

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 1: GENERAL ADMINISTRATIVE HEARING RULES AND PROCEDURES

22.600.1.1 ISSUING AGENCY: Administrative hearings office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.1.1 NMAC - N, 1/1/2018]

22.600.1.2 SCOPE: This part applies to all proceedings before the administrative hearings office and all parties that appear before the administrative hearings office, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted.
[22.600.1.2 NMAC - N, 1/1/2018]

22.600.1.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1B-5 NMSA 1978.
[22.600.1.3 NMAC - N, 1/1/2018]

22.600.1.4 DURATION: Permanent.
[22.600.1.4 NMAC - N, 1/1/2018]

22.600.1.5 EFFECTIVE DATE: January 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.1.5 NMAC - N, 1/1/2018]

22.600.1.6 OBJECTIVE: The objective of this part is to provide general hearing practice rules for hearings before the administrative hearings office.
[22.600.1.6 NMAC - N, 1/1/2018]

22.600.1.7 DEFINITIONS: The following terms apply to:

- A. “Administrative hearings office”** is the agency established under Section 7-1B-1 NMSA 1978.
- B. “Administrative hearings office facility”** is an office facility owned or leased by the administrative hearings office.
- C. “Business day”** means Monday through Friday, excluding Saturday, Sunday, or a state-recognized holiday as specified by Section 12-5-2 NMSA 1978, except for President’s Day, which by practice of the state personnel office is awarded on the day after Thanksgiving.
- D. “Chief hearing officer”** is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer’s designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.
- E. “Hearing location”** is the administrative hearings office facility or another state, county, municipal, or private office location where the administrative hearings office has arranged space to conduct a scheduled hearing or hearings.
- F. “Hearing officer”** is the attorney assigned by the chief hearing officer or designee of the chief hearing officer to serve as a neutral decision maker in any adjudicatory proceeding before the administrative hearings office. The person assigned as hearing officer must be licensed to practice law in New Mexico or eligible for temporary licensure to practice in New Mexico as determined by the New Mexico supreme court. The hearing officer may be a classified employee in the state personnel system with the administrative hearings office either as an attorney or administrative law judge, may be under contract with the administrative hearings office as a contract attorney, administrative law judge, or judge, or may be an attorney, administrative law judge, or judge serving in a voluntary capacity for the administrative hearings office.
- G. “MVD”** is the motor vehicle division of the New Mexico taxation and revenue department.
- H. “Order”** means any ruling of the administrative hearings office directed to the parties involved in a proceeding before the administrative hearings office.
- I. “Pleading”** means any written request, motion, or proposed action filed by a party with the administrative hearings office.
- J. “Request for hearing”** means a formal written request from a party to be heard on a particular matter where the administrative hearings office has been granted statutory authority to conduct an adjudicatory proceeding.

K. “Sua Sponte” means any order or ruling of the chief hearing officer or assigned hearing officer made without prompting of the parties.

L. “TRD” is the New Mexico taxation and revenue department.
[22.600.1.7 NMAC - N, 1/1/2018]

22.600.1.8 APPLICABILITY OF THESE RULES: These rules provide general practice rules for all matters before the administrative hearings office. However, if a more specific regulatory provision applies to the hearing type at issue, that more specific regulation controls over these general rules.
[22.600.1.8 NMAC - N, 1/1/2018]

22.600.1.9 STANDING ORDERS: The chief hearing officer may issue, or withdraw, standing orders addressing general practice issues and filing protocols for the handling of cases before the administrative hearings office. Such standing orders will be displayed publicly at administrative hearings office facilities, any administrative hearings office website, and in any applicable information provided with a notice of hearing. The parties appearing before the administrative hearings office are expected to comply with standing orders addressing general practice protocols and procedures.
[22.600.1.9 NMAC - N, 1/1/2018]

22.600.1.10 REQUESTING A HEARING BEFORE THE ADMINISTRATIVE HEARINGS OFFICE:

A. Any party seeking a hearing before the administrative hearings office shall file a written request for a hearing with a brief summary identifying the nature of the dispute, the applicable statute or rule in dispute in the matter, and identifying the jurisdictional basis for the administrative hearings office to adjudicate the matter. Such request for hearing must include the triggering proposed action of TRD or MVD (or other state agency), such as a denial, suspension, or withdrawal letter, as well as the person or entity’s written protest or request for hearing challenging that action/inaction. The request for hearing must also include the address of record of the party challenging the state’s action either as included in that person’s request for hearing or contained in the agency’s official records. If the administrative hearings office has developed a specific form to request a hearing in a particular subject matter, the parties are required to use that form.

