

502 KAR 10:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

RELATES TO: KRS 332.030

STATUTORY AUTHORITY: KRS 15A.160, 332.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.100 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation outlines the administrative adjudication procedures of the cabinet in license denial, suspension, nonrenewal and revocation hearings.

Section 1. Scope and Definitions. (1) These administrative regulations govern the procedure for the Justice Cabinet in all proceedings under this chapter in which the legal rights, duties or privileges of any person licensed by the cabinet is required by statutes or by these rules to be determined after an opportunity for a hearing. These rules shall be construed to secure a fair and impartial determination of every proceeding.

(2) For purposes of administrative adjudicatory procedure unless the context otherwise requires:

(a) "Party" means any person or agency named or admitted as a party to any proceedings conducted pursuant to these administrative regulations and shall include only persons who have a real interest in the matter before the secretary.

(b) "Person" means any individual, sole proprietorship, partnership, corporation, association or public or private organization of any character.

(c) "Order" means the whole or any part of a final disposition of an adjudication.

(d) "Contested case" means an adjudicatory proceeding before the secretary in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the cabinet or by some other person.

(e) "Cabinet" means the Justice Cabinet.

(f) "Secretary" means the Secretary of the Justice Cabinet.

(g) "Department" means the Department of State Police.

(h) "Commissioner" means the Commissioner of the Department of State Police.

Section 2. Complaints and Investigations. (1) Complaints. A complaint may be made by any person against the holder of a license by the filing of written charges with the secretary. The written complaint shall contain the name and address of any person making charges as well as the name and address of the person or persons against whom charges are being made and a clear and concise statement of the facts giving rise to the complaint. Any complaint or charge filed with the secretary shall be forwarded to the licensee involved and the licensee shall be given thirty (30) days to resolve the problem or make a full satisfactory reply thereto. Any defamatory matter in a formal written complaint shall be exercised by the secretary prior to the complaint being forwarded to the licensee.

(2) Investigations. Upon the receipt of a complaint and following the expiration of the thirty (30) days provided for in subsection (1) of this section, the secretary may cause an investigation to be made by the Department of State Police or by any agent or representative appointed by the secretary. Upon the completion of any investigation, the person or persons making such investigation shall submit a full written report to the person designated by the secretary to prosecute the matter in an adjudicatory proceeding.

Section 3. Commencement of Adjudicatory Proceedings. Upon the request of the prosecutor or after the expiration of the thirty (30) day period referred to in Section 2(1) of this administrative regulation where an investigation is not made, the secretary may begin formal adjudicatory proceedings

in accordance with the following procedure:

(1) If it is determined that the facts alleged in the complaint and/or investigative report may constitute grounds for the suspension, probation or revocation of a license, a hearing shall be scheduled before the secretary, or his designated hearing officer, on those allegations. In any case in which an application for license or renewal of license has been denied, a hearing shall only be scheduled upon receipt by the secretary of a written request submitted by or on behalf of the person whose application for license was denied or not renewed. Any required hearing shall be held within three (3) months, or as soon thereafter as practicable, after the receipt by the secretary of a written request for a hearing. In any contested case, whether it be instituted by the cabinet or by some other person, all the parties to the proceeding shall be given reasonable notice and an opportunity to be heard.

(2) Notice. The notice provided for shall be issued in the name of the cabinet by the secretary or designated hearing officer and shall state:

(a) The time, date, place, and nature of the hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) The alleged statutory or regulatory violations; and

(d) A short and plain statement of the complaint or charges which are being preferred and the remedy which is being sought. The notice shall be personally served or mailed to the last known address of the party or parties not less than twenty (20) days before the date of the hearing.

(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to appear personally at the hearing, and by counsel, and shall have the right to cross-examine witnesses appearing against them and to produce witnesses on their own behalf. When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders or other correspondence shall be served on such attorney; service on the attorney shall be considered as service on the party and the hearing officer shall be notified of any change in such attorney.

(4) The secretary or his designated hearing officer shall preside over the hearing proceedings; if the secretary presides, he may have assistance of counsel to rule on evidentiary matters.

(5) Authority to administer oaths. In hearings before the secretary or hearing officer, any oath or affirmation required may be administered by any person authorized to administer oaths by the laws of the Commonwealth of Kentucky.

(6) Presentation of evidence. The evidence against the licensee or other person concerning the pending complaint or charge shall be presented by the designated prosecutor. Additionally, any witness or other evidence may be questioned or introduced by the presiding officer.

Section 4. Conduct of Hearings; Witnesses; Burden of Proof; Evidence. (1) The presiding officer may hear testimony of any person present at the hearing who has information to offer bearing on the subject matter of such hearings. The presiding officer may ask any witness questions as may be required for a full and true disclosure of the facts. The presiding officer shall have only one (1) witness before him at any one (1) time and other witnesses may be excluded from the hearing room while any one (1) witness is being questioned.

