, the name, OBA number, address, and preferred phone numbers must be shown on the signature page of the document.

(ii) When filed by a party not represented by a lawyer, the party is considered a pro se party, and must sign his or her name and type or legibly print his or her name, mailing address, Zip code, and preferred phone numbers on the signature page of the document.

(C) All documents in a proceeding, other than exhibits, must be served ~~as required by rule or statute~~ on all other parties. Proof of service must be filed with OAH and establish that requirements for service are satisfied. A notice or order setting hearing will provide recipients with the date and time of the hearing and when persons are instructed to appear:

(i) at a physical location for hearing, the street address will be included; or

(ii) by video or telephonic means, contact information and options are included.

(D) OAH may limit participation in hearings to video or telephonic means in any notice or order setting hearing. OAH may also limit participation in hearings to video or telephonic means through an order containing instructions in specific cases or through an administration order authorized by the Chief ALJ.

(D) A copy of all documents, other than exhibits, filed in OAH must be provided to all other pro se parties and attorneys of record. A certificate of mailing, delivery, or service must be filed with OAH.

(E) Upon failure to comply with the requirements in this Section, the ALJ may, among other sanctions, continue the cause of action until satisfactory compliance or deny the requested relief.

(F) Requests that do not comply with the requirements of (A) through (E) of this paragraph are considered only at the ALJ's discretion.

(G) Documents submitted through secure electronic means approved by OAH meet the requirement of original documents.

**(2) Motions.**

(A) This paragraph does not prohibit oral motions; however written motions are preferred.

(B) All motions must state the legal basis supporting the relief or action requested, and if when known, whether the opposing party objects, ~~when known~~.

(C) The ALJ determines if a hearing or oral argument is necessary on a motion and, if so, provides pro se parties and all attorneys of record with notice of the specific hearing date, time, and ~~place~~ means.

(D) Briefs Initial and response briefs or responses that do not comply with this paragraph are considered only at the ALJ's discretion.

**(3) Briefs.**

(A) Reply and response briefs must be filed three-business days prior to any hearing. Each brief must be clearly styled to show:

- (i) if it is in support of a motion, in opposition of a motion, or a reply brief;
- (ii) the particular application or proceeding to which it relates; and
- (iii) the party or parties on whose behalf it is presented.

(B) Initial and response Briefs briefs, when required, must not exceed 20 pages in length without prior ALJ permission.

(C) Reply briefs must be limited to five pages in length, without prior ALJ permission.

(D) No further briefs may be filed without ALJ permission.

(E) Briefs and responses that do not comply with this paragraph are considered only at the ALJ's discretion.

**(4) Time extensions.** Except at the ALJ's discretion, all requests for extensions of time must contain:

(A) the original due date for the response;

(B) the amount of additional time requested;

(C) the reason for the request;

(D) the current status of the case, including the next hearing date, when a hearing is scheduled; and

(E) a statement that the opposing pro se party or the opposing party's counsel was contacted regarding the extension and either consents or objects to the

extension; or in the alternative, a statement that a good faith effort was made to comply but the opposing pro se party or the opposing party's counsel was unavailable.

~~(5) **Discovery not filed.** Requests for the purpose of discovery must not be filed with OAH, unless the discovery document accompanies a pleading, motion, a response to a motion, or is ordered by the ALJ. Motions to compel discovery or discovery motions for protective order are permitted.~~

~~(A) Any discovery that contains personal identifiers, such as bank account, routing, taxpayer identification, or Social Security numbers, may be redacted by the party submitting the documents. When the numbers are relevant to the case, redacting all numbers except for the last four digits is acceptable. The party submitting the redacted documents must not redact the originals; the redaction is made on copies of the originals, with the redacted copies submitted in substitution for the originals.~~

~~(B) It is the responsibility of the party submitting the documents to redact any sensitive material.~~

~~(C) The originals with the redacted information intact may be required for viewing by the ALJ assigned to the case.~~

~~(6) **Disputed discovery motions.** A hearing on a discovery dispute may not be set unless the moving party advises the ALJ in the motion that the party has conferred or has attempted to confer, in good faith, about the dispute, with the non-movant and was unable to resolve the dispute.~~

~~(7)(5) **Counsel withdrawal.** When submitting an application to withdraw and a proposed order allowing withdrawal, counsel must comply with (A) through (B) of this paragraph: the following:~~

