

RULES OF THE

ARKANSAS MOTOR VEHICLE COMMISSION

RULE 2

HEARING PROVISIONS

- 2.1 Any hearing to be conducted by the Commission may be held at a regular Commission meeting or at a special meeting convened for that purpose. A hearing may be called on a notarized complaint filed with the Commission or on the Commission's own motion.
- 2.2 Before denying any application for a license under A.C.A. § 23-112-101 et seq., the Commission shall hold a hearing to determine if the applicant is qualified under the provisions of the Act and Rules to receive the license for which application has been made.
- 2.3 Before revoking or suspending any license issued by the Commission pursuant to A.C.A. § 23-112-101 et seq., the Commission shall hold a hearing to determine whether sufficient grounds exist under the provisions of the Act upon which to base such revocation or suspension.
- 2.4 Any interested party, including the Commission on its own motion, shall have the right to petition the Commission to call a hearing for the purpose of taking action in respect to any matter within the Commission's jurisdiction. A party requesting a hearing on any allegation that a licensee has violated the Act or any Rules promulgated hereunder shall initiate the proceeding by filing with the Executive Director of the Commission a notarized complaint, specifically setting forth the grounds upon which the complaint is based and requesting a hearing on the complaint.
- 2.5 All complaints shall be forwarded to the licensee who is the subject of the complaint for a response pursuant to Rule 2.8 herein. However, the Commission shall have the discretion to investigate the alleged violations before sending the complaint to the licensee when it determines that prior investigation is appropriate or necessary to establish facts relevant to the complaint.
- 2.6 All pleadings and motions to be filed relative to any hearing or complaint shall be signed, dated and filed with the Executive Director fifteen (15) days prior to the scheduled hearing. The Commission shall retain the discretion to alter the aforesaid time as circumstances dictate.
- 2.7 Upon receipt of a notarized complaint against any licensee, person, firm, partnership, association, corporation or legal entity the Commission shall determine if the complaint alleges facts sufficient to give the Commission jurisdiction. If the Executive Director or Commission is of the opinion that the complaint tendered for filing does not comply with these rules, does not sufficiently set forth required information or is otherwise insufficient,

the Executive Director or Commission may decline to accept the complaint and return it unfiled. However, the Executive Director may proceed on an anonymous complaint regarding

violations of Commission advertising rules if the documents clearly show the name of the dealer, the name of the publication, and the date of publication.

- 2.8 If the complaint is sufficient for filing, the Executive Director shall forward a copy of the complaint to the licensee, person, firm, partnership, association, corporation or legal entity against which the complaint is lodged, together with notice that any written response to the complaint must be filed with the Commission within ten (10) days from the mailing thereof. Upon receipt of response to complaint or the expiration of the ten (10) day time period, whichever occurs first, and upon completion of any further investigation which is deemed appropriate, the Commission, in accordance with this Rule, shall determine if the matter should be set down for hearing on the complaint filed with the Commission or on the Commission's own motion.
- 2.9 At least thirty (30) days prior to the date of any hearing before the Commission, Commission's Legal Counsel or the Executive Director shall give written notice to the parties whose rights may be affected. The notice shall include a statement of legal authority and jurisdiction under which the hearing is to be held; along with a brief and concise statement of the matters of fact and law involved. Notice shall be mailed to such parties by registered or certified mail at their last known address.
- 2.10 A "party whose rights may be affected at any hearing" shall mean (1) any applicant for license pursuant to the Arkansas Motor Vehicle Commission ACT whose potential licensing is at issue at a hearing; (2) any licensee under the ACT against whom the Commission could take adverse action at or after a hearing; and (3) the complainant or party who has filed the complaint that led to the hearing.
- 2.11 Any hearing to be held pursuant to the filing of a notarized complaint against a licensee under A.C.A. § 23-112-101 et seq., or any hearing convened by the Commission upon its own motion at which the issuance, suspension, or revocation of a party's license under the Act is at issue shall be held in the county of respondent or in the county where such respondent's principal place of business is located unless the respondent shall agree that the hearing be held at the Commission Office. If the respondent is a non-resident of this State, the hearing shall be held at the Commission Office.
- 2.12 Any party whose rights may be affected at any hearing before the Commission may, by written petition signed and dated, invoke the aid of the Commission in procurement of any witness the party may desire to be present and testify at any hearing; such petition shall be filed with the Executive Director at least ten (10) days prior to the hearing date. Any and all costs anticipated must be deposited with the Executive Director at the time of filing of the petition. The Executive Director shall retain the discretion to alter the aforesaid time as circumstances dictate.

