

**ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD
ADMINISTRATIVE CODE**

**CHAPTER 20-X-22
RULES OF PRACTICE (TOBACCO)**

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20-X-22-.01 **Rules Of Practice.**

(1) A party may appeal to the ABC Board an adverse initial decision, including the findings of fact and the conclusion of the Hearing Commission or an initial decision of the ABC Board itself, provided that a request therefor in writing is received within fifteen (15) days after the date of notification of such decision. At their option, a party may submit written exceptions to the decision within the same fifteen-day period.

(2) A party may be represented by legal counsel at any stage of administrative proceedings of the ABC Board at the party's own expense.

(3) Communications regarding appeal hearings, existing permits or applications for permits should be addressed to the Secretary of the ABC Board, P. O. Box 1151, Montgomery, Alabama 36101.

(4) Continuances for good cause shown may be granted as in actions at law at the ABC Board's discretion. Requests for continuances should be addressed to the Secretary of the ABC Board, P. O. Box 1151, Montgomery, Alabama 36101, and except in exigent circumstances, shall be received by the secretary no later than five (5) business days prior to the scheduled hearing date in order to be considered.

(5) Any final administrative decision of the ABC Board, together with a written opinion thereof, will be reduced to writing and transmitted to each party or their representative.

(6) Hearings before the ABC Board, in the absence of notice to the contrary, will be held at the ABC Board's Central Office in Montgomery, Alabama.

(7) Reasonable notice of the time and place of an appeal hearing shall be given to each party who appeared at the initial hearing or their representative. Non-parties must request in writing to

the Secretary of the ABC Board, their desire to be notified of such appeal hearings.

(8) Anyone who has an interest in a case, as distinguished from the public interest in contested permit application or permit renewal cases, upon timely application in writing to the ABC Board, shall be permitted to intervene as a party when a statute confers an unconditional right to intervene, or when the applicant has an individual interest in the outcome of the case as distinguished from a public interest and the existing representation of the applicant's interest is inadequate.

(9) The record before the Hearing Commission, including its initial decision, the transcript of testimony, argument and exhibits, together with all papers and requested files in the proceeding before the Commission, shall constitute the exclusive record for the final decision of the Commission, if appealed to the ABC Board.

(10) In computing any period of time prescribed or allowed by these rules and regulations, such period shall be computed according to Rule 6(a) of the Alabama Rules of Civil Procedure.

(11) A party aggrieved by a final administrative decision of the ABC Board may file a notice of appeal or review in Circuit Court as specified in Section 41-22-20, et seq., Code of Ala. 1975.

(12) Facsimile or other similar electronic transmissions may be utilized for the purpose of exchange of information between parties, but shall not be accepted for purposes of official document filings with the ABC Board.

Author: ABC Board

Statutory Authority: Code of Ala. 1975, §28-11-4.

History: New Rule: Filed December 7, 1998; effective January 11, 1999.

20-X-22-.02 Hearing Commission.

(1) The Hearing Commission shall be comprised of at least three people designated by the ABC Board, one of whom, unless otherwise designated, shall be the ABC Board Administrator. Hearings before the Hearing Commission shall be conducted before the Administrator and two other persons from a pool of designated Commissioners. The Administrator shall be the Chairperson thereof, but may at his/her discretion, appoint a representative from the designated pool of Commissioners to chair the Commission in his/her absence.

(2) The Hearing Commission shall convene at least once a month, unless otherwise designated by the Administrator.

(3) Contested permit applications and disciplinary charges against a permittee or employee thereof may be referred to the Hearing Commission for appropriate action.

(4) The Hearing Commission shall, in each case referred to it, conduct a hearing, and thereafter, take one of the following discretionary actions:

- (a) Find no cause for action by the Commission or insufficient evidence to justify any action under the complaint and dismiss the complaint;
- (b) Adjudge the appropriate fine;
- (c) Suspend or revoke the permit;
- (d) Suspend or revoke the permit upon a subsequent offense;
- (e) Grant or deny the permit in application cases.

