TITLE 22: COURTS

CHAPTER 1-49: [RESERVED]

CHAPTER 50: EDUCATION AND TRAINING

PART 1: GENERAL PROVISIONS [REPEALED]

[This part was repealed on July 17, 2006.]

PART 2-9: [RESERVED]

PART 10: MAGISTRATE COURTS - JUDGES [REPEALED]

[This part was repealed on July 17, 2006.]

PART 11: [RESERVED]

PART 12: MUNICIPAL COURTS - JUDGES [REPEALED]

[This part was repealed on July 17, 2006.]

PART 13-14: [RESERVED]

PART 15: PROBATE COURTS - JUDGES [REPEALED]

[This part was repealed on July 17, 2006.]

PART 16: [RESERVED]

PART 17: DOMESTIC VIOLENCE SPECIAL COMMISSIONERS AND DOMESTIC RELATIONS HEARING OFFICERS [REPEALED]

[This part was repealed on July 17, 2006.]

PART 18-19: [RESERVED]

CHAPTER 51-99: [RESERVED]

CHAPTER 100: JUDICIAL STANDARDS - GENERAL PROVISIONS [RESERVED]

CHAPTER 101-509: [RESERVED]

CHAPTER 510: PAROLE

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PAROLE HEARINGS

22.510.2.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.2.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.2.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.2.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.2.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.2.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.2.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.2.8 PAROLE HEARING:

A. The provisions of Paragraph I [now Subsection A of 22.510.2.8 NMAC] apply to persons serving determinate sentences for crimes committed on or after July 1, 1979, except for persons serving indeterminate life sentences for crimes committed on or after July 1,1979.

(1) The purpose of a regular parole hearing with regard to inmates in this category is to set conditions of parole and to consider an appropriate parole plan for the inmate.

(2) Inmates should appear before the board at least 90 days before their anticipated release on parole, except that an inmate who is trying to secure an out-of-state parole plan should appear at least 120 days before the board prior to his anticipated release date. (Regularly scheduled appearance dates are determined by the institution where the inmate is incarcerated).

(3) Legal counsel for a prospective parolee is not permitted in a regular parole hearing. Visitors will not be permitted unless cleared by the chairman with consent of the other board members.

(4) Inmates will be informed of the parole board's decision within five (5) working days from the date of the hearing, unless the board informs the inmate that it will require more time to set parole conditions and to consider an appropriate parole plan.

(5) Minutes of regular parole hearings will be kept by one of the board members or a designated staff person.

(6) If it appears during a regular hearing that a translator and/or interpreter is needed in order that the inmate may communicate to the board and understand the proceedings, the board will provide one.

(7) Regular parole hearings will be held at regularly scheduled times at the New Mexico penitentiary, satellite facilities or other places where New Mexico inmates are being confined.

B. The provisions of Paragraph II [now Subsection B of 22.510.2.8 NMAC] apply to inmates serving indeterminate sentences for crimes committed prior to July 1, 1979, and to inmates serving indeterminate life sentences for crimes committed on or after July 1, 1979.

(1) There are three types of regular parole hearings:

(a) the initial hearing, to which each inmate is entitled upon meeting the statutory requirements, at which time the inmate will appear in person, unless waived in writing;

(b) review hearing;

(c) special hearing.

(2) All special reviews must be approved by the board before the hearing date.

(3) Legal counsel for a prospective parolee is not permitted in a regular parole hearing. Visitors will not be permitted unless cleared by the chairman with the consent of the other board members.

(4) Letters of recommendation concerning parole or job offers should be sent at least one month before the parole board hearing. A parole board docket for regular board hearings will be prepared and copies sent to the district court judges who committed the prospective parolees at least 30 days prior thereto.

(5) Inmates will be informed of the parole board's decision within a five (5) day period, unless the board informs the inmate that it will require more time to decide the case.

(6) If parole is denied, reasons for denial will be provided the inmates. The inmates' caseworker or the parole board will inform the inmates of the board's decision.

(7) Minutes of regular parole hearings are kept by one of the board members.

(8) If it appears during a regular hearing that a translator and/or interpreter is needed in order that the inmate may communicate to the board and understand the proceedings, the board will provide one.

(9) With respect to the parole of inmates sentenced by New Mexico courts who are confined in state institutions outside of New Mexico, if the state in which the inmate is located is party to the Western Interstate Corrections Compact, a parole hearing may be provided the inmate pursuant to the provisions of the Western Interstate Corrections Compact.

(10) Meetings of the parole board held for the purpose of taking formal action upon a matter not requiring the presence of an inmate may be held at the office of the parole board.

(11) Regular parole hearings will be held at regularly scheduled times at the New Mexico state penitentiary, satellite facilities or other places where New Mexico inmates are being confined.

[Recompiled 12/31/01]

PART 3: POLICY STATEMENT PERTAINNIG TO THE GRANTING OF PAROLE, DENIAL OR PAROLE, REVOCATION OR RECISSION OF PAROLE AND TO THE DISCHARGE OF PAROLEE

22.510.3.1 ISSUING AGENCY:

New Mexico Parole Board.

[22.510.3.1 NMAC – Rp, 22.510.3.1 NMAC, 3/9/2021]

22.510.3.2 SCOPE:

The provisions of Part 3 apply to persons subject to the granting of parole, denial of parole, revocation or recission of parole and to the discharge of parole.

[22.510.3.2 NMAC – Rp, 22.510.3.2 NMAC, 3/9/2021]

22.510.3.3 STATUTORY AUTHORITY:

Paragraph 8 of Subsection B of Section 31-21-25 NMSA 1978.

[22.510.3.3 NMAC – Rp, 22.510.3.3 NMAC3/9/2021]

22.510.3.4 DURATION:

Permanent.

[22.510.3.4 NMAC – Rp, 22.510.3.4 NMAC, 3/9/2021]

22.510.3.5 EFFECTIVE DATE:

March 9, 2021, unless a later date is cited at the end of a section.

[22.510.3.5 NMAC – Rp, 22.510.3.5 NMAC, 3/9/2021]

22.510.3.6 OBJECTIVE:

To qualify the application of Subsection A of 22.510.3.8 and its exclusion of persons serving indeterminate life sentences who were under the age of eighteen (18) at the time their crime was committed, which relates to the enactment of 22.510.17.

[22.510.3.6 NMAC – Rp, 22.510.3.6 NMAC, 3/9/2021]

22.510.3.7 DEFINITIONS:

[RESERVED]

[22.510.3.7 NMAC – Rp, 22.510.3.7 NMAC, 3/9/2021]

22.510.3.8 POLICY STATEMENT PERTAINING TO THE GRANTING OF PAROLE, DENIAL OF PAROLE, REVOCATION OR RESCISSION OF PAROLE AND TO THE DISCHARGE OF PAROLEE:

A. The provisions of Subsection A of 22.510.3.8 NMAC apply to persons serving determinate sentences for crimes committed on or after July 1, 1979, except for persons serving indeterminate life sentences for crimes committed on or after July 1,1979.

(1) Before release of an individual in this category, the board shall furnish to each inmate, as a prerequisite to his release under its supervision, a written statement of the conditions of parole which will be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require, as a prerequisite to release, the submission and approval of a parole plan which shall include, unless waived by the board, evidence of having secured gainful employment or satisfactory evidence of self support.

(2) In setting conditions of parole and in approving a parole plan for the inmate, the following factors will be considered by the board:

(a) the inmate's employment history and his occupational skills and training, both civilian and/or military, and any skills he may have attained while in the corrections system;

(b) the inmate's plans, including proposed residence, proposed employment and other intended pursuits when released;

(c) the inmate's past use of narcotics, other controlled substances or excessive use of alcohol;

(d) any pre-sentence or pre-release investigative reports prepared in with accordance with Section 31-21-9 NMSA 1978;

(e) the inmate's criminal record, including parole and probation history;

(f) reports of physical and mental examinations as have been made, conclusions and recommendations made therein;

(g) whether the inmate should be paroled for hospitalization/treatment;

(h) the inmate's institutional record;

(i) the availability of community resources to assist the inmate when paroled;

(j) whether or not parole costs are required to be included as a parole condition for a crime committed on or after June 19,1981, and the amount thereof;

(k) whether or not victim restitution has been ordered by the court with accordance with Section 31-17-1 NMSA 1978;

(l) any other factor which is deemed relevant by the board in a particular case.

B. The provisions of Subsection B of 22.510.3.8 NMAC apply to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. Before ordering the parole of an inmate sentenced to life imprisonment in this category, the board shall:

(1) interview the inmate at the institution where he is committed;

(2) consider all pertinent information concerning the inmate including:

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

(c) whether a deadly weapon was used in the commission of the offense;

(d) whether an inmate is a habitual offender;

(e) any pre-sentence or pre-release investigative reports filed under Section 31-21-9 NMSA 1978;

(f) the reports of such physical and mental examinations as have been made while in prison; the board may require mental examinations in appropriate cases;

(3) make a determination that parole is in the best interest of society and the inmate;

(4) make a determination that the inmate is able and willing to fulfill the obligations of a law abiding citizen.

C. The provisions of Subsection C of 22.510.3.8 NMAC apply to persons serving indeterminate sentences for crimes committed prior to July 1,1979. Where appropriate, the provisions of this section also apply to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. In accordance with Section 31-21-25

NMSA 1978, the parole board hereby adopts a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a parolee from supervision.

(1) With respect to the grant or denial of parole, the following criteria will be considered by the parole board in making a determination:

(a) whether the inmate has given evidence of having secured gainful employment or satisfactory evidence of self-support;

(b) whether the inmate can be released without detriment to himself or to the community;

(c) whether the inmate is able and willing to fulfill the obligations of a law-abiding citizen;

(d) criteria (a), (b) and (c) of this paragraph must be met in order for an inmate to be paroled to the community.

(2) In determining whether criteria (a), (b) and (c)] have been met, the following factors will be considered by the board:

(a) the inmate's ability and readiness to assume the obligations and responsibilities provided in the parole certificate;

(b) the degree to which the inmate has close ties to family and friends;

(c) the degree to which the type of residence or community in which the inmate plans to live is conducive to good behavior while on parole;

(d) the inmate's employment history and his occupational skills and training, both civilian and/or military, and any skills he may have attained while in the custody of the corrections department;

(e) the inmate's plans, including residence, employment and other intended pursuits if released;

(f) the inmate's past use of narcotics or excessive use of alcohol;

(g) any recommendation made by the sentencing court, district attorneys, law enforcement agencies, and probation and parole officers;

(h) the inmate's conduct during his term of imprisonment;

(i) any pre-sentence or pre-release investigative reports prepared in accordance with Section 31-21-9 NMSA 1978;

(j) the inmate's criminal record;

(k) reports of physical and mental examinations as have been made, and conclusions and recommendations made therein; the board may require mental examinations in appropriate cases;

(l) the inmate's behavior and attitude during confinement;

(m) the inmate's behavior and attitude while on probation or parole from any other sentence and the recentness of such probation or parole;

(n) the availability of community resources to assist the inmate if paroled;

(o) the circumstances of the offense of which the inmate was convicted and sentenced;

(p) any recommendations or comments filed with the board regarding the inmate's suitability for parole;

(q) the inmate's previous social history, including his reputation in his home community;

(r) the inmate's positive efforts on behalf of others;

(s) the inmate's culture, language, values, mores, judgments, communicative ability and other unique qualities;

(t) whether or not victim restitution has been ordered by the court;

(u) whether or not parole costs are required to be included as a parole condition for a crime committed on or after June 19, 1981, and the amount thereof;

(v) any other relevant factor deemed appropriate by the parole board in any particular case.

D. The provisions of Subsection D of 22.520.3.8 NMAC apply to inmates serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. With respect to the parole of an inmate in this category to a detainer or to a consecutive sentence, the following criteria will be considered by the board in making a determination:

(1) The inmate must sufficiently demonstrate the attitude that he could, if released to the community, be able and willing to be a law-abiding citizen.

(2) The inmate must sufficiently demonstrate the attitude that, if he were released to the community, he would not be a detriment to himself or to the community.

(3) The parole of an inmate to a detainer or to a consecutive sentence must be in the best interest of the applicant and society.

E. The provisions of Subsection E of 22.510.3.8 NMAC apply to all applicants for parole. With respect to the parole of an inmate for hospitalization, the following criteria will be considered by the board in making a determination:

(1) It must appear that the inmate needs and will benefit from physical or mental treatment.

(2) It must appear that such treatment, if successful, would probably render the inmate a suitable candidate for parole to the community.

F. The provisions of Subsection F of 22.510.3.8 NMAC apply to all persons facing possible parole revocation. With respect to the revocation of parole, the following criteria apply:

(1) whether the parolee has violated a condition of parole. Whether the violation or violations of one or more conditions of parole demonstrate a disregard of or careless attitude towards the conditions of parole; whether the parolee, whose violation of parole is established, should be recommitted to the custody of the corrections department or should other steps be taken to protect society and improve chances of rehabilitation;

(2) if the violation is sufficiently justified by the parolee, the board may continue parole or may enter any other order it deems appropriate;

(3) if the violation is not established, the parolee will be reinstated on parole;

(4) when a parolee has been returned to a correctional facility of the corrections department, bail or bond release cannot be accomplished by the parole board during final parole revocation hearing;

(5) an electronic recording will be made of all violation hearings.

G. The provisions of Subsection G of 22.510.3.8 NMAC apply to persons serving determinate sentences for crimes committed on or after July 1, 1979. With respect to the criteria to be considered by the board in determining whether to discharge a parolee, the following will be considered: persons serving determinate sentences will be discharged upon completion of the mandatory parole period and a certificate of parole discharge will be issued.

H. The provisions of Subsection H of 22.510.3.8 NMAC] apply to persons serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1,1979. With respect to the criteria to be considered by the board in determining whether to discharge a parolee, the following will be considered:

(1) Upon recommendation by field services division, a parolee who has performed the obligations of his release for such time as will satisfy the board that his final release is not incompatible with his welfare and that of society, the board will, consistent with Paragraphs (2) and (3) below, make final order of parole discharge to the parolee.

(2) For persons sentenced for crimes committed prior to July 1, 1979, no such order of discharge will be made in any case within a period of less than one year after the date of parole release, except where the sentence expires prior thereto.

(3) For persons serving life sentences for crimes committed on or after July 1, 1979, no such order of discharge shall be made in any case until after the parolee has served at least five years on parole.

[22.510.3.8 NMAC – Rp & A, 22.510.3.8 NMAC, 3/9/2021]

PART 4: REVIEW AFTER INITIAL DENIAL

22.510.4.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.4.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.4.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.4.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.4.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.4.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.4.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.4.8 EARLY REVIEW AFTER INITIAL DENIAL:

The provisions of Paragraph I [now 22.510.4.8 NMAC] apply to persons serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. An inmate who has received an initial hearing and has been denied a parole may request an early review in the following manner:

A. submit request through caseworker;

B. request and caseworker's recommendation will be submitted to the parole board;

C. in all instances the request for a review will state the compelling reason, if any, or the reasons for the requested review;

D. the parole board will advise applicant in writing of its decision.

[Recompiled 12/31/01]

PART 5: SUPPORT SUPERVISORY RELEASE CRITERIA

22.510.5.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.5.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.5.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.5.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.5.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.5.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.5.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.5.8 SUPPORT SUPERVISORY RELEASE CRITERIA:

The provisions of the rule apply only to inmates serving indeterminate sentences for crimes committed prior to July 1, 1979. There is hereby adopted by the parole board the following practice to be applied in those instances where a resident of the New Mexico penitentiary is approaching a final release date, and to be followed only in those instances where the final release date is a minimum of six (6) months. (This program involves considering parole for those inmates who have previously been denied parole but who will "final out" their sentences within six (6) months. Such releases are made on the theory that it is more appropriate to release "poor parole" risks under some form of

supervision rather than to release them without any supervision at the termination of their sentences.)

A. A petition, which may be by letter, shall be submitted to the parole board seeking consideration under this procedure. In all instances the petition shall be accompanied with the recommendations of the case manager.

B. To be considered for this program, the petitioner must meet the minimum parole eligibility requirements.

[Recompiled 12/31/01]

PART 6: WAIVER OF PAROLE HEARINGS

22.510.6.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.6.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.6.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.6.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.6.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.6.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.6.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.6.8 WAIVER OF PAROLE HEARING:

A. The provisions of Paragraph I [now Subsection A of 22.520.6.8 NMAC] apply to inmates serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. Any inmate may waive, in writing, his initial or any subsequent parole hearing by signing the appropriate form.

B. The provisions of this paragraph [now Subsection B of 22.510.6.8 NMAC] apply to persons serving determinate sentences for crimes committed on or after July l, 1979. Any inmate in this category may waive, in writing, his right to a parole hearing and this has the effect of requiring him to serve his parole time in incarcerated status. He will discharge what would otherwise be his parole term in incarcerated status unless, prior to such time, he evidences his acceptances and agreement to the conditions of parole as required.

