

DEPARTMENT OF REVENUE

Hearings Division

RULES FOR HEARINGS RELATED TO DRIVER'S LICENSES OR STATE ISSUED IDENTIFICATION CARDS

1 CCR 211-2

RULE 1. DEFINITIONS

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to define certain words and terms of art used in these Rules and the administrative proceedings held by the Colorado Department of Revenue's Hearings Division regarding driver's licenses or state issued identification cards.

4.1.A. "Department" - The Colorado Department of Revenue.

4.2.B. "Division" - The Colorado Department of Revenue Hearings Division.

4.3. ~~"Driver's License Restraint" or "Restraint" - Any denial, revocation, or suspension of a person's license or privilege to drive a motor vehicle in this or any other state.~~

4.4.C. ~~"Hearing Officer" - An authorized representative of the Executive Director of the Department, designated under the authority of Title 42 with the statutory authority to conduct hearings pursuant to Titles 24 and 42, C.R.S.~~

4.5.D. ~~"Hearing Record" - The hearing record shall be consistent with that defined in the State Administrative Procedures Act, which shall include but shall not be limited to the audio recording (or a transcription thereof) and the written record of the hearing made by the Hearing Officer, together with the evidence presented at hearing. All matters constituting the record on which the initial decision was based, including, but not limited to, rulings on proposed findings and conclusions, electronic recordings, evidence presented at hearing, and any other exceptions or briefs.~~

E. ~~"Other Electronic Means" - The video conferencing platform designated by the Division for the purpose of conducting hearings.~~

4.6.F. ~~"Respondent" - The person whose driving privilege is the subject of the hearing. The person whose driving privilege and/or identification document is the subject of the hearing.~~

G. ~~"Restraint" or "Driver's License Restraint" - Any cancellation, denial, revocation, or suspension of a person's license or driving privilege, or the denial of an identification document.~~

H. ~~"60-day deadline" - The time limitation for holding hearings established by §§ 42-2-126(8)(a), 42-2-127.7(7)(e)(I), and 42-2-127.9(6)(e)(I), C.R.S.~~

RULE 2. HEARING OFFICER AUTHORITY

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to describe the authority of the Division's Hearing Officers to conduct hearings, manage cases, and issue decisions in administrative proceedings regarding driver's licenses or state issued identification cards.

2.1.A. In addition to any other powers authorized by Statute, the Hearing Officer shall have the authority ~~and responsibility~~ to:

2.1.1. Conduct a full, fair, and impartial hearing;

2.1.2. ~~Take action~~Act to avoid unnecessary delay in ~~the disposition of~~ the proceeding;

2.1.3. Maintain order;

2.1.4. Administer oaths for the purpose of obtaining testimony;

2.1.5. Rule on matters of evidence and law;

2.1.6. Issue orders relating to hearing and pre-hearing matters;

2.1.7. Limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

2.1.8. Rule on motions of parties or the Hearing Officer's own motion;

2.1.9. Issue final agency ~~decisions~~actions. As provided by statute, such decisions may not be reviewed at the Division or Department level but are subject to appeal in District Court; and

2.1.10. Request parties to submit legal memoranda.

RULE 3. **EVIDENCE**

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to describe the procedure for the discovery and admission of evidence in administrative proceedings before the Division regarding driver's licenses or state issued identification cards.

3.1.A. Discovery is prohibited except as set forth in these Rules. However, the Respondent shall have access to information maintained by the Department to the extent permitted by law.

3.2.B. The Respondent or any other witness may testify and present evidence on pertinent issues.

3.3.C. The Hearing Officer may exclude irrelevant, repetitious, cumulative, immaterial, or privileged information or evidence.

3.4.D. The Hearing Officer may apply the Colorado Rules of Evidence, as necessary, and may consider hearsay evidence per § 24-4-105(7), C.R.S.

3.5.E. The Hearing Officer may question the Respondent and/or any other witnesses.

