

INTRODUCTION

Successor to the Alcoholic beverage Control Board, the Alcoholic Beverage Laws Enforcement (ABLE) Commission is housed in the Lincoln Plaza Office Building at 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma. The new agency was created under laws which became effective July 1, 1985 to regulate and license the manufacture, sale, distribution, possession and transportation of alcoholic beverage within the State of Oklahoma, with later responsibility to license and regulate charity games (bingo) and enforce the Prevention of Youth Access to Tobacco Act.

Where controversies arising out of the laws cannot be resolved informally, the ABLE commission provides a hearing process to facilitate the resolution of disputes in a fair and reasonable manner. Actions may be initiated before the ABLE Commission by private parties and by officers of the State. Both sides of the controversy may be represented by legal counsel or other representative.

Initial hearings are conducted by a Hearing Officer or an Administrative Law Judge employed by the ABLE Commission for that purpose. The Administrative Hearing Officer or Administrative Law Judge takes testimony and evidence in formal hearings, makes findings of fact, conclusions of law and recommendations to the Director of the Commission, who issues an order. Appeal from the Order may be taken before the full Commission, and thereafter to State courts.

The Rules of Practice and Procedure set forth herein are intended to serve as a guideline for the litigant appearing in ABLE Commission hearings.

RULE 1: INTENT, SCOPE AND CONSTRUCTION OF RULES

The Rules of Practice and Procedure set forth below as guidelines for Commission hearings before the Alcohol Beverage Laws Enforcement (ABLE) Commission shall govern in all hearings before the Commission. These rules shall be given the most reasonable meaning taken in total context and will be construed to secure a just and proper resolution for controversies litigated before the Commission. Matters not resolved under these rules shall be governed by the Oklahoma Rules of Civil Procedure.

RULE 2: PROCEDURE TO INITIATE HEARINGS

- A. If the Commission shall propose Denial, Suspension, Revocation or Denial of Renewal of a license, or Imposition of a Fine, Suspension of License, or a Letter of Caution, or any other disciplinary action, the person aggrieved may file a written request for a hearing on the proposed action and shall be accorded a hearing before a Commission Hearing Officer on the matter. Charity Games (bingo) protests may be filed in writing during the pendency of the subject license application. The ABLE Commission shall provide notice to all parties to the hearing a minimum of fifteen (15) days prior to the date of the hearing, including the time, place and matter set for hearing whenever possible.

- B. A written request for hearing shall be signed by the party so requesting, or by his duly authorized representative, and submitted to the Director of ABLE Commission.
1. A request for hearing shall contain:
 - a. the date of the request;
 - b. the name of the real party in interest making such request and his residential address;
 - c. the name of the business or proposed business in questions, including the complete business address and complete telephone number of the said business;
 - d. the relationship between the said business and the person requesting the hearing;
 - e. the date the grievance arose;
 - f. the type and number of any license at issue;
 - g. a short statement requesting a hearing.
 2. Any form provided by ABLE Commission for the specific purpose of serving as a hearing request form or application is adequate to satisfy this rules; such form shall be completed in its entirety and submitted to the Director of ABLE Commission in a timely manner.
 3. Charity Game protests are initiated by fully completing an ABLE Commission form.

RULE 3: HEARING OFFICERS/ADMINISTRATIVE LAW JUDGES

Initial hearings shall be conducted by a Hearing Officer or Administrative Law Judge, who shall have authority to administer oaths and affirmations, examine witnesses, rule upon Motions, and rule upon the admissibility of evidence. He shall have the authority to continue or recess any hearing, to control the record, and to propose decisions to the Commission in the form of findings of fact, conclusions of law or recommendations. If for any reason a Hearing Officer cannot continue to hear a case opened before him, the Commission shall designate another Hearing Officer, who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings.

RULE 4: REPRESENTATION AND PARTICIPATION

In any hearing before an ABLE Commission Hearing Officer or an Administrative Law Judge, a party may represent himself or may be represented by an attorney or other representative. The ABLE Commission will be represented by its General Counsel, The Attorney General or other representative so designated by the Director of the Commission.

