

ARTICLE 5. ADMINISTRATIVE HEARINGS

R17-1-501. Definitions

The following definitions apply to this Article unless otherwise required:

1. "Administrative hearing" means a scheduled Executive Hearing Office proceeding for deciding a dispute based on the evidence presented to an administrative law judge. An administrative hearing includes:
 - a. Advance notice to participants of record,
 - b. An opportunity for witnesses to testify under oath, and
 - c. Presentation of documentary evidence.
2. "Administrative law judge" means a person who conducts a summary review or presides at an administrative hearing, with the powers listed under these rules.
3. "Affidavit" means a declaration or statement of facts made:
 - a. In writing, and
 - b. Under oath or affirmation.
4. "Agency action" means an action affecting a license, permit, certificate, approval, registration, or other permission issued by the Arizona Department of Transportation or the Division.
5. "Attorney" means:
 - a. An individual who is an active member in good standing with the State Bar of Arizona,
 - b. An individual approved to appear pro hac vice before the Executive Hearing Office pursuant to Rule 38(A) of the Arizona Supreme Court, or
 - c. An individual authorized by Rule 31 of the Arizona Supreme Court to appear on behalf of another person or legal entity at a hearing before the Executive Hearing Office.
6. "Business day" means a day other than a Saturday, Sunday, or state holiday.
7. "Deposition" means a witness' testimony:
 - a. Given under oath or affirmation,
 - b. Brought out by another person's oral or written questions, and
 - c. Reduced to writing for a proceeding.
8. "Director" means the Arizona Department of Transportation, Motor Vehicle Division Director.
9. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
10. "Executive Hearing Office" means the branch of the Director's office that conducts an administrative hearing or a summary review.
11. "In writing" means:
 - a. An original document,
 - b. A photocopy,
 - c. A facsimile, or
 - d. An electronic mail message.
12. "Motion" means a written or oral proposal for consideration and action filed by a person with the Executive Hearing Office.
13. "Participant of record" means:
 - a. A petitioner or a respondent;
 - b. An attorney representing a petitioner or respondent; or
 - c. A person or entity with an interest in the subject matter of an administrative hearing as determined from Division records or from Arizona Department of Transportation records.
14. "Petitioner" means a person or entity that requests an administrative hearing or a summary review from the Executive Hearing Office.
15. "Respondent" means a person against whom relief is sought in an Executive Hearing Office proceeding.
16. "Summary review" means an Executive Hearing Office proceeding conducted under A.R.S. § 28-1385(L).

17. "Under oath or affirmation" means a witness' sworn statement made to a person with the power to administer an oath or affirmation.

Historical Note

New Section recodified from R17-4-901 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).
Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).
Amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-502. Request for Hearing

- A.** A petitioner or petitioner's attorney shall file a request for a hearing:
1. By mail or hand delivery to the Executive Hearing Office's street address:
Executive Hearing Office, Arizona Department of Transportation, Motor Vehicle Division, 3737 N. 7th St., Suite 160, Phoenix, AZ 85014-5017;
 2. By fax to (602) 241-1624; or
 3. By e-mail to the Executive Hearing Office's electronic mail address: hearingoffice@azdot.gov; and
 4. Timeliness of filing is determined as of the date the Executive Hearing Office receives a request for hearing.
- B.** A request for hearing shall be submitted to the Executive Hearing Office within 15 days of the date of an agency action notice.
- C.** A request for a hearing shall include the petitioner's name, mailing address, and telephone number.

Historical Note

New Section recodified from R17-4-902 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).
Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).
Amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-503. Notice of Hearing

- A.** If a petitioner timely files a request for a hearing as provided under R17-1-502, the Executive Hearing Office shall send a notice of hearing to the petitioner's mailing address in the request for hearing and to any other participant of record.
- B.** The notice of hearing shall state the:
1. Time, date, and place of the administrative hearing;
 2. Type of administrative hearing; and
 3. Statutory authority for the administrative hearing.