[Recompiled 12/31/01]

PART 7: WAIVER OF PAROLE HEARING BY OUT-OF-STATE INMATE

22.510.7.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.7.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.7.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.7.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.7.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.7.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.7.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.7.8 WAIVER OF PAROLE HEARING BY OUT-OF-STATE INMATE:

The provisions of this rule [now 22.510.7 NMAC] apply to all inmates. Any inmate serving a New Mexico sentence, whether or not concurrent with a sentence served in a jurisdiction other than New Mexico in an out-of-state or federal institution, may waive his initial or other appearance, before the parole board by signing a waiver of personal or other appearance and the board will review his case administratively and enter a decision. The board will notify the inmate, in writing, of its decision.

[Recompiled 12/31/01]

PART 8: VENUE FOR TRANSACTION OF PAROLE BOARD HEARING

22.510.8.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.8.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.8.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.8.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.8.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.8.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.8.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.8.8 VENUE FOR TRANSACTION OF PAROLE BOARD HEARINGS:

The provisions of this rule [now 22.510.8 NMAC] apply to all inmates. Parole board hearings will be held at the following places, as applicable:

A. penitentiary of New Mexico;

B. satellite facilities established by the corrections department;

C. New Mexico state hospital, forensic hospital;

D. at the main office of the parole board;

E. at any place or jurisdiction where New Mexico inmates are confined.

[Recompiled 12/31/01]

PART 9: VOTING ON GRANTING A PAROLE, SETTING PAROLE CONDITION AND VOTING ON PAROLE REVOCATION

22.510.9.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.9.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.9.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.9.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.9.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.9.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.9.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.9.8 VOTING ON GRANTING A PAROLE, SETTING PAROLE CONDITIONS AND VOTING ON PAROLE REVOCATIONS:

The provisions of this rule [now 22.510.9 NMAC] apply to all inmates and all parolees. A majority of two board members is required to grant, deny, revoke a parole, or set parole conditions or approve a parole plan. If only two members of the board are present at any hearing and a tie vote results, then the matter will be deferred and resubmitted to the full board for decision.

[Recompiled 12/31/01]

PART 10: REMOVING OR ADDING PAROLE CONDITIONS

22.510.10.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.10.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.10.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.10.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.10.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.10.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.10.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.10.8 REMOVING OR ADDING PAROLE CONDITIONS:

The provisions of this paragraph [now 22.510.10.8 NMAC] apply to all parolees. Any parolee, by going through his parole officer, may request that a condition of parole be removed, but the request must have the recommendation of his parole officer. The parole officer who wishes to add or remove any condition of parole, must have the parole board's permission to change the parolee's certificate. In some cases, a personal interview may be requested. In all instances, the request for addition or removal of parole conditions must state the reasons for the change.

[Recompiled 12/31/01]

PART 11: APPOINTING AN ACTING CHAIRMAN

22.510.11.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.11.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.11.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.11.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.11.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.11.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.11.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.11.8 PAROLE BOARD ACTING CHAIRMAN:

When the chairman is unavailable, he shall designate one member of the board to be acting chairman.

[Recompiled 12/31/01]

PART 12: HEARING OFFICER REGULATIONS

22.510.12.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.12.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.12.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.12.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.12.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.12.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.12.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.12.8 HEARING OFFICER REGULATIONS:

A. The provisions of Paragraph I [now Subsection A of 22.510.12.8 NMAC] apply to persons serving determinate sentences for crimes committed on or after July 1, 1979, except for persons serving indeterminate life sentences for crimes committed on or after July 1,1979.

(1) Regular parole application hearings may be conducted before one member of the board or before a hearing officer designated by the board.

(a) The regular hearing procedures as set out in the rules and regulations of the parole board shall be followed.

(b) If only one board member or a hearing officer presides over such hearing, he shall prepare and submit a written summary of the proposed parole conditions and reasons therefor, and the proposed parole plan and reasons therefor, and other evidence and information as appropriate, with copies of all relevant documentation together with recommendations to the board within ten (10) working days of the close of the hearing for a decision by the full board.

(2) Parole revocation hearings may be conducted before one member of the board or before a hearing officer designated by the board.

(a) The regular hearing procedures as set out in the rules and regulations of the parole board shall be followed.

(b) If only one board member or a hearing officer presides over such hearing, he shall prepare and submit written findings of fact and conclusions of law together with a summary of the evidence presented at the hearing and recommendations to the full board within ten (10) working days of the close of the hearing for a decision by the full board.

(3) The time limits herein may be extended for cause by the board.

B. The provisions of Paragraph II [now Subsection B of 22.510.12.8 NMAC] apply to persons serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979.

(1) Regular parole application hearing may be conducted before one member of the board or before a hearing officer designated by the board.

(a) The regular hearing procedures as set out in the rules and regulations of the parole board shall be followed.

(b) If only one board member or a hearing officer presides over such hearing, he shall prepare and submit a written summary of the testimony and other evidence, copies of all relevant documents together with recommendations to the board within ten (10) working days of the close of the hearing for a decision by the full board.

(2) Parole revocation hearings may be conducted before one member of the board or before a hearing officer designated by the board.

(a) The regular hearing procedures as set out in the rules and regulations of the parole board shall be followed.

(b) If only one board member or a hearing officer presides over such hearing, he shall prepare and submit written findings of fact and conclusions of law together with a summary of the evidence presented at the hearing and recommendations to the full board within ten (10) working days of the close of the hearing for a decision by the full board.

(3) The time limits herein may be extended for cause by the board.

[Recompiled 12/31/01]

PART 13: ADMINISTRATIVE PROCEDURES

22.510.13.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.13.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.13.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.13.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.13.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.13.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.13.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.13.8 ADMINISTRATIVE PROCEDURES:

A. Upon receipt by the parole board of parole plan that is unacceptable, the board shall advise the prospective parolee, in writing, of this fact, with copies to the director of field services division. A "home plan" may be considered subject to the board’s approval.

B. Field services division may request that the board write a letter of reprimand to a parolee who is adjusting poorly on parole, or that said individual appear before the board personally to discuss his parole adjustment.

C. A parole plan check-out and investigation which reveals that return to a particular community or area which would have adverse effects on the parolees or the community should be covered in said parole plan check-out so that the board may be appraised of that information prior to the release of the parolee.

D. In the event that the parole board places a special parole condition on an individual and the parole plan check-out reveals that compliance therewith is not possible, such determination should be brought to the attention of the board at the time the parole plan report is submitted.

E. The discharge dates from basic sentences inmates are serving is computed by the institutional record section and is not the responsibility or function of the New Mexico parole board.

[Recompiled 12/31/01]

PART 14: TIME LIMITS

22.510.14.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.14.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.14.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.14.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.14.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.14.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.14.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.14.8 TIME LIMITS:

Wherever specific time limits are enumerated in these rules, said limits may be extended for cause by the board. If specific time limits are exceeded, any actions taken shall not be avoided unless actual prejudice to the affected party is shown.

[Recompiled 12/31/01]

PART 15: PAROLE REVOCATION HEARINGS

22.510.15.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.15.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.15.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.15.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.15.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.15.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.15.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.15.8 PAROLE REVOCATION HEARINGS:

The provisions of this paragraph [now 22.510.15.8 NMAC] apply to all parolees facing parole revocation.

A. Parolees charged with parole violation will receive a preliminary probable cause parole revocation hearing upon such charge or charges in accordance with rules and regulations of the corrections department.

B. Final parole revocation hearings are scheduled to commence on the third Wednesday of each month, and continuing on through Thursday and Friday, if necessary.

C. Field services division staff will serve the parolee with proper documentation of alleged violation(s) of parole.

D. The parole board will serve the public defender’s office with the proper documentation of alleged parole violation(s) a minimum of at least 10 working days before the scheduled hearing.

E. The parole board may, however, conduct a final revocation hearing at any time at the request of the parolee or the parolee’s attorney.

F. The parolee's return to the penitentiary of New Mexico at Santa Fe (or other correctional facility) subsequent to a finding of probable cause at such preliminary parole revocation hearing will receive a prompt final parole revocation hearing.

G. Parolees will be afforded the opportunity to request assistance of counsel. Parolees requesting assistance of counsel at their final parole revocation hearings will be interviewed by a member of the parole board to determine whether such parolees need assistance of counsel in accordance with the following criteria:

(1) whether the parolee claims he has not committed the alleged violation;

(2) whether there are substantial reasons which justified or mitigated the violation and makes revocation inappropriate;

(3) whether such reasons (referred in (2) above) are complex or otherwise difficult to develop or present;

(4) whether the parolee appears capable or incapable of speaking effectively for himself;

(5) whether the parolee had counsel at the preliminary probable cause parole revocation hearing.

H. If the parolee's request for counsel is refused, the board shall state the reasons for such refusal.

I. If the parole board determines that counsel is necessary for an indigent parolee, the New Mexico public defender's office shall be notified and requested to represent the parolee.

J. At the final parole revocation hearing, the following due process requirements will be observed at a minimum:

(1) written notice to the parolee of the claimed violation(s) of parole;

(2) disclosure to the parolee of the evidence against him;

(3) opportunity to be heard in person and to present witnesses and documentary evidence;

(4) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);

(5) a written statement by the fact finders as to the evidence relied on and the reasons for revoking parole or the reasons for other action taken by the board.

K. Hearsay evidence which the parole board deems reliable may be admitted at such parole revocation hearing. The board may consider evidence, including letters, affidavits and other material that may not be admissible in a criminal prosecution.

L. If the parole violation charged is established, the parole board may continue or revoke the parole, or enter any other order deemed appropriate.

M. At the final parole revocation hearing, a parolee cannot relitigate issues determined against him in other forums, as in the situation presented when revocation is based on conviction of a crime.

N. Parolees confined in institution outside of New Mexico, by reason of a new conviction subsequent to release on parole, will receive a final parole revocation hearing upon their return to the actual, physical custody of New Mexico corrections department.

O. Credit for time served while on parole will be given, unless (1) the parolee is a fugitive from justice; or (2) the parolee was convicted in another jurisdiction and was sentenced to confinement in a penal institution outside of New Mexico. However, the parole board may exercise discretion in determining whether to grant or disallow credit for those periods of time while on parole prior to revocation. Credit while the parolee is either a fugitive from justice or is serving a sentence in another jurisdiction will not ordinarily be allowed for such time periods, unless the parolee can demonstrate good cause why credit should be allowed for such periods of time.

[Recompiled 12/31/01]

PART 16: RESCINDING PAROLE

22.510.16.1 ISSUING AGENCY:

New Mexico Parole Board.

[Recompiled 12/31/01]

22.510.16.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

22.510.16.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

22.510.16.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

22.510.16.5 EFFECTIVE DATE:

[Filed December 2, 1982]

[Recompiled 12/31/01]

22.510.16.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

22.510.16.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

22.510.16.8 RESCINDING PAROLE:

The provisions in PB Rule 82.15 [now 22.510.16 NMAC] apply to all inmates.

A. Any inmate who has been granted a parole to the community, a consecutive sentence or a detainer, and who is found guilty of, or pleads guilty to having violated a prison rule or regulation which constitutes a misconduct report and finding of guilt after a due process hearing at the place of confinement, will be afforded a hearing before the parole board or a hearing officer designated by the board.

B. The hearing contemplated in this section will be a limited hearing solely on the issue of whether the violation warrants rescission of the board's previous favorable action.

C. The inmate will be permitted to present evidence he may have which is relevant to this one issue only.

D. In no instances will the board relitigate the issue of guilt.

E. The inmate may submit his evidence in mitigation, in writing.

F. The inmate may waive the right to have this hearing, and the board will then enter its decision in accordance therewith.

G. In all instances, the board will advise the inmate, in writing, of its decision.

[Recompiled 12/31/01]

PART 17: PAROLE HEARINGS FOR YOUTH SENTENCED IN ADULT COURT

22.510.17.1 ISSUING AGENCY:

New Mexico Parole Board.

[22.510.17.1 NMAC – N, 3/9/2021]

22.510.17.2 SCOPE:

The provisions of Part 17 apply to persons serving indeterminate life sentences for crimes committed when under the age of 18 and sentenced on or after July 1, 1979.

[22.510.17.2 NMAC – N, 3/9/2021]

22.510.17.3 STATUTORY AUTHORITY:

Paragraph 8 of Subsection B of Section 31-21-25 NMSA 1978.

[22.510.17.3 NMAC – N, 3/9/2021]

22.510.17.4 DURATION:

Permanent.

[22.510.17.4 NMAC – N, 3/9/2021]

22.510.17.5 EFFECTIVE DATE:

March 9, 2021, unless a later date is cited at the end of a section.

[22.510.17.5 NMAC – N, 3/9/2021]

22.510.17.6 OBJECTIVE:

In accordance with the prohibition on cruel and unusual punishment of the Eighth Amendment of the U.S. Constitution and Article II, Section 13 of the New Mexico Constitution and the rehabilitative purposes of the New Mexico Children's Code, the parole board is responsible for providing an inmate sentenced for offenses committed

under the age of 18 with a meaningful opportunity for release. Because of the unique constitutional requirements announced in supreme court precedent, the parole board must treat cases involving youthful offenders differently than those involving adult offenders.

[22.510.17.6 NMAC – N, 3/9/2021]

22.510.17.7 DEFINITIONS:

A. "Aggravating factor"--a circumstance or factor the parole board is permitted or required to weigh against the grant of parole. *See also* mitigating factor.

B. "Deadly weapon"– as defined in Section 31-1-12 NMSA 1978, a deadly weapon means any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including sword, canes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted.

C. "Experts" – an expert permitted to submit evidence in support of release under Subsection D of 22.510.17.8 is limited to those psychologists, psychiatrists, social workers, and other licensed professionals in adolescent brain development who have conducted an individual evaluation of the inmate for purposes of parole review under the provisions of this rule.

D. "Family member of the victim" – as defined in Section 31-21-25 NMSA 1978, "family member of the victim" is a mother, father, sister, brother, child or spouse of the victim or a person who has custody of the victim.

E. "Habitual offender" – as defined in Section 31-18-17 NMSA 1978, a habitual offender is a person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978.

F. "Mitigating factor" – a circumstance or factor the Parole Board is permitted or required to weigh in favor of the grant of parole. *See also* aggravating factor.

[22.510.17.7 NMAC – N, 3/9/2021]

22.510.17.8 PRESENTATION AND CONSIDERATION OF YOUTHFUL CHARACTERISTICS:

The parole board shall consider the following mitigating factors for inmates sentenced for crimes committed before the age of 18:

A. The age and life circumstances of the inmate as of the date of the commission of the crime(s), including, but not limited to, diminished understanding of risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;

(1) The hallmark features of youth at the time of the commission of the crime(s), including, but not limited to, diminished understanding of risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;

(2) Whether the inmate has demonstrated growth and increased maturity since the date of the commission of the crime(s);

(3) The inmate's contributions to the welfare of other persons through service while incarcerated;

(4) When appropriate, the inmate's efforts to overcome substance abuse, addiction, or trauma;

(5) Lack of education or obstacles that the inmate may have faced as an adolescent in the adult correctional system;

(6) The inmate's opportunities for, or lack thereof, rehabilitation services in the correctional system, including, but not limited to, mental health services, counseling, educational programs, and vocational training; and

(7) The overall degree of the inmate's rehabilitation considering the inmate's age and life circumstances at the time of the crime, the nature and circumstances of the inmate's involvement in the crime(s), and the inmate's opportunities for rehabilitation while incarcerated.

B. An inmate shall be allowed to present, and the parole board shall consider, evidence of the inmate's youthful characteristics prior to the crime(s) and during incarceration in the form of paper, photographic, and electronic records, expert reports, and written statements.

C. Individuals, including, but not limited to, family members, friends, school and vocational personnel, faith leaders, teachers, correctional officials, and representatives from community-based organizations with knowledge about relevant evidence about the inmate may submit statements to the parole board as mitigating evidence of the inmate's maturity and life circumstances prior to the crime and/or as mitigating evidence of the inmate's growth and maturity since the time of the offense.

D. Experts in adolescent development, brain science, trauma, mental and physical health, and other relevant areas of expertise may present to the parole board on reports, affidavits, or other written statements to the parole board submitted as mitigating evidence. To qualify for consideration by the parole board, expert reports must address the inmate's particular circumstances and be based on an individual evaluation of the inmate.

E. Institutional infractions received prior to age 25 shall not be weighed against the inmate when determining whether to grant or deny parole.

[22.510.17.8 NMAC – N, 3/9/2021]

22.510.17.9 GRANT OF PAROLE AND INCORPORATION OF SECTION 31-21-10 NMSA 1978:

A. Where credible evidence of rehabilitation, growth, and maturity is present, a presumption of fitness for parole shall be applied. In applying this presumption, the parole board shall abide by the statutory requirements under Section 31-21-10 NMSA 1978, for granting parole of an inmate sentenced to life imprisonment. In accordance with Section 31-21-10 NMSA 1978, before granting parole, the parole board shall also consider:

(1) The circumstances of the offense;

(2) Mitigating and aggravating circumstances;

(3) Whether a deadly weapon was used in the commission of the offense;

(4) Whether the inmate is a habitual offender;

(5) The reports filed under Section 31-21-9 NMSA 1978; and

(6) The reports of such physical and mental examinations as have been made while in an institution.