B. The administrative hearings office may reject any request for hearing in which the administrative hearings office lacks jurisdiction to adjudicate the matter, the matter is moot, or where the request for hearing is defective, not on the appropriate form, lacking required supporting documents, or is otherwise deficient. If the request for hearing is defective for any reason, the requesting party may correct any deficiency and resubmit the request for hearing.

C. Upon receipt of a complete request for hearing for which the administrative hearings office has jurisdiction to adjudicate the matter, the chief hearing officer or designee shall assign a hearing officer to preside in the matter based on the knowledge, expertise, experience, efficiency, and staffing needs of the office. The chief hearing officer may reassign the matter to another hearing officer if the management of the office or other circumstances so require it.

[22.600.1.10 NMAC - N, 1/1/2018]

22.600.1.11 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE/SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:

A. Unless otherwise expressly authorized by statute, only the person challenging the action or a bona fide employee if the party is an entity or business, or an attorney licensed or authorized to practice law in New Mexico may represent the person at hearing. Any attorney not licensed to practice law in New Mexico must comply with applicable New Mexico supreme court pro hac vice rules in order to represent the person, business, or entity at any substantive hearing in the matter.

B. Any attorney wishing to represent a party must file a formal written entry of appearance directly with the administrative hearings office listing his or her mailing address, a fax number (if any), and a valid email address. Any attorney wishing to substitute in for a previous attorney must file a substitution of counsel containing the same information required in the initial entry of appearance. Upon withdrawal of representation, consistent with the rules of professional conduct, the attorney shall give reasonable notice of the date and time of the scheduled hearing to the party and allow time for the party to retain other counsel, if needed. Prior to the hearing, counsel should file a written notice of withdrawal from representation with the administrative hearings office indicating when counsel notified the driver of the date and time of the license revocation hearing.

C. A hearing officer may deny a request for withdrawal of representation only when withdrawal would have a clear, materially adverse effect on the party's interests and impede the conduct of a full, fair, and efficient hearing.
[22.600.1.11 NMAC - N, 1/1/2018]

22.600.1.12 FILING OF PLEADINGS:

A. All pleadings, including but not limited to formal motions, proposed orders, formal objections, motions to continue or other informal letters seeking particular relief, may be filed with the administrative hearings office through mail, facsimile, or electronic mail as specified in the relevant notice of hearing, with a copy of such pleading contemporaneously provided to the opposing party through the same method of service of the filing. The moving party shall include an attestation that they provided a copy of the pleading to the opposing party.

B. All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

C. Before submission of any motion, request for relief, request for continuance, the requesting party should make reasonable efforts to consult with the opposing party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the opposing party would oppose the requested relief. The party shall state the position of the opposing party in the pleading.

D. Unless a more specific deadline applies under an applicable order of the assigned hearing, the opposing party has 10 days to file a written response to a pleading. If any deadline falls on a Saturday, Sunday, or state-recognized holiday, the deadline falls on the next business day. Failure to file a response in opposition may be presumed to be consent to the relief sought, although the hearing officer is not required to make such a default ruling on the motion if the relief would be contrary to the hearing officer's view of the facts or law on the issues.

E. Absent express preapproval of the assigned hearing officer with good cause shown, no pleading shall exceed 10 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font. Similarly, with exception of motions for summary judgment or submission of stipulated facts or a proposed order, attachments to any other pleading shall not exceed the length of the pleading absent express permission of the assigned hearing officer. Only relevant excerpts of a motion exhibit shall be attached, with the pertinent portions highlighted, underlined, or otherwise emphasized.

F. All pleadings shall be captioned in a format consistent with the caption included in the notice of hearing issued by the administrative hearings office, including using the specific case number, if any, listed in that notice. Generally, that caption shall be centered, in all capital letters, and in bold font, as shown below:

**STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
(GENERAL TITLE OF APPLICABLE STATUTE CONTROLLING HEARING)**

G. In the event of a procedural defect or other error with the manner, method, or content of a submitted pleading, the administrative hearings office may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to attest service to the opposing party, failure to comply with the page limitations, failure to seek the opposing party's position, failure to use the form or follow the specific filing method required by the administrative hearings office for the type of case at issue, or failure to comply with a standing order governing the practice before the administrative hearings office.