Historical Note

New Section recodified from R17-4-903 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).
Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).
Amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-504. Representation

- A.** Prior to any appearance, a petitioner's or respondent's attorney licensed in a state other than Arizona, shall file with, and obtain approval from, the Executive Hearing Office the following documentation:
1. An original motion to appear pro hac vice,
 2. The Notice of Receipt of Complete Application from the State Bar of Arizona, and
 3. The original certificate of good standing from the licensing State Bar.
- B.** Documentation under subsection (A) shall be filed with the Executive Hearing Office at least five business days before date of appearance.
- C.** Non-compliance with this Section shall result in the exclusion of a petitioner's or respondent's attorney licensed in a state other than Arizona from participation in an administrative hearing.

Historical Note

New Section recodified from R17-4-904 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).
Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-504 renumbered to R17-1-505; new R17-1-504 made by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-505. Administrative Hearing Procedure

- A.** An administrative law judge shall preside at an administrative hearing and shall:
1. Administer oaths or affirmations;
 2. Conduct fair and impartial hearings;
 3. Have the parties state orally at the hearing their positions on the issues;
 4. Rule on motions filed under R17-1-508;
 5. Maintain an administrative hearing record;
 6. Issue a written decision, including findings of fact and conclusions of law, based on the record, and
 7. Sustain an agency action supported by the record, state and administrative law.
- B.** In addition to the requirements of subsection (A), an administrative law judge may:
1. Issue a subpoena for the attendance of a relevant witness or for the production of relevant documents or things, and
 2. Question a witness.
- C.** An administrative law judge may order summary suspension of a license according to A.R.S. § 41-1064(C).
- D.** A.R.S. § 41-1063 applies to the contents and service of an administrative hearing decision.
- E.** A participant of record shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:
1. All participants of record are present;
 2. Communication is during a scheduled proceeding, where an absent participant of record fails to appear after proper notice; or
 3. Communication is by written motion with copies to all participants of record.
- F.** At the request of a participant of record or at the judge's discretion, an administrative law judge may order a witness excluded from the hearing room except:
1. A participant of record, or
 2. A person whose presence is shown to be essential to the presentation of a participant of record's case.

Historical Note

New Section recodified from R17-4-905 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).
Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).
Former R17-1-505 renumbered to R17-1-506; new R17-1-505 renumbered from R17-1-504 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-506. Administrative Hearing Evidence

- A.** A.R.S. §§ 41-1062(A) applies to evidence offered in an administrative hearing.
- B.** The administrative law judge may admit a witness' deposition or affidavit and determine its evidentiary weight. The party taking a witness' deposition or affidavit shall bear all deposition-related or affidavit-related costs.

Historical Note

New Section recodified from R17-4-906 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).
Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).
Former R17-1-506 renumbered to R17-1-507; new R17-1-506 renumbered from R17-1-505 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-507. Time Computation

- In computing a time period under this Article, the Executive Hearing Office shall:
1. Exclude the day of the act triggering the period;

2. If the last day is a Saturday, Sunday, or legal holiday, extend the period to the end of the next business day;
3. If the period is 10 days or less, count only the business days; and
4. If service is by mail, extend the period by five days.

Historical Note

New Section recodified from R17-4-907 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-507 renumbered to R17-1-508; new R17-1-507 renumbered from R17-1-506 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-508. Motion Practice

- A.** A party or a party's attorney making a motion shall state in the motion the relief sought, the factual basis, and the legal authority for the requested relief.
 1. For a pre-hearing motion, a party or a party's attorney shall:
 - a. Make the motion in writing, and
 - b. File the motion with the Executive Hearing Office at least five business days before the administrative hearing.
 2. For a motion made at an administrative hearing:
 - a. A party or a party's attorney may make the motion orally, and
 - b. The administrative law judge may require the party or the party's attorney to file the motion in writing.
- B.** An administrative law judge may include a ruling on a motion in an administrative hearing decision.