(5) A permittee or applicant shall be notified in writing by the Hearing Commission of its decision within fifteen (15) days after the hearing. The notification shall include a statement that the permittee or applicant has the right to appeal on the record to the ABC Board. In the event the Hearing Commission, for good cause shown, is unable to render a decision within fifteen (15) days, then the notification shall be provided to the permittee or applicant within fifteen (15) days after a decision is rendered.

(6) A permittee or applicant shall have fifteen (15) days from receipt of notification of the action of the Hearing Commission in which to appeal to the ABC Board. Such notice of appeal shall be in writing and shall be signed by the permittee, applicant, their duly authorized agent or attorney. The appeal is deemed filed and perfected upon hand delivery to the office of the ABC Administrator, within the allotted time, or by U. S. postmark within the allotted time.

(a) If no appeal is taken, the decision of the Hearing Commission shall be deemed final on the 16th day after the permittee or applicant received notification of the action of the Hearing Commission.

(b) If the permittee or applicant makes a timely appeal of the Hearing Commission's decision to the ABC Board, the Board's decision on the appeal becomes the final administrative decision on the date so rendered. Upon consideration of the appeal, the ABC Board shall: (1) affirm the decision of the Hearing Commission; or (2) modify or amend the decision of the Hearing Commission; or (3) reverse the decision of the Hearing Commission and substitute therefor its own decision with Findings of Fact.

(7) An appealing permittee or applicant must pay to the ABC Board the reasonable costs of transcribing the record before the Hearing Commission, not to exceed \$10.00 per page. The Board may require the payment of an advanced deposit prior to such transcription. In no case shall the ABC Board consider an appeal from the Hearing Commission where the transcription cost has not been paid. If the appeal prevails, any money deposited for transcription, in accordance with this paragraph, shall be returned to the appealing permittee or applicant.

(8) Any additional evidence not available before the Hearing Commission may be submitted to the ABC Board by affidavit or exhibit. The ABC Board may, at its discretion, consider the same on appeal.

(9) In cases where there is no appeal from a final administrative decision of the Hearing Commission or the ABC Board, the ABC Board in its discretion, after a period of sixty (60) days, subsequent to the last day an appeal might be perfected, may destroy any and all documentary evidence introduced at the contested hearing, including the recorded testimony thereof.

Author: ABC Board

Statutory Authority: Code of Ala. 1975, §28-11-4.

History: New Rule: Filed December 7, 1998; effective January 11, 1999.

20-X-22-.03 Notification To Permittees Of Hearings.

(1) All notices required by law to be given to ABC Board permittees, pursuant to and in connection with hearings before the ABC Board or the Hearing Commission on questions of disciplinary matters, revocations, suspensions, or renewal of and applications for ABC Board permits, or the results of any such hearings, may be effectively given by any one of the following methods:

(a) By an agent of the ABC Board delivering a copy of such notice to the permittee or, to whomever is in charge of the licensed premises at the time of serving such notice;

(b) By sending notice via U.S. Mail, return receipt requested, proper postage prepaid, addressed to such permittee at the address of the permitted establishment, or the mailing address furnished by such permittee on the permit application;

(c) By an agent of the ABC Board delivering a copy of such notice to whomever is in charge of the permitted premises at the time of serving such notice.

(d) In the event the permitted establishment is closed by order of a court or is not operating for some other reason, by an agent of the ABC Board posting a copy of such notice to the

door of such establishment and the ABC Board sending a copy of such notice via U.S. Mail, proper postage prepaid, addressed to such permittee at the mailing address furnished to the ABC Board by such permittee.

(2) All notices shall include:

(a) A statement of the time, place and nature of the hearing;

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

(c) A reference to particular statutes and rules involved;

(d) A short and plain statement of the matters asserted. If the ABC Board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application by the permittee, a more definite and detailed statement shall be furnished.

(3) If a party fails to appear in a contested case after proper service of notice and given reasonable time to appear, the ABC Board or Hearing Commission may proceed with the hearing and render a decision in the absence of the party.

(4) Opportunity shall be afforded all parties to respond and present evidence and argument on all material issues involved in hearings before the Hearing Commission and ABC Board and to be represented by counsel at the parties' own expense.

Author: ABC Board

Statutory Authority: Code of Ala. 1975, §§28-3A-24; 28-11-4.

History: New Rule: December 7, 1998; effective January 11, 1999.