

**RULES  
OF THE  
TENNESSEE ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 0100-04  
RULES OF PROCEDURE FOR HEARING CONTESTED CASES**

**TABLE OF CONTENTS**

0100-04-.01	General Procedures for Contested Cases	0100-04-.03	Commission Review of Initial Orders
0100-04-.02	Contested Cases Before Administrative Law Judges of TABC Hearing Officers Sitting Alone	0100-04-.04	Declaratory Orders

**0100-04-.01 GENERAL PROCEDURES FOR CONTESTED CASES.**

- (1) Except as otherwise provided herein, all contested matters before the Commission will be conducted in accordance with T.C.A. §§ 4-5-301 et seq., applicable provisions of Title 57 of the Tennessee Code, with these Rules, and with the Rules of the Secretary of State Chapter 1360-04-01.
- (2) Eligibility to appeal. Any person with legal standing, and who meets the requirements of Title 57 of the Tennessee Code as a licensee/permittee may petition the Commission for a contested matter hearing to appeal an Initial Order of revocation, suspension or civil penalty imposed upon the licensee/permittee by an Administrative Law Judge or TABC Hearing Officer sitting alone. All other appeals and/or review of actions of the Commission shall be conducted pursuant to the applicable provisions of Title 57 of the Tennessee Code.

**Authority:** T.C.A. §§ 4-5-217, 4-5-219, and 57-1-102. **Administrative History:** Original rule filed November 22, 1978; effective January 8, 1979. *Repeal and new rule filed October 14, 2014; effective January 12, 2015.*

**0100-04-.02 CONTESTED CASES BEFORE ADMINISTRATIVE LAW JUDGES OR TABC HEARING OFFICERS SITTING ALONE.**

- (1) With the exception of declaratory orders referenced below, all petitions for a contested matter hearing shall be routinely referred to the Administrative Procedures Division, Department of State for hearing before an Administrative Law Judge sitting alone on behalf of the Commission. However, the Commission retains the right to hear any particular contested matter on its own behalf, or before a properly designated TABC Hearing Officer.
- (2) In all matters held in accordance with the contested matter provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3 of the Tennessee Code, and in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the Commission, whether heard by an Administrative Law Judge or a properly designated TABC Hearing Officer sitting alone, or by the full Agency, the petitioner and other parties, with the exception of the Commission, shall bear the actual and reasonable costs associated with the contested matter including, but not limited to, Secretary of State Administrative Procedures Division, docketing, filing, judges and other costs, cost for all depositions, court reporters, transcriptions, costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and any other persons involved in the investigation, prosecution and hearing of the action. If an Initial Order of an Administrative Law Judge or properly designated TABC Hearing Officer is to be reviewed by the full Commission, whether such review is requested by the party/licensee/permittee or the TABC staff, the original transcript and one copy of the transcript for each member of the Commission shall be provided to the Commission by the other parties/licensees/permittees

(Rule 0100-04-.02, continued)

which cost shall be borne by said party/licensee/permittee and not by the Commission. Other costs of the proceeding, including the Administrative Law Judge's or TABC Hearing Officer's costs shall be assessed by the Commission against the other party/licensee/permittee in accordance with T.C.A § 57-1-213.