H. Pleadings will be marked as filed on the business date that the administrative hearings office receives the pleading, however any pleading submitted to the administrative hearings office after 5:00 pm will not be marked as filed until the next business day.
[22.600.1.12 NMAC - N, 1/1/2018]

22.600.1.13 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. The hearing officer may direct representatives for all parties to meet together or with the hearing officer present for a prehearing conference to consider any or all of the following:

- (1) simplify, clarify, narrow or resolve the pending issues;
- (2) stipulations and admissions of fact and of the contents and authenticity of documents;

(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of expert, economic or technical witnesses;

(4) matters of which administrative notice will be taken; and

(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

B. Prehearing conferences conducted by the hearing officer will be recorded.

C. The hearing officer may enter in the record an order that recites the results of the conference conducted by the hearing officer. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.

D. The hearing officer may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

E. The hearing officer may conduct a status conference upon the request of either party or on the hearing officer's own initiative, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.

F. As part of basic docket management and to ensuring efficient use of staff resources, the chief hearing officer, or a designee of the chief hearing officer other than the assigned hearing officer on the case, at any point in the proceeding may check with the parties about the status of any matters pending before the administrative hearings office.

[22.600.1.13 NMAC - N, 1/1/2018]

22.600.1.14 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:

A. Unless statutorily required to occur in a different location, all hearings before the administrative hearings office will occur in Santa Fe or, at the discretion of the chief hearing officer, at another administrative hearings office facility in the state. The parties may express a mutual preference for location of the hearing in their request for hearing for the chief hearing officer's consideration. In selecting the location of the hearing other than a setting in Santa Fe, in addition to complying with any mandated, applicable statutory hearing location, the chief hearing officer shall consider and give weight to the location and wishes of the respective parties, witnesses, and representative in the proceeding, the duty station of the assigned hearing officer with expertise in the matter, and the scheduling and staffing needs of the administrative hearings office. If setting a hearing in a location other than Santa Fe would cause an unreasonable, undue burden to either party, that party may file a written objection to the setting of the hearing at a location other than Santa Fe within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The chief hearing officer or designee will promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to Santa Fe or another more reasonable location and reassign the matter to another hearing officer if necessary.

B. The administrative hearings office will notify the parties to the hearing by mail of the date, time and, place scheduled for the hearing at least seven days before the scheduled hearing. This notice will be directed to the address contained on the request for a hearing or, if no return address is indicated, to the address last given by the party to TRD, MVD, or other state entity, or to the address provided by the party's attorney in the entry of appearance.

[22.600.1.14 NMAC - N, 1/1/2018]

22.600.1.15 TELEPHONIC, VIDEOCONFERENCE, AND OTHER EQUIVALENT ELECTRONIC METHOD HEARINGS:

A. If not otherwise prohibited by statute, rule, or court ruling, the hearing officer may conduct the hearing in person or by telephone, videoconference, or other equivalent electronic methods.

B. If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall so inform the parties. Either party may file a written objection to conducting the hearing by telephone, videoconference, or other equivalent electronic method within 10 days of the notice of hearing. Failure to timely object to the conduct of a telephone, videoconference, or other equivalent electronic method hearing constitutes consent to the hearing proceeding in that manner and waiver of any other applicable statutory in county hearing requirement.

C. Upon receipt of a timely objection, the hearing officer shall consider the applicable legal requirements, the location of the parties and witnesses, the complexity of the particular matter, the availability of necessary electronic equipment for conduct of a full and fair hearing by telephone, videoconference, or other

equivalent electronic method, and the basis of the objection in determining whether the hearing should occur at a specific location rather than via telephone, videoconference, or other equivalent electronic method.

D. Provided that the requesting party has not previously demanded an in-person hearing or otherwise objected to conducting the matter via telephone, videoconference, or other equivalent electronic methods, any party may request to appear directly or have a witness on their behalf appear via telephone, videoconference, or alternative electronic means by filing a request at least three business days before the scheduled hearing. The filing of a request to appear via telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete waiver of any in-person, in-county hearing requirement and deemed as consent for all parties, all witnesses, and the hearing officer to appear via telephone, videoconference, or other equivalent electronic methods.