~~(A) Every application to withdraw as counsel must contain:~~

~~(i) a statement of grounds for withdrawal;~~

~~(ii) the current case status, including the next hearing date, when a hearing is scheduled;~~

~~(iii) if new or substitute counsel was obtained by the client and entered an appearance; and~~

~~(iv) a certificate of mailing, delivery, or service to the client and to all other pro se parties and attorneys of record.~~

~~(B) Every proposed order allowing withdrawal must contain a statement of the case's current status, including the next hearing date, when a hearing is scheduled, and a certificate of mailing, delivery, or service to the movant's client, all other pro se parties, and attorneys of record.~~

### **340:2-28-18. Discovery**

Revised 7-1-039-15-21

**(a) Right to discovery.** Parties to an action before an administrative law judge (ALJ) of the Office of Administrative Hearings: Child Support, have the right to conduct discovery under the Oklahoma Discovery Code, Chapter 41 of Title 12 of the Oklahoma Statutes. ALJs may enter orders for discovery as necessary.

**(b) Discovery not filed.** Requests for the purpose of discovery must not be filed with OAH, unless the discovery document accompanies a pleading, motion, a response to a

motion, or is ordered by the ALJ. Motions to compel discovery and/or for protective orders are permitted.

(1) It is the responsibility of the party submitting the documents to redact any sensitive material.

(2) Any discovery that contains personal identifiers, such as bank account, routing, taxpayer identification, or Social Security numbers, may be redacted by the party submitting the documents. When the numbers are relevant to the case, redacting all numbers except for the last four digits is acceptable. The party submitting the redacted documents must not redact the originals; the redaction is made on copies of the originals, with the redacted copies submitted in substitution for the originals.

(c) **Disputed discovery motions.** A hearing on a discovery dispute may not be set unless the moving party advises the ALJ in the motion that the party has conferred or has attempted to confer, in good faith, about the dispute, with the non-movant and was unable to resolve the dispute.

### **340:2-28-19. Evidentiary purpose**

Revised 7-1-079-15-21

(a) ~~The hearing is directed to receiving~~ includes argument, factual evidence related to issues in the proceeding, including testimony, stipulations, and exhibits; and judicial notice of the law and of adjudicative facts, pursuant to the Oklahoma Evidence Code, 12 O.S. Section 2101 et seq; however, the technical rules of evidence do not apply to the hearing. Rules and principles designed to ensure production of the most credible evidence available and to subject testimony to test by cross-examination are applied by the ALJ where reasonably necessary. All documents and other evidence offered or taken for the record are open to examination by the parties, unless limited by redaction or a protection order.

(b) Exhibits intended to be offered must be exchanged prior to the hearing, except for exhibits to be offered in rebuttal and except for exhibits for which the opposing parties waive their right to inspect on the record. The ALJ may recess the hearing to allow for exchange of exhibits offered in rebuttal, as necessary and reasonable, or the exchange of exhibits initially offered at hearing, based upon an anticipated waiver of inspection which then does not occur on the record. The ALJ may require a proffer to determine the reasonableness and necessity of a recess for these purposes. All exhibits offered in electronic format are considered a substitution for the original. All exhibits submitted are pre-marked for identification. Any exhibit submitted to the court in anticipation of being offered, but which is not offered at the close of the record, will not be considered part of the court record and will not be maintained.

(1) **Argument.** Argument is not presented in evidence, but in statements, memoranda, or briefs, as determined by the administrative law judge (ALJ). Brief opening statements of the party's position and what the party intends to prove may be made at the hearing.

(2) **Testimony.** Testimony is given orally, under oath or affirmation, by witnesses at the hearing. Witnesses must be available for cross-examination by all parties at the hearing. The ALJ may conduct hearings telephonically or by other electronic means when requiring a party or witness to physically attend would create a hardship.



