



**NEW MEXICO ADMINISTRATIVE HEARINGS OFFICE**  
Willie Ortiz Building, 2600 Cerrillos Road | P.O. Box 6400, Santa Fe, NM 87502  
Phone: (505) 827-0358 | Fax: (505) 827-0500



**STANDING ORDER #22-01 OF THE CHIEF HEARING OFFICER**

**ORDER UPDATING IN-PERSON HEARING PROTOCOLS**

In light of recent changes to the relevant public health order and other Department of Health and C.D.C. guidance, consistent with my statutory authority to manage the operations of the Administrative Hearings Office and my regulatory authority under 22.600.1.9 NMAC to issue standing orders, I, Brian VanDenzen, Chief Hearing Officer, do hereby **ISSUE** the attached and incorporated updated in-person hearing protocols, which shall serve as standing orders of procedure during the current pandemic in order to comply with the mandatory, controlling public health order.

**IT IS SO ORDERED on this 18<sup>th</sup> day of February 2022.**

A handwritten signature in blue ink, appearing to read "B. VanDenzen".

Chief Hearing Officer  
Administrative Hearings Office

**In-Person Hearing Protocols (February 18, 2022)**

While the Administrative Hearings Office (AHO) still encourages continuing use of video conference hearings for the safety of all parties involved in the hearing process, in-person Implied Consent Act hearings will occur under the following hearing protocols:

**1) Scheduling of ICA/MVD Hearings**

- a. Per Regulation 22.600.6.10 NMAC, a driver or their representative may still request or consent to a telephonic or videoconference hearing.
- b. All hearings will continue to be initially set as remote telephonic or videoconference hearings absent a timely objection with a specific demand for in-person hearing with all hearing participants present in one location in the county of incident.

- c. Upon written, timely objection under Regulation 22.600.6.10 (C) NMAC to conducting the hearing by telephone, the hearing will be set to occur via videoconference.
- d. Upon written, timely objection under Regulation 22.600.6.10 (C) NMAC to videoconference hearing with a demand for an in-person hearing with all hearing participants present in one location in the county of incident, the case will be set for an in-person hearing.

## **2) Scheduling of Tax Protest Hearings and Property Tax Hearings**

- a. Per NMSA 1978, Section 7-1B-8(H) and Regulation 22.600.3.10 NMAC, the Taxation and Revenue Department and/or a taxpayer may still request or consent to a videoconference hearing.
- b. The parties may also request a hybrid hearing, with some hearing participants appearing in-person and some via videoconference for the purposes of reducing potential travel exposure or other good cause.
- c. The Chief Hearing Office may still schedule a hearing as video hearing pursuant to Regulation 22.600.3.10 (C) NMAC even without an affirmative request of the parties. Upon written, timely objection under Regulation 22.600.3.10 (C) NMAC, the case will be set for an in-person hearing.

## **3) Health Screening and Entry into Facility**

- a. To the fullest extent possible given its facilities and requirement to conduct hearings, AHO will follow the New Mexico Department of Health guidelines, applicable public health orders, and emergency orders of the Governor, or any more restrictive order applicable in the location of the hearing.
- b. Hearing Participants will check-in for their in-person hearing as indicated by the instructions included with the notice of hearing, the subpoena, or requirements articulated at each specific hearing facility. Hearing participants may be required to provide a cellular phone number to the Scheduling Unit to facilitate that check-in process.

- c. Any employee, person, or hearing participant entering an AHO facility or other facility where hearings are scheduled to occur must satisfactorily answer screening questions, if any, before entering the facility. Any person declining to complete the screening or does not pass the screening shall be denied entry into the facility.
- d. No employee, staff, hearing participant, attorney, police officer or other person shall be allowed into the facility if they are ill or exhibiting any overt signs of illness.
  - i. Any hearing participant exhibiting signs of illness will be directed to leave the hearing facility immediately. The Hearing Officer may proceed with a hearing with remote telephonic or video appearances, continue and reschedule the hearing, or take other appropriate action in his or her discretion.
  - ii. Any employee who is ill in any manner shall not attempt to work in the office and instead must consult with their supervisor about telework or leave options.
- e. All people entering the facility agree to notify AHO if they are diagnosed with COVID-19, or otherwise ordered to quarantine or self-isolate for any reason related to COVID-19, within 10-days before or after their entry into the facility.
- f. If a hearing facility is closed due to a COVID-19 exposure or public health order related to the pandemic, the hearing may be converted to a videoconference hearing or continued if the facility is scheduled to reopen with sufficient time to allow the matter to be reset before expiration of the 90-day hearing requirement.

