

Sec. 14-137-38. Hearing procedure

Hearings are conducted where required or authorized by statute or regulation under general authority of section 14-4a of the Connecticut General Statutes. Pursuant to section 14-4a, the commissioner may designate any person to act as a hearing officer for the motor vehicle department for the purpose of conducting hearings and rendering decisions. In any hearing where the hearing officer has been authorized by the commissioner to render a final decision, the fact of such authorization shall be noticed on the record. In any contested case in which the hearing officer assigned to conduct the hearing has not been authorized to render a final decision in the matter, this fact shall be noticed on the record at the start of the hearing and the party(ies) of record shall be notified of the identity of the individual who will render the final decision.

(a) **Official address.** All correspondence relating to formal hearings should be addressed to: Adjudications Unit, Legal Services Division, Department of Motor Vehicles, 60 State Street, Wethersfield, Connecticut 06109-1896.

(b) **Waiver of rules.** Where good cause appears, the commissioner or his designee may permit deviation from these rules, except where precluded by statute or where the rights of any party would be prejudiced substantially.

(c) **Notice of hearings.**

(1) The department shall mail a notice of hearing to the last known address or the last address provided by the respondent, at least ten (10) days before the scheduled hearing, unless the respondent has received actual notice or waived the requirement of advance notice.

(2) The notice 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 the particular sections of the statutes and regulations involved;

(D) A short and plain statement of the matters asserted. If the department or other party 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 a more definite and detailed statement shall be furnished.

(d) **Location of hearings.** Hearings are held at 60 State Street, Wethersfield, Connecticut and at such other location or locations as the commissioner may designate.

(e) **Hearings to be public; maintenance of order**

(1) Unless otherwise provided by law, all contested case hearings shall be open to the public.

(2) At any hearing, the hearing officer may direct that any recording, radio, television, or broadcasting equipment shall be placed in a stationery location or otherwise handled in such a manner as not to disturb the proceedings or, in the opinion of the hearing officer, block the aisles or exits, or jeopardize the safety of any party in the hearing room.

(3) The hearing officer may order any individual, willfully interrupting the orderly conduct of a hearing, to be removed from the hearing room.

(4) The hearing officer may order the hearing room to be cleared if, in his opinion, the hearing cannot be conducted in an orderly fashion and the orderly conduct of the hearing

cannot be restored by the removal of the individuals who are willfully interrupting the hearing. Accredited representatives of the news media, other than those participating in the interruption of the hearing, shall be allowed to remain in the cleared hearing room and continue to observe the hearing.

(5) The hearing officer may readmit an individual that had been ordered to vacate the hearing room pursuant to either subdivisions three (3) or four (4) of this section if, in the hearing officer's opinion, the individual has ceased to be disruptive and will continue to behave in an orderly manner.

(f) Postponements and adjournments.

(1) Only for good cause shown will a continuance be granted to any licensee upon a request made to the commissioner or his designee.

(2) A continuance will be granted when, due to an emergency, a police officer scheduled to appear at a hearing is required by his superiors to be on duty. Any hearing so continued will be rescheduled to the earliest possible time after the original hearing.

(3) No second continuance will be granted for the convenience of any party. An attorney for a respondent who has a conflicting court appearance may be granted a second continuance upon a request in writing, stating the name and location of the court, the date, time and case number of the conflicting court appearance. Such written request shall be directed to the attention of the Adjudications Unit, Legal Services Division, Department of Motor Vehicles, 60 State Street, Wethersfield, CT 06109-1896.

(4) The requirements in subdivisions (1), (2) or (3) may be waived by the commissioner or his designee only for good cause shown. The commissioner or his designee may request written certification of the facts surrounding the request for a continuance.

(5) The commissioner or his designee may reschedule a hearing or adjourn a hearing in progress to another date and time.

(g) Waiver of oral hearing and personal appearance. The respondent may waive oral hearing and personal appearance and request that the matter be adjudicated on the basis of the available written and demonstrative evidence on file with the department including any evidence submitted by the respondent.

(h) Adjudication in absence of a party. Where the commissioner or his designee finds that the notice of hearing has been properly served by mail and the respondent or any witness has failed to appear, the commissioner or his designee may in his or her discretion hear the case and render a decision.