Hearings shall be open the public. However, when it is deemed necessary to maintain order, fairness or decorum, the Hearing Officer my limit attendance and may impose reasonable conditions to protect the hearing process.

Where Respondent fails without good cause, to procure by the time of the Hearing, legal representation, witnesses supporting Respondent's position, or documentation from the Tax Commission showing reinstatement of the Tax Permit, a continuance will not be granted.

RULE 5: PLEADINGS

- A. As used in these Rules, “to file” contemplates delivery of document to the office of the Director of the Commission, 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma 73105; upon receipt of documents presented in person or by mail for filing, the Director or his clerk shall file-stamp the document received on the date of receipt and the director shall retain the original document so filed.
- B. Upon request for hearing or notice of violation, a commission attorney shall cause the filing of the initial pleading in the case which shall be entitled **NOTICE OF HEARING ON THE MERITS**: the caption of the Notice shall designate ABLE Commission as Petitioner and shall identify the parties as Petitioner and Respondent; the said Notice shall provide the parties with reasonable notice of the time and place of the hearing, and the matter to be considered at that time.
- C. Subsequent pleadings shall be captioned identically as the initiating document, signed by the party or his duly authorized representative, and filed in the office of the Director of the Commission in a timely manner; a party filing subsequent pleading shall mail a copy of each document so filed to all parties by regular mail or by hand delivery, and certify such act.
 1. Replies and Responses to pleadings are merited at the discretion of the Hearing Officer of Administrative Law Judge;
 2. Motions filed seven (7) days prior to the hearing on the merits may be specially set for hearing if not heard at a pretrial conference; unless the movant submits a Notice of Hearing on the Motion as set forth below, it shall be presumed the motion shall be heard and considered at the time of the hearing on the merits. Motions filed within seven (7) days of the hearing on the merits shall be heard and considered at the time of the hearing on the merits. Motions entered upon the open record may be made orally or may be submitted in writing; motions entered at this time shall be orally argued before the Hearing Officer or Administrative Law Judge, who may take his ruling under advisement, or may rule from the bench on the matter. After the record is closed in a case pursuant to the hearing on the merits, all motions must be in writing. Motions to Reopen or for Rehearing must be filed within ten (10) days from the date of the issuance of the order, setting forth the grounds for such motion.
 3. Legal Briefs may be required by the Hearing Officer or Administrative Law Judge upon his/her own motion or upon the motion of any party, or may be voluntarily submitted by counsel; the Hearing Officer may limit the length of any brief (s)he requests.
 4. Amendments to pleadings may be made orally on the record in a case and noted in the report of the Hearing Officer or Administrative Law Judge where justice and expediency are served; otherwise, an amended document may be filed in the case and treated as the original document amended; no amendment shall be permitted which alters the original caption in any manner.
 5. Dismissal of a case is effectuated by the filing of the appropriate document; any dismissal shall set forth the status of the case and state whether the matter is dismissed with or without prejudice.

- a. The Petitioner may at any time prior to the opening of the record dismiss the action, such Dismissal shall be signed by the Commission's representative;
 - b. After the record in any case has been opened, and pursuant to successful argument of a Motion to Dismiss, the Hearing Officer or Administrative Law Judge shall dismiss the case with or without prejudice; the prevailing party shall submit an order Dismissing the Case for the signature of the Hearing Officer or Administrative Law Judge and the Director of the Commission.
6. Intervention, Joinder and Consolidation of Parties or Proceedings may be accomplished by motion of any person interested in the subject matter of the case.
 7. Appeals must be timely filed; the Notice of Hearing setting the Appeal shall be submitted by the appellant as set forth below in Subsection D. of this rule, and shall be treated as a matter specially set;
 - a. The right to appeal the Order of the Commission issued by the Director of the Commission is automatic, and must be filed within fifteen (15) days of receipt. At its discretion, the Commission may stipulate the exhaustion of administrative remedies permitting first appeal of the Order to the State courts;
 - b. Appeal from Commission orders to State courts must be taken within thirty (30) days after appellant is notified of the order.
- D. Subsequent pleadings filed in a case may be specially set for hearing apart from the hearing on the merits where appropriate documents are timely prepared and submitted to the Director of the Commission.
1. The movant or appellant shall prepare two (2) documents for filing where he desires a matter to be specially set: his Motion or appeal, and a Notice Setting Hearing.
 2. The said Notice shall be submitted with time and place spaces left blank; the Director or his designated employee shall complete the blank portions of the Notice; the signed Notice shall be filed in the case, and the document shall otherwise be treated as any other subsequently filed document under Subsection C. of this Rule, above.