B. In accordance with Section 31-21-10 NMSA 1978, in support of a grant of parole, the parole board shall also:

(1) Make a finding that parole is in the best interest of society and the inmate; and

(2) Make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

[22.510.17.9 NMAC – N, 3/9/2021]

22.510.17.10 RIGHTS OF CRIME VICTIMS AND INCORPORATION OF SECTION 31-21-25 NMSA 1978:

The parole board shall allow the victim of the offender's crime or a family member of the victim to be present during the parole hearing. If the victim or a family member of the victim requests an opportunity to speak to the parole board during the hearing in public or private, the parole board shall grant the request.

[22.510.17.10 NMAC – N, 3/9/2021]

22.510.17.11 DENIAL OF PAROLE:

A. Where credible evidence of rehabilitation, growth, and maturity is present, a presumption of fitness for parole shall be applied. The focus of the parole board's determination should be on the credible evidence provided by the inmate demonstrating rehabilitation, growth, and maturity. Denial of parole is permitted if the parole board determines there is insufficient evidence of rehabilitation, growth, and maturity. The parole board shall articulate the basis of its decision in writing if release is denied. The written denial shall include, but is not limited to:

(1) The specific reason(s) why release is not in the best interest of society and the inmate; and

(2) An analysis of the characteristics of youth as outlined in 22.510.17.8.

B. In accordance with Subsection A of Section 31-21-10 NMSA 1978, if release is denied, the inmate shall be eligible for a subsequent parole review after two years from the date of the most recent denial.

[22.510.17.11 NMAC – N, 3/9/2021]

22.510.17.12 LEGAL COUNSEL AND DEFENSE PROFESSIONALS:

A. Inmates appearing before the parole board sentenced to indeterminate life for an offense or offenses committed under the age of 18 shall have the right to retain counsel for representation before the parole board. Counsel shall be permitted to participate in the hearing, argue the application of the provisions of this rule in the case of their client, and submit to the members of the parole board memorandum of this proposed application and supporting evidence.

B. The parole board shall have the right to have legal counsel of its own present at the hearing.

C. Social workers and other defense professionals also engaged in the representation of the inmate before the parole board shall be permitted to submit reports, affidavits, or other written or testamentary statements to the parole board as mitigating evidence.

[22.510.17.12 NMAC – N, 3/9/2021]

22.510.17.13 NOTICE:

A. Inmates will be provided a minimum of 30 days' notice of the date and time of their hearing under this rule.

B. Inmates will be informed of the parole board's decision within 30 days from the date of the hearing.

[22.510.17.13 NMAC – N, 3/9/2021]

22.510.17.14 PRESERVATION OF RECORD:

Parole hearings will be tape recorded and kept by the parole board. A recording of the hearing will be made available to anyone upon written request to the parole board and sent within 14 days of the request.

[22.510.17.14 NMAC – N, 3/9/2021]

PART 18-99: [RESERVED]

PART 100: JUVENILE PUBLIC SAFETY ADVISORY BOARD

22.510.100.1 ISSUING AGENCY:

New Mexico Juvenile Public Safety Advisory Board.

[22.510.100.1 NMAC - Rp, 22.510.100.1 NMAC, 10/30/09]

22.510.100.2 SCOPE:

This policy applies to members and employees of the juvenile public safety advisory board and to all juvenile offenders, including youthful offenders, who are eligible to be considered for supervised release by the department.

[22.510.100.2 NMAC - Rp, 22.510.100.2 NMAC, 10/30/09]

22.510.100.3 STATUTORY AUTHORITY:

These regulations are adopted pursuant to authority granted to the juvenile public safety advisory board in 1978 N.M. Stat. Ann. Section 32A-7-6(A)(5) 2009.

[22.510.100.3 NMAC - Rp, 22.510.100.3 NMAC, 10/30/09]

22.510.100.4 DURATION:

Permanent.

[22.510.100.4 NMAC - Rp, 22.510.100.4 NMAC, 10/30/09]

22.510.100.5 EFFECTIVE DATE:

October 30, 2009, unless a later date is cited at end of a section.

[22.510.100.5 NMAC - Rp, 22.510.100.5 NMAC, 10/30/09]

22.510.100.6 OBJECTIVE:

To establish standards and procedures for the juvenile public safety advisory board and its staff to conduct investigations, examinations, interviews, and such other procedures as may be necessary for the effectual discharge of the duties of the board.

[22.510.100.6 NMAC - Rp, 22.510.100.6 NMAC, 10/30/09]

22.510.100.7 DEFINITIONS:

In these definitions, all references to males are understood to include females. As used in these regulations:

A. "Administrative review" means a review conducted by the director or designee.

B. "Agenda" means the list of juvenile offenders who are to be considered for supervised release at the department's regular release consideration meetings.

C. "Board" means the juvenile public safety advisory board whose members are appointed pursuant to the Juvenile Public Safety Advisory Board Act, 1978 NMSA Sections 32A-7A-1 to 32A-7A-8.

D. "Department" means the New Mexico children, youth and families department.

E. "Director" means the administrative officer of the juvenile public safety advisory board appointed by the governor; the director shall employ other staff as necessary to carry out the administrative duties of the board.

F. "Facility" refers to a facility operated by or on behalf of CYFD's juvenile justice services for purposes of housing and providing care and rehabilitation for clients committed to the custody of CYFD.

G. "Facility release panel (panel)" is the departmental secretary-designated releasing authority that considers juveniles for supervised release.

H. "Facility transition coordinator (FTC)" means a department employee who works with the client and the client's multi-disciplinary team, juvenile probation officer, classification officer and regional transition coordinator to coordinate the client's care while in the facility and ensures that the required tasks of the client's supervised release or extension track are occurring in a timely manner.

I. "Home study" means the assessment conducted by the department of the living environment where the juvenile offender may reside during the term of supervised release; specific strengths and weaknesses of the living environment are identified through the home study process.

J. "Juvenile offender" means a child committed to the custody of the department pursuant to the Delinquency Act, 1978 NMSA Section 32A-2-1 through 32A-2-32; the term "juvenile offender" in this regulation includes those individuals who are committed as youthful offenders.

K. "Quorum" is a minimum number of members of a board who must be present to make decisions; for purposes of board participation in facility release panel meetings and hearings, quorum means at least one member of the board.

L. "Release consideration meeting" means a proceeding conducted by the panel for purposes of deciding whether to grant, deny, defer or revoke supervised release.

M. "Release plan" means the department's recommendation for the conditions the juvenile offender should be required to fulfill if released, and presents workable methods of dealing with the juvenile offender's problems and needs throughout the community intervention.

N. "Release agreement" means the conditions of supervised release as established by the panel. The juvenile is required to agree in writing to the conditions as a prerequisite to being placed on release status.

O. "Secretary" means the secretary of the children, youth and families department.

P. "Structured decision making (SDM)" means a system designed for use in case management of the juvenile population, and used by the department in the classification of committed juvenile offenders.

Q. "Supervised release" refers to the release of a juvenile, whose terms of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the terms of commitment has expired, and may be returned to custody for violating conditions of release.

R. "Supervised release plan" means the department's recommendation for the conditions the juvenile offender should be required to fulfill if released and presents workable methods of dealing with the juvenile offender's problems and needs through community intervention.

S. "Supervised release recommendation report" is the report prepared by the FTC/designee to inform the panel of the juvenile's progress while committed and the juvenile's readiness for release through summaries of all the disciplines in the juvenile's plan of care and the plan for the juvenile if he or she is granted supervised release.

[22.510.100.7 NMAC - Rp, 22.510.100.7 NMAC, 10/30/09; A, 6/1/10]

22.510.100.8 ADMINISTRATIVE REVIEWS:

A. Administrative review. At intervals, the director or designee reviews the juvenile offender's progress or lack thereof. The administrative review may be based solely on documentation. Whenever possible, it is preferable for the administrative review to include an interview with the juvenile offender at the facility where he or she is housed.

(1) The first administrative review must occur not later than forty days after the date that the juvenile offender is committed to the department's custody, and may occur at the juvenile's initial MDT.

(2) Subsequent administrative reviews occur at regular intervals thereafter, until such time as the juvenile offender is placed on the agenda for a release meeting, or is otherwise discharged.

B. After each administrative review, the director or designee prepares a report of the juvenile offender's progress with recommendation as to readiness for supervised release. The reports are compiled and provided to board members prior to a juvenile's appearance at a release consideration meeting. Any board member may direct the director or designee to obtain additional information regarding any child at any time, and may review the case of any child at any time. The director or designee also provides copies of the board's reviews to the facilities, with any recommendations, prior to a juvenile's appearance at a release consideration meeting.

[22.510.100.8 NMAC - Rp, 22.510.100.8 NMAC, 10/30/09; A, 6/1/10]

22.510.100.9 FACILITY VISITS AND OTHER DUTIES:

A. At least once per year, the board visits each departmental facility for purposes of evaluating the conditions of the facilities and any other matters pertinent to the care of committed juveniles.

B. After the board visits the department's facilities, it shall prepare a written report on the conditions found, including recommendations for programs and facilities. The report shall be provided to:

(1) the secretary of the children, youth and families department;

(2) the director of the juvenile justice division; and

(3) the governor.

C. At least twice per year, the board meets with the secretary or the secretary's designee to review the activities of the department.

D. A quorum of the board participates in regular and special release consideration meetings and final supervised release revocation hearings.

[22.510.100.9 NMAC - N, 10/30/09; A, 6/1/10]

22.510.100.10 INFORMATION REQUIRED FOR BOARD PARTICIPATION IN RELEASE DECISIONS:

In order for the board to effectually participate in release panel decisions, the board obtains information on the juvenile being considered for release from the facilities.

A. For the initial administrative review (the forty day review), the director or designee attends the juvenile's initial MDT at the facility to obtain the following information:

(1) a complete history of the juvenile offender's delinquent acts and any resulting consequences;

(2) the juvenile offender's family history;

(3) the juvenile offender's social history;

(4) the juvenile offender's academic, vocational and educational history;

(5) the juvenile offender's psychological and psychiatric history, including all diagnostic center reports;

(6) relevant medical reports for the juvenile offender;

(7) the commitment order for the current commitment and petition;

(8) the pre-disposition report for the current commitment;

(9) the facility's plan for care and rehabilitation;

(10) the facility's identification sheets or case record sheets;

(11) designation of home study recipient; and

(12) the juvenile offender's social security number.

B. After the initial administrative review, the director or designee reviews the juvenile's FACTS entries and as necessary, contacts the juvenile's classification officer or other facility staff familiar with the juvenile or visits the juvenile as necessary to obtain the following information:

(1) monthly or bi-monthly progress reports and SDM scores, including reports and SDM scores on those juvenile offenders who are in programs outside the facility;

(2) psychological and psychiatric reports and evaluations on the juvenile offender, including for juvenile offenders who are in programs outside the facility;

(3) home studies and any facility requests for home studies;

(4) a current and updated facility face sheet;

(5) any court-ordered restitution payment plan or social restitution plan;

(6) a wilderness and urban experience evaluation report if applicable;

(7) serious incident reports;

(8) any information relating to an out-of-state supervised release plan, as required by interstate compact provisions;

(9) all information pertaining to furloughs, passes, transfers and pre-supervised releases; and

(10) any special reports that the board may request.

C. Thirty days prior to the regularly-scheduled release meeting, the board obtains an updated supervised release recommendation report from the facility for each juvenile offender on the agenda. For special release meetings or for juvenile offenders who are added to the agenda, the board receives the updated supervised release recommendation report as soon as practicable.

[22.510.100.10 NMAC - Rp, 22.510.100.19 NMAC, 10/30/09; A, 6/1/10]

22.510.100.11 SUPERVISED RELEASE CONSIDERATION MEETINGS:

The board participates in release consideration meetings held by the department, including revocation hearings, and internally confers on release or revocation decisions prior to or at meetings. The board is not required to meet in person to internally confer on release or revocation decisions, as long as each board member provides input on what the board's vote should be at the release consideration meeting or revocation hearing. After conferring, a majority of the board's members must agree to the vote to be given at the meeting or hearing for each juvenile on the agenda. A quorum of the board then attends each regular and special release consideration meeting or revocation hearing and provides one vote. The board also advises the department on criteria to be used to decide whether to release a juvenile.

[22.510.100.11 NMAC - N, 10/30/09; A, 6/1/10]

22.510.100.12 CONFIDENTIALITY:

All juvenile records in the possession of the board or its staff are maintained confidentially in accordance with 1978 NMSA Section 32A-2-32.

[22.510.100.12 NMAC - Rp, 22.510.100.20 NMAC, 10/30/09; A, 6/1/10]

22.510.100.13 DIRECTOR DUTIES:

The director of the board is not an ex-officio member of the board and does not vote in board decisions, including any decisions related to the facility release panel. The director shall support the board and other board members by providing budget administration, inclusive of travel and per diem support to board members; guiding the board in preparing for facility release panel meetings and bi-annual meetings with the secretary; coordinating the board's efforts in developing an annual report to the governor's office; managing any specific requests for information from board members relating to information about agency services and programs or specific youth scheduled to appear before the facility release panel; assisting the office of the secretary in recruiting and nominating potential board members to fill vacant positions, as needed; and other duties as requested by the board.

[22.510.100.13 NMAC - N, 6/1/10]

CHAPTER 511-599: [RESERVED]

CHAPTER 600: ADMINISTRATIVE HEARING OFFICE

PART 1: GENERAL ADMINISTRATIVE HEARING 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, New Mexico 87502.

[22.600.1.1 NMAC - N, 2/1/2018]

22.600.1.2 SCOPE:

This part applies to all proceedings, cases, and hearing 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, 2/1/2018]

22.600.1.3 STATUTORY AUTHORITY:

Paragraph (1) of Subsection A of 7-1B-5 NMSA 1978.

[22.600.1.3 NMAC - N, 2/1/2018]

22.600.1.4 DURATION:

Permanent.

[22.600.1.4 NMAC - N, 2/1/2018]

22.600.1.5 EFFECTIVE DATE:

February 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, 2/1/2018]

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, 2/1/2018]

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. For the purposes of determining the timeliness of an electronic filing, a business day commences at 12:00 am and concludes at 11:59 p.m.

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" means an on the record, adjudicatory proceeding between two parties before an assigned hearing officer of the administrative hearings office.

F. "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.

G. "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.

H. "MVD" is the motor vehicle division of the New Mexico taxation and revenue department.

I. "Order" means any directive, command, determination of a disputed issue, or ruling on a disputed issue, by the administrative hearings office directed to the parties involved in a proceeding before the administrative hearings office.

J. "Party" means the named person, entity, or agency in an action before the administrative hearings office.

K. "Pleading" means any written request, motion, or proposed action filed by a party with the administrative hearings office.

L. "Request for hearing" means a formal written request from a party to be heard on a particular matter where the administrative hearings office has statutory authority to conduct an adjudicatory proceeding.

M. "Sua Sponte" means any order of the chief hearing officer or the assigned hearing officer made without prompting of the parties.

N. "TRD" is the New Mexico taxation and revenue department.

[22.600.1.7 NMAC - N, 2/1/2018]

22.600.1.8 APPLICABILITY OF THESE RULES:

These rules provide general practice rules for all proceedings 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. For example, the specific rules addressing tax protest hearings would apply over any conflicting provision contained in these rules.

[22.600.1.8 NMAC - N, 2/1/2018]

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, 2/1/2018]

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 request for hearing containing the relevant information specified in subparagraph (A) and 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, 2/1/2018]

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. In tax protest hearings, any person expressly authorized by statute to represent a taxpayer in a tax protest proceeding may represent the taxpayer before the administrative hearings office. 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, 2/1/2018]

22.600.1.12 FILING OF PLEADINGS:

A. All pleadings 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, or equivalent statement or information, 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 different deadline applies under an applicable order of the assigned hearing officer, the opposing party has 14 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. The assigned hearing officer may require a shorter response deadline, especially for time-sensitive or basic motions like continuance requests. 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 permission of the assigned hearing officer with good cause shown, no pleading filed in a hearing involving the motor vehicle code or the implied consent act shall exceed 10 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font. Absent express permission of the assigned hearing officer with good cause shown, no pleading, including motions and attached memorandums of support, filed in a hearing involving the tax administration act or property tax code shall exceed 20 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 day that the administrative hearings office receives the pleading. Any pleading submitted electronically to the administrative hearings office after 11:59 pm on a business day 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 electronically recorded.

C. The hearing officer may enter in the record a written 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 ensure 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, 2/1/2018]

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

A. Except for hearings under the Implied Consent Act or other hearings 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, 2/1/2018]

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 method.

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 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, 2/1/2018]

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, 2/1/2018]

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 required 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, 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, 2/1/2018]

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

A. Any person having relevant, material knowledge related to one of the issues in a hearing 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 assigned 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 of videoconference.

C. The current or previously assigned hearing officer in a matter shall not be called and shall not be 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, or with sufficient time before completion of discovery deadline specified in a scheduling order to allow for deposition, 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 shall 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, 2/1/2018]

22.600.1.20 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. Hearings 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 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 hearing;

(11) to cause a complete record of 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 improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper 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 an improper 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, 2/1/2018]

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.

