

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

LIQUOR CONTROL COMMISSION

HEARING AND APPEAL PRACTICE

(By authority conferred on the liquor control commission by section 215(1) of 1998 PA 58, MCL 436.1215(1), section 230 of 1965 PA 380, MCL 16.330, and section 33 of 1969 PA 306, MCL 24.233)

R 436.1901 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means 1998 PA 58, MCL 436.1101 et seq.

(b) "Duly authorized agent" means a person designated by the chairperson pursuant to sections 903(3) and (4) of the act to hear violation cases.

(2) The terms defined in the act and in the general rules of the commission have the same meaning when used in these rules.

History: 1979 AC; 2004 AACS.

R 436.1903 Hearings; transcripts.

Rule 3. (1) All hearings shall be open to the public.

(2) A copy of the transcript of the testimony taken at a hearing before the commission shall be available upon written request to the commission and payment of the commission's prescribed fees which shall be set by written order of the commission.

History: 1979 AC.

R 436.1905 Violations; violation report; complaint; notice of hearing.

Rule 5. (1) Alleged violations of the act or commission rules shall be stated on a violation report form and shall be submitted to the executive services division of the commission.

(2) A complaint specifying the particular section of the act or commission rules allegedly violated by the licensee may be prepared for the licensing and enforcement division at the direction of an assistant attorney general.

(3) Each complaint shall be assigned a number which shall be placed on all papers filed in the proceedings.

(4) The complaint shall be served by the executive services division on the licensee in person or by mail to the licensed address not less than 20 days before the scheduled hearing date. The licensed address shall be the address of the licensed establishment unless the licensee has submitted, in writing, to the commission, a different address for the receipt of mail. The complaint shall advise the licensee of the licensee's right to request a copy of the violation report.

(5) Notice of hearing on a complaint which indicates the date scheduled for the hearing shall be served by executive services division on the licensee at the address of the licensee as specified in subrule (4) of this rule not less than 10 days before the date of hearing.

(6) The hearing notice shall advise the licensee of the licensee's right to be represented by an attorney at the hearing.

(7) The complaint and notice of hearing on the complaint shall be substantially in accordance with forms prescribed by the commission.

History: 1979 AC; 2004 AACS.

R 436.1907 Waiver of hearing; acknowledgment of violation.

Rule 7. (1) A licensee who is cited in a complaint for an alleged violation of the act or commission rules may waive the right to a hearing on the complaint and acknowledge the violation or violations specified in the complaint.

(2) The waiver and acknowledgment constitute an authorization to the hearing commissioner or duly authorized agent to enter, without a hearing, an order which the hearing commissioner or duly authorized agent deems appropriate.

(3) The waiver of the right to hearing and acknowledgment of the violation shall be on the reverse side of the complaint form and as prescribed by the commission. The waiver and acknowledgment form shall provide that the licensee may explain, on a separate sheet of paper, any mitigating circumstances which the licensee believes should be considered in disposing of the violation.

History: 1979 AC; 2004 AACS.

#### R 436.1909 Violation hearing.

Rule 9. (1) A hearing commissioner or duly authorized agent designated by the chairperson shall conduct the violation hearing on the complaint. Findings of fact, conclusions of law, and an order shall be mailed to the licensee and the licensee's attorney of record within 45 days after the completion of the hearing, except upon written order of the commission extending the time period.

(2) In violation hearings where the licensee is not represented by an attorney-at-law, the hearing commissioner or duly authorized agent designated by the chairperson shall open the hearing by advising the licensee of both of the following rights:

- (a) The right to present evidence.
- (b) The right to cross-examine commission witnesses.

History: 1979 AC; 1988 AACS.

#### R 436.1910 Violation rehearing.

Rule 10. (1) After a violation hearing, a licensee who alleges new evidence may request a rehearing before the hearing commissioner or duly authorized agent who issued the original order. A request for a rehearing shall be submitted in writing to the commission in Lansing within 20 days after the date of the mailing of the original order.

(2) If a request for a rehearing in a violation matter is granted by the hearing commissioner or duly authorized agent, then the licensee or the licensee's attorney of record shall be notified of the rehearing not less than 10 days before the date of the rehearing.

History: 1979 AC; 2004 AACS.

#### R 436.1911 Costs.

Rule 11. If the hearing commissioner renders a decision that a violation occurred, then the hearing commissioner or duly authorized agent may assess actual costs of the proceeding against the licensee.

History: 1979 AC; 2004 AACS.

#### R 436.1913 Personal appearance of licensee.

Rule 13. (1) At least 1 of the following entities shall personally appear at a violation hearing, as applicable:

- (a) The individual licensee.
- (b) A co-licensee.
- (c) A partner of a partnership licensee.
- (d) An officer of a corporate licensee.
- (e) A member or manager of a limited liability company.

(2) Subrule (1) of this rule may be waived by the hearing commissioner or duly authorized agent if a formal appearance has been filed by an attorney-at-law in good standing in this state.

History: 1979 AC; 1995 AACS; 2004 AACS.

R 436.1915 Failure to personally appear at violation hearings.

Rule 15. (1) If a proper appearance by a licensee is not made at a scheduled violation hearing in accordance with R 436.1913, then the presiding hearing commissioner or duly authorized agent may do any of the following:

- (a) Grant an adjournment without testimony being taken.
- (b) Order testimony taken and then adjourn the proceedings until rescheduled.
- (c) Order the immediate suspension of the license until a proper appearance is made at a rescheduled hearing.
- (d) Issue a decision of default.
- (e) Proceed with the hearing and render a decision.