3.6.F. The Hearing Officer may consider and receive real or documentary evidence, including whether originals, photocopies, or excerpts, and including, but not limited to, driving records, proof of

insurance, proof of residency, body camera videos, dash camera videos, paychecks, court documents, accident reports, state or federal regulations, code books, training manuals, scientific studies, maps, photographs, and satellite images.

3.7.G. If practicable and necessary, the Hearing Officer may continue a hearing in order to subpoena any witness or document relevant to the proceeding.

RULE 4. EXHIBITS

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to describe the formatting, presentation, and retention requirements for exhibits offered for admission into the evidentiary record in administrative proceedings before the Division regarding driver's licenses or state issued identification cards. This rule also describes Hearing Officer discretion to exclude bulky, dangerous, and/or otherwise unsuitable evidence.

4.1.A. Documents offered into evidence shall be legible, and shall not exceed 8 ½ inches by 11 inches unless good cause is shown why such documents cannot be reduced. Exhibits from the Department will be lettered (i.e., Ex. A, Ex. B, Ex. C...) and exhibits from Respondent will be numbered (i.e., Ex. 1, Ex. 2, Ex. 3...).

4.2.B. Exhibits offered into evidence ~~may~~ shall not be of such a nature that they unduly encumber the record. Physical evidence that is bulky, dangerous, perishable, or otherwise not suitable for inclusion in the record shall be limited or excluded from the record at the discretion of the Hearing Officer.

4.3.C. A table of contents or index shall accompany any document when such document exceeds 50 pages.

4.4.D. All exhibits entered into evidence shall become a part of the record of the hearing, and where practicable, shall be subsequently maintained by the Department; however, the Hearing Officer may require the Respondent to maintain the original of any exhibit for the purposes of appeal.

RULE 5. SUBPOENAS

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 24-35-116, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to describe the procedure for requesting, issuing, serving, enforcing, and opposing subpoenas in administrative proceedings before the Division regarding driver's licenses or state issued identification cards.

5.1.A. ~~The~~ Respondent in a hearing before the Division may request subpoenas to ~~secure~~ compel the presence of witnesses or production of documents necessary for the hearing. ~~The intent must be to provide the presiding Hearing Officer with the evidence needed to make an appropriate determination, not~~ Subpoenas of witnesses and documents must directly relate to the subject matter of the hearing and will not be issued to further the discovery needs of the Respondent ~~for~~ in other proceedings.

5.2.B. All subpoena requests must be delivered in person, by mail, ~~by facsimile transmission or other electronic means~~ or by email to the main ~~Hearing~~-Division office.

5.3.C. All subpoena requests must be made on a "Request for Subpoena"- form authorized and provided by the Division. No subpoena will be issued unless the request contains the following information:

5.3.1. Name of Respondent;

5.3.2. Case number;

5.3.3. Date of hearing;

5.3.4. Location of hearing, or telephone number for telephone check-in;

5.3.5. Time of hearing;

5.3.6. Name of witness to be subpoenaed; and

5.3.7. Address of witness (home or business).

5.4.D. A request for a subpoena duces tecum must specifically identify each document to be produced.

5.5.E. Any subpoena (excluding that for the officer who signed the Affidavit and Notice of Revocation for hearings under- § 42-2-126, C.R.S.) must also include a specific and detailed statement attached to the request form that indicates the following:

5.5.1. The nature of the expected testimony or evidence;

5.5.2. ~~Why such~~The reasons the testimony or evidence is relevant ~~and~~necessary, and not cumulative to other evidence;

5.5.3. The reasons ~~Why~~ the production~~vision~~ of the evidence is not unduly burdensome on the entity or witness subpoenaed;

5.5.4. The reasons ~~Why~~ compliance with the subpoena will not unreasonably delay or prolong the proceedings; and

5.5.5. That the evidence sought is not otherwise available to the Hearing Officer.

5.6.F. When multiple witnesses or documents are requested for a single hearing, the supporting statements must clearly ~~delineate-identify the reason~~why each witness or document is necessary, and ~~why-the reason~~ the evidence sought is not cumulative.