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, 2/1/2018]

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 shall 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 10 days notice before compelled attendance at a hearing or deposition, and at least 10 days notice before compelled production of materials. All returns or certificates of service on served 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.

[22.600.1.22 NMAC - N, 2/1/2018]

22.600.1.23 LANGUAGE INTERPRETERS:

In matters before the administrative hearings office, a party needing language interpreter services for translation of one language into another 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. Upon reasonable notice of the party to the administrative hearings office, any interpreter required to be provided under the American with Disabilities Act shall be provided for by the administrative hearings office.

[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, 2/1/2018]

22.600.1.25 RECONSIDERATIONS:

A. A party may file a motion for reconsideration no more than 15 days after the date on the final decision and order. The opposing party may file a response no more than 15 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 previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors/omissions in the final decision and order.

[22.600.1.25 NMAC - N, 2/1/2018]

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, 2/1/2018]

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 submitting a written request to 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, 2/1/2018]

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, 2/1/2018]

PART 2: CODE OF CONDUCT FOR ADMINISTRATIVE HEARINGS

22.600.2.1 ISSUING AGENCY:

Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.

[22.600.2.1 NMAC - N, 2/1/2018]

22.600.2.2 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.

[22.600.2.2 NMAC - N, 2/1/2018]

22.600.2.3 STATUTORY AUTHORITY:

Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.

[22.600.2.3 NMAC - N, 2/1/2018]

22.600.2.4 DURATION:

Permanent.

[22.600.2.4 NMAC - N, 2/1/2018]

22.600.2.5 EFFECTIVE DATE:

February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[22.600.2.5 NMAC - N, 2/1/2018]

22.600.2.6 OBJECTIVE:

The objective of this part is to establish a code of conduct for the administrative hearings office hearing officers and those appearing before the administrative hearings office.

[22.600.2.6 NMAC - N, 2/1/2018]

22.600.2.7 DEFINITIONS:

The following terms apply to:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "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.

C. "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.

D. "Party" shall include the real parties of interest and their representatives, including bona fide employees, attorneys, certified public accountants, enrolled agents, agency staff, agency attorneys, or other representatives authorized by the Administrative Hearings Office Act to appear on behalf of a party.

E. "Third degree of relationship" include the following persons, by blood or marriage: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

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

22.600.2.8 APPLICABILITY OF THESE RULES:

These rules apply to hearing officers conducting and adjudicating administrative hearings for the administrative hearings office, and parties appearing before the administrative hearings office.

[22.600.2.8 NMAC - N, 2/1/2018]

22.600.2.9 HEARING OFFICERS SHALL PROMOTE PUBLIC CONFIDENCE IN THE INTEGRITY AND FAIRNESS OF THE HEARING PROCESS:

A hearing officer shall act in a manner that promotes public confidence in the fairness, integrity, and impartiality of the hearing process. A hearing officer shall not abuse the public trust granted to the hearing officer in adjudicating hearings to advance the personal, professional, or economic interest of the hearing officer, family, friends, or current or former business associates nor shall the hearing officer knowingly permit others to do the same on his or her behalf.

[22.600.2.9 NMAC - N, 2/1/2018]

22.600.2.10 AVOIDING IMPROPRIETY AND THE APPEARANCE THEREOF:

A hearing officer shall avoid impropriety. A hearing officer shall also avoid the reasonable appearance of impropriety. A reasonable appearance of impropriety occurs

whenever a reasonable person would have serious doubts about whether the hearing officer could be fair given the circumstances. If the hearing officer, initially unaware of any potential issue, becomes aware of any potential appearance of impropriety during the course of the hearing, the hearing officer shall promptly disclose on the record the potential appearance of impropriety to the parties, allow the parties to appropriately respond or object, and then make a formal determination as to whether the hearing officer can continue to proceed in the hearing without violating this provision. The hearing officer may consult with other hearings officers and the chief hearing officer about any potential appearance of impropriety issues as part of the process of determining whether the assigned hearing officer can continuing presiding over the matter. The rule of necessity may require a hearing officer to proceed in the matter if there is no other hearing officer available to conduct the matter before expiration of a mandatory, jurisdictional deadline.

[22.600.2.10 NMAC - N, 2/1/2018]

22.600.2.11 HEARING OFFICER COMPETENCY:

Hearing officers should perform their duties diligently and competently. Hearing officers should know, and have the capacity to apply the applicable substantive and procedural law at issue in the hearing, including standards governing due process and evidence. Hearing officers should have the capacity to properly weigh evidence and assess the credibility of witnesses whether present in person for the hearing or appearing remotely via telephone, videoconference, or other equivalent electronic means. Hearing officers shall possess the writing skills necessary to craft legally competent and readable documents, including citation to legal authority and hearing record as necessary or appropriate. Hearing officers should be skilled in conducting hearings efficiently, fairly, developing an appropriate record, and maintaining good order during the proceeding. Hearing officer should regularly participate in, attend, or conduct continuing education and appropriate legal community outreach/service to improve their competency, to stay current in the knowledge of the law and the hearing process, and to remain engaged in the broader legal community.

[22.600.2.11 NMAC - N, 2/1/2018]

22.600.2.12 INDEPENDENCE:

In deciding matters, a hearing officer shall be faithful to their reasonable understanding of controlling law. A hearing officer shall not be swayed by partisan interests, public clamor, or fear of criticism. Hearing officers shall not permit family, social, political, financial, or other personal interests or relationships to influence their conduct or judgment. A hearing officer shall not convey nor permit others to convey the impression that any person or organization is in a position to improperly influence the hearing officer. This provision is not intended to prevent a hearing officer from consulting and discussing a pending matter with other hearing officers or a supervising hearing officer within the administrative hearings office.

[22.600.2.12 NMAC - N, 2/1/2018]

22.600.2.13 ORDER AND DECORUM OF PROCEEEDING:

A. A hearing officer should require order and decorum in official proceedings. Hearing officers should promote the dignity and decorum of the administrative hearing process. Hearing officers should exercise their lawful authority in any proceeding to ensure that all persons involved conduct themselves with proper decorum.

B. Attorneys, certified public accountants, enrolled agents and other authorized representatives appearing before the hearing officer should treat the tribunal with appropriate professionalism, dignity and respect, including showing candor to the tribunal, in line with their own obligations for professional and ethical conduct. Failure to do so may result in reporting the representative to the appropriate governing body and other appropriate remedies needed to ensure an orderly hearing process, including in extreme circumstances, excluding the representative from further representation.

[22.600.2.13 NMAC - N, 2/1/2018]

22.600.2.14 HEARINGS TO BE CONDUCTED WITH IMPARTIALITY:

Hearing officers should always strive to conduct proceedings before them in an impartial, fair, and respectful manner. This requires a hearing officer to treat all persons involved in the proceeding, including the appealing or petitioning parties and their representatives, the agency, agency staff or representatives, witnesses, interpreters, interveners, observers, and any other person who appears before the hearing officer with appropriate respect. It is not a violation of this provision for hearing officers: to reasonably ask questions during the proceeding; to reasonably state what they believe the legal analysis applicable to the case requires in order to ensure an orderly, relevant, and efficient presentation of the case; to reasonably press a party on their legal position during the course of the proceeding in order to test the contours of an issue; to reasonably encourage resolution or narrowing of the issues in a case; and to take other reasonable actions necessary to ensure the conduct of an orderly hearing, or gain control of a hearing if a party violates the decorum of the proceeding, such as but not limited to reprimanding a participant for continuing inappropriate, disrespectful, or disruptive conduct.

[22.600.2.14 NMAC - N, 2/1/2018]

22.600.2.15 HEARINGS TO BE CONDUCTED WITHOUT BIAS, PREJUDICE, OR HARASSMENT:

A hearing officer shall not, by words or conduct, show any bias or prejudice, or harass any party or person present at a hearing, based on race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, socioeconomic status, political affiliation, age, physical or mental disability or serious

medical condition. To the extent reasonably possible, a hearing officer shall not permit or allow others involved in the hearing process, including the hearing officer's staff or representatives of the parties, to engage in such bias, prejudice, or harassment. A hearing officer and others may make legitimate and respectful reference to, and discuss, the listed factors when they are relevant to an issue in the proceeding.

[22.600.2.15 NMAC - N, 2/1/2018]

22.600.2.16 EX PARTE COMMUNICATIONS:

A. A hearing officer on an assigned case may not engage in any prohibited ex parte communications about the substantive issues with either party on any matter before the administrative hearings office. 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.

B. Where circumstances require it, ex parte communications for procedural, administrative, or emergency purposes that does not address the substantive matters or issues on the merits are permitted if the hearing officer reasonably believes that no party will gain an advantage as a result of the non-substantive ex parte communication and the hearing officer makes provisions to promptly notify all parties of the substance of the ex parte communication.

C. As part of the deliberative process, a hearing officer may consult with other hearing officers, except those who have previously been disqualified from the matter, and support personnel of the administrative hearings office about a pending matter. Such communication does not amount to a prohibited ex parte communication.

D. In the event a hearing officer receives an unsolicited ex parte communication, such as but not limited to the receipt of an email or a facsimile, the hearing officer receiving the unsolicited communication shall promptly forward a copy of the communication to the opposing party and admonish the sending party to comply with the ex parte communication prohibition in all future communications. An unsolicited ex parte communication does not constitute a prohibited ex parte communication unless the assigned hearing officer deems that the communication caused a genuine advantage to the non-complying, submitting party.

E. The chief hearing officer or designated staff, may make inquiries about the status of a scheduled case or cases, or the conduct of a case or cases that have already occurred, with either or both parties as part of the management of the docket, staff, and state resources. This communication does not amount to prohibited ex parte communication.

F. With consent of the parties, the hearing officer may confer separately with the parties or their representatives in an effort to mediate or settle pending matters. With consent, such communication does not amount to a prohibited ex parte communication.

G. Absent providing administrative notice to the parties with an opportunity for the parties to respond or object, or receiving prior consent from the parties to do so, a hearing officer shall not investigate facts that are reasonably in dispute in a matter independently of what has been presented on the record. This does not preclude a hearing officer from researching the applicable law relevant to the facts presented regardless of whether such legal authority was cited by either party. Nor does it preclude the hearing officer from taking administrative notice of facts that cannot reasonably be disputed.

H. A hearing officer may engage in ex parte communications when expressly authorized by law to do so.

I. So long as no confidential or privileged information about the case or the identities of the parties is disclosed, a hearing officer may consult with other hearing officers, other staff, ethics advisory committees, outside counsel, judges who will not serve in an appellate capacity in the matter, mentors, or other legal experts concerning the hearing officer's obligations and compliance with provisions of this code without disclosing such communication to any person or party.

[22.600.2.16 NMAC - N, 2/1/2018]

22.600.2.17 PUBLIC STATEMENTS ON PENDING MATTERS AND HEARING OFFICER INVOLVEMENT IN PUBLIC EVENTS/ORGANIZATIONS:

A. A hearing officer shall not make any public statement about a pending matter that might reasonably be expected to affect the outcome or impair the fairness of proceedings in a pending matter, or make pledges, promises or commitments that are inconsistent with the impartial performance of the hearing officer's adjudicatory duties.

B. A hearing officer shall not publicly comment on any case in which the hearing officer presided over other than, upon inquiry, refer to any publically available final decision and order, if any, issued in the matter.

C. A hearing officer may make public statements to explain tribunal procedures and confirm basic status and scheduling details for a hearing that is statutorily open to the public.

D. While a hearing officer may not publically advocate for or against the formulation of any particular substantive tax policy or statute, a hearing officer may provide general information in a public forum, including before the Legislature, about the policies, practices, procedures of the office, and the possible effects of proposed change of

statutes on the efficiency of the hearing process, hearing procedures, and the resource needs of the office.

E. A hearing officer is encouraged to participate in legal forums, trainings, educational or academic settings, bar association, judicial association, or other public community events where the hearing officer's knowledge of the issues, law, and procedures may be useful to the legal system, the public understanding about the hearing process, and the administration of justice, or where other participants at the event may provide similar insight to the hearing officer.

F. Consistent with other controlling state statutes, rules, regulations, and policies, and with consent of the chief hearing officer, a hearing officer may voluntarily serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice, so long as such service would not create an appearance of impropriety, a potential conflict of interest, or otherwise reasonably interfere with the hearing officer's ability to fairly, impartially, and efficiently adjudicate cases in the subject matters that regularly are heard before the administrative hearings office.

[22.600.2.17 NMAC - N, 2/1/2018]

22.600.2.18 PERSONAL CONDUCT:

A. Hearing officers shall not participate in outside activities that will interfere with the hearing officer's official duties or participate in activities that will lead to frequent disqualification of the hearing officer. The hearing officer should refrain from conduct and not participate in activities, or belong to organizations, that would appear to a reasonable person to undermine the hearing officer's independence, integrity, impartiality, or judgment. A hearing officer should not hold membership in any organization that practices invidious discrimination on the basis of race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender, gender identity, marital status, socioeconomic status, political affiliation, age, physical or mental disability, or serious medical condition.

B. The hearing officer must be knowledgeable about and comply with all statutes, ordinances, regulations, and policies governing conduct of public employees.

C. A hearing officer shall not accept any gifts, loans, bequests, benefits, donations, or things of value if acceptance is prohibited by law or would appear to a reasonable person to undermine the hearing officer's integrity or impartiality in performance of hearing officer duties, or if the source is a party or other person, including a lawyer, who has or is likely to come before the hearing officer.

D. A hearing officer shall not request or receive an honorarium or payment for a speech, presentation, training, educational activity, or other event related to the hearing

officer's duties except for reasonable reimbursement for meals, lodging, and actual travel expenses incurred for such activity.

[22.600.2.18 NMAC - N, 2/1/2018]

22.600.2.19 CONFIDENTIALITY:

A hearing officer shall not intentionally disclose or use nonpublic information acquired by virtue of his or her position for any purpose unrelated to the hearing officer's duties or in violation of the law. A hearing officer shall be knowledgeable about and shall comply with all laws and regulations governing confidentiality of information before the agency and tribunal.

[22.600.2.19 NMAC - N, 2/1/2018]

22.600.2.20 COMPLIANCE WITH ETHICAL RULES:

A hearing officer shall strive to comply with these rules and, to the extent they are not in direct conflict with these rules or other statutory authority applicable to the administrative hearings office, any other relevant administrative rules, codes of conduct, or policies regarding ethics, professionalism, or conduct. Hearing officers should work to ensure that their own staff and others appearing in a proceeding before them also comply with these rules and other applicable rules governing conduct. Hearing officers have a duty to report a clear violation of a known ethical, professional or conduct standard they observe to the appropriate authority, including the governing bodies that regulate attorneys, certified public accountants, and enrolled agents that appear at hearings as representatives.

[22.600.2.20 NMAC - N, 2/1/2018]

22.600.2.21 DUTY TO HEAR ASSIGNED CASES AND RECUSALS:

A. A hearing officer has a professional responsibility to hear and decide cases assigned to them, including difficult, time consuming, controversial, or high profile matters, and adjudicate all assigned cases unless there are clear grounds under this code or other applicable standards or law requiring disqualification.

B. A hearing officer shall recuse himself or herself in any proceeding in which the hearing officer's impartiality might reasonably be questioned, including:

(1) The hearing officer has a personal preference for, or bias or prejudice against a party or a party's lawyer, or has direct personal knowledge of facts that are in dispute in the proceeding.

(2) The hearing officer knows that the hearing officer, the hearing officer's spouse or domestic partner, or person within the third degree of relationship to either of

them, or the spouse or domestic partner of such a person, or a member of the hearing officer's staff is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person has more than a de minimis interest that could substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The hearing officer knows that he or she, individually or as fiduciary, or the hearing officer's spouse, domestic partner, parent, or child, or any other person residing in the hearing officer's household, has more than a de minimis economic interest in the subject matter in controversy or is a party to the proceeding. Because tax controversies can involve companies and business with a substantial public consumer, retail, or general services presence in commerce, the mere fact that the assigned hearing officer, or their immediate family residing in their household, may be an occasional customer of a company or consumer of a company's products is not necessarily grounds for recusal unless the hearing officer has more than a de minimis economic interest beyond being an average consumer, shopper, or user of the goods and services of the company or the circumstances are sufficient to raise reasonable questions about the hearing officer's impartiality.

C. In consultation with the chief hearing officer about the reasons and necessity for recusal, a hearing officer may recuse himself or herself from the case through notice of recusal, or through the chief hearing officer's issuance of a notice of reassignment, without further explanation to the parties in the proceeding about the basis of the recusal. The recused hearing officer shall play no further role in the proceeding and reasonable steps should be taken to exclude the recused hearing officer from any further contact, review, or substantive discussions about the proceeding. A hearing officer's own decision to recuse himself or herself from a proceeding should not be construed as an admission of a conflict of interest, misconduct, impropriety, violation of this code or other relevant ethical or professional code, or as an admission that the hearing officer cannot be impartial in a particular matter.

