

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 700 Department or Agency Alabama Board of Physical Therapy
Rule No. CHAPTER 700-X-5
Rule Title: AMENDMENT OF RULES.

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

YES

Is there another, less restrictive method of regulation available that could adequately protect the public?

NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

YES

Does the proposed rule have an economic impact?

NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

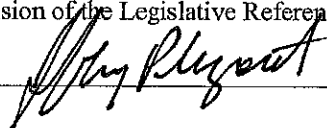
Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer _____

Date _____

2/12/2017



ALABAMA BOARD OF PHYSICAL THERAPY

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Physical Therapy

RULE NO. & TITLE: CHAPTER 700-X-4-DISCIPLINARY ACTIONS

INTENDED ACTION: The Alabama Board of Physical Therapy proposes to repeal the Chapter DISCIPLINARY ACTIONS. re: repeal and replace with updated, more concise version of code.

SUBSTANCE OF PROPOSED ACTION: The proposed rule Chapter 700-X-4 will be repealed and replaced by authority in Alabama Code Title 42. State Government. §41-22-5.2

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing or in person through the close of business on Tuesday, April 5, 2017. Those wishing to present views in person should contact the Board of Physical Therapy at 334-242-4064.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: April 5, 2017.

CONTACT PERSON AT AGENCY: Jeffrey Vinzant
Executive Director
Board of Physical Therapy
100 North Union Street, Suite 724
Montgomery, AL 36130-5040
(334) 242-4064
jeffrey.vinzant@pt.alabama.gov

Jeffrey Vinzant,
Executive Director



ALABAMA BOARD OF PHYSICAL THERAPY
ADMINISTRATIVE CODE

CHAPTER 700-X-4
DISCIPLINARY ACTIONS

TABLE OF CONTENTS

700-X-4-.01 Complaints
 700-X-4-.02 Probable Cause
 700-X-4-.03 Summons And Complaint
 700-X-4-.04 Pre-Hearing Discovery
 700-X-4-.05 Disciplinary Hearings
 700-X-4-.06 Discipline
 700-X-4-.07 Costs And Fines
 700-X-4-.08 Reinstatement Of License After
 Revocation
 700-X-4-.09 Conflict And Bias

700-X-4-.01 Complaints. Complaints alleging any violation of the laws of the State of Alabama or rules of this Board may be lodged by any person in writing with the executive director.
Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris
Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-194.
History: Filed September 30, 1982. Amended: Filed September 4, 1988; effective October 11, 1998. Amended: Filed February 4, 2003; effective March 11, 2003.

700-X-4-.02 Probable Cause. Beginning January 21, 2009, upon the lodging of a complaint, the executive director shall refer the complaint to the chair of the Board. Subsequent to investigation the chair shall, in consultation with the executive director the Board's attorney, and a second board member appointed by the Chair, determine whether probable cause exists for the issuing of a summons and complaint by the Board. If a summons and complaint is issued, the chair and the second board member involved who made the probable cause determination shall not vote at the disciplinary hearing held pursuant to the summons and complaint.

Author: John C. Badenhop, Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris, Sonja Enfinger, John Cormier, Ron G. Bass, Mitzi Tuttle, Andy Gustafson, Jay Segal, Vince Molyneux
Statutory Authority: Code of Ala. 1975, §34-24-194.

History: Filed September 30, 1982. **Amended:** Filed September 6, 1985. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed February 4, 2003; effective March 11, 2003. **Amended:** Filed December 15, 2008; effective January 19, 2009.

700-X-4-.03 Summons And Complaint.

(1) Preparation. In the event the Board determines that probable cause exists for the filing of a summons and complaint, the Board shall instruct its counsel to prepare it.

(2) The summons and complaint shall be mailed certified mail, return receipt requested, to the most recent address of the respondent on file with the Board and shall be mailed at least 30 days prior to the scheduled date of the hearing. In the event the summons and complaint is refused or the return receipt has not been received by the Board or its attorney at least 20 days before the scheduled hearing, respondent may be served by mailing a copy of the summons and complaint first class mail at least 15 days before the hearing date.

