

ALABAMA DEPARTMENT OF INSURANCE
ADMINISTRATIVE CODECHAPTER 482-1-065
PROCEDURAL RULES GOVERNING ADMINISTRATIVE HEARINGS

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482-1-065-.01 Purpose.

(1) This Chapter is to reduce to writing the procedural rules governing hearings that have, many times, been in effect for years. It is hoped that the party subjected to a hearing will, if in possession of these rules, have a better idea of what the procedure is and what to expect at a hearing. It is also hoped that these rules will promote uniformity for future hearings.

(2) A hearing under the Insurance Code is not necessarily conducted in the same manner as in a court of law, even though the Commissioner, or his or her delegated authority, both of which are hereinafter sometimes referred to as "hearing officer," acts in a quasi-judicial capacity, and is not subject to the Alabama Rules of Civil Procedure or Rules of Evidence, except as herein indicated otherwise. Therefore, the latitude allowed a hearing officer is not meant to be unduly restricted by these rules.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 1979, Effective July 31, 1979.

Revised: July 19, 1985, Effective August 1, 1985. **Revised:** June 5, 1992, Effective July 1, 1992. **Revised:** April 21, 2003, Effective May 1, 2003. Filed with LRS April 21, 2003. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-065-.02 Authority.

The authority for the promulgation of this chapter is under the provisions of Sections 27-2-7 and 27-2-17, Code of Alabama 1975.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-7, 27-2-17.
History: New Rule: June 11, 1979, Effective July 31, 1979.
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482-1-065-.03 Definitions.

The following definitions shall apply for purposes of this chapter:

(a) Commissioner. The Alabama Commissioner of Insurance. Said term may also refer to the person to whom authority has been delegated pursuant to Section 27-2-8, Code of Ala. 1975.

(b) Department. The Alabama Department of Insurance.

(c) Hearing Officer. The Commissioner or any deputy, assistant, examiner or employee of the Department to whom authority has been delegated to conduct a hearing and other proceedings pertaining thereto.

(d) Hearing Reporter. The Court Reporter engaged by the Department to transcribe the proceedings of the hearing.

(d) Insurance Code. Title 27, Code of Ala. 1975, commencing with Section 27-1-1.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-7, 27-2-17.

History: New Rule: April 21, 2003, Effective May 1, 2003. Filed with LRS April 21, 2003. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-065-.04 Rules Of Procedure.

Rule 1. Scope of Rules.

(a) These rules shall be applicable for all hearings conducted by a hearing officer under the provisions of any section in the Alabama Code requiring a hearing and also for any hearing held by the Commissioner under his or her discretionary or implied powers to hold hearings.

(b) No rule or portion of these rules may be waived without express written permission of the hearing officer under the provisions of Section 27-2-28. Waiver may also be given orally in open hearing.

(c) If the hearing officer is required to decide a matter during a hearing not covered by these rules or by any provision of the Insurance Code or related statutes, he or she shall decide the matter, as much as practical, under the provisions of the Alabama Rules of Civil Procedure for Circuit Court non-jury actions.

(d) This rule is not to be interpreted as requiring the formal application of rules under the Alabama Rules of Civil Procedure, or restricting the authority of the hearing officer in deciding any matter in the manner which, in his or her opinion, the ends of justice would be met or restricting any evidence, which in his or her opinion, needed to be brought out. The opinion of the hearing officer shall be paramount so long as it does not conflict with these rules, statutes, court decisions or regulations.

(e) These rules shall apply to rate hearings and orders under the provisions of Chapter 13 of Title 27 of the Insurance Code.

(f) Where a conflict exists between this chapter and any Alabama statute, the statute shall prevail.

Rule 2. Notice of Hearing.

(a) Hearings on Complaints.

(1) Any hearing to be held, whereby any person, insurance producer, service representative, insurer, company, or any other entity could be subjected to a penalty of suspension or revocation of license or certificate of authority or a monetary penalty or any other penalty or supervision, shall commence with a complaint.

(2) The complaint shall conform to the provisions of Section 27-2-18, and every allegation shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(3) Any person, other than the Department, demanding a hearing before the Commissioner shall make such demand by filing an affidavit with the Commissioner. Said affidavit shall contain sufficient factual information to show a reasonable cause to believe that violations of the Insurance Code have occurred or that the subject matter otherwise comes under the jurisdiction of the Commissioner and that a hearing is appropriate. The Department may investigate the allegations and initiate a complaint in the name of the Department. Otherwise, the affidavit shall constitute the complaint which the Commissioner shall serve upon the defendant with an

appropriate summons or notice. No affidavit is necessary when the Department institutes the action.

