

TITLE 30: Professions and Occupations

PART 1601: Mississippi Real Estate Commission

Part 1601: Chapter 5: Complaint Procedures; Administrative and Disciplinary Proceedings

Rule 5.2 Definitions.

For Part 1601, Chapter 5 only, the following terms have the meanings indicated:

- A. **Administrative Hearing:** A formal hearing, with record made by a Certified Court Reporter before a Commission Hearing Panel, or Administrative Hearing Officer, to consider and adjudicate disciplinary proceedings or other matters pending on the administrative docket of the Commission.
- B. **Administrative Hearing Officer:** A staff attorney employed by the Attorney General's office and designated by the Attorney General for the purpose of holding hearings, hearing evidence and rendering decisions on matters determined to be the subject of an administrative hearing.
- C. **Administrative Hearing Officer Option:** The option for a licensee/Respondent to elect to have his or her Administrative Hearing conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. When the Administrative Hearing Officer Option is elected, the Administrative Hearing Officer shall have the same powers to conduct administrative hearings and render decisions as would the Commission Hearing Panel.
- D. **Agreed Order:** A written agreement submitted by the licensee(s) and Commission Staff resolving a Formal Complaint or other matter pending on the administrative docket of the Commission.
- E. **Allegation:** A claim or accusation of a violation of the Mississippi Real Estate Commission License Law (the Real Estate Brokers License Law of 1954) and/or the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- F. **Appellant:** A Respondent who makes an appeal of an adverse order, ruling or decision of the Mississippi Real Estate Commission to a circuit court or other appellate court, as may be provided by law.
- G. **Commission:** The Mississippi Real Estate Commission, including its' Commissioners and authorized employees or legal counsel acting on its behalf.
- H. **Commissioners:** The seated members of the Mississippi Real Estate Commission as appointed by the Governor with the advice and consent of the Senate pursuant to Miss. Code Ann. §73-35-5.

- I. Commission Hearing Panel: The three to five-member panel of the Commissioners designated to hear disciplinary proceedings, pursuant to Miss. Code Ann. §73-35-21. Commissioners may be designated to sit on an Administrative Hearing Panel on a rotating basis.
- J. Complaint Counsel: The attorney retained by the Commission to prosecute licensees and other alleged violators of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- K. Date of Service/Delivery: Date of Service means the delivery of a notice, order, or other document by the Commission to a licensee or other party. When delivery is by hand-delivery or personal delivery, delivery is complete when handed to a licensee or other party, or left at the office, dwelling house or usual abode of the licensee or other party with some person of suitable age and discretion. Delivery by electronic means is complete when the licensee or party acknowledges receipt. Delivery by mail is complete upon the date of mailing.
- L. Due Process: Due Process in administrative/disciplinary proceedings before the Mississippi Real Estate Commission means the provision of notice to applicants or licensees of any alleged deficiencies or allegations of violations of the Mississippi Real Estate Commission License Law, Commission Administrative Rules or other applicable laws, and the opportunity to respond and defend against those alleged deficiencies or allegations of violations at an administrative hearing.
- M. Executive Director: The Administrator, Chief Executive Officer, or other designee employed by the Commissioners to manage the day-to-day operations of the Commission.
- N. Formal Complaint: A formal document charging a licensee with a violation of the Mississippi Real Estate Commission License Law, and/or the Commission's Administrative Rules, and/or other laws governing the practice of real estate. A Formal Complaint may result following the conclusion of an investigation of a verified/sworn complaint submitted to the Commission or may be initiated by the Commission.
- O. Full Commission: A majority or quorum of the seated Commissioners of the Mississippi Real Estate Commission.
- P. Hearing Officer: The Chairman or designated Commissioner, or Administrative Hearing Officer, who will preside over administrative hearings before the Commission and exercise those powers as defined in the Administrative Rules of the Mississippi Real Estate Commission.
- Q. Informal Conference: An informal interview or meeting, occurring at any time prior to the Commission entering any order with respect to pending allegation(s), between the Investigative Review Committee, Investigator(s), and the Respondent, and/or Respondent's legal counsel, to explore the issues involved in the allegation(s) and to

facilitate the disposition of the allegation(s).