~~(3) **Stipulation and exhibits.** Two or more parties may agree to stipulations of fact. Stipulations of fact or exhibits proposed by any party must be exchanged at the prehearing conference or otherwise prior to the hearing if the ALJ so requires. The ALJ may substitute copies for original documents. Unless otherwise ordered, all exhibits to be introduced into evidence or presented at the hearing must be marked in numerical order for identification and shown to opposing parties prior to the prehearing conference or, where a conference is not held, prior to the hearing on the matter.~~

~~(4) **Confidential information.** Confidential information, such as bank account numbers, routing numbers or Social Security numbers, may be redacted by the party submitting the documents. If the numbers are relevant to the case, redacting all numbers except the last four digits is acceptable.~~

~~(A) It is the responsibility of the party submitting the documents to redact any sensitive material.~~

~~(B) The originals with the redacted information intact may be required for viewing by the ALJ assigned to the case.~~

~~(5) **Rules of evidence; exceptions.** Technical rules of evidence do not apply to the hearing. Rules and principles designed to ensure production of the most credible evidence available and to subject testimony to test by cross-examination are applied by the ALJ where reasonably necessary. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination of the witness. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties. Opportunity is given to refute facts and arguments presented on either side of the issues.~~

~~(6) **Evidence of payments.** A report of payments made by the obligor or payor with a certification of authenticity executed by the Oklahoma Department of Human Services or a district court clerk is admissible in evidence as self-authenticated.~~

~~(7) **Judicial notice.** The ALJ may take judicial notice at any stage of the proceeding of the common law, constitutions, and public statutes in force in every state, territory, and jurisdiction of the United States, including tribal courts and the Court of Indian Offenses, and of adjudicative facts whenever:~~

~~(A) the adjudicative fact is generally known within the territorial jurisdiction of the administrative court;~~

~~(B) the adjudicative fact is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; or~~

~~(C) a party requests the taking of judicial notice and supplies the ALJ with the necessary information.~~

### **340:2-28-24. Case Record Management**

(a) Audio or video recordings of hearings are the property of the Office of Administrative Hearings: Child Support (OAH), and are not available for copying, review, or transcription except as described in Oklahoma Administrative Code 340:2-28-23. Video recordings of hearings are not required to be made or maintained by OAH, even if hearings are conducted by electronic/digital video conferencing.

(b) OAH manages and disposes of case records according to the Oklahoma Statutes and all applicable Oklahoma Department of Human Services and Archives and Records Commission administrative rules and policy. ■-4

## **INSTRUCTIONS TO STAFF 340:2-28-24 [REVOKED]**

**Revised 9-17-18**

~~1. See OKDHS:2-21-50 through 2-21-66 for regulations describing Oklahoma Department of Human Services (DHS) records management and records disposition schedules. See also DHS Records Management Handbook.~~

### **340:2-28-33. Default judgement and agreed judgments**

**Revised 7-1-079-15-21**

(a) A default judgment or administrative order may be entered if, without formal motion or notice of taking of default, when:

- (1) after statutory requirements for service have been met, a party fails to:
  - (A) appear for a set hearing date;
  - (B) file a responsive pleading; or
  - (C) request a hearing within the statutory time allotted; or
- (2) having requested a hearing, the obligor fails to make an appearance at the hearing; ~~or~~
- (3) ~~otherwise provided by statute.~~ ■ 1

(b) ~~Under the circumstances described in this Section, notice of taking default is not required.~~ Documents filed in support of the proposed default judgment are:

- (1) proof of service;
- (2) Servicemember's affidavit in accordance with the Servicemember's Civil Relief Act of 2003 and Department of Defense Status Report;
- (3) Proof of breach of payment, when basis of claim;
- (4) Copy of underlying order(s), when basis of claim;
- (5) Amount of debt, including principle and interest;
- (6) proof of paternity/maternity, when available and when basis of claim; and
- (7) any other item specifically requested by the assigned judge.

(c) An agreed judgment or administrative order may be entered upon the basis of mutual intent of all parties in accord with the law, as evidenced by their signatures or by an authorized representation, on the document or in open court, that one or more parties has waived signature. The following documents are filed in support of the proposed agreed judgment:

- (1) Copy of underlying order(s), when basis of claim;
- (2) proof of paternity/maternity, when available and when basis of claim; and
- (3) any other item specifically requested by the assigned judge.

## **INSTRUCTIONS TO STAFF 340:2-28-33 [REVOKED]**

**Revised 7-1-07**

~~1. Default judgment.~~

- ~~(1) For example, a default judgment may be entered when the noncustodial parent (NCP) fails to appear for genetic testing under an order entered by~~

~~the Director of the Oklahoma Department of Human Services under Section 240.23 of Title 56 of the Oklahoma Statutes.~~

~~(2) A default paternity order is not entered when the:~~

~~(A) NCP has entered a general appearance in the action by submitting to genetic testing; and~~

~~(B) custodian or mother fails to submit herself or her child for genetic testing after being ordered to appear.~~