(2) If an adjournment is granted after testimony is taken and the licensee, at a rescheduled hearing, desires to cross-examine the commission witnesses who have already testified, then the commission witnesses shall be produced by, and at the expense of, the licensee under the provisions of the commission rules.

History: 1979 AC; 2004 AACS.

R 436.1917 Violation appeal hearings; appeal board.

Rule 17. (1) A licensee aggrieved by an order of a hearing commissioner or duly authorized agent as a result of a complaint may request a violation appeal hearing which may be granted at the discretion of the appeal board.

(2) The violation appeal board consists of the 3 administrative commissioners who shall conduct violation appeal hearings.

(3) A request for a violation appeal hearing shall identify the date of the violation hearing, the order which was issued as a result of the violation hearing, and the licensee's reasons for requesting an appeal.

(4) The request for a violation appeal hearing shall consist of 4 copies which shall be sent, by certified mail, to the Lansing office of the commission accompanied by a check or money order for \$25.00 within 20 days from the date of the mailing of the order from which the appeal is taken.

(5) An appeal based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the grounds for claiming error.

(6) A request for a violation appeal hearing, which is sent to the commission after 20 days from the date of the mailing of the order from which the appeal is taken, may be granted by the commission if the delay is not due to the culpable negligence of the licensee appellant.

(7) An answer to a request for an appeal from a violation may be prepared by an assistant attorney general before the date of the appeal hearing.

History: 1979 AC; 2004 AACS.

R 436.1919 Appeal notice.

Rule 19. If a request for a violation appeal hearing is granted, the appeal board shall notify the licensee, or the licensee's attorney of record, of the appeal hearing not less than 10 days prior to the date of the appeal hearing.

History: 1979 AC.

R 436.1921 Violation appeal hearings; burden of proceeding.

Rule 21. (1) Violation appeal hearings which are granted by the appeal board shall be limited to the official record of the original hearing.

(2) In violation appeal hearings, the licensee has the burden of proceeding with reasons and arguments for revision or reversal of the order of the hearing commissioner or duly authorized agent.

History: 1979 AC; 2004 AACS.

R 436.1923 Violation appeal hearing decision.

Rule 23. (1) The decision of the appeal board on a violation appeal hearing shall be mailed to the licensee and the licensee's attorney of record within 30 days after the hearing, except upon written order of the commission extending the time period.

(2) The decision of the appeal board shall be in writing and shall do 1 of the following:

(a) Affirm the order of the hearing commissioner or duly authorized agent.

(b) Modify the order of the hearing commissioner or duly authorized agent.

(c) Rescind the order of the hearing commissioner or duly authorized agent.

(d) Remand the case back to the hearing commissioner or duly authorized agent who issued the original order.

History: 1979 AC; 2004 AACS.

R 436.1925 Hearings on matters other than violations.

Rule 25. (1) The commission, on its own motion, may order a hearing on a matter within its jurisdiction.

(2) Applications for a license issued under the act or commission rules shall be reviewed by the administrative commissioners. If a license application is denied, then the aggrieved license applicant may request an appeal hearing, and the commission shall grant the hearing. The request shall be made to the Lansing office of the commission within 20 days from the date of the mailing of the decision of denial.

(3) The chairperson may designate 1 or more commissioners to hear matters other than a violation of the act or commission rules.

(4) In a hearing on matters other than a violation of the act or commission rules, the commission may determine which party has the burden of proceeding.

History: 1979 AC; 2004 AACS.

R 436.1927 Filing of papers.

Rule 27. (1) All documents and papers pertaining to a hearing or appeal hearing shall be filed at the Lansing office of the commission.

(2) The presiding commissioner may allow papers to be filed at a hearing or appeal hearing.

History: 1979 AC.

R 436.1929 Subpoena.

Rule 29. (1) On written application, the commission or the authorized agent of the commission shall issue a subpoena requiring the attendance of witnesses at the time and place of hearing or appeal hearing. Subpoena and witness fees shall be set by written order of the commission.

(2) The application for subpoena shall indicate the name and address of the witness. The person requesting the issuance of the subpoena is responsible for the service of the subpoena.

History: 1979 AC.

R 436.1931 Postponements; continuances.

Rule 31. (1) Requests for postponements shall be made in writing not less than 2 working days before the violation hearing or appeal hearing date unless waived by a commissioner or duly authorized agent. The written request may be granted by a commissioner or a duly authorized agent of the commission.

(2) Requests for continuance for cause may be granted by the presiding commissioner or duly authorized agent at the hearing or appeal hearing.

History: 1979 AC; 2004 AACS.

R 436.1933 Attorney-at-law.

Rule 33. In addition to the appearance required by R 436.1913, a licensee or an aggrieved license applicant may be represented at a hearing by a licensed attorney-at-law in good standing in this state. The attorney shall file a written appearance with the commission before or at the time of the hearing.

History: 1979 AC.

R 436.1935 Rescissions.

Rule 35. The following rules are rescinded:

(a) Rules entitled "Rules of Procedure on Appeal to the Appeal Board," being R 436.701 to R 436.711 of the Michigan Administrative Code and appearing on pages 1526 and 1527 of the 1960 Annual Supplement to the Code.

(b) Rules entitled "Rules of Practice and Hearing Procedure Upon Violations," being R 436.751 to R 436.767 of the Michigan Administrative Code and appearing on pages 1527 to 1531 of the 1960 Annual Supplement to the Code.

History: 1979 AC.