- R. Informal Resolution: A written agreement submitted by the licensee(s) and Commission resolving an allegation of violation(s), or other matter(s) pending on the administrative docket of the Commission wherein the licensee has waived the service of a Formal Complaint and Notice of Hearing.
- S. Investigative Review Committee: An intra-agency committee consisting of Commission Investigative Staff and legal counsel, assembled for the purpose of reviewing allegations of violations of the Mississippi Real Estate Commission License Law and/or the Commission's Administrative Rules and/or other applicable laws governing the practice of real estate.
- T. Licensee: Any individual licensed to practice by the Mississippi Real Estate Commission.
- U. Notice of Hearing: A written notification to a licensee to appear before the Commission, or Administrative Hearing Officer when applicable, for an administrative hearing at a scheduled place, date, and time.
- V. Mississippi Real Estate Commission License Law: §§73-35-1, *et seq.*, and §§89-1-501, *et seq.*, of the Mississippi Code of 1972, as amended.
- W. Respondent: A licensee or applicant against whom the Commission has initiated a formal or informal action.
- X. Time Period: Unless indicated otherwise, when the period is stated in days or a longer unit of time:
 - a. In computing any period of time prescribed or allowed by these rules, the day of the event that triggers the period shall not be included.
 - b. Every day, including intermediate Saturdays, Sundays, and legal holidays shall be included. However, when any time period prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
 - c. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, as set forth in Mississippi statute(s). In such case, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. In the event a legal holiday falls on a Sunday, the next following day shall be a legal holiday.
 - d. Whenever a licensee has the right or is required to do some act or take some proceedings within a prescribed time period after the service of a notice, order, or other document by the Commission that is served upon him or her by mail, three (3) days shall be added to the prescribed period.
- Y. Verified Complaint: A written, sworn complaint alleging violations of the Real Estate License Law submitted to the Commission for investigation, conclusion of which investigation may result in dismissal of the verified complaint without further action,

or the issuance of a Formal Complaint by the Commission with notice to appear at an administrative hearing.

Z. Work File: Any and all documentation of a real estate transaction maintained by a licensee. This includes, but is not limited to the following when applicable to a real estate transaction:

- 1) Agency Agreements / Working With a Real Estate Broker forms (WWREB)
- 2) Contracts of Sale, with addendums
- 3) Closing documents / Closing Statements
- 4) Co-Op Agreements
- 5) Correspondence sent/received during the course of the transaction when same may be reasonably considered material/germane to the transaction
- 6) Dual Agency Confirmation forms
- 7) Escrow records
- 8) Home Inspection Reports
- 9) Leases
- 10) Listing agreements, including extensions (must be in writing to be valid)
- 11) Offers to Purchase
- 12) Options
- 13) Property Condition Disclosure Statements (PCDS), with Informational Statement or Seller's Statement of Exclusion, when applicable
- 14) Wood Destroying Insect Reports (WDIR)

Source: Miss. Code Ann. §73-35-23, §73-35-25, §73-35-35 (1972, as amended).

Rule 5.3 Investigations of Complaints.

- A. Upon receipt of a verified/sworn complaint, or other allegation of violation of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules or other applicable laws, the Commission's Investigative Staff, with advice and consultation from Commission legal staff/counsel shall make an initial determination whether the information justifies or warrants further investigation. A complaint or inquiry may be dismissed without further investigation based on a determination of either:
- 1) Lack of Commission jurisdiction; or
 - 2) No apparent violation of the Mississippi Real Estate Commission License Law or the Commission's Administrative Rules governing the practice of real estate.
- B. The Commission may initiate an investigation either:
- 1) In response to a written or verified/sworn complaint, or other information received by the Commission alleging violation(s) of the Mississippi Real Estate Commission License Law, the Commission's Administrative Rules, or other applicable laws; or
 - 2) The Commission may initiate an investigation based on information independently developed or corroborated by the Investigative Staff of the Commission that has been reduced to writing, describing said information and the acts or omissions constituting any alleged unprofessional conduct or

violations. Further investigation based upon information independently developed by the Investigative Staff may commence after the written description of alleged violation(s) has been approved in writing by the Administrator.

