

Colorado Regulations



1 CCR 204-19 SUBPOENA ISSUANCE AND ENFORCEMENT AT DEPARTMENT OF REVENUE
HEARINGS SECTION

HEARING PROCEDURE

1 CCR 204-19

Basis: These rules are promulgated pursuant to C.R.S. §§ [24-4-103](#), [24-4-105](#); [42-1-218.5](#); [42-2-122](#), [42-2-125](#), [42-2-126](#), [42-2-127](#), and [42-2-127.3](#), [42-2-127.6](#), [42-2-127.7](#), [42-2-132.5](#), [42-2-138](#), [42-2-203](#), [42-2-405.5](#), [42-7-301](#)–303, [42-7-401](#)–06, and any other current or subsequently enacted legislation that allow for an administrative hearing related to an individual's driving privileges.

Purpose: These rules regulate the conduct of all hearings before the Colorado Department of Revenue, Hearings Division, related to a person's driving privileges in the State of Colorado. They include the issue of subpoena issuance and enforcement. They clarify the authority and duties of the Hearing Officers. They also more clearly state and harmonize the Hearings Division processes with the Administrative Procedures Act and Court Rules. Legislative enactments and case law have increased the complexity of the hearings warranting further development of the rules.

Fiscal Impact: These rules have no fiscal impact.

HEARING PROCEDURE

1 CCR 204-19

DEFINITIONS

"Department" – The Colorado Department of Revenue.

"Division" – Colorado Department of Revenue, Hearings Division.

"Drivers' 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, or any combination of denials, revocations, or suspensions.

"Hearing Officer" – An authorized representative of the Executive Director of the Department, designated under the authority of Title 42 of the Colorado Revised Statutes.

"Hearing Record" or "Record" – The audio recording and/or the written record of the hearing made by the Hearing Officer, together with the evidence presented at hearing.

"Respondent" – The person whose driving privilege is the subject of the hearing.

HEARING PROCESS.

Discovery.

2.1.1. Discovery is prohibited except as set forth in these Rules.

However, the Respondent shall always have access to information maintained by the Department, to the extent permitted by law.

2.2. Hearing Officer Duties.

2.2.1. In addition to any other powers authorized by statute, the Hearing Officer shall have the duty to:

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

2.2.1.2. Take action to avoid unnecessary delay in the disposition of the proceeding;

2.2.1.3. Maintain order.

2.2.1.4. Administer oaths for the purpose of obtaining testimony.

2.2.1.5. Rule on questions of evidence and law;

2.2.1.6. Issue orders relating to hearing and pre-hearing matters, including orders imposing sanctions for improper or unprofessional conduct, or abuse of administrative process, and to award reasonable attorney fees.

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

2.2.1.8. Rule on motions of parties or the Hearing Officer's own motion, including granting or denying continuance;

2.2.1.9. Issue final agency decisions or preliminary decisions as required by statute.

2.3. Discretionary Authority of Hearing Officer

2.3.1. In addition to any other powers authorized by statute, the Hearing Officer shall have the discretion to:

2.3.1.1. Order pre-hearing conferences and hearings on preliminary matters;

2.3.1.2. Request parties to submit legal memoranda, proposed findings of fact, and conclusions of law.

2.4. Evidence.

2.4.1. While under oath, the respondent may testify, present evidence, and comment on pertinent issues.

2.4.2. The Hearing Officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The Hearing Officer may consider hearsay evidence and receive testimony from witnesses other than the Respondent.

2.4.3. The Hearing Officer may question witnesses.

2.4.4. The Hearing Officer may consider and receive documentary evidence, including copies or excerpts. The Hearing Officer may continue a hearing in order to subpoena any witness or document relevant to the proceeding.

2.5. Exhibits.

2.5.1. Documents offered into evidence shall be legible, and shall not exceed 8 ½ inches by 11 inches unless good cause is shown why they cannot be reduced.

2.5.2. Exhibits offered into evidence may 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 excluded from the Record.

2.5.3. Maps, drawings, blueprints, and other documents not reasonably susceptible to reduction shall be rolled or folded.

2.5.4. A table of contents or index shall accompany any document in excess of 50 pages.

2.5.5. The Hearing Officer may require the Respondent, or the Respondent's counsel, to maintain the original of any exhibit for the purposes of ensuring that the exhibit is preserved and included in the Record if the Hearing Officer's decision is appealed.

2.6 SUBPOENAS

2.6.1. Any party to a motor vehicle proceeding before the Division that requests the issuance of a subpoena shall do so at the main Hearing Division Office. This office is currently located at 1881 Pierce Street, Room 106, Lakewood, CO 80214-1493. The request must be in writing and may be served personally, by mail, or by facsimile transmission. Currently, the facsimile number for the Division is (303) 205-5700, but is subject to change.

2.6.2. The written request 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:

2.6.2.1. Name of respondent

2.6.2.2. Case number

2.6.2.3. Date of hearing

2.6.2.4. Location of hearing

2.6.2.5. Time of hearing

2.6.2.6. Name of subject to be subpoenaed

2.6.2.7. Address of subject (home or business)

2.6.2.8. For a subpoena duces tecum the request must specifically identify each document requested to be produced.

2.6.2.9. For subpoenas other than for the officer who signed an Affidavit and Notice of Revocation pursuant to § [42-2-126](#)(3), the request shall also include: (1) a short statement, attached to the form indicating good cause as to why the expected testimony or evidence to be obtained through the witness and/or documents are relevant and necessary to the issues involved in the hearing; why the requesting party believes the evidence is not unduly burdensome on the entity or person subpoenaed; (4) why the requesting party believes compliance with the subpoena will not significantly delay the proceedings; and (5) that the information sought is not otherwise obtainable by the date set for the hearing.