- 2.13 Hearings of the Commission, after being called to order, shall begin with a statement by the presiding officer as to the nature of the cause to be heard and thereafter the hearing shall proceed with the presentation of evidence on behalf of the complainant (petitioner). At the conclusion of such evidence, the party complained against (respondent) may proceed to introduce evidence on his or her behalf, after which rebuttal evidence may be offered.
- 2.14 In any proceeding against a licensee under the Act instituted by the Commission, or in other appropriate circumstances, the evidence against such licensee shall be presented by the Commission's Legal Counsel and complaining witnesses will not be allowed to conduct any part of the hearing.
- 2.15 The Commission shall not be bound by the rules of evidence applicable in a court and it may admit and give probative value effect to any evidence which possesses such probative value as would entitle it to be accepted by reasonably prudent men and/or women in the conduct of their affairs; provided, however, that the Commission shall give effect to the rules of privilege recognized by law and may exclude incompetent, irrelevant, immaterial, or repetitious evidence and may make rulings to protect witnesses from undue harassment or oppression.
- 2.16 All evidence, including records and documents introduced at the hearing, shall be offered and made a part of the record in a hearing, and no other factual information or evidence shall be considered in the determination of any cause. Documentary evidence may be received in the form of copies or excerpts or incorporation by reference.
- 2.17 If hearing results from a complaint filed with the Commission, the complainant will be required to appear personally and/or by an attorney and to present any and all evidence against the licensee at the hearing. The complainant and licensee/respondent may introduce evidence, cross-examine witnesses and examine any document or other evidence introduced at the hearing, subject to rulings of the Hearing Officer.
- 2.18 A final decision shall include Findings of Facts, Conclusions of Law and Orders of Disposition separately stated in writing or in the record. A final decision may be rendered after a majority of the Commissioners have heard the case or reviewed a transcript of the proceedings. Parties shall be served either personally or by certified mail with a copy of any decision or order.
- 2.19 No orders of the Commission shall become final with respect to any party aggrieved thereby until such party shall have exhausted or had the opportunity to exhaust his appellate remedies under A.C.A. § 23-112-101 et seq.; provided, however, the Commission may make a decision final from the date of its entry if the Commission determines that the failure to do so would be detrimental to the public interest or public welfare.
- 2.20 When the Commission conducts a hearing on the adoption or revision of any Rule, the Commission may, in its discretion, require that the views of any interested parties be presented in writing and be filed with the Executive Director at least fifteen (15) days prior to the hearing.

2.21 There shall preside at any Commission hearing a quorum of the members of the Commission or one or more examiners or referees designated by the Commission.

The presiding officer(s) shall have the following powers:

- (a) To issue subpoenas.
- (b) To administer oaths and affirmation.

- (c) To maintain order.
- (d) To rule on all questions arising during the proceedings.
- (e) To hold conferences for simplification of the issues and to rule upon motions.
- (f) To recommend findings of fact, conclusions of law and decisions, and
- (g) To generally regulate and guide the course of the proceedings.

2.22 The Executive Director shall, as and when directed by the Commission, issue such subpoenas as requested by the parties involved, or as the Commission may designate, to bring before the Commission any person to this State to give testimony under oath, and to compel production of records and documents relative to matters to be investigated, or considered or heard by the Commission.

2.23 **Alternate Proceedings:**

Prior to proceeding to a formal adjudicative hearing as provided for in Rule 2, 2.1 to 2.22, the case will be reviewed by an *ad hoc* committee to determine whether summary proceedings should be invoked. Members of the Committee shall be Chair, Executive Director and Counsel. If the Committee determines that the violation(s), if proved, would not warrant license suspension, revocation or a fine in an amount greater than five thousand dollars (\$5,000), the Committee may recommend that the complaint be handled in a summary manner. This decision will be referred to the Commission for their acceptance or rejection.

If the Commission decides to utilize alternative proceedings, the Respondent will be notified by mail that the Commission has learned that he or she has engaged in actions which violate the licensing law and that it is recommended that under all circumstances the appropriate sanction is a fine of five thousand dollars (\$5,000) or less. This Notice will further inform the Respondent that he or she has a right to reject the proposed fine and have a full evidentiary hearing.

The Respondent will be provided with a formal document on which he or she will admit or deny that he or she had violated the Licensing Law and accept or reject the proposed penalty. The Respondent will indicate that he or she understand that he or she has a right to a full evidentiary hearing before the Commission and he or she elects not to exercise that right.