(3) Contents. The summons and complaint shall give notice in substantial compliance with the Alabama Administrative Procedures Act 12(2).

(4) Subpoena Power. The Board of Physical Therapy has the power to issue subpoenas to respondents, witnesses, and for documents which may be required for the disposition of complaints.

Authors: John C. Badenhop, Herbert R. Baillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-194, 41-22-12(1)

History: Filed September 30, 1982. **Amended:** Filed September 6, 1985. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed February 4, 2003; effective March 11, 2003.

700-X-4-.04 Pre-Hearing Discovery.

(1) Permitted. Pre-hearing discovery shall be permitted in accordance with this rule to the extent necessary to

prevent fraud, conserve the Board's time, prevent undue surprise at hearing and facilitate the carriage of justice.

(2) Extent Allowed. The attorney for the Board or the respondent may, upon application to the chair, obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the charge of the Board or the defense of the respondent.

(3) Method of Discovery.

(a) Upon written application to the chair, the following discovery may be allowed or ordered:

1. Deposition upon oral examination of any expert witness.
2. Interrogatories to respondent.
3. Order for production and copying of documents and things and entry upon land for inspection and other purposes, against any person.

(b) The discovery must be in accordance with any terms and conditions imposed by the chair. The chair may impose any such terms and conditions as are just upon discovery in order to protect a party from annoyance, embarrassment, oppression or undue burden or expense.

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §34-24-193.

History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed February 4, 2003; effective March 11, 2003.

700-X-4-.05 Disciplinary Hearings.

(1) Conduct of Hearing.

(a) Hearing Examiner. The Board may, in its discretion, appoint some person to act as hearing examiner at disciplinary hearings. In the event a hearing examiner is appointed, he/she shall preside at the hearing and shall rule on all questions of evidence and procedure, notwithstanding other provisions of these rules to the contrary.

(b) Plea. The respondent shall plead either "guilty" or "not guilty" to the charges set forth in the complaint.

(c) Opening Statement. Each side shall be permitted to make a short opening statement.

(d) The state shall present its evidence, followed by the respondent, followed by rebuttal by the state. Each witness called may be examined in the following manner:

1. Direct examination.
2. Cross examination.
3. Examination by Board.
4. Re-direct examination.
5. Re-cross examination.
6. Re-examination by Board.

(e) Closing Argument. Each side shall be permitted to make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(f) The Board may request one or both sides to prepare within seven days for the Board's consideration a proposed order of the Board, including findings of fact, official notice, and conclusions of law, and relevant facts of record which support the findings should be cited.

(g) Order. The Board shall issue an order within 30 days of the date of the final hearing, which shall include findings of fact, official notice taken, and conclusions of law, stated separately. Respondent shall be delivered a copy of the order by certified mail, return receipt requested, and a copy shall be mailed first class to each attorney of record.

(2) Evidence. Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act Section 13.

(3) Emergencies. The Board may in an emergency situation when danger to the public health, safety, and welfare requires suspending a license without hearing or with an abbreviated hearing in accordance with the Alabama Administrative Procedure Act Section 19(4).

(4) Other. The hearing shall otherwise be conducted in compliance with the provisions of the Alabama Administrative Procedure Act.

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris
Statutory Authority: Code of Ala. 1975, §§34-24-193, 41-22-13, 41-22-16(3).

History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998.

700-X-4-.06 Discipline.

(1) **Revocation or suspension of License.** Upon a finding that respondent has violated any enumerated provision of Code of Ala. 1975, §§34-24-193, 41-22-13, or any rule adopted pursuant thereto, the Board may restrict, revoke or suspend respondent's license to practice as a physical therapist or physical therapist assistant in Alabama.

(2) **Stay of Execution of Order.** The Board may, in its discretion, permanently or temporarily stay the execution of its order to restrict, revoke or suspend respondent's license. The stay may be conditioned on any provision the Board deems appropriate under all the circumstances of a particular case.