#### **4) Facemasks at the Hearing**

- a. AHO follows the applicable public health order addressing the requirements, if any, of wearing a facemask in state facilities and during the hearing.

- b. Even if facemasks are not required under the applicable public health order:
  - i. Masks will be available to any hearing participant who requests one.
  - ii. Any hearing participant can choose to wear a facemask during the hearing and may not be compelled to remove the mask absent a specific, legitimate legal necessity as determined by the hearing officer.
  - iii. Pursuant to the applicable code of conduct, hearing participants are required to treat each other with courtesy and respect as part of the appropriate decorum of the proceeding. When a hearing participant communicates that they or someone in their household are particularly vulnerable, other hearing participants out of basic courtesy, kindness, and respect may be encouraged or ordered to wear a mask during the hearing if necessary to ensure a fair proceeding.

**5) Social Distancing and Limited Attendance in Hearing Room.**

- a. All hearings shall be conducted in a manner to promote the social distancing requirements of the relevant public health order, or any more restrictive rule applicable at the location of the hearing.
- b. In order to create sufficient social distancing necessary to comply with any applicable public health order, the hearing officer retains discretion to direct hearing participants to specific locations in the room, limit the number of hearing participants in the hearing room at one time, and/or limit number of public attendees in the hearing room.
  - i. Because the size of hearing rooms varies throughout the state, some facilities may require particularly unique arrangements and settings to maximize social distancing during the hearing, including limited working space, elimination of desks or conference tables, and use of lobbies and other open spaces.

- ii. Alternative hearing locations may be employed in some counties in order to facilitate a socially-distanced hearings. Parties should pay particular attention to their notices, subpoenas, and other communications from AHO listing specific hearing locations.

## **6) Exhibits**

- a. Exchange of physical copies of documentary exhibits between the parties during the course of the in-person hearings is discouraged and electronic exchange of exhibits is encouraged.
  - i. Where electronic exchange of exhibits is not feasible, the parties shall submit two copies of any exhibits (in addition to their own copy) at the hearing.
- b. For exhibits in remote proceedings occurring by telephone or videoconference, the parties may be required to submit the proffered exhibits before the hearing in accord with the instructions contained in the notice of hearing or the subpoena to appear.
  - i. Tendering of such exhibits before the hearing helps facilitates an effective hearing process but does not mean such exhibits will be admitted into the evidentiary record of the proceeding. The parties may still make appropriate objections to the admission of any pre-filed exhibit during the course of the remote hearing.

## **7) Hearing Officer Discretion**

- a. In the event that any person, party, or witness fails to abide by these protocols or the applicable New Mexico Public Health Orders, the assigned hearing officer has discretion to *sua sponte*:
  - i. Order the non-complying individual(s) to exit the facility immediately;
  - ii. Deem that the non-complying individual(s) inability to comply with the protocols for the conduct of an in-person hearing amounts to consent to conduct a remote hearing by telephone or video;

- iii. Order the non-complying individual(s) to appear for the remainder of the hearing via an available remote hearing method, such as telephone or video;
  - iv. Order an immediate continuance in the case and reset the hearing via telephone or videoconference if adequate time permits such a continuance;
  - v. Order that the hearing reconvene in another location or via telephone/videoconference on the same date;
- b. In the event of egregious and continuous non-compliance by an individual that interferes with the conduct of the hearing, prejudices the opposing party, or needlessly jeopardize the safety and well-being of all hearing participants, the hearing officer, under Regulation 22.600.6.13 (B) NMAC, may exclude the non-complying individual from further participation in the hearing and enter a decision accordingly.

**8) Cleaning of Hearing Room**

- a. High contact surfaces in the Hearing Room will be sanitized before and after each day of hearings.
  - b. Air purifiers will be used during that hearing at AHO controlled facilities, and the to the extent possible, at third party facilities where hearings occur.
  - c. Plexiglass barriers may be installed between the hearing officers and the hearing participants at AHO controlled facilities, and the to the extent possible, at third party facilities where hearings occur.
- 9) **Modification of these Protocols:** Conduct of in-person hearings and the conditions of this order are subject to change as public health orders are issued/modified/cancelled or as otherwise required by emergency declarations of the Governor or issuance of other executive branch policy related to the pandemic. The terms of the applicable public health order at the time of hearing control over any contrary provision of these protocols.