

**Resolution Proceeding Stage
Administrator's General Instructions**

GENERAL FRAMING

- The purpose of a Resolution Proceeding with the Administrator is to resolve claims filed in the YDC claims process for settlement purposes.
- The Administrator will conduct Resolution Proceedings in a trauma-informed and victim-centered manner to the greatest extent possible and in a fair and efficient manner for reasonable resolution of claims.
- The Resolution Proceeding is not a litigation process (such as a deposition for civil discovery) and is not like a court trial.
- The Administrator will evaluate and decide claims based on information provided, including -
 - claim packet submissions filed by a Claimant
 - testimony under oath of the Claimant (if live hearing occurs)
 - written witness statements (if any provided)
 - memos and other materials, including medical, hospital and mental health records, exchanged by the parties and submitted to the Administrator
- The Administrator will evaluate the claimant's testimony, when provided, in light of the totality of the claim record and advocacy of each side in order to provide an independent evaluation.
- A Notice of Record Closure will be issued once the Administrator determines no further information is necessary to provide an independent evaluation of the claim.
- The Administrator will provide his written decision no later than 30 days from the Record Closure.
- It is the responsibility of the parties to provide copies of submissions to one another during the claims process.

CONFIDENTIALITY

- Claims documents and information created in connection with claims are treated as confidential by the Claims Administrator and by the Attorney General's Office to the greatest extent permitted by law, with limited exceptions.
- A claimant may choose to waive confidentiality.
- In order to process a claim, Claims Administration staff must share claims information with parties in a confidential manner.
- **Resolution Proceedings, including hearings, are confidential and not public.**
- The time, date and location of Resolution Proceeding hearings are CONFIDENTIAL.
- Attendance at hearings is limited to:
 - the claimant
 - the claimant's lawyer and staff
 - the claimant's victim advocate and/or a trusted support person (such as family member)
 - the AG Designee or representative(s)
 - the neutral Administrator and minimal staff needed for conducting a hearing
 - a trauma-informed professional assisting the Administrator.

DEPARTMENT OF CORRECTIONS FACILITY RESIDENTS

- In limited situations, Claims Administration staff will need to share the names of a claimant and some claim information with limited persons at a Department of Corrections in a confidential manner in order to process a claim.
- Resolution Proceeding hearings in New Hampshire will be scheduled at DOC facilities on a periodic basis and in compliance with DOC policies.
- A *Notice for Department of Corrections Residents* is available on our website.

EMOTIONAL AND MENTAL HEALTH SUPPORT

- A claimant may choose to have a victim advocate or trusted support person attend a hearing to provide support.
- It is very important for a claimant to receive emotional and mental health support throughout the claims process.
- There is a list of *Resources for Emotional and Mental Health Support* available on our website.

SAFETY AND SECURITY

- The Administrator considers safety and security at Resolution Proceeding hearings of the utmost importance.
- *Administrator's Notice on Safety, Security & Impairment at Resolution Proceedings* identifies instructions for law firms that host a resolution proceeding hearing (RP Host). This document is available on our website.
- Proceedings may be conducted entirely remotely when appropriate and with prior notice and only in unique circumstances.

SELECTION OF A RESOLUTION PROCEEDING TYPE

- A claimant may select a resolution proceeding that involves either (1) evaluation with a live hearing, or (2) evaluation by written submission only. A *Claimant Selection of Option* form is available on our website.
- A claimant should identify at the time of making a selection some initial information for logistics, such as special circumstances for the claimant and whether the claimant is currently a resident at a department of corrections facility (state or county, out-of-state), and if so, where and whether a change in status or change in location is anticipated.
- An in-person testimonial hearing is highly recommended by the Administrator for evaluation of a claim **but not required for a resolution hearing**. The Administrator strongly emphasizes how valuable it is for him and the trauma-informed expert assisting in the hearing to be sitting in the same room with the claimant for the conversation about what happened to the claimant.
- Deciding claims solely by written submissions may sometimes be necessary but it is not recommended.
- Ultimately, it is each claimant's decision whether to provide testimony at a Resolution Proceeding hearing to support his/her claim.
- If a claimant is not comfortable providing live testimony and declines to do so, such a decision will **not** be held against the Claimant. The Claimant should consider that lack of live testimony could limit the Administrator's understanding of events identified in a claim packet or written statement.

SPECIAL CIRCUMSTANCES

- The claimant, claimant’s counsel, or the AG Designee should inform the Administrator in advance of a hearing of any special circumstances believed to be important for preparation for a live hearing.
- Examples of different types of special circumstances are listed in a document called *Special Circumstances of Claimant for Resolution Proceeding* available on our website.
- Please inform Claims Administration staff as early as possible once special circumstances become known.