D. A hearing officer may disclose on the record the basis of the hearing officer's prospective recusal and may ask the parties and their lawyers to consider whether to waive the potential issue necessitating the recusal. If, following this disclosure, the parties and lawyers agree for the record that the hearing officer should not be recused, the hearing officer may continue to participate in the matter.

E. The rule of necessity may require a hearing officer to proceed in a case where they otherwise might wish to recuse themselves if, after reasonable efforts to secure a

continuance or reassignment of the matter to another hearing officer, there are no other competent hearing officers available to timely hear the matter before expiration of a mandatory jurisdictional deadline. If the hearing officer is relying on the rule of necessity to proceed, that determination must be disclosed on the record.

[22.600.2.21 NMAC - N, 2/1/2018]

22.600.2.22 COMPLAINT PROCEDURE AND DISQUALIFICATION:

A. A party may make an informal, verbal complaint of a violation of this code with the chief hearing officer. Such complaints will be investigated internally and informally by the chief hearing officer as part of the management of personnel of the office. If the complaint is justified, the chief hearing officer may implement informal actions designed to educate or correct the hearings officer's conduct, mitigate the violation, or take other justified actions under the circumstances.

B. Whenever any party believes the hearing officer for any reason should be formally disqualified because there is a substantial doubt as to whether the hearing officer can conduct the matter fairly, such party may file with the chief hearing officer a formal written motion for disqualification of the assigned hearing officer, along with supporting affidavits or exhibits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose disqualification is sought.

(1) Upon receipt of a formal motion for disqualification, the chief hearing officer may:

(a) summarily dismiss the motion if it is clear that the complaint fails to state grounds that raise a reasonable doubt as to the hearing officer's ability to provide a fair and impartial hearing, is frivolous in that it either has the primary purpose of seeking to delay the proceeding or is an attempt to relitigate an unfavorable ruling that is better addressed as part of the traditional appellate process; or

(b) conduct further investigation either directly or through another agency or entity as circumstances justify; or

(c) in order to ensure an efficient hearing process in light of a mandatory jurisdictional deadline, reassign the case to another hearing officer pending further investigation. Such reassignment for efficiency of hearing process pending further investigation does not constitute a finding that the motion for disqualification has any validity, only a recognition of the practical jurisdictional deadlines applicable in a matter.

(2) If further investigation is merited, the hearing officer shall have 10 days from service of the motion to accede or to reply to the allegations. The noncomplaining other party may also choose to file a response within 10 days. If the hearing officer does not recuse himself or herself within that time, the chief hearing officer shall promptly

review the complaint, the responses, and the results of any investigation to determine whether or not the hearing officer shall be disqualified. The chief hearing officer's determination shall be reduced to writing in the form of a letter or order and shall be included in the record of the proceeding. Subject to appellate review, the chief hearing officer's decision in response to a formal motion seeking disqualification shall be final.

C. If the hearing officer is disqualified, the chief hearing officer shall designate another person to act as hearing officer in the matter.

D. As a result of the motion for disqualification and any related investigation, the chief hearing officer may take other appropriate internal corrective or disciplinary personnel actions consistent with the State Personnel Act. Any such additional personnel action is confidential in accord with the controlling provisions of the State Personnel Act.

E. The complaining party's remedies for violations of this code are limited to disqualification of the hearing officer from the particular proceeding before the administrative hearings office. Nothing in this section creates an independent cause of action by either party outside of this complaint procedure described herein, or an independent basis to seek discipline under either the code of judicial conduct or the rules of professional conduct.

[22.600.2.22 NMAC - N, 2/1/2018]

PART 3: HEARINGS UNDER THE TAX ADMINISTRATIVE ACT

22.600.3.1 ISSUING AGENCY:

Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.

[22.600.3.1 NMAC - Rp. 22.600.3.1 NMAC, 8/25/2020]

22.600.3.2 SCOPE:

This part applies to the taxation and revenue department and all taxpayers, their agents and representatives protesting an action of the taxation and revenue department under Section 7-1-24 NMSA 1978 of the Tax Administration Act and seeking a hearing under Section 7-1B-8 NMSA 1978 of the Administrative Hearings Office Act.

[22.600.3.2 NMAC - Rp. 22.600.3.2 NMAC, 8/25/2020]

22.600.3.3 STATUTORY AUTHORITY:

Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.

[22.600.3.3 NMAC - Rp. 22.600.3.3 NMAC, 8/25/2020]

22.600.3.4 DURATION:

Permanent.

[22.600.3.4 NMAC - Rp. 22.600.3.4 NMAC, 8/25/2020]

22.600.3.5 EFFECTIVE DATE:

August 25, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[22.600.3.5 NMAC - Rp. 22.600.3.5 NMAC, 8/25/2020]

22.600.3.6 OBJECTIVE:

The objective of this part is to provide procedural rules and guidance about the tax protest hearing process before the administrative hearings office under the provisions of the Tax Administration Act and the Administrative Hearings Office Act.

[22.600.3.6 NMAC - Rp. 22.600.3.6 NMAC, 8/25/2020]

22.600.3.7 DEFINITIONS:

As used in 22.600.3 NMAC:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Answer" is TRD's written statement in response to claims or defenses asserted by a Taxpayer in opposition to any action subject to protest providing with reasonable specificity the legal and factual bases for its position.

C. "Bona fide employee" means any legitimate employee, owner, or member of any board of directors or other governing body of a company, business, or otherwise recognized entity, including trustees acting on behalf of a trust and personal representatives acting on behalf of a decedent's estate. A bona fide employee is not a person hired for the limited purpose, scope, or duration of representing a taxpayer before the administrative hearings office during the protest proceeding.

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. "Enrolled agent" means a federally licensed tax practitioner with unlimited rights to represent taxpayers before the internal revenue service.

F. "Hearing" is an on-the-record proceeding before the hearing officer addressing the procedural, evidentiary, or substantive issues of the protest. A hearing includes a merits hearing, a scheduling hearing, or a motion's hearing.

G. "Merits Hearing" is the formal, administrative hearing focused on the adjudication of the disputed issues under protest.

H. "Scheduling Hearing" is a hearing where the parties appear to discuss the issues involved in the protest, to discuss the need for a discovery and motions practice before the merits hearing, to discuss how much time the parties need to ensure compliance with the statutory fair hearing requirements under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978, and to select a merits hearing date and time. The scheduling hearing is part of the record of the proceeding.

I. "Taxpayer" for the limited purposes of this rule is the generic party name of the individual, person, entity association, business, corporation, partnership or other recognized entity protesting against TRD in the proceeding before the administrative hearings office. This definition shall not be construed in any manner to change, clarify, or expound the statutory definition of taxpayer contained under the Tax Administration Act.

J. "TRD" is the New Mexico taxation and revenue department.

[22.600.3.7 NMAC - Rp. 22.600.3.7 NMAC, 8/25/2020]

22.600.3.8 REQUESTS FOR HEARING, ANSWERS, SCHEDULING OF MERITS HEARINGS, SCHEDULING HEARINGS, SCHEDULING ORDERS, AND PEREMPTORY EXCUSALS:

A. Pursuant to Subsection B of Section 7-1B-8 NMSA 1978, TRD shall file a request for hearing with the administrative hearings office no less than 60 days and no more than 180 days from the date of its acknowledgement of a valid protest on a form and in a manner specified by the chief hearing officer

B. In instances where TRD has not yet filed a hearing request, pursuant to Subsection B of Section 7-1B-8 NMSA 1978, a taxpayer may but is not required to file a request for hearing with the administrative hearings office on or after the 60th day from the date on which TRD acknowledged its protest.

C. If neither party has filed a request for hearing by 180 days from the acknowledgement of a valid protest, a Taxpayer may request relief from interest under Subsection E of 22.600.3.18 NMAC.

D. In addition to other requirements of this section, a hearing request submitted by TRD shall be accompanied by an answer to a taxpayer's protest. If the taxpayer is the party requesting a hearing, then TRD shall file and serve its answer to the protest within 30 days of the filing of Taxpayer's request for hearing.

E. An answer shall state TRD's response to a taxpayer's protest, including the legal and factual bases for TRD's position plus other issues it perceives as relevant or in dispute. Matters asserted in the protest which TRD's answer does not explicitly oppose or dispute with reasonable specificity may be deemed admitted or conceded. An answer may be amended no less than 10 days before a scheduled hearing on the merits of the protest, unless another deadline is stated in the governing scheduling order. An amended answer, even if otherwise timely filed, may still be disallowed if the hearing officer determines that the lateness of the amendment unfairly prejudices the taxpayer. In evaluating the issue of prejudice, the hearing officer shall consider whether any newly asserted facts, legal conclusions, or other matters contained in the amended answer were known or should have been known to TRD earlier. Alleging new facts, legal conclusions, or other matters that were known or should have been known earlier will weigh in favor of finding the amended answer to be prejudicial.

F. Requests for hearing shall include (if available) a copy of TRD's initiating document (such as a notice of assessment or denial of claim for refund or credit), action, or inaction that led to the protest, a copy of the taxpayer's protest letter, TRD's acknowledgement letter, any taxpayer information authorization filed with TRD allowing someone other than the named taxpayer (or bona fide employee of the taxpayer) to represent the taxpayer before TRD, the address of record of the taxpayer with TRD, and TRD's answer to the protest if TRD is the party requesting the hearing. If the taxpayer submits the request for hearing, it shall not be required to include TRD's answer, but may do so if it is in the taxpayer's possession. The administrative hearings office may require additional information on any request for hearing or referral and may require the parties to submit such request on a form developed by the administrative hearings office.

G. If both parties submit timely hearing requests in reference to the same protest, the request filed later in time shall be merged with the request filed earlier in time, and the first-filed timely hearing request shall control the establishment of pertinent deadlines.

H. The party requesting the hearing shall specify whether they believe the matter will be ripe for a merits hearing within 90-days of the request for hearing or whether the parties need additional time to complete discovery, prepare motions, and to ensure both sides have ample and fair opportunity to present their respective cases. The chief hearing officer shall give consideration to the requests of either party for a scheduling hearing but is not bound to such requests if in the view of the chief hearing officer after reviewing the record and the docket, another hearing type is more appropriate to the case.

I. Upon receipt of the hearing request, the chief hearing officer or designee thereof shall review the matter to assess the complexity of the case, the potential discovery required, the potential need for motions practice before conducting the merits hearing, the tax hearing docket, and the preference of the party that filed the hearing request to determine whether the matter should be set promptly for a merits hearing or set for a scheduling hearing within 90 days of the date on which TRD's answer to the protest was filed.

J. Absent a timely objection before or at the time of the scheduling hearing, conducting a scheduling hearing within 90 days of TRD's answer was filed or within 120 days from the filing of taxpayer's request for hearing satisfies the under Subsection F of Section 7-1B-8 NMSA 1978 while allowing sufficient and meaningful time for completion of the statutory requirements contained under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978. Upon completion of the scheduling hearing, the hearing officer will issue a scheduling order and notice of administrative hearing or other form of notice or order as the circumstances require.

K. Upon objection to conducting a scheduling hearing, the administrative hearings office may set the matter for a merits hearing on an expedited basis with a minimum of seven days notice unless the parties consent to a lesser period for notice. All other notices will be sent at least 14 days before the scheduled hearing unless the parties consent to a lesser period for notice.

L. Upon receipt of the notice of scheduling hearing, the parties may consult with each other and agree to a proposed scheduling order, in a format specified by the administrative hearings office, articulating discovery and motions deadlines, length of the potential hearing, a proposed month or months of merits hearing, and an express waiver of the hearing deadlines under Subsection F of Section 7-1B-8 NMSA 1978. If the assigned hearing officer accepts or substantially adopts the proposed scheduling order, the scheduling hearing will be vacated.

M. At the sole discretion of the chief hearing officer, a series of cases involving similar substantive issues or involving small controversies may be scheduled to be heard individually as part of a trailing docket commencing at the beginning of the day, to be heard at some indefinite point during that day after the time of commencement of the docket. If the protest is to be heard as part of a trailing docket:

(1) All parties and their representatives in a case set on a trailing docket shall report at the time and place specified in the notice of hearing for commencement of the trailing docket in a method and manner specified by the administrative hearings office.

(2) Failure to report at the commencement of a trailing docket shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

(3) After the reporting time for the trailing docket, the assigned hearing officer or hearing officers for the conduct of the trailing docket will determine the order of the

cases to be heard that day, considering the appearance or nonappearance of the various parties on that day's docket, the complexity of the cases, the number and availability of witnesses, and if possible, accommodating any scheduling conflicts of the parties on that date.

(4) Upon receipt of notice of hearing set on a trailing docket, a party may file a written objection at least seven days before the scheduled hearing citing good cause as to why the matter should be given a unique setting rather than heard as part of a trailing docket, which the chief hearing officer or the assigned hearing officer may review and determine whether the case should be continued to a specific date with a firm time of commencement of the proceeding.

N. All notices of hearing, including notice of scheduling hearing, notice of administrative hearing, and scheduling order shall be mailed via regular, first class mail to the taxpayer's address of record or the address of taxpayer's representative of record, as well as TRD either through interdepartmental mail or first class mail. Additionally, if the parties provide an email address on the protest letter, entry of appearance, or other subsequent communication, a copy of the notice may be emailed to the party. Notice may be given orally on the record of any proceeding where all parties are present and all parties agree to the proposed hearing date.

[22.600.3.8 NMAC - Rp. 22.600.3.8 NMAC, 8/25/2020]

22.600.3.9 PEREMPTORY EXCUSAL OF PRESIDING HEARING OFFICER:

A. Hearing officers shall be assigned to preside over protests as determined by the chief hearing officer upon consideration of a hearing officer's experience, availability or other considerations bearing on the management of the administrative docket. Notice of an assignment shall be provided in the notice of the initial merits or scheduling hearing set in response to the request for hearing. Unless otherwise stated in such notice, or in a preceding notice of assignment, the hearing officer assigned to the protest shall be identified by referring to the signature block in the notice of the initial hearing.

B. Either party may exercise its one-time right of peremptory excusal of the assigned hearing officer within 10 days of the notice of hearing or other notice of assignment, whichever is earlier in time, provided that the party seeking the excusal has not previously sought a discretionary ruling of the hearing officer to be excused. Upon a timely and proper notice of excusal, the chief hearing officer shall reassign the protest and provide notice to the parties.

C. In the event both parties seek to excuse the same hearing officer in response to the same notice, only the excusal submitted earlier in time shall be effective and the party whose excusal was filed subsequent to the other shall retain its right to excuse the next-assigned hearing officer provided its notice is filed within 10 days of a notice of reassignment and it has not sought a discretionary ruling of the hearing officer to be excused.

D. At any time while a protest is pending, the chief hearing officer may be required to reassign a case due to unforeseen circumstances, docket management, or agency resource concerns. Circumstances permitting, the chief hearing officer will provide at least 14-day notice of a reassignment. A party that has not previously exercised its peremptory right of excusal shall be permitted 10 days from such notice to excuse the hearing officer provided that they have not sought a discretionary ruling of that hearing officer.

E. A notice of reassignment within 14 days of a scheduled hearing shall not be grounds to necessarily continue the scheduled hearing. Continuance requests under such conditions shall be considered based on the unique circumstances presented by the specific protest.

F. For the purpose of this rule, the term "party" shall include all members of a group of parties. In identifying the group comprising a party, the administrative hearings office may consider whether the parties are represented by the same law firm, accounting firm, or other authorized representative; whether the parties filed a joint protest or have filed joint pleadings; and whether the parties consist of a business entity or other organization and its owners, parents, subsidiaries officers, directors, or major shareholders.

G. An objection to the timeliness or validity of a peremptory excusal may be raised by any party or by the administrative hearings office on its own motion. The chief hearing officer or the presiding hearing officer may rule on the timeliness or validity of any such objection, provided that an order prepared by and signed by the presiding hearing officer shall also be concurrently signed by the chief hearing officer. If the hearing officer or chief hearing officer determines that the excusal has met the applicable procedural and legal requirements in this rule, the hearing officer shall proceed no further in the protest. If the presiding hearing officer or chief hearing officer determines that the excusal has not met the applicable procedural and legal requirements in this rule, the hearing officer may continue to preside over the protest.

[22.600.3.9 NMAC - N, 8/25/2020]

22.600.3.10 LOCATION OF HEARINGS:

Merits hearings are held in Santa Fe. At the sole discretion of the chief hearing officer, and considering the location of the respective parties, their representatives, the assigned hearing officer, the resources of the administrative hearings office, and the docket, a hearing may be set at the administrative hearings office’s Albuquerque office. If setting a hearing at the Albuquerque office would cause an unreasonable, undue burden to either party, the party may file a written objection to the hearing location 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, will order the hearing to occur in

Santa Fe. Such changes in hearing location may require the reassignment of the case to another hearing officer as determined necessary by the chief hearing officer.

[22.600.3.10 NMAC - Rp. 22.600.3.9 NMAC, 8/25/2020]

22.600.3.11 VIDEO-CONFERENCE HEARINGS, TELEPHONIC HEARINGS, AND TELEPHONIC TESTIMONY:

A. Scheduling hearings and other preliminary, preconference, motions, or prehearing motions hearings may be conducted via telephone, or videoconference or equivalent electronic method without consent or waiver of either party.