Historical Note

New Section recodified from R17-4-908 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-508 renumbered to R17-1-509; new R17-1-508 renumbered from R17-1-507 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-509. Subpoena Issuance

- A.** In connection with an administrative hearing, an administrative law judge may issue a subpoena to compel the attendance of a witness or the production of documents or things.
 1. A party or a party's attorney requesting a subpoena shall file a written subpoena request, briefly stating the substance of the evidence sought and why the evidence is necessary for the hearing.
 2. An administrative law judge has discretion to issue or deny a subpoena based on the:
 - a. Relevance of the evidence sought,
 - b. Reasonable need for the evidence sought, and
 - c. Timeliness of the request.
- B.** A party or a party's attorney requesting a subpoena shall:
 1. Draft the subpoena in the correct format, including:
 - a. The caption and docket number of the matter;
 - b. A list of documents or things to be produced;
 - c. The full name and address of:
 - i. The custodian of the documents or things listed, or
 - ii. The person ordered to appear;
 - d. The time, date, and place to appear or to produce documents or things; and
 - e. The name, address, and telephone number of the party or the party's attorney requesting the subpoena;
 2. Obtain an administrative law judge's signature on the subpoena,
 3. Ensure service of the subpoena on the person named in the subpoena under subsection (C), and
 4. Bear all subpoena-related costs.

- C. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena shall have the subpoena served by a person who:
 - 1. Is at least age 18 and is not a party to the administrative hearing;
 - 2. Delivers, within Arizona, a copy of the subpoena to the person named in the subpoena;
 - 3. If the subpoena requires the named person's attendance at an administrative hearing, hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
 - 4. Files with the Executive Hearing Office a proof of service, signed by the person who served the subpoena, certifying:
 - a. The date of service,
 - b. The manner of service, and
 - c. The name of the person served.
- D. A party or a person served with a subpoena who objects to the subpoena or a portion of the subpoena, may file an objection in writing with the Executive Hearing Office. The party or person served with the subpoena shall:
 - 1. State in the objection the reasons for objecting; and
 - 2. File the objection:
 - a. Within five days after service of the subpoena; or
 - b. If the subpoena is served less than five days before an administrative hearing, at the start of the hearing.
- E. An administrative law judge may quash or modify a subpoena if:
 - 1. The subpoena is unreasonable or imposes an undue burden, or
 - 2. The evidence sought may be obtained by another method.
- F. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena or the Arizona Department of Transportation shall enforce the subpoena in the Superior Court of Arizona, in the county where the administrative hearing is held.

Historical Note

New Section recodified from R17-4-909 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-509 renumbered to R17-1-510; new R17-1-509 renumbered from R17-1-508 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-510. Document Filing

- A. A document filed in an Executive Hearing Office proceeding shall state:
 - 1. The description and title of the proceeding,
 - 2. The name of the party filing the document,
 - 3. The date the document is signed,
 - 4. The title and address of the document's signer, and
 - 5. If applicable, the attorney's name, state bar number, law firm, address, and telephone number.
- B. A party or a party's attorney shall sign a document filed with the Executive Hearing Office. By signing, the signer certifies that:
 - 1. The signer read the document;
 - 2. The document is supported by the facts and the law or by a good faith argument to extend, modify, or reverse the law; and
 - 3. The document is not filed to harass, delay, or needlessly increase the cost of the Executive Hearing Office proceeding.
- C. A document is filed as of the date the Executive Hearing Office receives the document.

Historical Note

New Section recodified from R17-4-913 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-510 renumbered to R17-1-511; new R17-1-510 renumbered from R17-1-509 and

amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-511. Continuing an Administrative Hearing

- A. An administrative hearing participant of record requesting a continuance shall file the request with the Executive Hearing Office at least seven business days before the hearing. The continuance request shall state a reason for continuing the administrative hearing.
- B. An administrative law judge shall not grant a continuance unless the participant of record establishes good cause for the continuance.
- C. An administrative law judge shall not grant a request for continuance which is untimely unless the participant of record establishes good cause for the delay in filing the request.