SCHEDULING NOTICE

- Claims Administration staff will issue a Scheduling Notice on a per claim basis to identify specific timetables and logistics for a live hearing, if that is the type of proceeding selected.
- The Scheduling Notice will identify deadlines for providing pre-hearing and post-hearing submissions to the Administrator.
- A sample *Scheduling Notice* is available on our website.
- The Administrator has discretion to adjust process and timetables of a Resolution Proceeding as appropriate to fit the unique needs of a claim.

RESOLUTION PROCEEDING QUESTIONNAIRES

- Upon selection of a Resolution Proceeding, the claimant and the AG Designee should each complete a questionnaire to assist the Administrator’s evaluation and to focus on issues that impact the difference in the Claimant’s Position and the AG Designee’s Position.
- Questionnaires are brief and seek information about:
 - Primary areas of difference in the parties Positions, under the *Guidelines*
 - Additional information that may be submitted during the Resolution Proceeding stage
 - Position on eligibility
 - Availability of resident file or similar records
 - Special circumstances for a Resolution Proceeding hearing
- Sample *Questionnaires* are available on our website.
- Should the AG Designee provide data/information identified in the *AG Designee Position Checklist* supplied by the Administrator in the AG Designee Position letter, then the *AG Designee Questionnaire* may not be necessary.

ELIGIBILITY

- The YDC Settlement Fund is available only to eligible living **Former YDC Residents** who were personally subjected to certain types of abuse defined by the YDC Settlement Fund statute.
- Instructions for Claimants and the AG Designee for providing the Administrator with written statements and supporting documents is available on our website: *Instructions regarding Eligibility as Former YDC Resident*.
- The claimant and the AG Designee should be prepared to provide an eligibility statement and supporting documents as part of pre-hearing submissions.

RECORDS AND DOCUMENTS

- In advance of a scheduled hearing, the parties are expected to provide available records and documents to help the Administrator evaluate and resolve key issues, such as eligibility or permanent injury.
- Examples of documents include medical records, doctor reports, therapy notes, court records, resident file, etc.
- At a minimum, the claimant should identify in a pre-hearing memo the efforts taken to obtain supporting documentation.

PRE-HEARING MEMOS

- Resolution proceeding memos are meant to assist the Administrator's independent evaluation of the Claim and may address key issues and a proposed standard for valuation (such as frequency multiplier, limitations/laches, justification, etc.) to align with fairness and uniformity under *Guidelines*.
- Pre-hearing memos should narrow focus to contested issues that impact the difference in the Claimant's and AG Designee's respective positions and help prepare the Administrator in conducting a live testimony hearing.
- Pre-hearing memos should identify whether the claim presents unique issues for interpreting or applying the *Guidelines* or an issue of eligibility.
- If the Claimant does not intend to provide an optional memo, notification should be made to both the Administrator and the AG Designee.

LIVE HEARING RESOLUTION PROCEEDINGS

- A Resolution Proceedings hearing may be held at a location suited for the circumstances of the claim. in keeping with the statute and *Claims Process*.
- Resolution Proceedings with live testimony are generally expected to last 60 – 90 minutes, with flexibility for taking breaks during the claimant's testimony. Time needed will depend on the type of information presented. Hearings will not extend beyond three hours.
- Hearings are for the benefit of claimants to assist the Administrator's independent evaluation of each claimant's position/total claim amount as identified in the claim.
- Live hearings will be in a confidential setting that is trauma-informed, victim-centered. If you are a DOC resident at the time of the hearing, please review *Notice for Department of Corrections Residents* that is available on our website.
- The Administrator's questions are meant to assist understanding of events and context as recalled by the claimant and identified in the claim.
- The Administrator may directly ask questions of the claimant, or with the assistance of a trauma-informed professional who is experienced in dealing sensitively and compassionately with survivors of sexual abuse and other/physical abuse.
- A limited number of individuals will be permitted to be present in the room when the claimant is in the hearing interview. Other attendees, including counsel for the claimant and the AG Designee, generally may attend by either live feed in a separate room, or by remote access that is secure and confidential.
- Hearing proceedings will NOT include any video or audio recording. The claimant, absent exceptional circumstances, cannot have a cell phone on their person during the proceedings.
- Claimant's counsel and AG Designee will confirm the individual persons who are anticipated participants/attendees – to include identifying those requesting to attend remotely.