RULE 6: CONTINUANCES

A party to a hearing before ABLE Commission may request a continuance, so long as such request is timely made and director the Hearing Officer or Administrative Law Judge assigned to hear the case. Upon the granting of a continuance, the Hearing Officer shall set a new hearing date and notify all parties, and cause such change to be entered in the permanent journal records of ABLE Commission.

1. Oral request for continuance made at least two (2) days prior the hearing date at issue, when pursuant to agreement of the parties, shall be granted at the discretion of the Hearing Officer or Administrative Law Judge after a showing of good cause;
2. Any other request for continuance shall be made in writing by motion (See Rule 5). Motions for continuance which are presented at the time of the hearing shall not be entertained favorably unless clear and convincing good cause for the continuance is shown.

RULE 7: PRETRIAL CONFERENCE

If any party or the Hearing Officer or Administrative Law Judge feels that a pretrial conference would be beneficial, a conference may be set at a mutually agreeable time by the Hearing Officer or Administrative Law Judge. The conference is an informal proceeding conducted by the Hearing Officer or Administrative Law Judge, held for the purpose of narrowing the issues and disposing of preliminary matters. Reasonable notice shall be given to the parties.

The Hearing Officer or Administrative Law Judge shall prepare a Pretrial Order reflecting the rulings and stipulations made at the pretrial conference.

RULE 8: DISCOVERY

The Hearing Officer or Administrative Law Judge, upon his own motion or on the motion of any party showing good cause may:

1. Cause the issuance of a subpoena and/or subpoena duces tecum compelling the attendance of any party or any witness, or compelling the production of documents or other tangible items at any oral hearing;
2. Require either party to complete interrogatories;
3. Commission the taking of depositions and direct the production of documents and tangible objects at the time and place of deposition;
4. Direct any party to allow entry of Commission personnel upon property for any lawful purpose or for making any inspection which is reasonably calculated to lead to the discovery of evidence material to any hearing; and
5. Cause the issuance of protective orders pursuant to discovery attempts.

RULE 9: CONDUCT OF HEARINGS

Hearings will be convened by the Hearing Officer or Administrative Law Judge, appearances noted in the record, and any motions or preliminary matters will be considered. Each party shall have the opportunity to present its case, call and examine witnesses, offer documentary evidence into the record and make closing arguments. Each party shall have the opportunity to cross examine opposing witnesses on matters covered in direct examination, and at the discretion of the Hearing Officer or Administrative Law Judge, upon matters relevant to the issues even where not covered in direct examination. Any objection to testimony shall be stated upon the record. The Hearing Officer or Administrative Law Judge may question any party, witness or representative of a party. The Hearing office or Administrative Law Judge may hold the record open for stated purposes. Parties may be required, at the discretion of the Hearing Officer or Administrative Law Judge, to submit proposed findings, conclusions and recommendations and may request that the record be held open for this or other purposes. The Hearing Officer or Administrative Law Judge may take any matter under advisement and continue the case for the purpose of making deliberations on any matter.

RULE 10: EVIDENCE

Incompetent, irrelevant, immaterial or unduly repetitive evidence may be excluded by the Hearing Officer or Administrative Law Judge. The rules of Evidence as applied in nonjury, civil cases in State courts shall be followed except where it is necessary to ascertain facts not reasonably susceptible of proof under those rules, and in

such event, evidence not admissible thereunder may be admitted, unless precluded by statute, if it is of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs. The Hearing Officer or Administrative Law Judge is not strictly bound by the Rules of Evidence, and although (s)he will always consider the best evidence rule, (s)he may allow hearsay evidence when pertinent and where allowed by statute. The Hearing Officer or Administrative Law Judge shall give effect to rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record.