E. All parties appearing via telephone, videoconference, or other electronic method shall provide the administrative hearings office with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing.

F. Failure to follow the administrative hearings office's instructions for participating in the hearing via telephone, videoconference, or other equivalent electronic method will be treated as a non-appearance at the hearing.

G. Any technical issues shall be promptly reported to the administrative hearings office in according to the instructions included on the notice of hearing.

H. In the event that technical or other computer problems prevent a hearing by videoconference or other electronic method from occurring or otherwise interferes with maintaining or developing a complete record at the hearing, the parties agree and consent that the assigned hearing officer at their discretion may continue the matter to a different time before expiration of the statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the remaining portion of the hearing via telephone.

I. If the assigned hearing officer determines during the course of the hearing, either sua sponte or upon argument of a party, that an in-person hearing is necessary to adequately complete the record, address credibility issues, or is otherwise necessary to ensure a full or fair hearing process, the hearing officer may recess a hearing occurring by telephone, videoconference, or other equivalent electronic method and reconvene the proceeding as an in-person hearing.

[22.600.1.15 NMAC - N, 1/1/2018]

22.600.1.16 CONTINUANCES:

A. At the request of a party, a witness, or upon the hearing officer's own determination, a hearing may be continued for good cause. The hearing officer shall consider only written continuance requests made at least three working days prior to the scheduled hearing absent extraordinary, unforeseen circumstances that the requesting party could not have known earlier. Employees of the administrative hearings office scheduling section or the chief hearing officer may grant or deny the request on behalf of the hearing officer. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the hearing officer may grant or deny the request on the record at the hearing. No continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory jurisdictional deadline.

B. Within the jurisdictional time limits set by statute, the chief hearing officer may sua sponte continue any matter as necessary to address staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the chief hearing officer or designee may contact the parties to inquire about the status of a scheduled case.

C. No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable jurisdictional time limit on the case.

[22.600.1.16 NMAC - N, 1/1/2018]

22.600.1.17 ATTIRE AT HEARING: All attorneys and other authorized representatives must be attired in a dignified, professional manner at all times during the hearing. Witnesses shall dress in a respectful manner. No attire or dress so flamboyant, disheveled, inflammatory, obscene, offensive or revealing as to create a distraction to the orderly conduct of court proceedings will be permitted.

[22.600.1.17 NMAC - N, 1/1/2018]

22.600.1.18 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE:

A. Unless otherwise specified by statute, the burden of proof in an administrative proceeding before the administrative hearings office is the preponderance of evidence.

B. The party with the burden of proof in the case will ordinarily present their case first, followed by the opposing party, unless the hearing officer makes reasonable exceptions related to the availability of the witnesses and representatives or other scheduling concerns.

C. The hearing officer may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be adopted as evidence by sworn oath of the party-witness who made the opening statement.

D. All testimony must be given under oath and will be subject to questioning of the opposing party. The hearing officer may also ask questions of the witness as appropriate. At the hearing officer's discretion, redirect and recross may be allowed.

E. The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the hearing officer, in writing after conclusion of the hearing. The hearing officer may also require the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing.

F. The New Mexico rules of evidence and civil procedure shall not apply in any matter before the administrative hearings office unless otherwise expressly and specifically proscribed by statute, regulation, or order of the hearing officer. Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

G. Hearsay evidence may be admitted in the proceeding.

H. The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute. Administrative notice may be taken at any stage in the proceeding whether or not requested by the parties. A party is entitled to respond as to the propriety of taking administrative notice which shall include the opportunity to refute a noticed fact.

I. Parties objecting to evidence shall timely and briefly state the grounds for the objection. Rulings on evidentiary objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

J. Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained by the administrative hearings office as part of the administrative record.

K. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer. The hearing officer may admit documentary exhibits presented at hearing which exceeds 8.5 inches by 11 inches or which cannot be folded may be admitted, provided the proponent of such exhibits provide the administrative hearings office with a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. The administrative hearings office may permit the proponent of a large exhibit to make arrangements to obtain a reduced copy, provided that a failure by the proponent to provide a reduced copy shall be deemed a withdrawal of the exhibit.

L. In lieu of the introduction of tangible objects as exhibits, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object for the record.