- C. Upon commencement of an investigation, the Commission will provide written notice to the applicable licensee(s) and their Responsible Broker of the allegations of violations, including copy of any written or sworn/verified complaint submitted to the Commission. No Commissioner, administrator, employee, investigator, representative, agent or attorney of the Commission shall communicate with a licensee in connection with any preliminary or formal investigation associated with alleged violations of licensing law or regulations prior to the delivery of written notice to the licensee's Responsible Broker.
- D. Licensees will be required to submit their entire work file/documentation of the real estate transaction(s) at issue, along with Affidavit, and his/her written, notarized response to the allegations, within ten (10) days of the date of service of written notice upon the licensee(s) and his/her Responsible Broker(s).
 - 1. The Affidavit submitted must certify that complete, accurate and true copies of all documents germane to the real estate transaction under investigation are being tendered to the Commission. The Affidavit should be signed by the licensee(s) and signature(s) notarized.
 - 2. The written response of the licensee(s) to the allegations submitted by the complaining party must be signed by the licensee(s) with notarized signature.
- E. Following receipt of the licensee's file documentation with Affidavit and sworn/written response to the allegation(s), said documentation and response will be provided to the complaining party who initiated the complaint/allegations against the licensee, when applicable, for response and for verification of authenticity of transaction documents submitted by the licensee(s).
- F. After any response/rebuttal is received from the complaining party, the response/rebuttal will be provided to the licensee(s) so that each party is fully aware of the complaining party's allegations, and which documents are considered germane to the Commission review and investigation. The Commission may conduct interviews and written (signed) responses may be requested from the parties for clarification.
- G. The Commission is authorized to issue subpoenas for the attendance of licensees and/or witnesses for interviews during the course of an investigation, and for the production of documents and records.
- H. During the course of any investigation, should information be received which indicates acts or omissions on the part of any licensee or licensees not originally the subject of the investigation which might constitute alleged unprofessional conduct or violations, then this information and any alleged charges will be reduced to writing describing said information and the acts or omissions constituting alleged unprofessional conduct or violations. Any new or expanded investigation or initiation of any Formal Complaint against such new licensee(s) based upon such information will commence after the written description of

alleged violations has been approved in writing by the Administrator. Notice shall be provided to the Responsible Broker(s) and licensee(s) to be investigated or charged. From and after that point, all provisions pertaining to investigation of the original licensee(s) shall apply to the new licensee(s).

- I. Licensees have, at all times, the right to retain and consult with legal counsel. Any licensee represented by an attorney of record in proceedings before the Commission shall be entitled to communication through such attorney, and service of documents by the Commission shall be made upon such attorney.

Source: Miss. Code Ann. § 73-35-21, §73-35-23, §73-35-35 (1972, as amended)

Rule 5.4 Results of Formal Investigation.

- A. Upon completion of the formal investigation, the Investigative Review Committee will determine whether there is sufficient cause to believe that a violation exists of the Mississippi Real Estate License Law, the Commission Administrative Rules and/or other applicable laws governing the practice of real estate.
 - 1) Upon a determination of sufficient cause to believe that a violation exists, the Investigative Review Committee shall refer the matter to Commission legal staff for the issuance of a Formal Complaint and Notice of Hearing. The Investigative Review Committee may also make a recommendation for resolution of the matter upon terms to be offered to the licensee.
 - 2) Upon a determination of no sufficient cause to believe that a violation exists, the Investigative Review Committee:
 - (a) Will recommend dismissal of the matter, subject to review and approval of one (1) reviewing Commissioner and subsequent approval by the full Commission; and
 - (b) Upon approval for dismissal, shall notify the Complainant/complaining party and Respondent of the dismissal decision.
- B. In circumstances where Commission Investigative Staff reasonably believe minor violations are established in the investigation, the matter may be concluded, as the individual circumstances may warrant, by:
 1. Dismissal with Letter of Caution, subject to approval by the full Commission (not a reported disciplinary action); or
 2. Informal Resolution with Letter of Reprimand or Suspension held in abeyance, with or without Probation or continuing education courses, subject to agreement and informed waiver by licensee of the issuance of a Formal Complaint and Administrative Hearing, and approval by the full Commission.
- C. A pending Formal Complaint may be resolved by an agreed settlement proposal (Agreed Order) or other Informal Resolution disposition at any time prior to an administrative hearing upon written agreement of the licensee(s) and the Commission Staff, subject to approval of the full Commission at a regularly scheduled Commission meeting.