5.7.G. Every request for a subpoena (excluding that for the officer who signed the Affidavit and Notice of Revocation for hearings under- § 42-2-126, C.R.S.) shall be signed by the Respondent or the Respondent's attorney. This signature constitutes an affirmation that the request ~~is in compliance~~ complies with C.R.C.P. ~~26(g)(2)45~~. This signature also certifies that to the best of the signer's knowledge, information, and belief the request is consistent with these Rules, warranted by the law, not made for any improper purpose, and will not be unreasonable, unduly burdensome or expensive. Any unsigned request ~~that lacks this affirmation~~ will be denied.

5.8.H. Issuance

5.8.1. A subpoena will be issued only upon a determination by the reviewing Hearing Officer that:

5.8.1.1.a. The information to be obtained appears to be relevant and necessary to the issues involved in the hearing, and is not cumulative;

5.8.1.2.b. Such discovery shall not in any way unreasonably delay or prolong the proceedings;

5.8.1.3.c. The subpoena can be served within the time period established by Rrule or Sstatute;

5.8.1.4.d. The information sought can reasonably be provided by the date required on the subpoena; and

5.8.1.5.e. The information requested is not otherwise attainable by the date set for the hearing.

5.8.2. If the statement in support of a subpoena request is insufficient to meet the criteria specified by this Rule, it shall be returned to the requesting party for revision.

5.8.3. If the reviewing Hearing Officer denies issuance of the subpoena, or alters the subpoena in any material way, specific findings and reasons for such denial or alteration must be made on the record, or by written order incorporated into the record. This review process may include communication with the requesting party.

5.8.4. When expert testimony or documents evidence is requested by subpoena, any such approved expert shall be entitled to reasonable fees for compliance with the request. The Respondent shall have the burden of paying such fees within 48 hours of service of the subpoena. If the amount of the fees is in dispute, the reviewing Hearing Officer shall hear the issue and make a final determination.

5.9.I. Service

5.9.1. Service of the subpoena is the duty of the party requesting the subpoena. Service shall be made pursuant to the requirements of Rule C.R.C.P. 45(eb)-of the Colorado Rules of Civil Procedure, except or as otherwise set forth in these Rules.

5.9.2. Witness and mileage fees shall be tendered at the time of service consistent with Rule C.R.C.P. 45(eb)-of the Colorado Rules of Civil Procedure, except as otherwise set forth in these Rules.

5.9.3. For cases under ~~§~~§ 42-2-126 and 42-2-127.7, C.R.S., subpoenas for law enforcement officers must be served at least five (5) calendar days prior to the start date and time of the hearing; all other subpoenas must be served at least 48 hours prior to the hearing.

5.9.4. Proof of Service is acceptable if the form incorporated within the subpoena issued by the Hearing Officer is fully completed, or an affidavit containing that same information and the case number, time, date, and location of the hearing is provided. Any affidavit of service must contain sufficient information, including the name and contact information for the witness, to match it to the corresponding subpoena.

5.10.J. Enforcement of Subpoenas

5.10.1. Quash by Request Prior to Hearing

5.10.1.1.a. Any subpoenaed witness, entity, or custodian of documents may request that a subpoena be quashed. Any request shall be treated as a motion to quash.

5.10.1.2.b. A motion to quash may be granted if the reviewing Hearing Officer finds that, contrary to the Respondent's statements, compliance would be unduly burdensome or impracticable, ~~or~~ unreasonably expensive, or require disclosure of privileged or other protected materials.

5.10.1.3.c. If a motion to quash is granted, the witness, entity, or custodian of documents may be entitled to reimbursement from the Respondent ~~of for~~ any reasonable attorney fees or costs associated with the motion to quash.