2.6.3. ISSUANCE

2.6.3.1. The subpoena will be issued only upon a determination by a Hearing Officer that:

2.6.3.1.1. The information to be obtained appears to be relevant and necessary to the issues involved in the hearing.

2.6.3.1.2. Such discovery shall not in any way unreasonably delay or prolong the proceedings

2.6.3.1.3. The subpoena can be timely served within the time period required by rule or statute.

2.6.3.1.4. The information sought can be reasonably provided by the date required on the subpoena.

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

2.6.3.1.6. As part of that process the Hearing Officer may conduct a hearing, which may be ex parte, on the motion to issue the subpoena. The party requesting the subpoena will be allowed to participate. Any subpoenaed person or entity wishing to quash a subpoena will also be allowed to participate if they have requested the subpoena be quashed.

2.6.3.2. If the 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 specifically into the Record.

2.6.3.3. When expert evidence is requested by subpoena, an approved expert shall be entitled to reasonable fees associated with compliance of the subpoena request. The Respondent shall have the burden of paying such reasonable expert fees. Such fees will be due within 48 hours of service of the subpoena.

2.6.3.3.1. If the amount of fees sought is disputed, the Hearing Officer shall hear the issue and make a final determination.

2.6.4. SERVICE

2.6.4.1. Service of the subpoena is the duty of the party requesting the subpoena. Service shall be made pursuant to Rule 45(c) of the Colorado Rules of Civil Procedure, except as otherwise set forth in these rules.

2.6.4.2. Witness and mileage fees shall be tendered at the time of service consistent with Rule 45(c) of the Colorado Rules of Civil Procedure.

2.6.4.3. All subpoenas for law enforcement officers must be served at least 5 calendar days prior to the hearing.

2.6.4.4. All other subpoenas must be served at least 48 hours prior to the hearing.

2.6.5. ENFORCEMENT OF SUBPOENA

2.6.5.1. Dismissal. In the event the Hearing Officer deems the non-appearance of a witness and/or failure to produce documents substantially impairs the right of the Respondent to present a defense, the Hearing Officer shall have authority to dismiss the case with prejudice. Failure of the police officer who signed the affidavit and notice of revocation as required in § [42-2-126](#)(8)(e)(II), 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. Other officer(s) subpoenaed by the Respondent shall be treated as any other witness.

2.6.5.2. Quash, by Request. Any subpoenaed witness, entity, or custodian of documents has the right to request that a subpoena be quashed. Any request shall be treated as a motion to quash. Grounds for quashing a subpoena include that compliance with the subpoena is unduly burdensome or impracticable, or unreasonably expensive. If a Hearing Officer grants

a request to quash a subpoena, the witness may be entitled to reimbursement of any reasonable attorney fees or costs associated with the motion to quash. If the request to quash is denied and the Hearing Officer finds compliance with the subpoena to be unreasonably expensive; the Hearing Officer may require the Respondent to pay the costs of compliance with the subpoena.

2.6.5.3. Quash, by Hearing Officer. In the event a properly served subpoenaed witness fails to appear or to provide required documentation, the Hearing Officer shall require an offer of proof from the Respondent as to the nature of the expected testimony or documentation. In the event the Hearing Officer finds, based upon the offer of proof, 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. However, in no event shall the Hearing Officer quash any properly served subpoena requiring the appearance of the officer who signed the notice and affidavit required in § [42-2-126](#)(8)(e)(II), C.R.S., except for events authorized by statute.

2.6.5.4. Reschedule. If the respondent's witness fails to appear after proper service of subpoena, and that witness is not the officer who signed the affidavit and notice of revocation required under § [42-2-126](#)(8)(e)(II), the Hearing Officer may reschedule the hearing to allow the respondent further opportunity to have the witness appear. If the hearing is pursuant to § [42-2-126](#), C.R.S., the hearing may not be rescheduled outside of 60 days from the date the request for hearing was received by the Department.

2.6.5.5. Petition for Contempt. The Hearing Officer may petition the District Court for enforcement of contempt proceedings to compel a properly subpoenaed witness to testify. If the witness is a witness for the Respondent, the Hearing Officer may require that the Respondent draft the affidavit and petition for contempt proceedings.

2.7. Proceedings Open to the Public

2.7.1. Unless otherwise required by law, all proceedings before the Division are open to the public.

2.7.2. The Hearing Officer may remove persons whose conduct impedes the orderly progress of the hearing.

2.7.3. The Hearing Officer may restrict attendance because of the physical limitations of the hearing facility.

2.8. CONDUCT AND DECORUM

2.8.1. 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 by the Hearing Officer in the proceeding. Attorneys shall adhere to the Colorado Rules of Professional Conduct.

2.8.2. To maintain and enforce proper conduct and decorum, and the orderly progress of the hearing, the Hearing Officer may take appropriate action, including but not limited to:

2.8.2.1. Issuing a warning.

2.8.2.2. Excluding a person or persons from the Hearing.

2.8.2.3. Recessing the Hearing.