Source: Miss. Code Ann. § 73-35-23, §73-35-35 (1972, as amended).

Rule 5.5 Commencement of Disciplinary Proceedings/Administrative Hearings.

- A. If an allegation is not resolved informally or the Investigative Review Committee determines that an allegation warrants the issuance of a Formal Complaint, Commission staff may commence disciplinary proceedings by issuing a Formal Complaint and Notice of Hearing.
- B. A Respondent shall be notified of the administrative hearing at least fifteen (15) days in advance of the date set for the hearing by written Notice of Hearing. The Formal Complaint shall set forth the charges and allegations against the Respondent in sufficient detail to provide sufficient disclosure and notice of all alleged violations of the Mississippi Real Estate License Law and/or the Commission Administrative Rules and other applicable laws governing the practice of real estate.
- C. The Commission's staff will serve the Formal Complaint and Notice of Hearing on Respondent, with copy to the Responsible Broker, by:
 - 1) Certified mail, postage pre-paid, to the last known address of the Respondent on record with the Commission; or
 - 2) Personal Delivery; or
 - 3) Electronic Delivery including email or facsimile.
- D. Beginning no later than July 1, 2022, a Respondent will be provided a Notice of Option for Administrative Hearing Officer, along with service of the Formal Complaint and Notice of Hearing. The Notice of Option for Administrative Hearing Officer will set forth the option for the Respondent to request, in writing, that the administrative hearing be conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. A Respondent who chooses to have the administrative hearing conducted by an Administrative Hearing Officer must notify the Commission of that choice within ten (10) days of the date of service of the Formal Complaint, Notice of Hearing and Notice of Option for Administrative Hearing Officer.
- E. A Respondent may file a response to the Formal Complaint but is not required to do so. Any written response to the charges set forth in a Formal Complaint must be filed with the Commission at least ten (10) days in advance of the date set for the hearing.
- F. A Respondent may waive the right to a formal Administrative Hearing. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Commission.
- G. A Formal Complaint may be resolved by agreement at any time prior to an Administrative Hearing by Agreed Order signed by Respondent and subject to approval by the full Commission.
- H. All pleadings or other papers permitted or required to be filed with the Commission in connection with a pending disciplinary/administrative proceeding shall be filed by personal delivery or by certified mail to the office of the Commission, or by email properly addressed to the Commission Administrator. Service is effective upon personal delivery,

mailing or, when delivered by email, upon acknowledged receipt of such email service.

- I. A Respondent who is represented by legal counsel with respect to the disciplinary/administrative proceeding shall personally or through such counsel, give written notice to the Commission of the name, address, and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, pleadings, subpoenas, orders, or other process related to the proceeding shall be served on Respondent through the designated counsel of record until such time as the withdrawal of counsel is filed with the Commission.

Source: Miss. Code Ann. § 73-35-23, §73-35-35 (1972, as amended).

Rule 5.6 Informal Proceedings/Informal Resolutions; Resolution by Agreed Order.

- A. At any time prior to an Administrative Hearing, any matter before the Commission may be resolved through informal proceedings either by stipulation, agreed settlement proposal, or agreed order of dismissal. Any agreed settlement proposal/Agreed Order must be agreed to in writing by the Respondent, upon a knowing and intentional waiver by the Respondent of his or her right to an Administrative Hearing, and subsequently must be approved by the full Commission. An agreed settlement or Agreed Order is not required, is always voluntary, and Respondent licensees retain, at all times, the right to proceed to an Administrative Hearing with full due process. This process may occur at any time prior to the Commission entering any final order with respect to the allegation of violation(s). Informal proceedings may be conducted in person via Informal Conference or by electronic, telephonic, or written communication.
- B. Informal Conferences may include an informal interview or meeting between the Investigative Review Committee, Commission Administrator, and the Respondent and/or Respondent's legal representative to fully explore the issue(s) involved in the complaint and to facilitate the disposition of an allegation of violation(s).
 - 1) Respondent shall have a right to be represented by an attorney of record, of Respondent's choice and Respondent's expense. At any time during the informal settlement conference, should Respondent choose to obtain representation by an attorney and advises Commission staff of such choice, the conference will be discontinued.
 - 2) Exchange of information may take place during the Informal Conference. Respondents are required to answer questions truthfully concerning the allegations and/or formal complaint and cooperate fully.
 - 3) Respondent and Commission Investigative Review Committee participation in the conference is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case to an administrative hearing with full due process.
 - 4) If the parties to an Informal Conference are unable to reach a mutually agreeable resolution and the matter is to proceed to a formal Administrative Hearing, the parties may agree in writing by stipulation to the following:
 - (a) Any undisputed claims, facts, testimony, documents, or issues; and
 - (b) Evidence to be introduced without objection.