RULE 11: WITNESSES AND PENALTY FOR FALSE STATEMENTS

A Hearing Officer or Administrative Law Judge may require the parties to any ABL Commission case to indicate the persons they expect to call as witnesses. The testimony of witnesses shall be made under oath or affirmation, and the making of false statements may subject a witness to penalties of perjury. Parties and witnesses shall appear at the appointed time and place of the hearing and shall be present in the hearing chamber where they shall remain unless and until the Rule is invoked to sequester the witnesses.

RULE 12: OFFICIAL NOTICE

The Hearing Officer or Administrative Law Judge may, upon request of any party or upon his/her own motion, take official notice of matter which judges of the State courts of Oklahoma can judicially notice and of facts within his own personal knowledge or within the specialized knowledge or expertise of the ABL Commission. Such official notice shall be stated on the record, and the party who requests the official notice must state upon the record sufficient information to enable the Hearing Officer or Administrative Law Judge to comply with the request.

RULE 13: RECORDING AND TRANSCRIPTION OF ORAL HEARINGS

The evidence, i.e., the testimony offered under oath, comments of counsel and the Hearing Officer or Administrative Law Judge, offers of documentary evidence and rulings made during the course of the hearing in contested cases heard by the Hearing Officer or Administrative Law Judge, shall be recorded by the Commission. Proceedings which are not in evidence, i.e., pretrial conferences will not be recorded unless requested by either party. A copy of the transcript of the hearing may be furnished to any party pursuant to written request and the payment of a reasonable fee established by the Commission.

RULE 14: REPORT OF THE HEARING OFFICER/ADMINISTRATIVE LAW JUDGE

Pursuant to the hearing on the merits in any case, the Hearing Officer or Administrative Law Judge shall timely prepare and file with the Commission his report, containing findings of fact, conclusions of law, and recommendations as to the disposition of the case.

RULE 15: ORDER ISSUING FROM A HEARING ON THE MERITS

Within the statutory prescribed period, and in consideration of the Report of the Hearing Officer or Administrative Law Judge in the case, an Order shall issue pursuant to every hearing on the merits, which shall be signed by the Director or Commissioner of the ABLÉ Commission.

The order shall affirm or disaffirm in total or in part the Report of the Hearing Officer or Administrative Law Judge, and shall dispose of the issues of the case.

The original document shall be filed with the Commission, and copies of the Order, Report of the Hearing Officer or Administrative Law Judge attached and incorporated, shall be sent by certified mail, return receipt requested, to each party of record. The Order shall become final if not appealed within fifteen (15) days.

RULE 16: DEFAULT JUDGEMENT

Where it is proved upon the record that a party in an ABLÉ Commission hearing has been provided legally adequate notice of the action pending against him, and where a party fails to appear at the hearing on the merits, or any subsequent proceeding, all proven allegations asserted by ABLÉ Commission or the opposing party shall be taken as confessed, and, upon motion of counsel, a default judgment shall be entered against Respondent, assessing the penalty allowed by law in the circumstances.

RULE 17: COMPUTATION OF TIME

In computing the period of time prescribed or allowed by these Rules, the period shall begin to run on the day after the act, event or default identified and shall conclude on the last day of such computed period, unless it be a Saturday, Sunday or Legal Holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday or Legal Holiday.

RULE 18: EXTENSION OF TIME

Unless otherwise provided by statute concerning timely filing of extensions of time with regard to pending cases, the time for doing any act prescribed or allowed under these Rules may be extended by the Hearing Officer or Administrative Law Judge upon written motion filed prior to the expiration of the applicable period of time. The Motion shall state good cause for such extension of time, and shall be subject to rule 5 of these Rules.