- (3) Whenever it is necessary to determine the actual and reasonable costs associated with the contested matter, the TABC director, assistant director or staff attorney shall file a sworn affidavit with the Administrative Law Judge or TABC Hearing Officer setting forth an itemized statement of the services rendered, including, but not limited to, the costs associated with the Secretary of State Administrative Procedures Division for docketing, filing, judges and other costs; cost for all depositions, court reporters and transcriptions; costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and such other persons involved in the investigation, prosecution and hearing of the contested matter as well as the time rendered for each service. The TABC shall make a suggestion of the fee to be awarded along with such other statement(s) of other pertinent facts including but not limited to that required by Tenn. Sup. Ct. R. 8, RPC 1.5, applicable case law, and such other information as may be requested by the Administrative Law Judge or TABC Hearing Officer. The Administrative Law Judge or TABC Hearing Officer shall then award the actual and reasonable costs associated with the contested matter based on the then prevailing rate imposed by the Secretary of State Administrative Procedures Division and the actual costs for all depositions, court reporters, transcriptions and such other persons, (including prosecutors, investigators, and expert witnesses) involved in the investigation, prosecution and hearing of the contested matter.
- (4) Unless otherwise agreed by the parties, at the beginning of all contested matter hearings, Commission counsel shall provide a summary of what the case is about, and introduce into evidence the application and/or Tennessee Alcoholic Beverage Commission license/permit. In no event shall this provision mean that the Commission is a neutral party in contested matters, or that its counsel represents the interests of any party other than the Tennessee Alcoholic Beverage Commission.
- (5) In all matters, whether heard by an Administrative Judge or properly designated TABC Hearing Officer sitting alone, or by the full Commission, the party petitioning for such hearing shall present its case first, unless the parties agree otherwise.

**Authority:** T.C.A. §§ 4-5-202, 4-5-310, 4-5-314, 57-1-102, 57-1-213, 57-3-214, and 57-4-201(a)(4).  
**Administrative History:** Original rule filed October 14, 2014; effective January 12, 2015.

#### **0100-04-.03 COMMISSION REVIEW OF INITIAL ORDERS.**

- (1) An Initial Order issued by an Administrative Law Judge or TABC Hearing Officer, sitting alone, may be reviewed by the Commission pursuant to T.C.A §§ 4-5-301, et seq., these Rules, and the Rules of the Secretary of State Chapter 1360-04-01. The Commission may, in its discretion, decline to exercise any review of an Initial Order issued by an Administrative Law Judge or TABC Hearing Officer, in which event the Initial Order issued by an Administrative Law Judge or TABC Hearing Officer shall become a Final Order as provided by the Uniform Administrative Procedures Act.
- (2) In such a review proceeding, the Commission's review is strictly limited to the record which was developed before the Administrative Law Judge or TABC Hearing Officer. No additional evidence is to be received or considered by the Commission.
- (3) Such a review proceeding is in the nature of appellate review. Each party will be given the opportunity to file a brief which should specify what action the party maintains the Commission should take on the Initial Order. The Commission may place reasonable page

(Rule 0100-04-.03, continued)

limitations on such briefs to be determined on a case by case basis depending on the number and complexity of the issues to be reviewed.

- (4) In such a review proceeding, each party will normally be limited to oral argument of fifteen (15) minutes in length, including rebuttal.
- (5) At the conclusion of the review proceeding the Agency may decide that the Initial Order should be adopted in its entirety, or it may make such modifications to the Initial Order as it deems appropriate. Alternatively, the Agency may take the case under advisement, and subsequently reconvene, after reasonable notice to the parties, to hold its public deliberations and to render a Final Order.

**Authority:** T.C.A. §§ 4-5-202, 4-5-217, 4-5-310, 4-5-314, and 57-1-102. **Administrative History:** Original rule filed October 14, 2014; effective January 12, 2015.

#### **0100-04-.04 DECLARATORY ORDERS.**

- (1) Any affected person may petition the Commission for a declaratory order, as provided in T.C.A. § 4-5-223, as to the interpretation, validity, or applicability of a statute or rule within the primary jurisdiction of the Commission. Such petition shall be filed with the Commission in duplicate, and must specifically identify the statute or rule at issue, and the nature of the ruling sought.
- (2) A petition for declaratory order is viewed as primarily involving questions of law and statutory or rule interpretation. The parties should strive to limit the amount of evidence presented, and to stipulate the facts to the fullest extent possible.
- (3) In the event the petition for declaratory order arises out of the Commission's action on a specific project or issue, the petition for declaratory order shall be filed within thirty (30) days of the date of the Commission meeting at which the action at issue was taken.
- (4) No person may file a petition for declaratory order as to any action or issue which is the subject of a pending or completed contested case proceeding involving the same person.

**Authority:** T.C.A. §§ 4-5-202, 4-5-217, 4-5-223, and 57-1-102. **Administrative History:** Original rule filed October 14, 2014; effective January 12, 2015.