- C. Respondent licensees will be allowed the opportunity to challenge and defend against allegations of violations contained in a Formal Complaint/Notice of Hearing at a formal Administrative Hearing with full due process, if Informal Resolution by agreement does not occur.

Source: Miss. Code Ann. § 73-35-23, §73-35-35 (1972, as amended)

Rule 5.7 Pre-Hearing Procedures.

A. Continuances.

Hearings shall be held before the Real Estate Commissioners Hearing Panel at the time and place designated in the Notice of Hearing unless the Commission grants a continuance.

- (a) A request for a continuance must be filed with the Commission at least ten (10) days prior to the scheduled hearing or upon a showing of good cause at any time prior to the hearing.
- (b) No more than two (2) continuances of the hearing will be granted without the approval of the Commission, Commission Chair, or Hearing Officer, for good cause.
- (c) A request for continuance, including one to retain counsel, submitted less than five (5) days prior to the hearing may be made only under unusual or extenuating circumstances. In such event, a request for a continuance shall be granted only if the other parties will not be prejudiced thereby.
- (d) Absent unusual or extenuating circumstances, if any continuance of an administrative hearing is requested or necessitated by Respondent/Respondent's counsel after the commencement of the hearing, any costs incurred by the Commission because of the continuance may be taxed against Respondent as part of any final Order of the Commission. Determination of the sufficiency of unusual or extenuating circumstances necessitating such continuance shall be in the sole discretion of the Hearing Officer.

B. Subpoenas.

- 1) For disciplinary/administrative hearings, the Commission acting by and through its legal staff may subpoena necessary persons and papers on its own behalf and on behalf of a Respondent.
- 2) Before the Commission will issue any subpoena on behalf of a Respondent, the Respondent shall file with the Commission a written request for the issuance of said subpoenas, identifying with certainty the identity and address of the persons to be subpoenaed and/or a concise description of the records to be subpoenaed with the identity and address of the custodian of said records.
- 3) All requests for the issuance of subpoenas shall be filed with the Commission sufficiently in advance of a scheduled hearing date, and no later than fourteen (14) days before the scheduled hearing date. The Commission shall not be responsible for the timely receipt of said subpoenas issued after the deadline.
- 4) All subpoenas issued by the Commission either on its own behalf or on behalf of a Respondent shall be effected by certified mail or by personal

delivery.

- 5) Subpoenas issued by the Commission shall be returnable within ten (10) days to either the Commission or other location as specified in the subpoena.
- 6) The costs for service of subpoenas issued by the Commission, and witness fees and mileage as allowed by law may be taxed as part of the costs of the administrative hearing in the final Order of the Commission.

