

You have Rights as a Respondent

You have just received a petition filed against you by the Enforcement Section of the Motor Vehicle Division. You are now a respondent in a law suit. This pamphlet was prepared to answer some of the most frequently asked questions. If you still have concerns after reading the following, you should call 800-687-7846 and ask for the docket clerk.

I just received a Petition; what is this?

More than likely someone filed a complaint alleging you did something wrong. An investigation was completed and it was determined that a formal Petition should be filed against you. The Petition is a legal instrument which states what violations you allegedly committed and asks for a civil penalty (fine) or action against your license. The docket number is at the top of the page and you should refer to this number whenever you contact the agency's office.

What do I do now?

The allegations against you have to be proven (you are "innocent" until proven "guilty"). This petition is sent to you to give you an opportunity to tell MVD your side of the story. You are not required under the law to do anything. If you do nothing a Notice of Hearing will be sent to you requiring you to show up for the hearing at the date, time and place set out in the Notice of Hearing. However, it is recommended that if you desire to settle this case without coming to Austin to attend a hearing, that you call the attorney who signed the cover letter to the Petition to discuss the case. The attorney can explain to you in more detail what the alleged violations are and how you can

settle the case. The best practice is to always call the attorney first before showing up in Austin at a hearing.

Do I have to stop running my business?

You may continue to operate your dealership as usual and you can renew your license until such time as a final order is entered by the Director. Of course, it is recommended that you stop any activity that is described as illegal in the complaint.

Will I pay a fine?

If you have a reasonable excuse or explanation for the alleged violation, the attorney may offer to dismiss the case with no fine. However, if the assigned staff attorney cannot agree to dismiss the case, you should feel free to negotiate with the attorney for a lower fine if you have good cause.

How much are the fines?

The Enforcement Section has guidelines on fines which take into consideration the seriousness of the violation, the history of the licensee, the harm to the consumer, if any, and what the licensee has done, if possible, to correct the violation.

What if I don't want to settle and pay the fine?

You are not required to settle with the attorney. You have a right to appear at a hearing and present your case to the administrative law judge who has been assigned to your case. That judge will consider whether you committed the alleged violation and what, if any, civil penalty should be recommended for you to pay.

Are all the hearings in Austin?

All hearings are scheduled to be held in Austin at the State Office of Administrative Hearings. The address and phone number are contained in the cover letter of the Notice of Hearing you received along with the date and time of your hearing. Once in a while in large cases which involve many witnesses a case will be moved out of Austin.

Should I hire a lawyer?

While the administrative process is an informal one, the hearings are conducted under the Rules of Evidence and Rules of Procedure. Most of the respondents do not appear with an attorney but some do and the choice is up to you. However, if the violations are serious and the enforcement attorney has told you he is looking for a large civil penalty or possible revocation of your license, you are certainly encouraged to hire an attorney.

Can I find out more about the complaint without settling before the hearing?

Yes, many times the enforcement attorney will voluntarily send you papers from the file for you to look at if you so desire. While the majority of cases are simple and do not require it, you may request a pre-hearing conference. At that conference a judge will set the dates for the procedure called "discovery" where you may take depositions of the state's witnesses or formally request copies of the state's documents. The enforcement attorney has the same right. Some things you request may be exempt, but the judge will decide what can and cannot be discovered. At the pre-hearing conference a special date for your hearing is also set.

Can I change the hearing date?

If you call the enforcement attorney, he or she will more than likely agree to a first time continuance. If you cannot reach an agreement, or it is the second time you want to continue the case, you should call the docket clerk and let her explain to you how to file a Motion for Continuance. You should not wait until the last moment to request a continuance, if possible.

What exactly happens at a hearing?

As stated before, the hearings are fairly informal though they do follow rules of evidence and procedure. If you do not have an attorney, the judge will allow you to ask questions as the hearing goes along. The enforcement attorney will present evidence first by calling witnesses and presenting documents to the judge. You will have a chance to object to the documents and question each witness. Then you will present your case. You should be sure and bring your witnesses and any documents you may have that will help explain or prove your case. Under the rules of evidence, you cannot give hearsay testimony. Roughly, that means telling what a person said when that person is not present to be questioned by the other side. This is why you need to bring the person to the hearing if that person's testimony is important to your case. Also, you should bring original documents, if you have them, and at least two copies of the documents, so you may give one to the judge and to the other party. No decision is made on that day.