(b) Hearings on Matters other than Complaints. Notice of hearing scheduling a hearing on a matter other than a complaint or matter under Paragraph (a), if requested by a person, insurer, company, or other entity, other than the Department, shall set out in the notice the identity of the party requesting the hearing and otherwise conform to the requirements of Section 27-2-18.

(c) Amendment of Complaints and Notices. Any complaint or notice of hearing may be amended at any time prior to the hearing, but the time required by law to run prior to the hearing shall start again from the date of receiving the amended complaint or notice.

Rule 3. Service of Complaints and Notices.

(a) Complaints and notices of hearings shall be sent by registered or certified mail in the manner prescribed under the Insurance Code. Evidence that the complaint or notice was placed in the United States mail shall be prima facie that proper notice was given.

(b) As the Insurance Code requires every insurance producer and service representative to promptly notify the Department of a change of address, a complaint or notice of hearing sent to such a licensee's last address of record at the Department shall be prima facie evidence that proper service and notice was given.

(c) Any insurance producer or service representative refusing to accept registered or certified mail sent by the Department shall be deemed to have received said mail and be familiar with its contents.

(d) The willful refusal or failure to accept registered or certified mail, identified as being sent by the Department, on the part of any licensed producer, service representative, adjuster, or insurer, shall be deemed a willful violation of a regulation.

(e) Where the individual or entity to be served with a notice of hearing or complaint is not a producer or service representative subject to the provisions of §27-7-17(b), service of the notice of hearing or complaint shall be made using the same methods as are available in Circuit Court in accordance with the Alabama Rules of Civil Procedure.

Rule 4. Answer Required After Complaint Issued.

(a) With the exception of hearings called under the provisions of Sections 27-2-33 through 27-2-38, all complaints shall state that the accused is required to mail or hand deliver a written answer either specifically admitting or denying each allegation in the complaint, and that any allegations not denied are admitted. The Department shall not be required to prove any allegation so admitted.

(b) The answer shall be mailed or delivered to the Department within thirty (30) days from the date the accused received the complaint, or every allegation of the complaint shall be deemed admitted by default.

Rule 5. Hearings to be scheduled after Receipt of Answer.

(a) Upon receiving the answer as required under Rule 4, the hearing officer shall schedule a hearing to determine those issues still in controversy after receipt of the answer.

(b) If the accused admits in writing every allegation of the complaint, the hearing officer may, without a hearing, take any necessary or appropriate action allowed under the law the same as if he or she had found the violations upon an evidentiary hearing.

(c) The hearing shall be scheduled at least twenty (20) days after the answer is filed with the Department. The notice of hearing shall set out those issues still to be determined.

(d) This rule only applies to those complaints falling under the provisions of Rule 4.

Rule 6. Discovery.

(a) Any party to any hearing conducted under these rules shall be allowed discovery to include depositions, use of subpoenas and subpoenas duces tecum to compel attendance of witnesses and production of documents.

(b) Generally, the different methods of discovery allowed by the Alabama Rules of Civil Procedure shall be allowed, but it is incumbent upon the parties to complete discovery prior to the hearing.

(c) Depositions and requests for admissions of the Commissioner or any employee of the Department shall only be had at the discretion of the hearing officer. Any party requesting depositions or admissions from any departmental employees must demonstrate that the ends of justice shall not be met unless this discovery is allowed.

Rule 7. Hearings.

(a) The Parties Conducting the Hearing. The Commissioner, or his or her delegated authority, shall preside over the hearing as hearing officer. So far as practical, the Assistant Attorneys General or Deputy Attorney General assigned to the Department shall present the case on behalf of the Department, but questions from certain experts representing either party may be allowed if in the opinion of the hearing officer the hearing may be expedited by such questioning.

(b) Representation. The accused may represent himself or herself or be represented by legal counsel.

(c) Dismissing the Hearing. If, at any time prior to or during the hearing, the hearing officer or the Assistant Attorney General or Deputy Attorney General representing the Department is of the opinion that the evidence is insufficient to prove the allegations in the complaint, or any portion thereof, or that the complaint was brought in bad faith or for any other reason requiring that the ends of justice be met to stop or not convene the hearing, then the complaint or any portion of the complaint meeting the above criteria shall be dismissed.