(3) **Considerations.** In determining whether a license should be restricted, revoked or suspended, and whether execution of the order should be stayed, and upon what conditions, the Board shall consider all relevant factors, including, but not limited to, the following:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the date of violation;
- (e) The number of complaints filed against the licensee;
- (f) The length of time the licensee has practiced;
- (g) The actual damage, physical or otherwise, to the patient;
- (h) The deterrent effect of the penalty imposed;
- (i) The effect of the penalty upon the licensee's livelihood;

- (j) Any efforts of rehabilitation and
 - (k) Any other mitigating or aggravating circumstances.
- (4) Public Notice. The Board shall publish semi-annually a listing of names, with offenses, of licensees disciplined via formal or informal means.

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris, Vince Molyneux, John Cromber, Jay Segal, Eric Dekle, Mitzi Watson, Mary Jolley
Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-217.
History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed September 20, 2012; effective October 25, 2012; operative November 2, 2012.

700-X-4-.07 Costs And Fines.

(1) Fines. The Board is authorized to discipline its licensees by the adoption and collection of administrative fines, not to exceed \$1,000 per violation, and it is further authorized to institute any legal proceedings necessary to effect compliance with this chapter.

(2) Costs. The Board may, with the agreement of a licensee, tax the costs of the Board's investigation or adjudication of a complaint, in an amount not to exceed \$1,000.

Authors: James R. Hobbs, Jr.; Anne H. Harrison; Robert L. Shoemake, Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris
Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-215.
History: Filed September 30, 1982. **Amended:** Filed November 29, 1989. **Amended:** Filed September 4, 1998; effective October 11, 1998.

700-X-4-.08 Reinstatement Of License After Revocation.

(1) Application for Reinstatement. Any person whose license has been revoked may apply to the Board for reinstatement of the license at any time within two years of the revocation. In his/her application for reinstatement, the applicant should state why he/she feels the license should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement. Applicant must include in his/her

application evidence that he/she meets the current requirements for licensure.

(2) Board Action. Upon receipt of such application, the Board may grant the applicant a hearing to consider reinstatement, at which time applicant may appeal to the Board to reinstate his/her license.

Authors: James R. Hobbs, Jr.; Anne H. Harrison; Robert L. Shoemaker; Herbert R. Caillouet; Donald L. Hiltz; Bernard Harris; Vince Molyneux; John Cormier; Jay Segal; Eric Dekle; Mitzi Watson; Mary Jolley

Statutory Authority: Code of Ala. 1975, §34-24-193.

History: Filed September 30, 1982. **Amended:** Filed November 29, 1989. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed September 20, 2002; effective October 25, 2012. Operative November 2, 2012.

700-X-4-009 Conflict And Bias

(1) No Board member shall be entitled to vote in any disciplinary matter if the Board member is personally biased against the respondent or when such voting would violate the provisions of the Alabama Administrative Procedure Act, Section 18(1).

(2) Any respondent in a disciplinary action who wishes to assert bias or conflict may do so by filing with the executive director at least three days before the scheduled disciplinary hearing an affidavit asserting the disqualification together with the underlying factual basis for the assertion.

(3) The Board shall consider the assertion of disqualification on the record as a preliminary matter at the hearing before any other question is decided.

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §34-24-193.

History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998.

ALABAMA BOARD OF PHYSICAL THERAPY
ADMINISTRATIVE CODE

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TABLE OF CONTENTS

700-X-4-.01	Complaints
700-X-4-.02	Probable Cause
700-X-4-.03	Summons And Complaint
700-X-4-.04	Pre-Hearing Discovery
700-X-4-.05	Disciplinary Hearings
700-X-4-.06	Discipline
700-X-4-.07	Costs And Fines
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700-X-4-.09	Conflict And Bias

700-X-4-.01 Complaints. Complaints alleging any violation of the laws of the State of Alabama or rules of this Board may be lodged by any person in writing with the executive director.
Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris
Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-194.
History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed February 4, 2003; effective March 11, 2003.

700-X-4-.02 Probable Cause. Beginning January 21, 2009, upon the lodging of a complaint, the executive director shall refer the complaint to the chair of the Board. Subsequent to investigation the chair shall, in consultation with the executive director the Board's attorney, and a second board member appointed by the Chair, determine whether probable cause exists for the issuing of a summons and complaint by the Board. If a summons and complaint is issued, the chair and the second board member involved who made the probable cause determination shall not vote at the disciplinary hearing held pursuant to the summons and complaint.