C. Disclosure.

- 1) Formal discovery is not provided for in proceedings before the Commission.
- 2) No depositions shall be taken in preparation for matters to be heard in a Commission administrative or disciplinary hearing, except, however, by agreement of the parties and upon good cause shown, where hearing depositions may be taken of licensees or other necessary witnesses who will be unavailable for a hearing previously scheduled.
- 3) Prior to an administrative or disciplinary hearing, licensees and/or counsel may, upon request, inspect that pertinent evidentiary material contained in Commission investigative files that is proposed to be offered at the Formal Hearing.
- 4) At least ten (10) days prior to hearing, Complaint Counsel of the Commission shall disclose and permit Respondent or his or her counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of the Commission or the existence of which is known to the Complaint Counsel:
 - (a) Names and addresses of all witnesses proposed to be called in the Commission's case in chief, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
 - (b) Copies of any written or recorded statement of Respondent and the substance of any oral statement made by Respondent.
 - (c) Copies of any criminal record of Respondent, if proposed to be introduced as evidence at the hearing.
 - (d) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the case.
 - (e) All records, documents, physical evidence, or photographs which may be offered as evidence.
- 5) The Commission shall charge a Respondent a reasonable fee, not to exceed fifty cents (\$0.50) per page, payable in advance of delivery of copied documents. Payment must be made by cashier's check, money order, or Commission accepted electronic method. Copies printed on both sides (front and back) shall be considered two (2) pages for copy charge purposes.
- 6) The Commission may deny disclosure authorized by these rules in accordance with applicable statutory and regulatory provisions providing exemptions, including but not limited to: Miss. Code Ann. §25-61-12; and Miss. Code Ann. §73-52-1.
- 7) Upon written request by Complaint Counsel, Respondent or his or her counsel shall promptly disclose and permit Complaint Counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of the Respondent or his or her counsel or the existence of which is known to the Respondent or his or her counsel:
 - (a) Names and addresses of all witnesses proposed to be called in Respondent's

defense, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.

- (b) All records, documents, physical evidence, or photographs which may or shall be offered as evidence in Respondent's defense.
- (c) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the case.

D. Exhibits

- 1) Respondent or his or her counsel shall produce to the Commission copies of all exhibits he or she intends to introduce as evidence in a Formal Hearing at least five (5) business days prior to the date of the Formal Hearing.
 - (a) This provision shall be satisfied if Respondent or his or her counsel previously provided disclosure under Rule 5.7 C to Complaint Counsel and the said disclosure contained no changes from that to be offered into evidence as exhibits.
 - (b) Respondent or his or her counsel shall produce at least six (6) physical copies of exhibits at the Formal Hearing, for any review by the Commission Hearing Panel/Hearing Officer and Complaint Counsel.
- 2) Upon written request of Respondent or his or her counsel, Complaint Counsel shall permit inspection of or produce to the Respondent or his or her counsel copies of all exhibits he or she intends to introduce as evidence in a Formal Hearing.
 - (a) This provision shall be satisfied if Complaint Counsel previously provided disclosure under Rule 5.7 C to Respondent or his or her counsel and the said disclosure contained no changes from that to be offered into evidence as exhibits.
 - (b) Complaint Counsel shall not be obligated to fulfill requests made by Respondent within (5) business days of the date of the formal Administrative Hearing.

E. Failure to Comply.

- 1) In case of the failure of any person to comply with a timely disclosure and/or production of exhibits, the Commission Hearing Panel or Administrative Hearing Officer shall either:
 - (a) Enter an Order prohibiting the noncompliant party from introducing the designated records, or
 - (b) Enter an Order continuing the matter until the next scheduled Formal Hearing time and, if the Respondent is the noncomplying party, tax any costs of the proceeding incurred because of the necessity for continuance of the proceedings against Respondent.

F. Amendment of Pleadings.

- 1) Complaint Counsel may amend a Formal Complaint or Notice of Hearing at any time prior to the scheduled hearing date for the purposes of correcting a clerical error, clarifying facts set forth in the Formal Complaint, or to add additional charges or counts to the Formal Complaint. However, upon any amendment of a Formal Complaint, Respondent will be served with the amended Formal

Complaint, and Notice of Hearing, not less than fifteen (15) days before the scheduled hearing date, or by mutual agreement of the parties.

G. Procedural Decisions.

The Commission Chair or Hearing Officer will be fully authorized to make all necessary procedural decisions on behalf of the Commission, including, but not limited to, matters related to continuances, time extensions, and amendments to Formal Complaints.

Source: Miss. Code Ann. § 73-35-23, §73-35-35 (1972, as amended).

Rule 5.8 Administrative Hearings.