(2) The hearing in a contested case involving a suspension, probation, or revocation of a license shall proceed in the following order, unless the presiding officer, for special reasons otherwise directs:

(a) The party filing the complaint or preferring the charges or the persons appointed or designated to present the evidence against the licensee shall briefly state the substance of the charges and the evidence by which he expects to sustain them.

(b) The party against whom a complaint has been filed or charges otherwise preferred may briefly state the substance of his defense and the evidence which he expects to offer in support of it.

(c) The party filing the complaint or otherwise preferring the charges or the designated prosecutor

shall have the burden of proof in the whole action; therefore, he shall produce his evidence first; the party against whom a complaint has been filed or charges preferred may then produce his evidence. The presiding officer, however, may regulate the order of proof in any proceeding to expedite the hearing and to enable the presiding officer to obtain a clear view of the whole evidence.

(d) The parties shall then be confined to rebuttal evidence, unless the presiding officer, in his discretion, permits them to offer additional evidence in chief.

(e) The parties may then submit the matter to the presiding officer for consideration, or present arguments on the issues involved. In the arguments, the party filing the complaint or otherwise preferring the charges or the designated prosecutor shall have the conclusion and the party against whom the complaint was filed or charges otherwise preferred shall have the opening.

(3) In a hearing requested in writing by a person whose application for a license has been denied or not renewed, the burden of proof and order of proceedings delineated in subsection (2) of this section shall be reversed.

(4) In any contested case, the presiding officer shall as far as practical adhere to the following rules of evidence:

(a) Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky, and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky, shall be admitted in hearings before the presiding officer; however, the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by reasonable, prudent men in the conduct of their affairs.

(b) Every party shall have the right to present such oral or documentary evidence, exhibits and rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts. Documentary evidence may be introduced in the form of copies or receipts if the original is not readily available provided that upon request the parties or the presiding officer shall be given an opportunity to compare the copy with the original.

(c) When a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, all or part of the evidence may be received in written form by affidavit or prepared statement. Prepared statements shall not be read or made a part of the record until the party against whom the statement is offered has been given a reasonable time for review and objection.

(d) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the presiding officer shall give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.

(e) The presiding officer may take notice of judicially cognizable facts.

(f) Objections to evidentiary offers may be made and shall be noted in the record.

(5) The parties to any hearing may agree to waive any one (1) or more of the procedural steps which would otherwise precede the reaching of a final decision by the secretary, but such waiver shall not be binding on the secretary.

Section 5. Deliberations; Records; Final Order. (1) Deliberations. During any hearing and after the case has been submitted to the secretary or hearing officer for decision, deliberations shall be governed by the following principles:

(a) Ex parte investigations. Neither the secretary nor any hearing officer or any other person who shall make findings of fact and conclusions of law in a contested case shall, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law except upon notice and opportunity for all parties to participate provided, however, that the secretary or hearing officer may have the aid and advice of one (1) or more personal assistants including the assistance of counsel.

(b) Separation of functions. No officer, employee, or agent of the cabinet who is engaged in the performance of investigative or prosecuting functions in a contested case shall, in that or a factually

related case, participate or advise in the decision except as a witness or counsel in the public hearing.

(c) Examination of evidence. The secretary or hearing officer shall personally consider the whole record or such portions thereof as may be cited by the parties before a decision is reached.

(d) The presiding officer at his discretion may recess a hearing for the taking of additional discovery and evidence as required.

(2) Record. The record shall include all pleadings, motions, exhibits, documentary and testimonial evidence received or considered, a statement of matters officially noticed and questions and offers of proof and rulings therein. Should any party desire a written transcript of the proceedings, it shall be necessary that they pay for said transcript.

(3) Recommended order. In the event the secretary designates a hearing officer as presiding officer of a hearing in a contested case, the hearing officer shall, as soon as practical after the conclusion of the hearing but in no event later than thirty (30) days thereafter, prepare findings of fact, conclusions of law, and a recommended order and cause copies of same to be served on all parties. The parties shall have ten (10) days following entry of the recommended order to file objections and comments thereto with the secretary. The secretary, after considering the record and hearing officer's report consisting of a synopsis of procedural matters, findings of fact, conclusions of law, and the recommended order and also any objections or comments filed by the parties, shall render a final order.

(4) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the office record. It shall include a concise and explicit statement of the findings of fact and conclusions of law, separately stated, and shall be signed by the secretary. One (1) copy of the order shall forthwith be served on each party to the proceeding. Motions to correct clerical errors may be filed within ten (10) days after entry of the final order. Any modifying order subsequent thereto shall be served on all parties. (12 Ky.R. 1696; eff. 5-6-86.)