- Claimant and the AG Designee may suggest questions or topics for a live hearing to assist preparation of the Administrator. There will be an opportunity to do so in advance of a hearing and during a break near the conclusion of the live hearing testimony.
- Immediately following the live hearing, the parties will have 15 minutes a piece (if they choose) to provide feedback or argument to the Administrator based on the claimant's live testimony.

LIVE TESTIMONY OF CLAIMANT

- A live hearing resolution proceeding involves testimony in the form of a conversational interview under oath. Live testimony directly from a claimant can be very helpful for the Administrator's neutral evaluation of a claim.
- Live hearings are conducted in a trauma-informed manner to the greatest extent possible.
- The host of the resolution proceeding (RP host), such as claimant's counsel, will make reasonable effort to ensure the setting is comfortable and informal, and without tables or physical barriers between those physically present in the room during live testimony.
- Claims administration staff may arrive up to an hour before the hearing to assess setting and associated security and may also reach out to counsel to arrange an earlier time and date to come on-site to assess setting and logistics.
 - RP host to provide 3 on-site rooms (1 for interview, 1 for live feed room, 1 for breakout room for Administrator and his staff).
 - RP host to provide remote-attendance logistics and confirm in advance use of secure and confidential technology and no audio/visual recording.
 - RP host to confirm adherence to *Safety, Security and Impairment* instructions for in-person hearings (available on our website).
- During the live testimony hearing:
 - The Administrator will facilitate introductions, and then provide brief opening remarks about the hearing.
 - The Administrator's staff will administer testimonial oath with the claimant.
 - The Administrator will explain the role of the attending trauma-informed (TI) professional.
 - TI professional and/or the Administrator will ask questions, and the claimant can describe his/her experiences in a conversational way, directly with the Administrator and/or the TI professional.
 - Testimony will pause to allow the Administrator to meet with claimant's counsel and the AG Designee to allow them to suggest additional lines of discussion or inquiry with the claimant.
 - The Administrator will ask both sides whether further description may be helpful for independent evaluation of the claim and the parties' positions.
 - All interaction with the claimant will be conducted in a non-adversarial manner.
 - The Administrator and the TI professional will provide closing remarks to the claimant.
- At the live hearing, the parties each will have an optional 15 minutes at the end to provide feedback to the Administrator based on claimant's live testimony and indicate whether post-hearing submissions are advisable.

REMOTE ATTENDANCE LIVE HEARING

- A remote attendance live hearing may be permitted in exceptional circumstances or because of hardship. Remote attendance will be defined as videoconference.
- A request for a remote live hearing should be made at least 3 weeks in advance of a scheduled hearing and needs to be supported by good cause, and provide the following information:

- where the claimant will be located for the remote hearing
 - who will be present with the claimant during the hearing and after the hearing
 - if the claimant has been informed about what to expect at the hearing, including the role of the Administrator and hearing team
 - the plan for adequate technology for the claimant’s participation in the remote hearing, to ensure that the claimant is present by both video and audio for the entire hearing
 - whether the claimant is connected to local mental health support resources
- The Administrator’s staff will reach out to counsel in advance of the hearing to discuss the circumstances and what may be required for the remote hearing (if permitted).

POST-HEARING MEMOS

- The parties will have an opportunity at the Resolution Proceeding hearing to identify, based on what is heard during the live testimony, whether post hearing memos are advisable to assist the Administrator’s independent evaluation on the claim.
- Post hearing memos may be advisable in the following scenarios:
- (1) the claimant verbally amends an existing claim or adds a new claim at the hearing during live testimony that may warrant consideration of an increase in a potential award. If so, claimant’s counsel must file a post-hearing memo with facts verified by the claimant (which may be in a separate declaration or affidavit) concerning the amended or new claim and indicating the adjusted value of the claim (1 week after the hearing); and the AGO would have the right to file a responsive memo (2 weeks after the hearing);
 - (2) The AG Designee or representative identify information learned during the testimony that may warrant consideration of a diminished valuation of the claim that differs from the AG Designee’s initial pre-hearing position;
 - (3) the parties learn something new during the live testimony that warrants consideration of unique issues for interpreting or applying the *Guidelines* or an issue of eligibility, or an exceptional circumstance that counsel believe justifies a post-hearing memo.
- The Administrator may expressly request a memo or additional information from counsel after the hearing concludes.
- Repetition of previously provided information/advocacy should be avoided.
- **Ordinarily, positions on whether a claim presents unique issues for interpreting or applying the *Guidelines* and/or an issue of eligibility should be explained in a pre-hearing memo.**
- Counsel should inform staff if they do not intend to file any further submissions after the hearing, when applicable.