Historical Note

New Section recodified from R17-4-911 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-511 renumbered to R17-1-512; new R17-1-511 renumbered from R17-1-510 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-512. Rehearing and Judicial Review

- A. A party may file a written motion for rehearing with the executive hearing office, stating in detail the reasons a rehearing should be granted.
- B. Unless otherwise provided by statute, a motion for rehearing is timely if received by the Executive Hearing Office within the later of:
 - 1. Fifteen days after the date of in-person service of the administrative hearing decision, or
 - 2. Fifteen days after the mailing date of the administrative hearing decision.
- C. A timely motion for rehearing stays an agency action, other than:
 - 1. A summary suspension under A.R.S. § 41-1064(C), or
 - 2. An agency action sustained under subsection (J).
- D. An administrative law judge may grant a rehearing for any of the following reasons materially affecting a party's rights:
 - 1. Irregularity in the proceedings of the Arizona Department of Transportation or the Division, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Arizona Department of Transportation or the Division, its staff, an administrative law judge, or the prevailing party;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 - 5. Excessive penalty;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
 - 7. That the administrative hearing decision is a result of passion or prejudice; or
 - 8. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. An administrative law judge may affirm or modify an administrative hearing decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying an administrative hearing decision or granting a rehearing shall specify the grounds for the order.
- F. An administrative law judge may order a rehearing for a reason in subsection (D).
- G. An administrative law judge may require the filing of written briefs on the issues raised in a motion for rehearing.
- H. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. An administrative law judge may extend this period for a maximum of 20 days for good cause as described in subsection (I) or by written stipulation of the parties. Reply affidavits may be permitted at the discretion of the administrative law judge.

- I. An administrative law judge may extend the time limits in subsections (A) and (H) upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have known in time, using reasonable diligence, and a ruling on the motion will:
 - 1. Further administrative convenience, expedition, or economy; or
 - 2. Avoid undue prejudice to any party.
- J. An administrative law judge shall issue an administrative hearing decision as a final decision without an opportunity for a rehearing if the administrative law judge makes specific findings that:
 - 1. The public health, safety, and welfare require immediate effectiveness of the administrative hearing decision; and
 - 2. A rehearing of the decision is impractical, unnecessary, or contrary to the public interest.
- K. A party may appeal or request judicial review of a final administrative hearing decision in the Superior Court of Arizona as provided by statute.

Historical Note

New Section recodified from R17-4-912 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-512 renumbered to R17-1-513; new R17-1-512 renumbered from R17-1-511 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-513. Summary Review of an Administrative Suspension Order Under A.R.S. § 28-1385

- A. A petitioner issued a driving privilege suspension order under A.R.S. § 28-1385, may request summary review instead of a hearing.
 - 1. The requirements of R17-1-502 apply to a summary review request.
 - 2. The petitioner or the petitioner's attorney may include with the summary review request a written statement of:
 - a. The reasons why the Division should not suspend the petitioner's driving privilege, and
 - b. Reasons to find that at least one issue in subsections (C)(1) through (C)(3) is not met by the affidavit filed by a law enforcement officer with the Department.
- B. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall:
 - 1. Conduct the summary review without the petitioner's presence,
 - 2. Examine the documents in the Executive Hearing Office case file, and
 - 3. Issue a written summary review decision sustaining or voiding the suspension order.
- C. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall consider the following factors:
 - 1. Whether the law enforcement officer's certified report reflects the officer had reasonable grounds to believe the petitioner was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor;
 - 2. Whether the law enforcement officer's certified report reflects the officer placed the petitioner under arrest for a violation of A.R.S. §§ 4-244(33), 28-1381, 28-1382, or 28-1383, and the petitioner complied with A.R.S. § 28-1321;
 - 3. Whether the law enforcement officer's certified report reflects petitioner's test results indicating at least the applicable alcohol concentration stated in A.R.S. § 28-1385; and
 - 4. Whether the petitioner's written statement of the reasons why the Division should not suspend the petitioner's driving privilege provides convincing evidence that at least one issue in subsections (C)(1) through (C)(3) was not met.

Historical Note

New Section recodified from R17-4-910 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3).

Former R17-1-513 renumbered to R17-1-514; new R17-1-513 renumbered from R17-1-512 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

R17-1-514. Maintaining Administrative Hearing Decorum

- A. All hearings are open to the public, however a person shall not interfere with access to or from a hearing room, or interfere, or threaten interference with a hearing.
- B. If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.