[22.600.1.18 NMAC - N, 1/1/2018]

22.600.1.19 WITNESSES, EXPERT WITNESSES, AND INVOCATION OF THE RULE:

A. Any person having relevant, material personal knowledge related to one of the elements in a proceeding may testify as a witness under oath in the matter. Upon affirming the oath, the witness may be questioned by both parties and by the hearing officer.

B. Unless a more specific provision applies, witnesses are ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the presiding hearing officer allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone or videoconference.

C. The current or previously presiding hearing officer in a matter may not be called and may not serve as a witness in the proceeding.

D. If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party must provide a written designation at least seven days before the scheduled hearing to the opposing party and the administrative hearings office, identifying the purported expert, the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and listing of any materials the expert reviewed as part of reaching his or her expert opinion. The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.

E. At the hearing, either party can invoke the exclusionary rule, excluding all witnesses other than the real party in interest, their representative, one main case agent, and any designated expert witness from the proceeding until the time of their testimony. If the rule has been invoked, the witnesses should not discuss their testimony with each other until the conclusion of the proceeding. When the rule has been invoked, any witness who remains in the hearing after conclusion of their testimony may not be recalled as a witness in the proceeding, except that any witness may observe the testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

[22.600.1.19 NMAC - N, 1/1/2018]

22.600.1.20 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the chief hearing officer of the administrative hearings office.

B. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

- (1) to administer or have administered oaths and affirmations;
- (2) to cause depositions to be taken;
- (3) to require the production or inspection of documents and other items;
- (4) to require the answering of interrogatories and requests for admissions;
- (5) to rule upon offers of proof and receive evidence;
- (6) to regulate the course of the hearings and the conduct of the parties and their

representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

- (8) to schedule, continue and reschedule formal hearings;
- (9) to consider and rule upon all procedural and other motions appropriate in proceeding;
- (10) to require the filing of briefs on specific legal issues prior to or after the formal hearing;
- (11) to cause a complete record of proceedings in formal hearings to be made;
- (12) to make and issue decisions and orders; and
- (13) to reprimand, or with warning in extreme instances exclude from the hearing, any person

for engaging in a continuing pattern of indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

C. In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any officer, employee or agent of the taxation and revenue department or the department of finance and administration or the other state agency involved in the proceeding.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any prohibited ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. A prohibited ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not a prohibited ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

[22.600.1.20 NMAC - N, 1/1/2018]

22.600.1.21 CLOSED/PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF HEARING OFFICER:

A. Except for hearings occurring pursuant to the Implied Consent Act, upon request of the party challenging the state action, or unless otherwise provided in an applicable statute or regulation pertinent to the hearing at issue, all hearings are closed to the public. The party challenging the state action may submit a written request to open the hearing to the public, which shall be granted if authorized by statute or regulation.

B. If the hearing is open to the public either under the Implied Consent Act, upon request of the party challenging the state action, or other applicable statute or regulation, members of the public and the media may attend the hearing so long as they do not interrupt, interfere, or impede the orderly, fair, and efficient hearing process. With prior consent of the chief hearing officer and the assigned hearing officer, media members may record the proceeding at a fixed location in the hearing room. The hearing officer may direct any member of the public, including attending media members, to leave the proceeding if they engage in any conduct that interferes with the hearing officer's ability to maintain order, develop the record, and provide a fair and efficient hearing process or otherwise.

C. Upon request of either party, and upon a showing of good cause, the hearing officer may seal a particular exhibit, document, or portions of a witness' testimony from public disclosure if such items contain statutorily-protected confidential information, privileged information, or otherwise contain private identification information of a party or third party that is immaterial to a substantive issue in the proceeding or if its materiality is substantially outweighed by the prejudice of public release of the information. Upon issuance of an order sealing such documents or exhibits, these records will remain under seal throughout the proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal. The opposing party shall be entitled to promptly review these documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process, but shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of these sealed documents to any other party outside of the hearing process.