Authors: John C. Badenhop, Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris, Sonja Enfinger, John Cormier, Ron G. Bass, Mitzi Tuttle, Andy Gustafson, Jay Segal, Vince Molyneux

Statutory Authority: Code of Ala. 1975, §34-24-194.

History: Filed September 30, 1982. **Amended:** Filed September 6, 1985. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed February 4, 2003; effective March 11, 2003. **Amended:** Filed December 15, 2008; effective January 19, 2009.

700-X-4-.03 Summons And Complaint.

(1) Preparation. In the event the Board determines that probable cause exists for the filing of a summons and complaint, the Board shall instruct its counsel to prepare it, and it shall be filed with the Board.

(2) The summons and complaint shall be mailed certified mail, return receipt requested, to the most recent address of the respondent on file with the Board and shall be mailed at least 30 days prior to the scheduled date of the hearing. In the event the summons and complaint is refused or the return receipt has not been received by the Board or its attorney at least 20 days before the scheduled hearing, respondent may be served by mailing a copy of the summons and complaint first class mail at least 15 days before the hearing date.

(3) Contents. The summons and complaint shall give notice in substantial compliance with the Alabama Administrative Procedures Act §12(2).

Authors: John C. Badenhop, Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-194, 41-22-12(1).

History: Filed September 30, 1982. **Amended:** Filed September 6, 1985. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed February 4, 2003; effective March 11, 2003.

700-X-4-.04 Pre-Hearing Discovery.

(1) Permitted. Pre-hearing discovery shall be permitted in accordance with this rule to the extent necessary

to prevent fraud, conserve the Board's time, prevent undue surprise at hearing and facilitate the carriage of justice.

(2) Extent Allowed. The attorney for the Board or the respondent may, upon application to the Administrative Law Judge, obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the charge of the Board or the defense of the respondent.

(3) Methods of Discovery.

(a) Upon written application to the Administrative Law Judge, the following discovery may be allowed or ordered:

1. Deposition upon oral examination of any expert witness.

2. Interrogatories to respondent.

3. Order for production and copying of documents and things and entry upon land for inspection and other purposes, against any person.

(b) The discovery must be done in accordance with the Alabama Administrative Procedures Act.

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §34-24-193.

History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed February 4, 2003; effective March 11, 2003.

700-X-4-.05 Disciplinary Hearings.

(1) Conduct of Hearing.

(a) Administrative Law Judge. The Board may, in its discretion, appoint some person to act as Administrative Law Judge at disciplinary hearings. In the event an Administrative Law Judge is appointed, he/she shall preside at the hearing and shall rule on all questions of evidence and procedure, notwithstanding other provisions of these rules to the contrary.

(b) Plea. The respondent shall plead either "guilty" or "not guilty" to the charges set forth in the complaint.

(c) Opening Statement. Each side shall be permitted to make a short opening statement.

(d) The state shall present its evidence, followed by the respondent, followed by rebuttal by the state. Each witness called may be examined in the following manner:

1. Direct examination.
2. Cross examination.
3. Examination by Board.
4. Re-direct examination.
5. Re-cross examination.
6. Reexamination by Board.

(e) Closing Argument. Each side shall be permitted to make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(f) The Board may request one or both sides to prepare within seven days for the Board's consideration a proposed order of the Board including findings of fact, official notice, and conclusions of law. Underlying facts of record which support the findings should be cited.

(g) Order. The Board shall issue an order within 30 days of the date of the final hearing, which shall include findings of fact, official notice taken, and conclusions of law, stated separately. Respondent shall be delivered a copy of the order by certified mail, return receipt requested, and a copy shall be mailed first class to each attorney of record.

(2) Evidence. Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act Section 13.

(3) Emergency Suspensions. Emergency suspensions shall be governed by Ala. Code § 41-22-19(d).

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §§34-24-193, 41-22-13, 41-22-16(3).

History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998.

