

Superseded  
by  
91 CSR 6  
6/15/93

**TITLE 91  
PROCEDURAL RULE  
DEPARTMENT OF MOTOR VEHICLES**

**SERIES 17  
DEALER AND FINANCIAL INSTITUTION APPLICANT  
OR LICENSEE ADMINISTRATIVE HEARINGS**

**§91-17-1. General.**

1.1. Scope. -- These procedural rules relate to dealer and financial institution applicant or licensee contested case administrative hearings as required by Chapter 29A, Article 6, Section 1 et seq. of the West Virginia Code of 1931, as amended.

1.2. Authority. -- W. Va. Code §17A-2-9 and §29A-5-1(a)

1.3. Filing Date. -- June 8, 1984

1.4. Effective Date. -- July 9, 1984

**§91-17-2. Application and Enforcement.**

2.1. Application. -- These rules relate to contested case hearings, required by Chapter 29A, Article 5, Section 1 et seq. of the West Virginia Code of 1931, as amended, upon orders entered by the Commissioner of the Department of Motor Vehicles pursuant to §17A-6-1 et seq.

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

**§91-17-3. Pre-hearing Procedures.**

3.1. Request for hearing. -- Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the Commissioner in accordance with the provisions of §17A-6-1 et seq., may request a hearing by filing a notice with the Commissioner in person, or by certified mail, return receipt requested, within thirty (30) days after the date upon which a copy of said order is received.

3.2. Contents of notice. -- The notice requesting a hearing shall contain the following information:

(a) A description of the order upon which a hearing is requested; and

(b) The grounds upon which it is asserted that said order should be vacated or modified.

3.3. Notice of hearing. -- Within ten (10) days after receipt of a notice requesting a hearing, the Commissioner shall cause a notice of hearing to be served upon the party requesting a hearing by certified mail, return receipt requested. Such notice shall specify the time, date, and place of the hearing and shall contain a statement of the issues to be considered at the hearing. All parties shall be afforded at least ten (10) days notice of the hearing.

3.4. Failure of person requesting hearing to appear. -- The failure of a person requesting a hearing to appear without first obtaining a continuance pursuant to Sections 3.5 or 3.6 shall result in an automatic reinstatement of the Commissioner's order.

3.5. Request for continuance. -- The person requesting a hearing may be granted a continuance of a scheduled hearing. The request for continuance shall be in writing, and must be received by the Director of the Titles and Registration Division of the Department of Motor Vehicles at least five (5) days prior to the scheduled hearing date. Such requests will be granted if good cause is shown. Good cause shall include such reasons as serious illness, medical appointments, court appearances, or religious holidays of either the person requesting a hearing or his attorney.

3.6. Continuance on the motion of the Commissioner. -- The Commissioner may postpone or continue a hearing on his own motion. The Commissioner may also grant a continuance on less than five (5) days notice in the circumstances of unexpected personal emergencies.

3.7. Subpoenas. -- Any party may request the issuance of subpoenas or subpoenas duces tecum by the Commissioner. The authority for the issuance of subpoenas and subpoenas duces tecum is contained in §17A-2-18. All to provisions relating to subpoenas and subpoenas duces tecum set forth in paragraph (b) of §29A-5-1 shall be followed.

3.8. Stays. -- The filing of a notice requesting a hearing shall operate to automatically stay or suspend execution of any order which is the subject matter of said hearing except for an order suspending a license certificate in accordance with the provisions of subsection (b) of §17A-6-18.

3.9. Designation of hearing examiner. -- The Commissioner may appoint a hearing examiner to conduct hearings under these rules and to recommend findings of fact and conclusions of the law to the Commissioner. Such appointee shall have had no contact or involvement with the investigation which resulted in the order that is being contested. Hearing examiners may exercise all the powers listed in §29A-5-1(d).

#### §91-17-4. Hearing Procedures.

4.1. Representation. -- The party who has requested a hearing may represent himself or be represented by an attorney duly qualified to practice in the State of West Virginia. The Department of Motor Vehicles shall be represented by the Office of the Attorney General.

#### 4.2. Rules of evidence.

(a) The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed.

(b) When necessary to ascertain facts not real Department's presentation, the party requesting the hearing shall have an opportunity to present evidence. All parties shall have the right to cross-examine witnesses.

#### 4.4. Continuation and adjournment. -- Hearings

may be continued from one (1) day to another or adjourned to a later date or a different place by the hearing examiner by announcement thereof at the hearing or by appropriate notice to all parties.

#### §91-17-5. Transcriptions of Reported Testimony and Evidence.

5.1. What reported. -- All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

5.2. Transcription of reported evidence. -- Upon the request to the Department of Motor Vehicles by any party to the hearing, all reported materials shall be transcribed and a copy furnished to such party at his expense. The Commissioner shall collect a fee of one dollar and fifty cents (\$1.50) for each page transcribed.

5.3. Responsibility for transcript. -- The Department of Motor Vehicles shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event transcription is required pursuant to Section 5.2, it shall be accomplished with all dispatch.

5.4. Correction of error in transcript. -- Upon the motion of the Department of Motor Vehicles or any party assigning error or omission in any part of any transcript, the Department of Motor Vehicles, through the Commissioner or his duly appointed hearing examiner, shall settle all differences arising as to whether such transcript truly disclosed what occurred at the hearing and shall direct that the transcript be corrected and revised in the respect designated so as to make it conform to the whole truth.

#### §91-17-6. Final Order.

6.1. Content. -- Every final order entered by the Commissioner, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of §29A-5-3.