(i) Pre-hearing procedure in contested cases.

(1) At any time after the issuance of a complaint or order and before the scheduled hearing date, and where not otherwise precluded by law, the commissioner may order or a respondent may request an informal, pre-hearing conference. The granting or denial of a request for a pre-hearing conference is within the complete discretion of the commissioner or such hearing officer as has been designated by the commissioner.

(2) A pre-hearing conference may be held for any of the following purposes:

- (A) To narrow the scope of the issues in dispute;
- (B) To obtain stipulations as to matters of fact;
- (C) To stipulate as to the authenticity of documents which are to be offered in evidence;
- (D) To stipulate as to the qualifications of any expert witnesses who are to testify at the

hearing; and

(E) To discuss the possibility of an informal disposition of a complaint.

(3) A pre-hearing conference need not be recorded, but a written record will be made of any stipulations as to matter of fact, as to the authenticity of documents, or as to the qualifications of expert witnesses. Any such written record will be signed by each of the individual respondents or his counsel and by the commissioner or his authorized representative.

(j) **Informal disposition in contested cases.**

(1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. A respondent may agree to enter an agreement containing a consent order in lieu of a hearing on the issue(s). Such agreement may be negotiated by the respondent and the counsel for a complainant or an authorized representative of the department. The acceptance of a consent agreement and order is within the complete discretion of the commissioner, or his designee, the chief of legal services for the department.

(2) A consent agreement and order shall contain:

(A) An admission of all jurisdiction facts;

(B) An express waiver of the right to seek judicial review or otherwise challenge or contest the validity of the order;

(C) An express waiver of the requirement that the decision contain findings of fact and conclusion of law;

(D) A provision that the complaint may be used in construing the terms of the order;

(E) A statement that the order contained therein shall have the same force and effect as an order entered after a full hearing and shall become final when issued;

(F) A statement that said order shall not be effective unless and until accepted and approved by the commissioner, or his designee, the chief of legal services for the department;

(G) The signature of each respondent or his attorney and the counsel for the complainant; and

(H) The signature of the commissioner or his said designee accepting and approving the consent agreement and order.

(k) **Motions.** Parties or their attorneys may file any appropriate motion in writing in advance of the hearing, at the hearing, or after the hearing. Any appropriate oral motion may be made at the hearing. The commissioner or his designee shall rule on pre-hearing and post hearing motions or refer them to the hearing officer hearing the case. The presiding hearing officer may rule on motions at the hearing, or may in his discretion incorporate a ruling on a motion in an intermediate or final decision.

(l) **Witnesses, subpoenas, and production of records.** All testimony shall be taken under oath or affirmation. The commissioner or his designee may subpoena witnesses and require the production of records, papers and documents. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by or under the direction of the commissioner or his designee or to produce any records and papers pursuant thereto, the commissioner may apply to the superior court for the judicial district of Hartford setting forth such disobedience to process or refusal to

answer, as provided in sections 4-177b and 14-110 of the Connecticut General Statutes.

(m) **Rules of evidence.** The following rules of evidence shall be followed in the admission of testimony and exhibits in all hearings:

(1) General. Any oral, documentary or physical evidence may be received. The commissioner or his designee shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. The commissioner or his designee shall give effect to the rules of privilege recognized by law in Connecticut where appropriate to the conduct of the hearing.

(2) Documentary evidence. Documentary evidence may be received at the discretion of the commissioner or his designee in the form of copies or excerpts, if the original is not found readily available. Upon request by any party an opportunity shall be granted to compare the copy with the original which shall be subject to production by the person offering such copies, within the provisions of section 52-180 of the Connecticut General Statutes.

(n) **Limiting number of witnesses.**

(1) To avoid unnecessary cumulative evidence, the commissioner or his designee may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing.

(2) The commissioner or his designee may permit any party to offer testimony in written form, if it will expedite the hearing. Such written testimony shall be received in evidence with the same force and effect as though it were stated orally by the witness who has given the evidence, provided that the interests of the parties will not be prejudiced substantially. Prior to its admission, such written testimony shall be subject to objections by parties.