5.10.1.4.d. If a motion to quash is denied, but the reviewing Hearing Officer finds that compliance with the subpoena will be unreasonably expensive, the Respondent may be ordered to pay the costs of ~~compliance production.~~

5.10.2. Dismissal of Case at Hearing

5.10.2.1.a. If the Hearing Officer deems that the non-appearance of a witness and/or failure to produce documents substantially impairs the right of the Respondent to present a defense, and that the subpoena was properly served, the Hearing Officer shall have the authority to dismiss the case with prejudice.

5.10.2.2.b. Failure of the police officer who signed the Affidavit and Notice of Revocation pursuant to ~~-§~~ 42-2-126, C.R.S. to appear after proper service of the subpoena, for reasons other than events authorized by statute, shall result in dismissal of the case with prejudice.

5.10.3. Quash by Hearing Officer at Hearing

5.10.3.1.a. If a properly served witness (including law enforcement officer(s) who did not sign the Affidavit and Notice of Revocation pursuant to ~~-§~~ 42-2-126, C.R.S.) fails to appear or to provide required documentation, the presiding Hearing Officer shall require an offer of proof from the Respondent as to the specific nature, content, and relevance of the expected testimony or documentation.

5.10.3.2.b. If the presiding Hearing Officer finds that the appearance of the subpoenaed witness, and/or production of documents, would not provide relevant and necessary information, or that the evidence would be needlessly cumulative, the Hearing Officer may quash the subpoena. NOTE: The reviewing Hearing Officer's determination to issue a subpoena is not binding upon the presiding Hearing Officer and does not preempt ~~her~~ their authority to assess the propriety of enforcing the subpoena.

5.10.4. Reschedule by Hearing Officer at Hearing

5.10.4.1.a. If a witness fails to appear after proper service of a subpoena the presiding Hearing Officer may, if practicable and necessary, seek to reschedule the hearing to allow the Respondent ~~further~~ additional opportunity to have the witness appear. NOTE: Rescheduling for this limited purpose does not waive jurisdictional limits.

RULE 6. CONDUCT AND DECORUM

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to describe the conduct and decorum required for all parties or other persons attending a hearing in an administrative

proceeding before the Division regarding driver's licenses or state issued identification cards. This rule also describes Hearing Officer discretion to enforce these guidelines and order additional ones.

6.1.1.A. Unless otherwise ~~precluded~~ prohibited by law, all proceedings before the Division are open to the public.

6.1.2.B. Parties, representatives, and other attendees shall conduct themselves with dignity, shall show courtesy and respect for one another and for the Hearing Officer, and shall follow any additional guidelines of decorum ~~prescribed~~ ordered by the Hearing Officer in the proceeding; attorneys ~~shall adhere~~ must comply with ~~to~~ the Colorado Rules of Professional Conduct.

6.1.3.C. To ensure proper conduct, ~~and~~ decorum, judicial efficiency, and ~~the~~ orderly progress of the hearing, the Hearing Officer may take appropriate action, including but not limited to:

6.1.3.1. Excluding any person or persons from the hearing;

6.1.3.2. Recessing the hearing; ~~or~~

3. Sequestering one or more witnesses upon a motion by a party or the Hearing Officer's own motion.

6.1.4.D. The Hearing Officer may restrict attendance due to the physical limitations of the hearing facility; ~~m~~Media access may be limited as provided by the Colorado Code of Judicial Conduct and the Colorado Rules of Civil Procedure.

RULE 7. REQUIREMENT FOR TIMELY AND WRITTEN REQUEST FOR HEARING

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to describe when a written hearing request is required in an administrative proceeding before the Division regarding a driver's license or state issued identification card. This rule also describes Hearing Officer discretion to exclude bulky, dangerous, and/or otherwise unsuitable evidence.

A. Written Request for Hearing Required

1. This requirement applies for all cases under Title 42, C.R.S, except: (1) Points cases under § 42-2-127, C.R.S.; (2) Suspension for uninsured motorist cases under § 42-2-127.7, C.R.S.; (3) Suspension for leaving the scene of an accident cases under § 42-2-127.9, C.R.S.; and (4) Express Consent revocation of licenses based on administrative determination cases under § 42-2-126, C.R.S.