(d) Burden of Proof -- General Rule. As in civil cases at law, as a general rule, the party asserting an affirmative issue alleged in the pleadings has the burden of proving said issue by a preponderance of the evidence.

(e) Burden of Proof -- Negative Allegation. The party asserting a negative allegation has the burden of proving said negation by only slight evidence, which then shifts to the other party the burden of proving said issue by a preponderance of the evidence.

Rule 8. Transcription of Hearing.

(a) The hearing reporter shall make a full stenographic record of every hearing.

(b) The transcript shall be a part of the record of the hearing. A copy of the transcript shall be furnished to any party to such hearing at the request and expense of such party.

(c) The Commissioner shall be the custodian of all exhibits introduced at a hearing, but he or she shall furnish copies, so far as practical, to any party to the hearing, requesting same.

Rule 9. Evidence.

(a) The only evidence that the hearing officer shall consider in making a finding of fact shall be sworn testimony, exhibits accepted in the hearing, and admitted pleadings.

(b) Hearsay Evidence. Hearsay testimony shall be allowed in any hearing so long as it has probative value, but hearsay evidence alone shall not be sufficient to prove any material fact, unless such hearsay evidence would be admissible in a non-jury Civil Action in the Circuit Courts of the State.

(c) Affidavits. Affidavits shall be admissible in any hearing so long as they have probative value and the affiant, for reasons of impossibility or impracticality, cannot be present for testimony at the hearing. The burden of impossibility or impracticality shall be upon the offeror of the affidavit. No material fact shall be proven by affidavit alone.

(d) Depositions. The right of introducing evidence by deposition at a hearing shall be the same as is available in the Circuit Courts in accordance with the Alabama Rules of Civil Procedure.

(e) Official Notice. All statutes of the State of Alabama and all published rules, regulations and informational bulletins issued by the Department shall be deemed admissible by mere identification of the State statute, published rules, regulations and informational bulletins.

(f) Admissibility. All evidence, whether documentary or ore tenus, to be admissible, shall be germane, material and relevant to the issues brought out by the complaint, answer or notice of hearing. Evidence that might otherwise be germane, material or relevant, if found to be repetitious, may, at the discretion of the hearing officer be disallowed.

(g) Documentary Evidence. Any document or a copy of said document shall be admissible if the document or copy shall be proven to be a part of the business record of any party, person, or company kept in the ordinary course of the business of said party, person or company. The document shall also be required to meet requirements of Rule 9(f).

(h) Witnesses.

(1) The hearing officer may compel any person to testify under oath at any hearing.

(2) Any party to a hearing may compel any witness to testify under oath at the hearing, except that the Commissioner, or his or her delegated representative, and the Assistant Attorney General or Deputy Attorney General representing the Department shall be required to testify only if it is demonstrated that the ends of justice would not be met without their sworn testimony.

(3) The Commissioner may compel the testimony of any witness refusing to obey his or her subpoena pursuant to Section 27-2-26(c).

Rule 10. Continuance of Hearing.

Any continuance of a hearing granted shall only be by express written consent of the hearing officer for good cause shown.

Rule 11. Withdrawing of Complaint.

(a) When any person, company, insurer or other entity has complained to the Commissioner of an alleged violation of any matter under the Commissioner's jurisdiction, by affidavit and requested a hearing, then the complaining person shall not be allowed to withdraw the complaint and affidavit without the express written consent of the hearing officer.

(b) If the complaining party is a person or insurer currently holding a license or certificate of authority from the Department, and the request to withdraw the complaint and affidavit is refused, then the party shall, at the request of the Commissioner, render any and all aid necessary to include offering sworn testimony and making available documents to prove the facts alleged in the affidavit. Failure of the complaining party to act in good faith to assist in proving the allegations in the affidavit may subject the above to a hearing for the willful violation of a regulation, under the provisions of Section 27-2-17(e).

Rule 12. Orders.

(a) All orders issued either pursuant to a hearing, or from any other cause, shall conform to the provisions of Sections 27-2-18 and 27-2-31. In addition to the above requirements, if the person presiding over the hearing is other than the Commissioner, he or she shall be so identified in the order.