REQUESTS FOR EXTENSIONS OR POSTPONEMENT

- Requests for extension of time for providing submissions to the Administrator or requests to postpone a scheduled hearing must be sent to the Administrator as soon as practicable, with reasoning showing good cause and a requested extension date. It is helpful to know if the parties mutually agree to the request.
- For extensions grounded in good cause, the Administrator may provide additional time for *supplements to the claim record* but generally not later than 30 days in advance of a scheduled Resolution Proceeding hearing date. There should be a written explanation of why the party was unable to provide such supplemental information or documentation at an earlier time in the claims process.
- Delays may cause inefficient processing, unnecessary complication of claim reviews, and prolonged decisions on awards.

REQUESTS BY THE ADMINISTRATOR

- The Administrator will review the available information and documents and assess whether to request additional information from the claimant and/or the AG Designee.
- When information requested by the Administrator has not been provided, the Administrator will continue to move forward with the Resolution Proceeding stage and make decisions based on information provided in accord with the statute and the *Guidelines*.

CLAIM RECORD AND SUPPLEMENTAL INFORMATION

- An important part of the claims process is the claimant's choice as to what information to include in a claim packet, with some allowance for supplements during claims processing, to permit verification for a claim position and total claim amount.
- The Administrator understands that those subjected to abuse may not be able to fully recall details about all events, especially many years later.
- It is important for claimants to make reasonable efforts to provide information to support a claim. For example, under the *Guidelines* that the Administrator is required to follow, claims may be denied or the amount reduced where reasonably expected proof is lacking.
- Upon selection of a Resolution Proceeding, the parties should be ready to promptly provide any additional information that may assist the Administrator's independent evaluation.
- The Administrator will permit a limited time frame for the Claimant to submit supplemental documentary information for the claim packet in advance of a hearing, with deadlines identified in a Scheduling Notice. Any supplemental information must also be shared with the AG Designee.
- Claimant and/or AG Designee must provide resident file or similar records when available during the pre-hearing submission time period identified in a Scheduling Notice.
- No supplemental information will be considered by the Administrator unless the parties have shared it with one another, and with sufficient time to comment on what weight to afford to it when the Administrator is conducting his independent evaluation.

ATTORNEY'S FEES/COSTS AFFIDAVIT

- Claimant's counsel is required to provide an updated attorney's fees affidavit detailing the time and work spent on the Claim, as part of post-hearing submissions.

NOTICE OF RECORD CLOSURE

- Following conclusion of the resolution proceeding hearing and any post-hearing period, staff will send a Notice of Record Closure.
- A Record Closure will trigger a 30-day period for the Administrator's final decision.

ADMINISTRATOR'S DECISION

- When conducting his independent evaluation of the Claim, the Administrator will consider the totality of the claims record and memos of the parties.
- The claimant is not required to accept the Administrator's decision and will have 30 days to accept the decision or elect to withdraw from the claims process.
- The Administrator's decision is final and non-appealable, except that the claimant or AG Designee may ask for reconsideration under the Claims Process on grounds that it contains mathematical errors.

- If the claimant accepts the Administrator’s decision, then the claim will be resolved and the claimant will need to sign Waiver and Release forms for rights against the State of New Hampshire (but not for rights against individual perpetrators of abuse even if state employees).

OPPORTUNITY FOR PRIVATE MEETING

- The claimant may request a private meeting with the Administrator after final resolution of the claim.
- No representatives of the State of New Hampshire or the Attorney General’s Office will be allowed to attend.

OPPORTUNITY FOR MUTUAL AGREEMENT

- A claimant and the AG Designee are free to mutually agree to resolve the claim on their own, including while a Resolution Proceeding is pending, any time before the Administrator’s written decision is final.
- The parties shall **NOT** apprise the Administrator of any settlement negotiations or discussions they have had, or are having, with each other (such as potential dollar amounts that are separate and apart from their stated claim positions).
- In the event the parties resolve the claim by mutual agreement, both should inform the Administrator in writing as soon as practicable in order to preserve claims administration resources.
- The Administrator encourages claims counsel to communicate directly with the AG Designee to clarify and resolve open questions and provide additional information in order to resolve the claim in accord with the statute’s purpose.

OVERALL

- These General Instructions are intended to give understanding on how the Resolution Proceeding stage will help facilitate resolution of claims under the YDC Settlement Fund, in furtherance of the *Claims Process for Administration of the YDC Settlement Fund* (“*Claims Process*”), and the *Guidelines for Valuing Claims for Settlement Purposes* (“*Guidelines*”).
- The Administrator may revise the process if operational efficiencies or process improvements are identified. Any such decisions will be made in line with the YDC Settlement Fund statute, the *Claims Process*, and the *Guidelines*.