- A. Formal Administrative Hearings are conducted pursuant to Miss. Code Ann. §73-35-23 which provides that hearings may be conducted before the Commission or an Administrative Hearing Officer. When hearings are conducted before the Commission, one Commissioner present at the hearing shall serve as the Hearing Officer for the hearing.
- B. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Commission. Costs incurred for the certified court reporter may be taxed to the Respondent as part of the costs of the proceedings in the final Order of the Commission as allowed or provided by statute or these Administrative Rules. No costs shall be taxed to a prevailing Respondent.
- C. At an Administrative Hearing, Complaint Counsel and Respondent shall have opportunity to present evidence on all issues of fact and argument on all issues of law, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts of the matter.
- D. The Commission Hearing Panel or Administrative Hearing Officer is not bound by strict rules of evidence, but all determinations of violations made by the Commission Hearing Panel or Administrative Hearing Officer must be based upon the preponderance of evidence standard of proof. The designated Hearing Officer shall rule on all evidentiary issues.
- E. All hearings are open to the public pursuant to the Mississippi Open Meetings Law, Miss. Code Ann. §§25-41-1, *et seq.*
- F. In all disciplinary/administrative hearings before the Commission or Administrative Hearing Officer, the record of the case will include:
 - 1) The Formal Complaint and Notice of Hearing;
 - 2) All pleadings and rulings issued;
 - 3) Evidence received or considered at the hearing;
 - 4) Certified transcript of the proceedings taken by a certified court reporter; and
 - 5) The Commission's Order or other disposition made by the Commission.

- G. Formal Hearings before the Commission or Administrative Hearing Officer shall be conducted in the following order:
- 1) Opening statements
 - 2) Complaint Counsel's case in chief
 - 3) Respondent's case in chief
 - 4) Complaint Counsel's rebuttal
 - 5) Closing statements, if requested
- H. Questioning of witnesses shall be conducted in the following order:
- 1) Direct examination
 - 2) Cross examination
 - 3) Redirect examination
- I. The Hearing Officer will have the authority to preside over the hearing in accordance with the requirements of the case in a manner that ensures due process.
- J. The Commission Hearing Panel or Administrative Hearing Officer shall render a decision, setting forth Findings of Fact and Conclusions of Law and final Order. Although the Commission Hearing Panel or Administrative Hearing Officer's decision may be announced immediately following deliberations, adequate time shall be allowed for preparation of the written Order. A copy of such order shall be sent to Respondent via certified mail at his or her last known address or served personally upon Respondent. A copy shall be sent to Respondent, Respondent's counsel of record and Responsible Broker for Respondent using email addresses on file.

Source: Miss. Code Ann. §73-35-23, §73-35-25, §73-35-35 (1972, as amended).

Rule 5.9 Appeals of Commission Orders/Rulings.

- A. An applicant, Respondent/licensee or other person aggrieved of an adverse order, ruling or decision of the Commission, or Administrative Hearing Officer, shall have the right to appeal to the circuit court of the county of residence of the applicant, licensee, or person, or of the First Judicial District of Hinds County, within thirty (30) days from the service of notice of the final Order or action of the Commission.
- B. Satisfactory bond in the amount of Five Hundred Dollars (\$500) shall be posted with the court upon filing of any appeal for the payment of any costs which may be adjudged against Appellant applicant or licensee(s).
- C. Filing, docketing and procession of appeals shall follow the requirements set forth in Miss. Code Ann. §73-35-25, other applicable laws, and the Uniform Circuit and County Court Rules (U.C.C.C.R.).
- D. Any order, rule or decision of the Commission or Administrative Hearing Officer shall not take effect until after the time for appeal to the court has expired. If an appeal is taken by a defendant or Respondent/licensee, such appeal shall act as an automatic supersedeas and the court shall dispose of the appeal and enter its decision promptly. However, the Commission may file a motion within ten (10) days of the date of filing the notice of appeal

and request the court to lift the supersedeas upon the Commission's showing, by clear and convincing evidence, that immediate and irreparable harm will or may occur if the licensee or person aggrieved were to continue operating as a licensee.

E. Actions taken by the Commission in suspending a license when required by Miss. Code Ann. §93-11-157 or §93-11-163 are not actions from which an appeal may be taken pursuant to these Rules. Appeals of such actions are governed by §93-11-157 or §93-11-163.

Source: Miss. Code Ann. §73-35-25, §73-35-35 (1972, as amended).