RULE 19: SERVICE

- A. Service of a **Notice of Hearing on the Merits**, described herein in Rule 5(B), shall require personal delivery or certified mail.
 1. Personal delivery is hand delivered to or posted at the last known residence or last known place of business of the party to be served or his representative of record, to a person fifteen (15) years of age or older; the process server shall certify such delivery, setting forth the circumstance under which service was accomplished.
 2. Certified mail shall be addressed to the last known residential or business address of the party to be served or his representative of record, and requires the return of a signed, dated receipt of delivery.

B. Service upon ABLE Commission shall be deemed accomplished by personal delivery or by certified mail, addressed to ABLE Commission, 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma 73105.

Service of subsequent pleadings, as prescribed herein in Rule 5(C) upon a Respondent shall be deemed adequate upon mailing, by regular mail, postage prepaid, to the last know residential or business address of the party to be served or his representative of record. Service of said subsequent pleadings upon ABLE Commission shall be deemed adequate by mailing, by regular mail, postage prepaid, to ABLE Commission, 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma 73105. Service by regular mail is complete with the filing of an Affidavit of Mailing verifying same. Service of all subsequent pleadings may be accomplished by hand delivery to the same address where mailing by regular mail would suffice.

RULE 20: BURDEN AND ORDER OF PROOF

In all proceedings before ABLE Commission, unless otherwise provided by law, the burden of proof shall be upon the Petitioner to make a prima facie case against Respondent before any penalty or disciplinary action can be assessed or taken against Respondent. In Charity Games (bingo) protests, the burden of proof is on the license applicant to overcome allegations asserted in the protest as filed. If, upon hearing, the Petitioner fails to prove his case, the Hearing Officer or Administrative Law Judge may dismiss the case for lack of sufficient evidence.

The Order of proof in cases brought by the Commission is as follows:

1. Opening statements by Petitioner then Respondent,
2. Presentation of the Petitioner’s Case,
3. Responsive presentation by Respondent followed by cross examination,
4. Rebuttal by Petitioner,
5. Sur rebuttal by Respondent,
6. Closing arguments by Petitioner and Respondent.

RULE 21: PENALTIES

In all proceedings before the ABLE Commission, unless otherwise provided and/or prohibited by law, including but not limited to the Oklahoma Administrative Procedures Act (Title 75)(, penalties provided in Title 37 and the penalty schedule in the ABLE Commission Rules and Regulations (OAC 45:10), legal counsel for the ABLE Commission, the Hearing Officer or Administrative Law Judge, and the Director, may, in determining settlement orders and fines, license suspensions and/or license revocations for final orders, consider mitigating and aggravating factors such as, by not limited to: previous violations; relevant history of respondent; penalties assessed in similar cases; existence, number and severity of violations arising from the same; or related incident(s); interests of justice; interests of the State; public policy; strength of case; likelihood of appeal and, costs to State; evidence of remedial measures or compliance with law and/or rules; amendment resulting of charge to conform to the facts of the case; and evidence of presence as absence of mens rea, scienter or malicious intent

RULE 22: OKLAHOMA ADMINISTRATIVE PROCEDURES ACT

ABLE Commission falls within the purview of the Oklahoma Administrative Procedures Act (OAPA). For ABLE Commission emergency authority and procedures, relief from ABLE Commission Orders and any other matter not treated herein, reference should be made to the OAPA, found at 75 O.S. Section 301 et seq.

RULE 23: APPEAL TO COMMISSION EN BANC

Respondent's first appeal from an adverse Order of the Director is to the Commission en banc and requires no legal basis for their consideration. This appeal may be filed within fifteen (15) days from the receipt of the Order of the Director and it must be signed and dated by the appealing party.

RULE 24: APPEAL OF COMMISSION ORDER

Respondent's rights of appeal from an adverse Commission Order entered pursuant to Rule 22, is governed by Title 75, Section 318, et seq, and must be filed within thirty (30) days from rendition of a final order by the Commission.

RULE 25: OPERATIVE DATE OF GUIDELINES

These guidelines were operative immediately on the day of , 2006. They govern all proceedings and cases commenced thereafter, as well as all other proceedings in cases pending on that date, except as to the extent that, in the opinion of the Hearing Officer or Administrative Law Judge, there application is a pending case would not be feasible or would work an injustice.