So when do I get a decision?

After the hearing, the judge may or may not ask you and the enforcement attorney to prepare written closing arguments. The

judge will review all the evidence and argument and write what is called a proposal for decision (PFD). This PFD is the judge's recommendations as to whether or not the violation was committed; what fine, if any, should be paid by the respondent; and how the judge came to that conclusion. The PFD is not the final word on the case. If you or the enforcement attorney disagrees with the result recommended in the PFD, special exceptions to the PFD may be filed setting out why the party believes the judge reached the wrong conclusion. The other party has an opportunity to reply to the exceptions. The PFD along with the exceptions and replies are presented to the Final Order Authority which may be either the Motor Vehicle Board or the Director of the Division, depending on the type of violation. You will have an opportunity to make an oral presentation before the Board or Director about your case. The Final Order Authority may approve the PFD as it stands, change certain parts of the PFD before approving it, or send the entire case back for a new hearing. If the PFD is agreed to, the Final Order accepting the PFD is signed and the order becomes final in 20 days.

Can I appeal the Final Order?

Yes, in the 20-day period after the final order is signed, you must file a Motion for Rehearing explaining why you should have another hearing. The Motion for Rehearing will be given to the Final Order Authority to decide whether or not to grant you another hearing. If your motion is denied, then you must comply with the order. That final order can be appealed to the District Court in Travis County, but it is highly recommended that you hire an attorney, if you haven't done

so already, to take the appeal any further. You must file a MFR in order to appeal to the District Court. If you miss the 20-day deadline to file the MFR, you cannot appeal.

When do I pay the civil penalty?

If you have reached an agreement with the enforcement attorney before a hearing, the attorney will send you an Agreed Order. You should sign that order and send it back with your check as instructed in the cover letter. If you have gone through the hearing process, and a violation is found, you must pay the civil penalty when the final order is signed and becomes final. If you do not pay your civil penalty further enforcement action may be taken and you will not be allowed to renew your license.

What would happen if I just don't show up or answer my mail?

If you fail to call the attorney or docket clerk to request a continuance and do not show up on the hearing date, the hearing will be held without you. The enforcement attorney will present evidence and ask for a fine or possibly a revocation of license. If you show up at the hearing without filing an answer, there is a possibility that the hearing will be reset. So it is important to call and talk to the attorney if you plan on showing up for the hearing. If you do not show up at the hearing and you did not file a reply to the complaint specifically admitting, denying, or otherwise explaining the allegations in the petition, all the allegations contained in the Petition and Notice of Hearing are found to be true. The judge will then submit a proposed Order of Default to the Final Order Authority for consideration. If approved, you are held responsible to comply with what is in the Default Order (for example, paying a fine), a

copy of which will be mailed to your mailing and physical addresses. If you do not abide by the Default Order, you may lose not only your current license, but also possibly the right to renew the license or apply for a new one.

Can I just call and talk to the judge?

You cannot call the judge just to tell your side of the story. That is what hearings are for. Neither the respondent (you) nor the complainant (enforcement) may talk to the judge without the presence of the other person either in person or on a conference call. This is to prevent one side from telling its side of the story without the other person having an opportunity to respond. If you feel the enforcement attorney is being unfair or is treating you badly, you are encouraged to call either the attorney's supervisor or the docket clerk and ask for advice.

PREPARED BY
Texas Department of Motor Vehicles
Motor Vehicle Division
P.O. Box 2293
Austin, Texas 78768-2293
512-416-4800
800-687-7846
Fax: 512-302-2328
E-mail to:
MVD-Scancenter@dmv.tx.gov



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RIGHTS OF RESPONDENTS

IN COMPLAINTS FILED BY
THE ENFORCEMENT
SECTION OF
**THE MOTOR VEHICLE
DIVISION**



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.