

CODE OF MARYLAND REGULATIONS (COMAR)

Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 10 CORRECTIONAL TRAINING COMMISSION

Chapter 03 General Hearing Regulations

Authority: State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland

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Table of Contents

12.10.03.01 – Scope	2
12.10.03.02 – General Provisions	2
12.10.03.03 – Representation	2
12.10.03.04 – Notice of Hearing	2
12.10.03.05 – Postponements	3
12.10.03.06 – Presiding Officer – Duties	3
12.10.03.07 – Attendance	3
12.10.03.08 – Standards for Recertification	4
12.10.03.09 – Decisions and Orders	4
12.10.03.10 – Request for Reconsideration	4
12.10.03.11 – Transcription of Hearing	5
12.10.03.12 – Judicial Appeal	5

12.10.03.01 – Scope

.01 Scope.

A. These regulations apply to administrative hearings before the Correctional Training Commission (Commission), where issues concerning the legal rights, duties, statutory entitlements, or privileges of specific parties are decided as required by law or constitutional right.

B. These regulations do not apply to:

- (1) An employee grievance hearing;
- (2) An informal investigation;
- (3) A Commission action on an application for certification or recertification to a mandated position;
- (4) A decision made by the Executive or Deputy Director pursuant to authority delegated by the Commission;
- (5) A decision to conduct or not to conduct a hearing; or
- (6) A proceeding where a hearing is not required by law.

12.10.03.02 – General Provisions

.02 General Provisions.

A. A hearing conducted by the Commission is subject to the provisions of the Administrative Procedure Act.

B. The Commission may conduct a hearing only if a majority of the Commission's authorized membership is present.

12.10.03.03 – Representation

.03 Parties — Representation.

A. A party to a hearing includes an individual or agency that the Commission names or designates, or who is entitled to be a party to a hearing.

B. A party may be represented by counsel at a hearing.

12.10.03.04 – Notice of Hearing

.04 Notice of Hearing.

A. The Commission shall provide all parties with written notice of a hearing at least 10 business days before the scheduled hearing date.

B. A written notice shall comply with State Government Article, §§10-207 and 10-208, Annotated Code of Maryland, and include:

- (1) The date, time, and place of the hearing;
- (2) A brief explanation of the allegations and issues;
- (3) Citations of relevant law or regulation; and
- (4) A copy of COMAR 12.10.03.

12.10.03.05 – Postponements

.05 Postponements.

A. The presiding officer may postpone a hearing upon a written request of any party, if the:

- (1) Presiding officer receives the request at least 3 business days before the scheduled hearing date; and
- (2) Request establishes good cause for the postponement as determined by the presiding officer.

B. Absent a postponement request, the presiding officer may postpone the hearing for good cause.

12.10.03.06 – Presiding Officer – Duties

.06 Presiding Officer — Duties.

A. The Commission chairman, or a designee, shall be the presiding officer who shall:

- (1) Be in charge of the hearing;
- (2) Permit the examination of witnesses;
- (3) Rule on the admissibility of evidence;
- (4) Decide the order in which parties may testify, present evidence, or present argument;
- (5) Adjourn or recess the hearing from time to time;
- (6) Decide if a party is required to submit a written brief or motion supporting the party's position and establish deadlines for submissions;
- (7) Reschedule the hearing if a majority of the Commission is not present; and
- (8) Maintain a record of the hearing as required under State Government Article, §10-218, Annotated Code of Maryland.

B. The presiding officer shall determine that a party:

- (1) Has been informed of the nature of the proceedings;
- (2) Understands the language and intent of these regulations; and

(3) Is cognizant of the rights under applicable statutes upon which the subject of the hearing is conducted as well as rights under these regulations.

C. If the presiding officer is not satisfied that a party is fully informed as to these matters, the presiding officer shall note this on the record.

D. The presiding officer, when deciding the case or issuing an order pursuant to the provisions of these regulations and of law, shall inform the party of the right to appeal a decision or order and the methods and procedures for making that appeal.

E. The presiding officer may:

- (1) Examine witnesses;
- (2) Call witnesses; and

(3) Request the Office of the Attorney General to provide counsel to the Commission and to Commission staff who may be presenting evidence at the hearing.

12.10.03.07 – Attendance

.07 Attendance.

A. If a party fails to appear for the hearing and the presiding officer has reason to believe the party received notice of the hearing, the presiding officer may:

(1) Proceed with the hearing based on the information available; or

(2) Reschedule the hearing.

B. A party may waive the right to appear for the hearing.

12.10.03.08 – Standards for Recertification

.08 Hearing Procedures — Testimony and Evidence.

A. The introduction of evidence at a hearing shall comport with procedures under State Government Article, §10-213, Annotated Code of Maryland.

B. When a party is represented by counsel, only counsel may submit evidence, question witnesses, and file objections, exceptions, and motions on behalf of the party.

C. A party testifying shall be under oath administered by an individual authorized by the presiding officer.

D. The presiding officer shall require the following oath be used: "Do you solemnly swear or affirm under the penalties of perjury that the responses given and statements made will be the truth, the whole truth, and nothing but the truth?"

E. The burden of proof shall be on the party bringing the issue before the Commission.

F. The standard of proof shall be a preponderance of evidence.

G. A party may submit a brief, or the presiding officer may order that a brief be submitted, concerning the issues of fact and law involved in the hearing. The presiding officer shall determine:

(1) The form, for the brief; and

(2) Submission deadlines.

12.10.03.09 – Decisions and Orders

.09 Decisions and Orders.

A. A decision by the Commission shall be made by a majority of the members present at the hearing.

B. The presiding officer shall prepare the Commission's final decision and order in writing that includes findings of fact and conclusions of law that are based exclusively on testimony, evidence, and other matters that are a part of the hearing record.

C. The Commission shall deliver or mail a copy of the decision and order and accompanying findings and conclusions to each party or the party's counsel of record.

D. Unless specified otherwise, orders of the presiding officer or the Commission shall be immediately implemented.

12.10.03.10 – Request for Reconsideration

.10 Request for Reconsideration.

A. A party may request reconsideration of a final decision by the Commission.

B. A request for reconsideration shall:

(1) Be in writing;

(2) Be received by the presiding officer issuing the decision not later than 10 days after receipt of the final decision or order by the party or the party's counsel of record; and

(3) State in detail the grounds for the request.

C. Within a reasonable period following receipt of the request for reconsideration, the presiding officer, with input from the Commission members hearing the case, shall either grant or deny the request.

D. The presiding officer shall mail the decision on the request for reconsideration under §C of this regulation to the individual making the request.

E. At the discretion of the Commission, a request for reconsideration may stay enforcement of the order until disposition of the request or subsequent action based on that request.

F. Submitting a request for reconsideration does not stay the time requirements for filing an appeal.

12.10.03.11 – Transcription of Hearing

.11 Transcription of Hearing Records.

A. The Commission is not required to provide a transcript of the hearing record.

B. A party may obtain a complete or partial transcript if the party:

- (1) Makes a written request for transcription to the presiding officer; and
- (2) Agrees to pay the costs of and make arrangements for transcription.

12.10.03.12 – Judicial Appeal

.12 Judicial Appeal.

A party aggrieved by the Commission's final decision, or by an interlocutory order, is entitled to judicial review as provided in State Government Article, §10-222, Annotated Code of Maryland, or any other applicable provision of law.