(b) All orders issued pursuant to hearings shall contain specific findings of fact tending to prove or disprove each and every issue required under law to be proven or disproven. No penalty shall be imposed by the order unless the findings of fact prove the material issues required under law to be proven to sustain the alleged violations.

(c) For orders on issues other than complaints, the findings of fact must show that there is compliance with the statutory provisions required to be found. No approval of matters such as reinsurance, mergers, and acquisitions, shall be made without the appropriate findings of fact being made, as required under the law.

(d) Whoever presides over a hearing, either the Commissioner or his or her delegated representative, shall be entirely responsible for the findings of fact and the appropriate penalties, approvals, findings of innocence or guilt or disapprovals of the matter at hand. He or she shall impose the correct penalty, under the law as is necessary and required after presiding over the entire hearing, or make any other order or ruling required by the appropriate statute under which the hearing was held.

(e) If the person presiding over the hearing is the delegated representative of the Commissioner, he or she shall state in the order the following words and also sign the order:
"DONE AND ORDERED, UNDER THE DELEGATED AUTHORITY OF THE COMMISSIONER OF INSURANCE, THIS (DATE).

JOHN DOE
TITLE
HEARING OFFICER"

Rule 13. Penalties.

(a) If the findings of fact prove the material issues required under law to be proven to sustain the alleged violations, the order shall impose the penalty allowed under the statute that, in the opinion of the hearing officer, would be in the best interest of the citizens of this State.

(b) An assessment of penalty, upon a finding of guilt, is not mandatory, but the hearing officer shall instead take into account the seriousness of the violation, willfulness on the part of the actor, attempts to make restitution, and any other factor deemed by him or her germane in deciding the correct penalty.

(c) If there is a finding of guilt of any person, as defined in Section 27-1-2(3), not licensed at the time of the order, the penalty may be suspension or revocation of the eligibility to hold or apply for licenses.

Rule 14. Rehearings.

(a) Requests for rehearings shall conform to the provisions of Section 27-2-30(g). Rehearings shall not be granted unless it is demonstrated that new evidence not otherwise available at the first hearing should be taken and that this evidence would materially affect the findings of the hearing officer, or that it is otherwise required in order to meet the ends of justice. The determination of whether to convene a new hearing shall only be made by the person signing the order at the conclusion of the hearing.

(b) This rule shall not be interpreted as restricting the power or authority of the Commissioner to convene a new hearing on the same issue or matters as have been brought out in previous hearings, if the ends of justice so merit.

Rule 15. Default.

(a) When a complaint is deemed admitted pursuant to Rule 4, the hearing officer may, without a hearing, take any necessary or appropriate action allowed under the law the same as if he or she had found the violations upon an evidentiary hearing.

(b) The hearing officer may set aside an order entered pursuant to Rule 15(a) upon motion of the accused filed not later than thirty (30) days after the date of said order, which motion shall allege and prove, by attached affidavit, a meritorious defense to the allegations of the complaint.

(c) The hearing officer shall enter an order either granting such motion and allowing the accused ten (10) days to file an answer pursuant to Rule 4, or denying the motion, setting forth the reasons therefor.

(d) An order denying a timely filed motion pursuant to this rule may be appealed as provided in Rule 482-1-065-.06.

Rule 16. Emergency Action.

(a) Whenever it may appear to the Commissioner, either upon investigation or otherwise, that any person, as defined in Section 27-1-2(3), Code of Ala. 1975, has engaged in, is engaged in, or is about to engage in any act, practice or transaction which is prohibited by Title 27, Code of Ala. 1975, or by any rule, regulation or order of the Commissioner promulgated or issued pursuant to said title or which is declared to be unlawful under said title, the Commissioner may, at his or her discretion, issue an order, if he or she deems it to be appropriate in the public interest or for the protection of policyholders or the citizens of this State, prohibiting such person from conducting such act, practice or transaction.

(b) Notwithstanding any other provision of this chapter, in situations where persons, as defined in Section 27-1-2(3) of the Code of Ala. 1975, otherwise would be entitled to a hearing prior to an order, the Commissioner may:

(1) Issue a proposed order to be effective upon a later date without hearing, unless persons subject to the order request a hearing within ten (10) days after receipt of the proposed order.