B. If both TRD and the taxpayer agree, they may petition the assigned hearing officer at least seven days before the scheduled merits hearing to conduct the merits hearing via secure videoconference pursuant to Subsection H of Section 7-1B-8 NMSA 1978. The hearing officer may grant or deny the request after considering whether a complete and accurate record can be made and a fair hearing can be conducted in the matter via secure videoconference. Even if the initial request is granted, the hearing officer always retains the discretion at any point in the proceeding to order the personal appearance of the parties and witnesses if in the hearing officer's determination resolution of the disputed facts, evidence, credibility of a witness, question of law, or development of a complete and accurate record requires it.

C. The administrative hearings office may also schedule a merits hearing as a videoconference hearing with consent of the parties, which shall be deemed to have been granted absent either party filing a written objection within 14 days of notice a videoconference merits hearing.

D. If a hearing is scheduled to be conducted via videoconference:

(1) all parties, witnesses, and the hearing officer will appear via videoconference service specified by the administrative hearings office. The administrative hearings office shall take reasonable precautions to ensure that the videoconference is secure and confidential. However, by requesting or consenting to a videoconference hearing, the parties shall be deemed to understand that the administrative hearings office may contract, license or utilize a third-party service provider to facilitate videoconferencing and that all electronic communications are vulnerable to security breaches beyond the reasonable control or knowledge of the administrative hearings office. If such electronic security breaches were to occur, they constitute unintentional, inadvertent disclosures and do not amount to a breach of statutory confidentiality requirements under relevant law by any party or the hearing officer appearing via videoconference. The parties shall also waive any claims against the administrative hearings office, its employees, agents or contractors, arising from any disclosure and shall be deemed to have assumed risk of disclosure by requesting or agreeing to appear via videoconference;

(2) the parties shall ensure that they have exchanged all exhibits with each other and provided the assigned hearing officer with an exhibit binder before commencement of the approved videoconference hearing;

(3) the parties also shall provide contact phone numbers where they will be available at the time of the hearing in case there are technical errors or other issues with conducting the videoconference;

(4) in the event that technical or other computer problems prevent the videoconference hearing from occurring or interfere with maintaining or developing a complete record at the hearing, the parties agree and consent upon their submission of a request to conduct the matter via videoconference that the assigned hearing officer at their discretion may continue the matter to a different time without regard to any other statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the hearing via telephone;

(5) in the event of a videoconference hearing, the hearing record will only be the audio recording or transcription of the proceeding and will not include the video portion of the proceeding.

E. Telephonic appearances by the parties, (or their representatives) at a merits hearing are not generally permitted and will only be considered in the event of a genuine medical emergency/hardship, in cases where there is no genuine dispute of fact and parties intend to simply make legal argument, or when a technical problem prevents the conduct of a scheduled videoconference hearing.

F. Telephonic testimony from third-party witnesses may only be permitted in the event that in person or videoconference testimony would create an undue hardship or expense to the third-party witness. In addition to potential undue hardship, the assigned hearing officer in deciding whether to permit the telephonic testimony will consider the nature and purpose of the purported testimony, potential credibility issues regarding the testimony, the potential weight of the testimony as it relates to the particular issues at protest, and whether the testimony is being offered in rebuttal.

[22.600.3.11 NMAC - Rp. 22.600.3.10 NMAC, 8/25/2020]

22.600.3.12 APPEARANCES BY AUTHORIZED REPRESENTATIVES:

A. Taxpayers may appear at a hearing for themselves or may be represented by any person expressly authorized under the Tax Administration Act or the Administrative Hearings Office Act to represent a taxpayer before the administrative hearings office. Unless otherwise changed, amended or repealed, Subsection H of Section 7-1B-8 NMSA 1978 expressly authorizes a taxpayer to represent themselves, or be represented by a bona fide employee, an attorney, a certified public accountant, an expressly authorized employee of a New Mexico licensed certified public accounting firm, or an enrolled agent. When the taxpayer is two individuals who have been jointly

assessed, such as a married couple who filed a joint personal income tax return, either individual may serve as the taxpayer's representative.

B. Any attorney representing a taxpayer before the administrative hearings office shall file an entry of appearance in the matter. If the attorney has prepared the protest letter on behalf of the taxpayer, the protest letter signed by the attorney constitutes a valid entry of appearance unless otherwise expressly limited by the taxpayer or the attorney. An attorney's entry of appearance constitutes a written authorization for representation of a taxpayer without need for the specific, separate, signed taxpayer authorization specified in Subsection C. Any attorney, including those employed as in-house counsel, representing taxpayers in the filing of any motion, conduct of motions hearing, or conduct of a merits hearing must be licensed in good standing to practice law in New Mexico or in compliance with the pro hac vice requirements found under Rule 24-106 NMRA.

C. If a taxpayer intends to be represented by the authorized employee of a New Mexico licensed certified public accounting firm, then that firm shall provide a written authorization permitting its employee to act in a representative capacity for the taxpayer, on behalf of the firm. The authorization shall be executed by an individual having supervisory responsibility over the designated employee and authority to bind the New Mexico licensed certified public accounting firm in contract.

D. Except as otherwise provided, a taxpayer shall file a signed, written authorization with the administrative hearings office designating any person, except an attorney, expressly authorized under the Tax Administration Act or the administrative hearings office to represent the taxpayer in a specific protest proceeding. When the taxpayer is an entity, the signature of any bona fide employee of the taxpayer shall be deemed to be the taxpayer's signature. The written authorization need not be a specific or technical form, but may be included as a statement in the protest designating an authorized representative, on a taxpayer information authorization form filed with TRD, or as a statement in a subsequent pleading filed with the administrative hearings office.

E. All written authorizations or entries of appearance should include the name, mailing address, phone number, and electronic mail address of the authorized representative. The taxpayer and any representative who has entered an appearance or written authorization to appear has an ongoing duty to inform the administrative hearings office and the opposing party of any change of mailing address, contact phone number, or contact email address.

F. After a written authorization or entry of appearance has been filed in a case, a change in a taxpayer's representation requires a new, signed written authorization from the taxpayer, an entry of appearance from an attorney if no attorney has previously represented the taxpayer, or a substitution of counsel and new entry of appearance in the event that a taxpayer has engaged a different attorney to represent the taxpayer in the protest.

G. Any person designated by the taxpayer in the protest letter, through a written authorization or entry of appearance shall be deemed to be an authorized representative of the taxpayer for the purposes of conducting the scheduling hearing(s) before the administrative hearings office. At the scheduling hearing, the taxpayer and their representative (if any) will be advised of the statutory right to and limitations of representation during the hearing process.

H. After the scheduling hearing and advisement of the statutory right to and limitations of representation during the hearing process, if the taxpayer's representative is not a person who is expressly authorized to represent the taxpayer before the administrative hearings office under the Tax Administration Act or the Administrative Hearings Office Act, that person may not serve as a representative of the taxpayer in the proceeding before the administrative hearings office. In that event, the taxpayer may be granted an additional opportunity before conduct of the hearing to arrange for appropriate representation. Any delay in the hearing process for this reason will be attributed to the taxpayer.

I. All parties shall have a responsibility of candor to the administrative hearings office and shall not knowingly make false statements to the hearing officer. The administrative hearings office is a tribunal for purposes of Rule 16-303 NMRA. An attorney, a certified public accountant, the authorized employee of a New Mexico certified public accountant, an enrolled agent, or any other statutorily permitted representative of a taxpayer in a protest hearing shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office. In the event of an apparent breach of applicable standards of conduct, ethics or professionalism, in addition to reporting the breach to the appropriate disciplinary board, the assigned hearing officer may take other reasonable and appropriate measures within the hearing officer's statutory and regulatory authority necessary to maintain order and ensure a fair hearing process for all parties, up to and including disqualification.

[22.600.3.12 NMAC - Rp. 22.600.3.11 NMAC, 8/25/2020]

22.600.3.13 TAX PROTEST HEARINGS CLOSED TO PUBLIC, FILE IS CONFIDENTIAL, AND SEALING OF RECORDS IN THE PROCEEDING:

A. Hearings are not open to the public except upon request of the taxpayer.

B. Pursuant to Section 7-1-8.3 NMSA 1978, all documents, exhibits, pleadings and materials contained in the administrative tax file and the record of the administrative hearing are confidential and may not be released to the public, except that the final decision and order without redaction and any evidentiary or procedural ruling made by the hearing officer with redaction of identifiable taxpayer information may be revealed.

C. Either party may ask for, and submit, a proposed order sealing particular records, documents, or exhibits that may contain confidential third-party taxpayer information or

as is required by relevant internal revenue service information sharing agreements or other applicable federal law. Upon issuance of an order sealing such documents of exhibits, those 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 those 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 those sealed documents to any other party outside of the hearing process.

D. In the event of an appeal, the complete record of the proceeding, including any sealed records, will be provided to the relevant judicial body, as required under Section 7-1-8.4 NMSA 1978.

E. The hearing officer's notes taken during the course of the hearing, any written discussions with another hearing officer related to the deliberative process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure under any recognized exception contained under Section 7-1-8.3 NMSA 1978. Only the hearing officer's final decision and order and other final procedural or evidentiary orders (with appropriate taxpayer information redacted) may be revealed to the public under Section 7-1-8.3 NMSA 1978.

[22.600.3.13 NMAC - Rp. 22.600.3.12 NMAC, 8/25/2020]

22.600.3.14 WITHDRAWAL OF PROTESTS:

A. A taxpayer electing to withdraw a protest pending before the administrative hearings office shall execute a written withdrawal of protest. The written withdrawal must include the taxpayer's signature or the signature of a bona fide employee of the taxpayer, even when the taxpayer has an authorized representative. The written withdrawal need not include the taxpayer's reasons for withdrawing the protest. The written withdrawal must include adequate information to properly identify the taxpayer and the file at protest, such as the administrative hearings office's case number, TRD's assessment letter i.d. number or the date the protest was filed. A written withdrawal form provided and approved by TRD is sufficient to adequately identify the taxpayer and the protest.

B. A properly executed withdrawal of protest satisfying the requirements of this section shall result in the issuance of an order closing of the protest, the administrative file, and vacating any scheduled hearings in the matter. The withdrawal shall be deemed conclusive and dispositive as to all issues that were raised, or could have been raised, in the protest.

C. Upon receipt of a withdrawal of protest which does not satisfy the requirement stated herein, which appears irregular on its face, which fails to adequately address all issues pending in a protest, or which is indefinite, uncertain, or ambiguous, the hearing

officer may require the parties to address the deficiencies, may reject the withdrawal as inadequate, may leave the matter on the calendar as scheduled, may set a status conference to address the issues with the withdrawal, or may order the parties to submit a new withdrawal, if they are able to, addressing the deficiencies. The hearing officer may also choose to accept an inadequate withdrawal as is, noting the deficiency for the record and giving the parties a period of time to correct the deficiencies or make any objections in light of the identified deficiencies before the withdrawal is adopted as conclusive in the matter.

[22.600.3.14 NMAC - Rp. 22.600.3.13 NMAC, 8/25/2020]

22.600.3.15 SUMMARY DISPOSITIONS OF PROTESTS:

Where there is well-settled law addressing the issue identified on the face of the pleadings, or when it appears from the face of the pleadings in the administrative file that there is no genuine issue as to any material fact, the hearing officer may propose a summary disposition of the protest under the following procedure:

A. the hearing officer shall provide to the parties, their attorneys, or authorized representatives a written proposed summary disposition based on a review of the administrative file;

B. the parties, their attorneys, or authorized representatives shall be provided with no less than 15 days in which to respond to the proposed summary disposition;

C. a response to a proposed summary disposition shall include the factual or legal basis in support of or in opposition to the proposed summary disposition;

D. no reply to a response shall be allowed;

E. the failure to respond to a proposed summary disposition may be deemed as concurrence in the proposed summary disposition;

F. upon review of the responses to a proposed summary disposition, the hearing officer shall withdraw the proposed summary disposition and schedule the matter to be heard if either party makes a bona fide objection and argument, or enter a decision and order consistent with the proposed summary disposition if the parties consent, concede, fail to object or otherwise fail to meaningfully address the proposed summary disposition.

[22.600.3.15 NMAC - Rp. 22.600.3.14 NMAC, 8/25/2020]

22.600.3.16 FILING METHODS AND MOTIONS:

A. All pleadings 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 should include an attestation, or equivalent statement or information, that they provided a copy of the pleading to the opposing party.

B. A filing by facsimile shall include a cover sheet indicating the name of the matter, the name of the individual submitting the filing, the number of pages contained in the transmission, and a telephone number to contact in the event there are any errors with the transmission.

C. Documents filed by email or other electronic means shall not be submitted in an editable format unless specifically requested by the hearing officer. Absent specific instructions to do so, pleadings, motions or other papers shall not be submitted directly to the assigned hearing officer.

D. 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.

E. Before submission of any motion, request for relief, or 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.

F. A party moving to obtain an order compelling discovery shall explicitly confirm that the parties have made a good faith effort to resolve the issue prior to filing the motion to compel. A motion failing to explicitly confirm such effort may be summarily denied.

G. An unopposed motion may be accompanied by a stipulated order indicating approval by the parties, attorneys, or authorized representatives. Approval may be indicated by an original, photocopy, facsimile, or electronic signature of the individual providing approval, or by a statement indicating approval by other means such as by email. The hearing officer retains the authority to deny the relief requested in an unopposed or stipulated motion and may adopt, modify, or reject any stipulated order accompanying an unopposed motion.

H. Unless a different deadline applies under an applicable order of the assigned hearing officer, the opposing party has 14 calendar 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. The assigned hearing officer may require a shorter response deadline, especially for time-sensitive or basic motions like

continuance requests. 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. The moving party shall file a notice that the matter is ripe for ruling upon receipt of the opposing party's response or in the event that the opposing party has not filed a timely response upon expiration of the response period.

I. Unless otherwise provided in a scheduling order, dispositive motions shall be filed no less than 75 days preceding a hearing on the merits of a protest and shall specify whether the moving party seeks to convert the scheduling hearing to a hearing on the motion. Dispositive motions shall be ruled upon no less than 30 days prior to a merits hearing. The chief hearing officer or the presiding hearing officer retains discretion, subject to objections from the parties, to continue or vacate a merits hearing pending a ruling on a dispositive motion if in the hearing officer's opinion, thorough consideration and preparation of a proper written ruling might cause the ruling to be rendered less than 30 days prior to a scheduled hearing.

J. A party attaching one or more exhibits to a pleading, motion, or other paper shall designate the exhibit in a manner to specifically associate it with the pleading, motion, or other paper which it is intended to accompany. An appropriate designation for an exhibit to a motion will include an abbreviation for the type of motion, and an identifying letter for TRD or a number for the taxpayer. For example only, an exhibit to a motion for summary judgment presented by a taxpayer may be designated as "Taxpayer MSJ #1". An exhibit to a response to the motion filed by TRD may be designated as "Dept. Resp. MSJ A".

K. Absent express permission of the assigned hearing officer with good cause shown, no pleading, including motions and attached memorandums of support, filed in a hearing involving the tax administration act or property tax code shall exceed 20 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font.

[22.600.3.16 NMAC - Rp. 22.600.3.15 NMAC, 8/25/2020]

22.600.3.17 DISCOVERY:

New Mexico is a liberal discovery state and to that end the parties are expected to cooperate in good faith to accomplish adequate discovery by the time the formal hearing is held without a specific order or intervention of the hearing officer. Discovery need not be a formal, time-consuming, litigious, or burdensome process; instead, the parties should make a good-faith effort to achieve discovery through informal consultation, discussion, stipulations, and good-faith, efficient exchange of relevant materials. If adequate discovery is not achieved informally within a reasonable time prior to the time a formal hearing is scheduled or by the deadline contained in a scheduling order issued by the hearing officer, any party may apply to the hearing officer for an order requiring a more formalized discovery process, including requiring

depositions, production of records or answers to interrogatories/requests for admissions. The parties shall file only certificates of service regarding discovery requests and productions unless the hearing officer requires otherwise, such as when there is a motion to compel. Depositions may be taken orally or by written interrogatories and cross-interrogatories. Unless ordered otherwise by the hearing officer, responses to interrogatories, requests for production of documents and requests for admission shall be due thirty days after service on a party. Unless ordered otherwise by the hearing officer, any notice of deposition shall be served on all opposing parties at least 14 days prior to the date of the deposition. The parties have an obligation to cooperate in the scheduling of depositions to avoid unnecessary expense to the parties and inconvenience to witnesses.

[22.600.3.17 NMAC - Rp. 22.600.3.16 NMAC, 8/25/2020]

22.600.3.18 CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS AND STATUTORY DEADLINES:

A. If a party or an officer or agent of a party fails to comply with an order of the hearing officer, the hearing officer may, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

(1) infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;

(2) issue an order to show cause;

(3) rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;

(4) rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied;

(5) rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown;

(6) disregard the content of any document filed after the deadline for filing said document has passed;

(7) disregard the content of any document filed after the merits hearing has been conducted, unless the hearing officer has granted permission to file such document; or

(8) dismiss the protest or order that the protest be granted.

B. Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to remedy the failure to comply with the order or withheld testimony, documents or other evidence.

C. The failure to comply in good faith with the orders of the hearing officer may be taken into consideration regarding the reasonableness of administrative costs or the reasonableness of a party's position when there is a motion for costs and fees under Section 7-1-29.1 NMSA 1978.

D. In the event a third-party refuses to comply with a valid subpoena, the hearing officer may allow the party who requested the subpoena to make a proffer of evidence that the party believes would have been obtained had the third-party complied with the subpoena. The opposing party shall have the opportunity to refute the proffer, including by making a proffer of its own as to what it believes would have been shown if the third-party complied with the subpoena. The hearing officer may give the proffers whatever weight she/he deems reasonable in light of all of the evidence presented and with due consideration of the statutory presumption of correctness.

E. Upon motion of the taxpayer or upon its own initiative, the administrative hearings office may evaluate whether TRD satisfied the applicable statutory requirements and deadlines for acknowledging a valid protest, for providing notice and an opportunity to correct an invalid protest, for conducting an informal conference, for requesting a hearing on the protest or in filing a timely and adequate answer consistent with Subsection E of Section 7-1B-8 NMSA 1978, as amended. Except upon good cause shown, finding that TRD failed to comply with applicable statutory requirements and deadlines may cause the accrual of interest on the protested liability to be suspended from the day after the date on which TRD should have, but did not act, or from another date considering the unique circumstances at issue in the protest.

[22.600.3.18 NMAC - Rp. 22.600.3.17 NMAC, 8/25/2020]

22.600.3.19 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. The hearing officer may direct the parties or their representatives 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 of 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 protest in order that the administrative hearings office may arrange its docket to expedite the disposition of cases.

F. As part of basic docket management and to ensure 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 contact the parties and inquire about the status of any scheduled or pending case or cases.

[22.600.3.19 NMAC - Rp. 22.600.3.18 NMAC, 8/25/2020]

22.600.3.20 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 shall 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 10 day notice before compelled attendance at a hearing or deposition, and at least 10 day notice before compelled production of materials. All returns or certificates of service on served 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.

[22.600.3.20 NMAC - Rp. 22.600.3.19 NMAC, 8/25/2020

22.600.3.21 REQUESTS FOR CONTINUANCES:

A. Either party may request that a scheduled hearing be continued until a different date and time by filing a written request for continuance. The request for continuance should include a description of the reason why the requesting party would like the matter rescheduled, the opposing party's position on the request unless the opposing party does not respond after reasonable efforts were made to contact them, how much additional time the moving party seeks before the matter is rescheduled, and any dates where the parties are unavailable for rescheduling the matter.

B. The hearing officer will generally only consider requests for a continuance made in writing at least seven days before the scheduled hearing and supported by good cause, absent extraordinary, unforeseen circumstances which the requesting party could not have known earlier than seven days before the hearing. Within seven days of the scheduled hearing, the hearing officer may reject a continuance request even if the opposing party has stipulated or does not oppose the request. Unless and until the parties are affirmatively informed by order or other communication of an administrative hearings office employee that the continuance request has been granted, the scheduled hearing remains on the calendar and the parties must appear at the hearing. Failure to appear at the scheduled time of the hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

C. As part of the continuance request, the moving party must waive the 90-day hearing requirement. In the absence of such express waiver, as a condition of granting the request, the hearing officer may deem that the 90-day hearing requirement was met and attribute any delay in the conduct of the hearing to the moving party.

D. The assigned hearing officer and the chief hearing officer or designee may continue or reschedule a scheduled hearing, or reassign a scheduled hearing to another hearing officer, as necessary to manage the tax docket and state resources in an efficient manner and account for changes in office staffing.

[22.600.3.21 NMAC - Rp. 22.600.3.20 NMAC, 8/25/2020]

22.600.1.22 FAILURE TO APPEAR:

A. A taxpayer's failure to appear at the scheduled time of the noticed protest hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

B. If a taxpayer has appeared but a representative of TRD fails to appear at a noticed hearing, the hearing officer may issue an order to show cause as to why the protest shall not be granted, may allow the taxpayer to present their case in the absence of TRD's representative and rule upon the protest, or take other appropriate actions within the hearing officer's power.

C. In considering the non-appearance and whether the person received appropriate notice, 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 shall be addressed on the record of the hearing or in any subsequent order.

D. Oral rulings based on failure to appear are not final until reduced to writing. Such rulings may be changed in the written order as new information arises after the hearing related to whether the notice of hearing was properly sent to the correct address or otherwise properly served.

[22.600.3.22 NMAC - Rp. 22.600.3.21 NMAC, 8/25/2020]

22.600.3.23 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 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.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper 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 an improper 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.

[22.600.3.23 NMAC - Rp. 22.600.3.22 NMAC, 8/25/2020]

22.600.3.24 EVIDENCE AT HEARING:

A. Every party shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing.

B. The taxpayer shall have the burden of proof, except as otherwise provided by law. Because the taxpayer must overcome the presumption of correctness or otherwise establish entitlement to the claim or relief sought during the protest, the taxpayer will ordinarily present their case first, followed by TRD, except as otherwise provided by law

or as otherwise ordered by the hearing officer for good cause. The party with the burden in the case shall have an opportunity to make a final rebuttal argument at the hearing. However, in the event closing argument is submitted after the hearing in writing, the hearing officer may require that each side submit simultaneous written closing arguments in the matter without an opportunity for rebuttal argument.

C. The New Mexico rules of evidence and New Mexico rules of civil procedure shall not apply in any matter before the administrative hearings office unless otherwise expressly and specifically prescribed 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. Immaterial or irrelevant portions of an otherwise admissible document shall be segregated or redacted and excluded so far as is practicable. 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.

D. Reliable hearsay evidence is admissible during the protest proceeding.

E. An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.

F. The parties may agree to, and the hearing officer may accept, the joint submission of stipulated facts relevant to the issue or issues. The hearing officer may order the parties to stipulate, subject to objections as to relevance or materiality, to uncontested facts and to exhibits. The hearing officer may also order the parties to stipulate to the admissibility of basic documents concerning the controversy, such as audit reports of TRD, assessments issued by TRD, returns and payments filed by taxpayer, correspondence between the parties, and to basic facts concerning the identity and business of a taxpayer, such as the taxpayer’s business locations in New Mexico and elsewhere, the location of its business headquarters and, if applicable, the state of its incorporation or registration.

G. 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.

H. 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, or reserved for ruling in a subsequent written order.

I. Formal exception to an adverse ruling is not required.

J. When an objection to admission of an exhibit or to a question propounded to a witness is sustained, the proponent may make a specific offer of what the representative expects to prove by introduction of the exhibit or by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, may be retained in the record so as to be available for consideration by any reviewing authority.

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 a documentary exhibit presented at hearing which exceeds 8.5 inches by 11 inches or which cannot be folded, provided the proponent of such exhibit provide the administrative hearings office 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 construed as a withdrawal of the exhibit. For the purposes of maintaining an adequate record for submission to the Court of Appeals upon an appeal of either party, the hearing officer may request or require the submission of electronic copies of all tendered exhibits either in addition to or in lieu of the physical copies of tendered exhibits.

L. Objects introduced as exhibits shall be returned to the proponent at the conclusion of the hearing unless otherwise ordered by the hearing officer. In lieu of the object itself, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as verbal description of the pertinent characteristics of the object for the record. If an object is retained for the record, it may be returned to the proponent no less than 45 days after a final decision and order is rendered on the merits of a protest provided that a party has not filed a notice of appeal.

[22.600.3.24 NMAC - Rp. 22.600.3.23 NMAC, 8/25/2020]

22.600.3.25 RECORD:

Hearings shall be electronically recorded unless the hearing officer allows recording by any alternative means approved by the New Mexico supreme court for the recording of judicial proceedings. Any party may request that a hearing be recorded by such an alternative in writing at least seven days before the scheduled hearing. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternate means will be responsible for the full cost thereof, including the provision of the original transcript to the hearing officer and copies to opposing parties. In the event of a videoconference hearing, only the audio portion of the recording shall be maintained as part of the record.

[22.600.3.25 NMAC - Rp. 22.600.3.24 NMAC, 8/25/2020]

22.600.3.26 PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS:

At the close of the reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or allow any party to file with the hearing officer proposed orders, proposed findings of fact, and proposed conclusions of law, together with reasons therefore and briefs in support thereof. The hearing officer may adopt the proposed findings in part, in whole, or may make his or her own findings. The period for preparing the final decision and order shall not commence until after the final pleadings, including any ordered briefings, findings of fact, or conclusions of law, are filed.

[22.600.3.26 NMAC - Rp. 22.600.3.25 NMAC, 8/25/2020]

22.600.3.27 DATE OF MAILING OR DELIVERY:

A. Use of the phrase "date of mailing or delivery" in Section 7-1-25A NMSA 1978 authorizes the administrative hearings office to choose between mailing and hand-delivering the written decision and order of the hearing officer.

B. "Date of mailing" means the time that the hearing officer's decision and order enclosed in properly addressed envelope or wrapper was postmarked by the U.S. postal service. "Delivery" means time of hand delivery of the written decision and order to the party’s business residence.

[22.600.3.27 NMAC - Rp. 22.600.3.26 NMAC, 8/25/2020]

22.600.3.28 REASONABLE ADMINISTRATIVE COSTS, LITIGATION COSTS AND ATTORNEY FEES:

A. At any time after the evidentiary record has closed in reference to the merits of a protest, the presiding hearing officer may request additional information from the parties relevant to determining whether the taxpayer should be awarded reasonable administrative costs, litigation costs and attorney fees pursuant to Section 7-1-29.1 NMSA 1978. The hearing officer may make such request regardless of whether the administrative record contains an explicit prior request for fees and costs. For the purpose of this subsection, additional information may include legal briefing, affidavits, documents, or live testimony or legal argument limited to the issue of whether a taxpayer should be considered a prevailing party, whether TRD’s position in the proceeding was based upon a reasonable application of the law to the facts of the case, or for determining the reasonableness of a potential award.

B. In circumstances where the issue of reasonable administrative costs, litigation costs and attorney fees remains outstanding after the parties have resolved, compromised, or conceded all other disputed issues in the protest, taxpayer shall by motion or other written communication, notify TRD and the administrative hearings office that it is seeking a determination on that issue prior to withdrawing its protest. A

request for an award of reasonable administrative costs, litigation costs and attorney fees will not be considered subsequent to the withdrawal of the protest in which the taxpayer alleges the fees and costs were incurred. In any manner where a request for hearing before the administrative hearings office has been filed by either party, the jurisdiction of the administrative hearings office to consider reasonable administrative costs, litigation costs and attorney fees shall not be extinguished by the full abatement of an assessment, full allowance of a refund or credit, or other concession which if not for the issue of fees and costs, would resolve the protest in favor of the taxpayer without the need for a hearing.

[22.600.3.28 NMAC - N, 8/25/2020]

22.600.3.29 RECONSIDERATIONS:

A. A party may file a motion for reconsideration no more than seven calendar days after the date on the final decision and order. The opposing party may file a response no more than seven calendar days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically.

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 previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors/omissions in the final decision and order.

D. An order shall be issued within seven calendar days of the response deadline or the motion to reconsider shall be deemed denied.

E. The parties should not presume that the filing of a motion for reconsideration will extend the deadline to appeal a decision and order under the Tax Administration Act, even if reconsideration is sought within the specified deadlines.

[22.600.3.29 NMAC - N 8/25/2020]

22.600.3.30 APPEALS:

A. Appeals of a final tax decision and order of the administrative hearings office are taken by filing a timely notice of appeal directly with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure. Writing or otherwise

communicating to the administrative hearings office a general intent to appeal a final decision is insufficient to perfect an appeal of the case.

B. Upon filing the required docketing statement with the New Mexico court of appeals, the appellant shall serve a copy of the docketing statement with the administrative hearings office. The administrative hearings office will then prepare and file the record proper with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure, providing a copy to the appellant and the other party.

C. The administrative hearings office, as the adjudicative body, is not a party to the appeal and all requests for positions related to motions in the appeal should be addressed to the opposing party or where appropriate, to the relevant appellate court.

[22.600.3.30 NMAC - Rp 22.60.3.27 NMAC, 8/25/2020]

PART 4-5: [RESERVED]

PART 6: IMPLIED CONSENT ACT LICENSE REVOCATION HEARINGS

22.600.6.1 ISSUING AGENCY:

Administrative hearings office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.

[22.600.6.1 NMAC - N, 2/1/2018]

22.600.6.2 SCOPE:

This part applies to all persons holding a New Mexico driver's license or driving on New Mexico roadways, their attorneys, MVD, and any person attending an Implied Consent Act violation hearing.

[22.600.6.2 NMAC - N, 2/1/2018]

22.600.6.3 STATUTORY AUTHORITY:

Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.

[22.600.6.3 NMAC - N, 2/1/2018]

22.600.6.4 DURATION:

Permanent.

[22.600.6.4 NMAC - N, 2/1/2018]

22.600.6.5 EFFECTIVE DATE:

February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[22.600.6.5 NMAC - N, 2/1/2018]

22.600.6.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the hearing provisions under the Implied Consent Act and the Administrative Hearings Office Act.

[22.600.6.6 NMAC - N, 2/1/2018]

22.600.6.7 DEFINITIONS:

As used in 22.600.5 NMAC:

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. "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.

D. "Driver" means the person challenging the proposed revocation of the person's driving privileges for an alleged Implied Consent Act violation.

E. "Hearing location" means an 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. "Revocation" means the termination of a person's driver's license, permit or privilege to drive a motor vehicle upon a highway in New Mexico.

[22.600.7.1 NMAC - N, 2/1/2018]

22.600.6.8 REQUEST FOR IMPLIED CONSENT ACT HEARING AND SUBMISSION OF REFERRAL TO THE ADMINISTRATIVE HEARINGS OFFICE FOR CONDUCT OF A HEARING:

A. Requests for hearing must be in writing, must be accompanied by the required fee or statement of indigency as required by MVD, must be made within ten days after receipt of notification of revocation as defined in Section 66-8-112 NMSA 1978, and must be submitted to MVD. Incomplete requests or requests received after this time will not be honored by MVD. Timeliness of the request shall be determined either by the date of actual delivery to MVD's headquarters in Santa Fe or, if mailed, by the postmark date of the envelope containing the request delivered through the U. S. postal service. The administrative hearings office, which is a separate and distinct agency from MVD, lacks authority under the statute to accept a request for hearing directly from a driver. While the administrative hearings office will make reasonable efforts to forward any hearing requests incorrectly submitted to it rather than MVD to MVD, the administrative hearings office will not be held liable for the driver's initial error in filing the request with the wrong entity in terms of timeliness of the request for hearing.

B. Upon receipt of a timely, complete request for hearing and review of a notice of revocation demonstrating a prima facie showing of an Implied Consent Act violation, MVD shall promptly transmit, submit or file a referral for hearing to the administrative hearings office in a method and manner required by the administrative hearings office. At a minimum, any referral for hearing by MVD should include the driver's request for hearing, the notice of revocation and any supporting documentation attached thereto by the law enforcement officer, any proof of mailing or service of the notice of revocation if issued by MVD rather than the law enforcement officer, a list of witnesses that MVD wishes to have subpoenaed to the hearing, an entry of appearance if any of an attorney or officer or agent appearing on behalf of MVD, the driver's address of record with MVD if different than what was listed on the driver's request for hearing, and any entry of appearance filed by an attorney on behalf of the driver. Administrative hearings office staff may reject any hearing referral received from MVD that does not include the minimum requested information until MVD provides the required information.

C. After initial submission of a referral for hearing with the administrative hearings office, MVD shall have a continuing duty to forward any additional information received on the case to the administrative hearings office for inclusion in the case file, including but not limited to, any subsequent entry of appearance received from an attorney on behalf of a driver, any supplemental evidence received such as the results of a chemical

test from the scientific laboratory division or foundational information related to such results, and any requests for discovery filed by a driver or the driver's representative.

D. Upon receipt of a complete referral for hearing, the chief hearing officer or staff designated by the chief hearing officer will promptly assign the matter to a hearing officer to be promptly heard at the appropriate place before expiration of any mandatory statutory deadline.

[22.600.6.8 NMAC - N, 2/1/2018]

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

A. Unless otherwise expressly authorized by law, only the driver, or in the case of a minor under the age of 18 the driver's legal parent(s) or guardian(s), or an attorney licensed or authorized to practice law in New Mexico may represent the driver 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 at the hearing.

B. Any attorney wishing to represent a party shall file a formal written entry of appearance directly with the administrative hearings office listing that attorney's mailing address, 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 filing a withdrawal of representation with the administrative hearings office, 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.

C. If an attorney attempts to withdraw from the case at the scheduled hearing, a hearing officer may deny a request for withdrawal of representation if such request would necessitate a continuance or otherwise have a clear, materially adverse effect on the party's interests and impede the conduct of a full, fair, and efficient hearing.