700-X-4-.06 **Discipline.**

(1) Revocation or suspension of License. Upon a finding that respondent has violated any enumerated provision of Code of Ala. 1975, §34-24-217, or any rule adopted pursuant thereto, the Board may restrict, revoke or suspend respondent's license to practice as a physical therapist or physical therapist assistant in Alabama.

(2) Stay of Execution of Order. The Board may, in its discretion, permanently or temporarily stay the execution of its order to restrict, revoke or suspend respondent's license. The stay may be conditioned on any provision the Board deems appropriate under all the circumstances of a particular case.

(3) Considerations. In determining whether a license should be restricted, revoked or suspended, and whether execution of the order should be stayed, and upon what conditions, the Board shall consider all relevant factors, including, but not limited to, the following:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the date of violation;
- (e) The number of complaints filed against the licensee;
- (f) The length of time the licensee has practiced;
- (g) The actual damage, physical or otherwise, to the patient;
- (h) The deterrent effect of the penalty imposed;

(i) The effect of the penalty upon the licensee's livelihood;

(j) Any efforts of rehabilitation; and

(k) Any other mitigating or aggravating circumstances.

(4) Public Notice. The Board shall publish semi-annually a listing of names, with offenses, of licensees disciplined via formal or informal means.

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris, Vince Molyneux, John Cromier, Jay Segal, Eric Dekle, Mitzi Watson, Mary Jolley

Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-217.

History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed September 20, 2012; effective October 25, 2012; Operative November 2, 2012.

700-X-4-.07 Costs And Fines.

(1) Fines. The Board is authorized to discipline its licensees by the adoption and collection of administrative fines, not to exceed \$1,000 per violation, and it is further authorized to institute any legal proceedings necessary to effect compliance with this chapter.

(2) Costs. The Board may, with the agreement of a licensee, tax the costs of the Board's investigation or adjudication of a complaint.

Authors: James R. Hobbs, Jr.; Anne H. Harrison; Robert L. Shoemake, Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §§34-24-193, 34-24-215.

History: Filed September 30, 1982. **Amended:** Filed November 29, 1989. **Amended:** Filed September 4, 1998; effective October 11, 1998.

700-X-4-.08 Reinstatement Of License After Revocation.

(1) Application for Reinstatement. Any person whose license has been revoked may apply to the Board for reinstatement of the license at any time within two years of the

revocation. In his/her application for reinstatement, the applicant should state why he/she feels the license should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement. Applicant must include in his/her application evidence that he/she meets the current requirements for licensure.

(2) Board Action. Upon receipt of such application, the Board may grant the applicant a hearing to consider reinstatement, at which time applicant may appeal to the Board to reinstate his/her license.

Authors: James R. Hobbs, Jr.; Anne H. Harrison; Robert L. Shoemake; Herbert R. Caillouet; Donald L. Hiltz; Bernard Harris; Vince Molyneux; John Cormier; Jay Segal; Eric Dekle; Mitzi Watson; Mary Jolley

Statutory Authority: Code of Ala. 1975, §34-24-193.

History: Filed September 30, 1982. **Amended:** Filed November 29, 1989. **Amended:** Filed September 4, 1998; effective October 11, 1998. **Amended:** Filed September 20, 2012; effective October 25, 2012; Operative November 2, 2012.

700-X-4-.09 Conflict And Bias.

(1) No Board member shall be entitled to vote in any disciplinary matter if the Board member is personally biased against the respondent or when such voting would violate the provisions of the Alabama Administrative Procedure Act, Section 18(1).

(2) Any respondent in a disciplinary action who wishes to assert bias or conflict may do so by filing with the executive director at least three days before the scheduled disciplinary hearing an affidavit asserting the disqualification together with the underlying factual basis for the assertion.

(3) The Board shall consider the assertion of disqualification on the record as a preliminary matter at the hearing before any other question is decided.

Authors: Herbert R. Caillouet, Donald L. Hiltz, Bernard Harris

Statutory Authority: Code of Ala. 1975, §34-24-193.

History: Filed September 30, 1982. **Amended:** Filed September 4, 1998; effective October 11, 1998.