

IRRC
March 13, 2001
Page 3

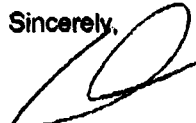
To allow the Department to file a motion to dismiss for untimeliness in advance of a hearing before the hearing examiner without requiring the issuance of a rule to show cause would prohibit any type of meaningful record to be developed in those cases in which the motorist wishes to appeal a pre-hearing dismissal by the hearing examiner. The requirement of the issuance of the rule to show cause would further allow the party seeking relief to have a hearing on the issue of the timeliness of the request for a hearing pursuant to 491.9(e) entitled *Notification to Parties*.

Requiring the Department to utilize the rule to show cause would also protect out-of-state residents whose driving privileges are being canceled due to an unresolved PennDOT restoration requirement which may pop up in the National Driver Registry. Out-of-state residents are at a disadvantage in that their home state attorney may be unfamiliar with Pennsylvania law and unlicensed to practice in Pennsylvania which may actually hurt the out-of-state motorist seeking administrative relief. The rule to show cause would enable the out-of-state motorist to plead the timeliness of their case in writing to the hearing examiner.

If you have any questions or comments, please feel free to contact me.

Thank you for your consideration.

Sincerely,



David E. Hershey

DEH:tk

cc: Office of Chief Counsel,
Pa. Department of Transportation

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INDEPENDENT REGULATORY
REVIEW COMMISSION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

www.dot.state.pa.us



November 15, 2000

Original: 2070

Lawrence J. DiAngelus
14 West Front Street
Media, PA 19063

Dear Mr. DiAngelus:

According to Mary Wyatte, Independent Regulatory Review Commission (IRRC) Chief Counsel, you have reconsidered waiting for the final approval of the Department's pending administrative practice and procedure regulations to receive a copy and have instead decided you would like a copy of the regulation as it was submitted last week to the IRRC and the standing committees for final review.

Enclosed please find a copy of the pending regulations, along with the preamble and comment document pertaining to the previous publication of the Notice of Proposed Rulemaking for these regulations last October. If there are no changes made prior to final publication, you will not receive a second copy of the regulations upon their publication. If you require anything further, please contact me.

Sincerely,


Jan Matthew Tamanini
Regulatory Counsel

cc: Mary Wyatte (w/o attachment)
Matthew Haeckler

Attachment

PENNSYLVANIA ASSOCIATION OF DRIVER LICENSE ATTORNEYS

14 WEST FRONT STREET
MEDIA, PENNSYLVANIA 19063

Original: 2070

LAWRENCE J. DIANGELUS
PRESIDENT

Telephone: (610) 565-5900
Fax: (610) 565-8548

March 9, 2001

Mary Wyatte, Esquire
Chief Counsel
I.R.R.C.
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Chapter 491 Regulations

Dear Ms. Wyatte:

On behalf of the members of the Pennsylvania Association of Driver License Attorneys (PADLA), I wish to express some concerns about the proposed changes and amendments to Chapter 491. I also wish to be heard at the scheduled meeting of the Commission on March 22, 2001.

Our first concern is with the proposal relating to Section 491.7(b). The Department's refusal to accept telefacsimile filing is unacceptable, especially in light of the recent developments in technology for facsimile machines and the geographical location of our members. Facsimile machines are now compact enough to fit on a desktop and no longer need a singular dedicated telephone line. Thus the Administrative Docket Clerk could have such a machine on her desk and attach it to her regular telephone line at no additional expense to the Department. Security would not be a problem because only the Clerk would have access to this machine. Additionally, the members of PADLA are located throughout the State, in places such as Pittsburgh, Philadelphia, Reading, West Chester, Clearfield, Stroudsburg and Scranton. If one of our members was up against a filing deadline because of the new 30 day filing requirement, and had to drive to Harrisburg to meet this deadline, would it not be much easier to allow telefacsimile filing?

Our second concern relates to Section 491.3(b)(ii). Setting a thirty day deadline from the date "the person knew or should have known" is unreasonable in light of the present Departmental procedure for notifying persons that they are not receiving credit toward a suspension. To this writer's knowledge there is no Departmental procedure for notifying persons that they are not

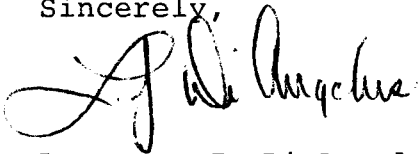
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REVIEW COMMISSION

Mary Wyatte, Esquire
March 9, 2001
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receiving credit. Thus, there is no known procedure for establishing when an operator "knew or should have known". According to the proposed regulation this determination is left entirely to the discretion of the Department hearing officer. Further, there appears to be no process of appeal from the determination of the hearing officer that a request is deficient under this new thirty day rule.

For the above reasons, we, the members of PADLA, ask that the Commission reject and disapprove the Department's pending practice and procedure regulations resubmitted to the I.R.R.C. on March 2, 2001.

Sincerely,



Lawrence J. Di Angelus, Esquire
President

LJD/jcc

cc: David Hershey, Esquire
Craig A. Sopin, Esquire
Charles G. Nistico, Esquire
Shawn Stevenson, Esquire