

TITLE 91
LEGISLATIVE RULE
DEPARTMENT OF MOTOR VEHICLES

SERIES 1
ADMINISTRATIVE DUE PROCESS

§91-1-1. General.

1.1. Scope. -- These legislative rules establish procedures for the exercise of administrative due process pursuant to Chapter 29A of the Code of West Virginia of 1931, as amended.

1.2. Authority. -- W. Va. Code §17A-2-9

1.3. Filing Date. -- May 19, 1965

1.4. Effective Date. -- June 19, 1965

§91-1-2. Application and Enforcement.

2.1. Application. -- These legislative rules apply to individual contesting the orders or decisions of the Commissioner of Motor Vehicles pursuant to Chapter 29A of the Code.

2.2. Enforcement. -- Enforcement of these legislative rules is vested with the Commissioner of Motor Vehicles or lawful designee.

§91-1-3. Hearings.

3.1. All hearings held in accordance with such statutory provisions of Chapter 17A, Article 7, Section 2; Chapter 17B, Article 2, Section 10; Chapter 17B; Article 3, Section 6; Chapter 17D, Article 2, Section 1, and Chapter 17D, Article 6, Section 2 of the Code of West Virginia, 1931, as amended, and all other laws the administration and enforcement of which are now or are hereafter vested in the Department, shall be held at the time and place in the State of West Virginia determined by the Department with due regard for the convenience of the parties and all witnesses; Provided, however, that if the parties and the Department do not agree otherwise, all hearings held pursuant to Chapter 17B, Article 3, Section 6 of the Code of West Virginia, 1931, as amended, shall be held in the county wherein the licensee resides. At

least ten (10) days' notice of the time and place of hearing shall be given by the Department to all interested parties. All notices shall be given by the Department as specified in Chapter 17A, Article 2, Section 19 of the Code of West Virginia of 1931. For good cause the Department may continue a hearing.

3.2. Any request or demand for a hearing, which hearing is authorized by statute or these rules and regulations, must be made in writing within ten (10) days from receipt of the notice of the action complained of; such written request or demand may be made in person at the Department or the same may be mailed to the Department. If mailed, such request or demand shall be considered as having been made as of the date of mailing.

3.3. All hearings shall be conducted by the Commissioner, Deputy Commissioner, Deputy Commissioner In Charge of Driver's Licenses or assistants and employees designated as hearing examiners by Memorandum Order of the Commissioner. In accordance with the provisions of Chapter 17A, Article 2, Section 18 and Chapter 17B, Article 3, Section 6 of the Code of West Virginia, 1931, as amended, the Commissioner, Deputy Commissioner, Deputy Commissioner In Charge of Driver's Licenses and the hearing examiners designated by Memorandum Order are hereby authorized to administer oaths and to subpoena witnesses to give testimony under oath, or to give a deposition upon any matter under the jurisdiction of the Department. A subpoena may require the production of relevant books, papers or records of whatever kind or character. Every such subpoena shall be served at least five (5) days before the return date thereof, either by personal service made by any person over eighteen (18) years, or by registered mail, but a return acknowledgement is required to prove service by registered mail. All subpoenas will be issued by the Commissioner, Deputy Commissioner, Deputy Commissioner In Charge of Driver's Licenses, or others authorized to hold hearings, but the party

requesting their issuance must see that they are properly served. Service of subpoenas issued at the instance of the Department shall be the responsibility of the Department. Any officer who serves any such subpoena shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this State. All such fees shall be paid by the Department if the witness subpoenaed, without the request of an interested party, at the instance of the Department. All such fees related to any witness subpoenaed at the instance of an interested party shall be paid by the party who asks that such witness be subpoenaed. All requests by interested parties for subpoenas shall be in writing on forms as prescribed by the Commissioner, which forms shall contain a statement acknowledging that the requesting party agrees to pay such fees.

3.4. At any hearing a party may represent himself, or he may be represented by an attorney at law admitted to practice before the courts of this state. No party may be represented by any person who is not an attorney at law admitted to practice before the courts of this State.

3.5. In conducting hearings the Commissioner, Deputy Commissioner, Deputy Commissioner In Charge of Driver's Licenses and the hearing examiners shall not be bound by the usual common law or statutory rules of evidence and procedure.

3.6. All hearings shall be recorded mechanically or by stenographic notes and characters, and such recorded proceeding shall become a part of the record in the case under consideration by the Department. Upon request of any interested party and execution of an agreement by such party to pay the fee required for transcription and a copy of such transcript, such recorded proceeding shall be transcribed and a copy of such transcript furnished to such party.

3.7. All hearings shall be impartially conducted, and although each case must be judged on its individual merits and the evidence adduced at any hearing, every effort shall be made to insure equal treatment of similar cases.