(3) Cross-examination. A party may conduct cross-examinations required for a full and true disclosure of the facts.

(4) Facts noticed, scope and procedure. The department may take official notice of generally recognized technical or scientific facts within its specialized knowledge. Parties shall be afforded an opportunity to contest the material so noticed by being notified before or during the hearing, or by an appropriate reference in preliminary reports or otherwise of the material noticed. The department shall nevertheless employ its experience, technical competence, and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making its findings of facts and arriving at a final decision. Where an adjudication of violation or responsibility has been determined, the records and prior decisions of the department may be considered in determining an appropriate disposition.

(o) **Filing of added exhibits and testimony.** Upon order of the commissioner or his designee before, during or after the hearing, any party may be given an opportunity to submit additional pleadings and evidence unless the rights of any party would be substantially prejudiced. Such added exhibits and testimony shall be subject to such comment, reply and contest as due process may require.

(p) **Party and intervenor status in a contested case.**

(1) The commissioner or his designee shall grant a person status as a party in a contested case if:

(A) Such person has submitted a written petition to the department and mailed copies to all parties at least five days before the date of hearing; and

(B) The petition states facts that demonstrate that the person's legal rights, duties or privileges shall be specifically affected by the decision of the department in such contested case.

(2) The commissioner or his designee may grant any person status as an intervenor in a contested case if:

(A) Such person has submitted a written petition to the department and mailed copies to all parties at least five days before the date of hearing; and

(B) The petition states facts that demonstrate that the person's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

(3) The five-day requirement in subdivisions (1) and (2) of this subsection may be waived at any time before or after commencement of the hearing by the hearing officer on a showing of good cause.

(4) If a petition is granted pursuant to subdivision (2) of this subsection, the intervenor's participation may be limited to designated issues in accordance with the provisions of section 4-177a (d) of the Connecticut General Statutes.

(q) Final decision in a contested case.

(1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A written decision shall be signed and dated by the hearing officer authorized to render the decision.

(2) In a contested case where the commissioner or his designee is to render the final decision or order, the commissioner or his designee shall give due consideration to the entire record before rendering such decision or order.

(3) Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the text of the final decision or order shall be sent by mail to each of the respondents and respondents' counsel, and to any other party of record.

(4) If no written request was filed for the preparation of a transcript, a final decision may be rendered at any time following the close of the hearing in compliance with the provisions of this subsection. If a transcript was requested in writing, the final decision may be rendered within a reasonable time following preparation and availability of the transcript in compliance with the provisions of this subsection.

(5) The Department shall proceed with reasonable dispatch to conclude any matter pending before it and shall render a final decision in all contested cases within ninety days following the close of evidence or the due date for the filing of briefs, whichever is later, in accordance with the provisions of section 4-180 of the Connecticut General Statutes.

(r) Record and transcripts:

(1) The record in a contested case shall include:

(A) All pleadings, motions and intermediate rulings;

(B) Evidence received or considered;

(C) Questions and offers of proof, objections and rulings thereon;

(D) Any decision, opinion or report by the commissioner or his designee.

(2) Oral proceedings or any part thereof shall be transcribed on request of any party. The requesting party shall pay the cost of such transcript or part thereof.

(s) Petition for reconsideration.

(1) Any petition for reconsideration of a contested case must be filed in writing within

Regulations of Connecticut State Agencies

fifteen (15) days after the personal delivery or mailing of the notice of final decision. Within forty days of the personal delivery or mailing of the final decision, the department, regardless of whether a petition for reconsideration has been filed, may decide to reconsider the final decision.

(2) Petitions for reconsideration shall be addressed to: Legal Services Division, Department of Motor Vehicles, 60 State Street, Wethersfield, Connecticut 06109-1896.

(t) **Motion for stay pending appeal.** A motion for stay of suspension, fine or other order pending appeal, should ordinarily be presented to the superior court. Alternatively, the motion may be presented to the commissioner, or to both the superior court and the commissioner.

(u) **Judicial appeal.** Unless otherwise provided by statute or regulation, appeals from final decisions of the department are governed by applicable provisions of Chapter 54 of the Connecticut General Statutes (Uniform Administrative Procedure Act).

(Effective April 1, 1996; Amended January 31, 2007)