B. All requests for hearing must be submitted in writing by U.S. mail, by email, or through the Hearings Division website, and must be received by the Hearings Division no later than 60 days after the Division of Motor Vehicles issues notice of the Restraint, unless otherwise specified by statute or in this rule.

1. Hearings for Restraints taken pursuant to § 42-2-122, C.R.S. will not be scheduled more than 30 days after the date of the Restraint, and late hearing requests will not be granted. Hearings requested after the 15th day after the notice of cancellation must be scheduled as soon as practicable to ensure compliance with these statutes.

2. A Respondent requesting a hearing may waive a statutorily required notice period and request the hearing be scheduled as soon as practicable. Any waiver of statutory notice requirements must be submitted in writing.

3. A Respondent's request for a hearing will not change the effective date of the Restraint taken by the Division of Motor Vehicles, unless otherwise specified by statute.

RULE 8. SCHEDULING HEARINGS CONDUCTED PURSUANT TO TITLE 42 OF THE COLORADO REVISED STATUTES BY TELEPHONE OR OTHER ELECTRONIC MEANS

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to establish telephonic or electronic hearings as the default for administrative proceedings before the Division regarding driver's licenses or state issued identification cards, and to describe the procedure to request in person hearings.

A. Telephonic or Electronic Hearings

1. Unless otherwise requested and ordered by the Division, all hearings conducted by the Division shall be held by telephone or other electronic means.

B. Requests for In Person Hearings

1. Respondents may request to appear in person for an electronic hearing. Such requests will be granted or denied on a case-by-case basis. The Division may consider safety issues, the availability of Hearing Officers and other participants, the availability of hearing rooms, and any other relevant factor in determining whether to grant the request.

RULE 9. RESCHEDULING HEARINGS

Basis and Purpose: The statutory authority for this rule includes, but is not limited to, §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126, and more generally, Article 1 Parts 1 and 2, Article 2 Parts 1 through 5, and Article 7 of Title 42, C.R.S. The purpose of this rule is to describe the procedure for rescheduling hearings set in administrative proceedings before the Division regarding driver's licenses or state issued identification cards.

A. Rescheduling or Continuing Hearings Pursuant to § 42-2-127 (Points), C.R.S.

1. A respondent may request a hearing be rescheduled or continued for good cause shown. Good cause shall include personal illness, or any other circumstance which, in the Department's discretion, constitutes sufficient reason for delay. The Hearings Division shall schedule a new date no later than 60 days after the original hearing date.
2. If Respondent fails to appear for a hearing, the Hearing Officer shall determine if notice was proper pursuant to § 42-2-127(8)(a), C.R.S. If the record does not support a suspension, the Hearing Officer may dismiss the action. If notice was not proper, the hearing shall be rescheduled. If notice was proper and the record supports a suspension of Respondent's driving privileges, the Hearing Officer shall enter an order.

B. Rescheduling or Continuing All Other Hearings Pursuant to Title 42, C.R.S., except those hearings under §§ 42-2-126 (Express Consent), 42-2-127.7 (Administrative Insurance Revocation), and 42-2-127.9 (Hit and Run), C.R.S.

1. Prior to or on the date of the hearing, the Respondent may request in writing that a hearing be rescheduled or continued for good cause shown.
2. If the Respondent fails to appear for a hearing, the Hearing Officer will close the case without a hearing except for hearings held pursuant to § 42-2-127.7, C.R.S. and any

third-party subrogation hearing held pursuant to §§ 42-7-301, C.R.S., et seq. Any active or pending Restraint shall remain in effect.

C. The Respondent may request to reschedule the hearing for good cause shown. Such a request must be filed within 60 days of the original hearing date and will not postpone the effectiveness of the Restraint. If a Respondent fails to appear for two hearings without showing good cause, the Respondent waives the right to a hearing and the determination of the Department shall be final.

Editor's Notes

History