(2) Issue an order to be effective immediately, if the Commissioner has reasonable cause to believe that an act, practice or transaction is occurring or is about to occur and that the situation constitutes a situation therefore imperatively requiring emergency action. The emergency order shall contain findings to this effect and reasons for the determination.

(c) Any order issued pursuant to this rule shall contain or be accompanied by a notice of opportunity for hearing which clearly explains that a hearing will be held if and only if a person subject to the order requests a hearing within ten (10) days of receipt of the order and notice.

(d) Any order or notice issued pursuant to this rule shall conform to the provisions of Section 27-2-18, Code of Ala. 1975, and shall be served in the same manner as complaints and according to Rule 3.

(e) The failure to request a hearing shall constitute a waiver of any provisions of law for a hearing. However, any person against whom an emergency order has been entered pursuant to this rule shall be entitled to apply for a hearing for relief from such order in the manner provided in Section 27-2-28, Code of Ala. 1975, and these rules.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17, 27-2-18, 27-2-26, 27-2-28, 27-2-30, 27-2-31.

History: New Rule: June 11, 1979, Effective July 31, 1979.

Revised: July 19, 1985, Effective August 1, 1985. **Revised:** June 5, 1992, Effective July 1, 1992. **Revised:** April 21, 2003, Effective May 1, 2003. Filed with LRS April 21, 2003. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-065-.05

Communications with Hearing Officers.

The attorneys for the parties, including the attorney for the Department prosecuting or defending the case before a hearing officer, are forbidden from discussing such case with the hearing officer outside the presence of the other party's counsel. This prohibition shall not apply in the case of a hearing called for the purpose of adopting, revising, amending, or repealing a regulation.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 1979, Effective July 31, 1979.

Revised: July 19, 1985, Effective August 1, 1985. **Revised:** June 5, 1992, Effective July 1, 1992. **Revised:** April 21, 2003, Effective May 1, 2003. Filed with LRS April 21, 2003. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-065-.06 Appeal From Hearing Officer's Ruling.

(1) Any party or any person whose pecuniary interests are directly and immediately affected by any order of the Commissioner (or refusal or failure to issue any order) may appeal to the appropriate Circuit Court pursuant to Section 27-2-32.

(2)(a) An appeal from an order of a hearing officer other than the Commissioner must first be made to the Commissioner, who shall either affirm, modify, or rescind the action theretofore taken.

(b) The appeal to the Commissioner shall be on the record, for which notice of appeal must be filed with the Commissioner within thirty (30) days from the date of the order from which appealed. The Commissioner shall give notice to all parties of the date on which the transcript and record are completed and filed.

(c) The Appellant may serve and file a brief within fourteen (14) days after the date of the Commissioner's notice, in which brief oral argument may be requested.

(d) The Appellee may serve and file a brief within fourteen (14) days after service of the brief of the Appellant, in which brief oral argument may be requested.

(e) The Commissioner for good cause shown may, upon motion, enlarge the time prescribed by this rule.

(f) The Commissioner may, upon the agreement of all parties, dispense with the filing of briefs or may provide for a different briefing schedule.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17, 27-2-32.

History: New Rule: June 11, 1979, Effective July 31, 1979.

Revised: July 19, 1985, Effective August 1, 1985. **Revised:** June 5, 1992, Effective July 1, 1992. **Revised:** April 21, 2003, Effective May 1, 2003. Filed with LRS April 21, 2003. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-065-.07 Distribution.

A copy of this chapter shall accompany every complaint or notice of hearing and a notation of the existence of the rules shall be made in the complaint or notice of hearing.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 1979, Effective July 31, 1979.
Revised: July 19, 1985, Effective August 1, 1985. **Revised:** June 5, 1992, Effective July 1, 1992. **Revised:** April 21, 2003, Effective May 1, 2003. Filed with LRS April 21, 2003. Rule is not subject to the Alabama Administrative Procedure Act.

482-1-065-.08 Effective Date.

This chapter shall become effective upon its approval by the Commissioner of Insurance and upon its having been on file as a public document in the office of the Secretary of State for ten days.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §27-2-17.

History: New Rule: June 11, 1979, Effective July 31, 1979.

Revised: July 19, 1985, Effective August 1, 1985. **Revised:** June 5, 1992, Effective July 1, 1992. **Revised:** April 21, 2003, Effective May 1, 2003. Filed with LRS April 21, 2003. Rule is not subject to the Alabama Administrative Procedure Act.