

13B.040 Qualifications of hearing officer.

- (1) A person who has served as an investigator or prosecutor in an administrative hearing or in its preadjudicative stage shall not serve as hearing officer or assist or advise a hearing officer in the same proceeding. This shall not be construed as preventing a person who has participated as a hearing officer in a determination of probable cause or other equivalent preliminary determination from serving as a hearing officer in the same proceeding.
- (2)
 - (a) A hearing officer, agency head, or member of an agency head who is serving as a hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer, agency head, or member of the agency head by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. A request for the disqualification of a hearing officer shall be answered by the agency head within sixty (60) days of its filing. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding. Requests for disqualification of a hearing officer shall be determined by the agency head. Requests for disqualification of a hearing officer who is a member of the agency head shall be determined by the majority of the remaining members of the agency head.
 - (b) Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:
 1. Serving as an investigator or prosecutor in the proceeding or the preadjudicative stages of the proceeding;
 2. Participating in an ex parte communication which would prejudice the proceedings;
 3. Having a pecuniary interest in the outcome of the proceeding; or
 4. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

Effective: July 15, 1998

History: Amended 1998 Ky. Acts ch. 279, sec. 1, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 4, effective July 15, 1996. -- Created 1994 Ky. Acts ch. 382, sec. 4, effective July 15, 1996.