D. The hearing officer's notes taken during the course of the hearing, any written discussions with another hearing officer related to the deliberative, decision-making process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure.
[22.600.1.21 NMAC - N, 1/1/2018]

22.600.1.22 SUBPOENAS: Any request for issuance of subpoenas in matters before the administrative hearings office shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the limited powers of the administrative hearings office. Any subpoena issued shall be in the name of the chief hearing officer of the administrative hearings office. The party requesting the subpoena has the duty to prepare a proposed subpoena using a form approved by the administrative hearings office, submit the proposed subpoena to the administrative hearings office for approval and to the opposing party, and to timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 14 days notice before compelled attendance or 14 days to produce materials. All returned subpoenas shall be filed with the administrative hearings office, copied to the opposing party, and shall be made part of the record of the proceeding. Any action to seek contempt for failure to comply with a subpoena or to enforce a subpoena beyond the power of the administrative hearings office must be done in accordance with Subsection D of Section 7-1-4 NMSA 1978.
[22.600.1.22 NMAC - N, 1/1/2018]

22.600.1.23 LANGUAGE INTERPRETERS: In matters before the administrative hearings office, a party needing language interpreter services is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a matter before the administrative hearings office must affirm the interpreter's oath applicable in courts across this state.
[22.600.1.23 NMAC - N, 1/1/2018]

22.600.1.24 FAILURE TO APPEAR:

A. If a person or entity challenging the state action fails to appear, either in person or through a permissible representative, to a duly noticed hearing, the person or entity waives his, her, or their right to protest or challenge that proposed state action, the matter shall go on the record for the limited purpose of addressing notice and non-appearance, and a final judgment and order against them shall be entered based on the waiver of the hearing by failing to appear.

B. In considering the non-appearance and whether the person received appropriate notice necessitating issuance of the judgment, the hearing officer may consider the contents of the administrative file, information conveyed to or known by administrative hearings office staff, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal

service or other mail tracking services, and arguments offered by the present party, all of which may be addressed on the record of the hearing or in any subsequent order.

C. Oral rulings based on a party's failure to appear are not final until reduced to writing. The hearing officer may issue a different written order as new information arises after the hearing regarding whether the notice of hearing was properly sent to the correct address or otherwise properly served.
[22.600.1.24 NMAC - N, 1/1/2018]

22.600.1.25 RECONSIDERATIONS:

A. A party may file a motion for reconsideration no more than 10 days after the date on the final decision and order. The opposing party may file a response no more than 10 days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically. A timely filed motion for reconsideration should be decided based on the merits whether or not a response is filed.

B. The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

C. Motions for reconsideration shall not endeavor to present new evidence that was not presented at the hearing. Any such evidence may be disregarded. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. Motions for reconsideration should be limited to the correction of a significant factual or legal error or changes to statutes, regulations or case law.

D. A motion for reconsideration should not be used for the purpose of extending the time for taking an appeal or to circumvent the appeals process. In the interest of saving time and resources, a timely motion for reconsideration may be ruled upon even after an appeal is filed, unless statute or caselaw indicates otherwise. If a motion for reconsideration is granted and an amended final decision and order is issued that reverses the original ruling, the time for taking an appeal should be calculated from the date of the amended final decision and order.
[22.600.1.25 NMAC - N, 1/1/2018]

22.600.1.26 APPEALS: Each decision and order issued by the administrative hearings office shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall provide a court-endorsed copy of the appeal to the administrative hearings office so that the administrative hearings office can prepare and submit the record proper. Other than preparing and filling the record proper, the administrative hearings office is not the formal party to the appeal and does not provide any position on any motions or pleadings submitted on appeal.
[22.600.1.26 NMAC - N, 1/1/2018]

22.600.1.27 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE

RECORD: Either party may request copies of exhibits, documents, records in the administrative file, or a copy of the audio recording of the proceeding by filing a written request with the administrative hearings office. The administrative hearings office may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The administrative hearings office may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record.
[22.600.1.27 NMAC - N, 1/1/2018]

22.600.1.28 HEARINGS FOR OTHER STATE AGENCIES: From time to time, the administrative hearings office may enter into agreements with other state agencies to provide hearing officers for the conduct of administrative hearings involving that agency. Those hearings shall be conducted independent of the supervision and direction of the other state agency. The statutes, rules, and case law governing the conduct of those hearings before other agencies shall apply to those cases heard by agreement, except that the hearing officer shall still be bound by the code of conduct for administrative hearings contained in this chapter, 22.600.2 NMAC.
[22.600.1.28 NMAC - N, 1/1/2018]

HISTORY of 22.600.1 NMAC: [RESERVED]