[22.600.6.9 NMAC - N, 2/1/2018]

22.600.6.10 TIME AND PLACE OF IMPLIED CONSENT ACT HEARING - HEARINGS IN PERSON OR BY TELEPHONIC, VIDEOCONFERENCE, AND ELECTRONIC HEARINGS:

A. The administrative hearings office will notify the driver or driver's counsel by certified mail of the date, time and place scheduled for the hearing. This notice will be directed to the address listed on the request for a hearing or, if no return address is indicated, to the address last given by the driver to MVD pursuant to Section 66-5-22

NMSA 1978 or to the address provided by driver's counsel in the entry of appearance. Such notice of hearing will be sent a minimum of seven calendar days before the scheduled hearing consistent with Section 66-2-11 NMSA 1978. A driver, or their representative, has a continuing, ongoing obligation through final issuance of a decision and order resolving the case to provide the administrative hearings office with any change of address information.

B. The hearing shall be held in the county in which the offense for which the person was arrested took place unless driver or driver's designated representative either consents to or requests to appear by telephone, videoconference or other equivalent electronic method.

C. The hearing officer may conduct the hearing in person or with consent by telephone, videoconference or other equivalent electronic method. If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall so inform the driver or the driver's representative and provide no less than ten days for the driver or the driver's representative to object to the hearing being conducted in that manner. Failure to timely object to the conduct of a telephone, videoconference, or other equivalent electronic method hearing within the time frame specified by the notice shall be deemed consent to the hearing proceeding in that manner and waiver of any other applicable statutory in county hearing requirement.

D. Provided that the driver or driver's representative has not previously demanded an in-person hearing or otherwise objected to conducting the matter via telephone, videoconference, or other equivalent electronic method, a driver, a driver's representative, MVD's attorney, or any MVD witness may request to appear via telephone, videoconference, or alternative electronic means by filing a request at least three business days before the scheduled hearing, absent an extraordinary, unforeseen circumstance. The driver's or driver's representative filing of a request to appear via telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete waiver of the in-person, in-county hearing requirement and further deemed as consent for all parties, all witnesses, and the hearing officer to appear at the hearing via telephone, videoconference, or other equivalent electronic methods or no such request will be granted. The assigned hearing officer, the chief hearing officer, or designated scheduling unit employee may grant or deny the request after considering whether a complete and accurate record can be made and a fair hearing can be conducted in the matter via telephone, videoconference or other equivalent electronic method. Even if the initial request is granted, the assigned hearing officer always retains the discretion at any point in the proceeding to order the appearance of the parties or witnesses in person if, in the hearing officer's determination, resolution of the disputed facts, evidence, credibility of a witness, law, and or development of a complete and accurate record requires it.

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. Any

other tangible exhibit introduced into the record at a remote hearing will be submitted for the record in accord with the order of the presiding hearing officer.

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 officer in accord with the instructions included on the notice of hearing.

H. In the event that technical or other equipment problems prevent the telephone or videoconference hearing 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 hearing via another equivalent electronic method.

[22.600.6.10 NMAC - N, 2/1/2018]

22.600.6.11 CONTINUANCES:

At the request of the driver or the driver's representative, MVD or MVD's agent, any law enforcement officers subpoenaed as witnesses, or upon the hearing officer's own motion, the hearing officer may for good cause continue the hearing. Continuance requests shall be submitted to the administrative hearings office in writing prior to the scheduled hearing or on the record at the scheduled hearing. The hearing officer shall consider only those requests made in writing at least three working days prior to the scheduled hearing absent extraordinary circumstances that the requesting party could not have known earlier. Employees of the administrative hearings office scheduling unit 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. Regardless of the cited good cause or emergency circumstance supporting the continuance, no continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing within 90 days of the notice of revocation.

[22.600.6.11 NMAC - N, 2/1/2018]

22.600.6.12 IMPLIED CONSENT HEARINGS - SUBPOENAS FOR WITNESSES AND DOCUMENTS -ISSUANCE - COSTS:

A. With at least 10 days written notice, the administrative hearings office will subpoena any witness for testimony at the hearing that MVD has identified in its referral of the case including all law enforcement personnel identified on the notice of

revocation, or any subsequent submission by MVD, and any relevant witness requested by driver or driver's representative in writing. Such subpoenas shall be served by personal service as provided by NMRA 1-045(c), by email, by mail, or by certified mail.

B. The driver or the driver's representative may make written application to MVD requesting that a subpoena be issued to compel the production of specific books, papers or other records. Such written application shall set forth reasons supporting the issuance of the subpoena, including establishing the relevancy of the proposed testimony or documents sought. MVD shall issue a discovery order to its witnesses in the matter, which the administrative hearings office may subsequently enforce. The driver or the driver's representative shall be responsible for the service of any such subpoenas on MVD's witness, and following up with MVD in the event of noncompliance with the subpoena. Unless a request for continuance is made at least three working days prior to the scheduled date for the hearing, inability to serve such subpoenas shall not be grounds for continuance. Failure to comply with a diligently served subpoena, and subsequent follow up letter from MVD about the necessity for compliance with the subpoena, may be grounds to rescind the proposed revocation regardless of the merits of the case.

C. Other than crafting a remedy in the particular case before it appropriate for the failure to comply with a valid and reasonably executed subpoena, the administrative hearings office has no other subpoena enforcement powers.

[22.600.6.12 NMAC - N, 2/1/2018]

22.600.6.13 IMPLIED CONSENT HEARINGS - POWERS AND DUTIES OF HEARING OFFICER:

A. 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 schedule, continue and reschedule hearings;

(3) to rule upon offers of proof and receive evidence;

(4) to require the filings of briefs on specific legal issues prior to or after the hearing;

(5) to consider and rule upon procedural and other motions and objections appropriate in proceeding;

(6) to insure that all, and only, relevant and material issues are considered during the hearing;

(7) to require the production or inspection of relevant documents and other items;

(8) to participate, when appropriate, in the examination of witnesses;

(9) to maintain a complete administrative hearing record;

(10) to issue orders and a written decision based on the record; or

(11) to take such other action as may be necessary and appropriate, consistent with legal authority vested in the administrative hearings office, and with the rules, regulations, standing orders, and policies of the administrative hearings office.

B. The hearing officer shall have full power to regulate the course, conduct, and decorum of the hearing, including of the parties, their representatives, and the witnesses therein. This power includes the authority to reprimand, or with warning in extreme instances exclude from the hearing, any person 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.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper 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 an improper 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.

[22.600.6.13 NMAC - N, 2/1/2018]

22.600.6.14 IMPLIED CONSENT HEARINGS - PARTIES TO THE HEARING - PARTIES' RIGHTS:

The parties to the hearing shall be MVD and the driver. The driver may be represented by an authorized attorney at their own expense, who can appear on the driver’s behalf. MVD may also be represented by an attorney that has entered an appearance on its behalf. MVD may also designate the law enforcement officer that served the notice of revocation as its case agent for the purposes of the exclusionary rule and for the limited

purposes of presenting testimony, exhibits, and making basic evidentiary objections regarding relevancy by filing a written designation before the scheduled hearing. The parties directly, or through an authorized attorney, shall be entitled to call and examine witnesses, to introduce exhibits, to cross-examine witnesses, and to make closing arguments. Rebuttal evidence and argument may only be allowed at the discretion of the hearing officer.

[22.600.6.14 NMAC - N, 2/1/2018]

22.600.6.15 IMPLIED CONSENT HEARINGS - EVIDENCE:

A. The technical rules of evidence shall not apply to the conduct of any hearing held under the provisions of Section 66-8-112 NMSA 1978. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The hearing officer may give probative effect to evidence that is of a kind commonly relied upon by reasonably prudent people in the conduct of serious affairs.

B. Hearsay evidence may be admitted in the proceeding.

C. The hearing officer may take notice of judicially or administrative cognizable facts and of general technical or scientific facts and of other facts within the hearing officer's specialized knowledge and experience in conducting Implied Consent Act hearings and in the workings of the administrative hearings office.

D. The experience, technical competence, and specialized knowledge of the hearing officer may be utilized in the evaluation of the evidence.

E. 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 decision, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

F. 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.

G. Documentary evidence may be received in evidence in the form of copies or excerpts. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer.

H. 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 verbal description of the pertinent characteristics of the object for the record.

[22.600.6.15 NMAC - N, 2/1/2018]

22.600.6.16 IMPLIED CONSENT HEARINGS - FAILURE TO APPEAR:

If a driver who has requested a hearing fails to appear at the scheduled time and place, either in person or through an authorized representative attorney, and notice was given to the driver or to the driver's representative of the date, time, and place of the hearing, and no continuance has been granted, the right to a hearing shall be forfeited and the revocation shall be sustained. In considering the non-appearance and whether the person received appropriate notice, 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 shall be addressed on the record of the hearing or in any subsequent order. Oral rulings of default for failure to appear are not final until reduced to writing. Such rulings may be changed by written order as new information arises after the hearing related to whether the notice of hearing was properly sent to the correct address, such as but not limited to a returned envelope from the postal service received after the hearing date. If a driver waives the right to a hearing or withdraws the request for hearing, the right to a hearing shall be forfeited and the revocation shall be sustained.

[22.600.6.16 NMAC - N, 2/1/2018]

22.600.6.17 IMPLIED CONSENT HEARINGS - ISSUES TO BE CONSIDERED AT THE HEARING:

The hearing shall be strictly limited to those issues set out in Subsection E of Section 66-8-112 NMSA 1978, as interpreted by case law. Whether or not the person had a previous revocation under the Implied Consent Act is an issue determined by MVD, by its own review of its official records.

[22.600.6.17 NMAC - N, 2/1/2018]

22.600.6.18 IMPLIED CONSENT HEARINGS - HEARINGS OPEN TO PUBLIC:

The hearing, including any continuations, shall be open to the public, except that the assigned hearing officer may take any actions within the hearing officer’s power necessary to ensure a fair and orderly hearing process, including ordering any person, group of people, or member of the media who interferes with the conduct of a fair and orderly hearing process to leave the proceeding.

[22.600.6.18 NMAC - N, 2/1/2018]

22.600.6.19 IMPLIED CONSENT HEARINGS - DECISION AND ORDER:

The hearing officer shall enter a written order either sustaining or rescinding the revocation of the driver's license, permit or privilege to drive. The written order

sustaining the revocation shall contain the findings required by Subsection F of Section 66-8-112 NMSA 1978 except where the driver has withdrawn the driver's request for hearing or waived the driver's right to a hearing by failing to appear at the hearing.

[22.600.6.19 NMAC - N, 2/1/2018]

22.600.6.20 IMPLIED CONSENT HEARINGS - RECORD OF THE HEARING:

Hearings shall be electronically recorded unless the hearing officer requires recording by stenographic, mechanical or other means. Any party is permitted to make their own recording of the proceeding by providing notice to the tribunal and opposing party at beginning of the hearing of their intent to do so. However, unless designated to the contrary by the presiding hearing officer, the recording of the administrative hearings office is the official record of the proceeding. In the event of a videoconference hearing, only the audio recording portion of the proceeding shall be maintained as part of the record.

[22.600.6.20 NMAC - N, 2/1/2018]

22.600.6.21 IMPLIED CONSENT HEARING - TIME FRAMES:

In computing any period of time under this section, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

[22.600.6.21 NMAC - N, 2/1/2018]

PART 7-8: [RESERVED]

PART 9: PARENTAL RESPONSIBILITY ACT LICENSE SUSPENSION HEARINGS

22.600.9.1 ISSUING AGENCY:

Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.

[22.600.9.1 NMAC - N, 2/1/2018]

22.600.9.2 SCOPE:

This part applies to all persons and parties subject to driver's license suspension action pursuant to the New Mexico Parental Responsibility Act.

[22.600.9.2 NMAC - N, 2/1/2018]

22.600.9.3 STATUTORY AUTHORITY:

Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.

[22.600.9.3 NMAC - N, 2/1/2018]

22.600.9.4 DURATION:

Permanent.

[22.600.9.4 NMAC - N, 2/1/2018]

22.600.9.5 EFFECTIVE DATE:

February 1, 2018, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[22.600.9.5 NMAC - N, 2/1/2018]

22.600.9.6 OBJECTIVE:

The objective of this part is to interpret, exemplify, implement and enforce the hearing provisions under the Parental Responsibility Act and the Administrative Hearings Office Act.

[22.600.9.6 NMAC - N, 2/1/2018]

22.600.9.7 DEFINITIONS:

As used in 22.600.5 NMAC:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Certificate of compliance" means a certified statement from HSD stating that a licensee is in compliance with a judgment and order for support or in compliance with a subpoena or warrant relating to paternity or child support proceedings.

C. "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.

D. "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.

E. "HSD" means the child support enforcement division of the New Mexico human services department.

F. "License" means an individual driver's license or a commercial driver's license.

G. "Licensee" means the person challenging the proposed suspension of their driving privileges for an alleged violation of the Parental Responsibility Act.

H. "MVD" is the motor vehicle division of the New Mexico taxation and revenue department.

I. "Notice of intent to suspend driver's license and right to a hearing" means a written statement that MVD intends to suspend or not renew a driver's license, the basis for the proposed suspension, and the process afforded a licensee by MVD or HSD.

[22.600.9.7 NMAC - N, 2/1/2018]

22.600.9.8 REQUEST FOR HEARING AND SUBMISSION OF REFERRAL TO THE ADMINISTRATIVE HEARINGS OFFICE FOR CONDUCT OF A HEARING:

A. Requests for hearing from a licensee must be submitted to MVD within 30 days from the date notice of intent to suspend driver's license and right to a hearing was mailed. The request may be mailed to parental responsibility hearings, P.O. Box 630, Santa Fe, New Mexico 87504-0630, or delivered in person to the legal services bureau, Joseph M. Montoya building, 1100 S. St. Francis Drive, Suite 1100, Santa Fe, New Mexico. Incomplete requests or requests received after this time will not be honored by MVD. Timeliness of the request shall be determined either by the date of actual delivery to MVD's headquarters in Santa Fe or, if mailed, by the postmark date of the envelope containing the request delivered through the U. S. postal service. The administrative hearings office, which is a separate and distinct agency from MVD, lacks authority under the statute to accept a request for hearing directly from a licensee. While the administrative hearings office will make reasonable efforts to forward any hearing requests incorrectly submitted to it rather than MVD, the administrative hearings officer

will not be held liable for the licensee's initial error in filing the request with the wrong entity in terms of timeliness of the request for hearing.

B. Upon receipt of a timely, complete request for hearing, MVD shall promptly transmit, submit or file a referral for hearing to the administrative hearings office in a method and manner required by the administrative hearings office. At a minimum, any referral for hearing by MVD should include the notice of intent to suspend driver's license and right to a hearing, a copy of the controlling court order from HSD, licensee's request for hearing, the licensee's address of record with MVD if different than what was listed on the licensee's request for hearing, and any entry of appearance filed by an attorney on behalf of the licensee. Administrative hearings office staff may reject any hearing referral received from MVD that does not include the minimum requested information until MVD provides the required information.

C. After initial submission of a referral for hearing with the administrative hearings office, MVD shall have a continuing duty to forward any additional information received in the case to the administrative hearings office for inclusion in the case file, including but not limited to, any subsequent entry of appearance received from an attorney on behalf of a licensee, any supplemental evidence received, or any certificate of compliance issued in the case.

D. Upon receipt of a complete referral for hearing, the chief hearing officer or staff designated by the chief hearing officer will promptly assign the matter to a hearing officer to be heard.

[22.600.9.8 NMAC - N, 2/1/2018]

22.600.9.9 HEARINGS UNDER THE PARENTAL RESPONSIBILITY ACT:

A. The hearing shall be held within 90 days from the date of the referral of the case by MVD the administrative hearings office.

B. Because of the limited and simple issues involved in the proceeding, all license suspension hearings regarding the Parental Responsibility Act will be held by telephone unless the hearing officer, at their sole discretion, determines that an in-person hearing is required.

C. The administrative hearings office shall provide notice to the licensee and HSD of the hearing date and time.

(1) This notice will be directed to the address contained in the request for a hearing or, if no return address is indicated, to the address last given by the licensee to MVD pursuant to Section 66-5-22 NMSA 1978 or to the address provided by licensee's counsel in the entry of appearance. Such notice of hearing will be sent a minimum of seven calendar days before the scheduled hearing consistent with Section 66-2-11 NMSA 1978. A licensee, or their representative, has a continuing, ongoing obligation

through final issuance of a decision and order resolving the case to provide the administrative hearings office with any change of address information.

(2) HSD shall designate one person to receive all notices of hearing pursuant to the Parental Responsibility Act. The notice shall be mailed to HSD at the address and to the attention of the person designated by HSD. HSD shall be responsible for ensuring the appearance of HSD's witnesses at the hearing. HSD shall immediately inform the administrative hearings office of any change in the designated person or address.

D. Only the licensee, or in the case of a minor under the age of 18, the licensee's legal parent(s) or guardian(s), or an attorney licensed or authorized to practice law in New Mexico may represent the licensee at hearing. In order to prevent the unauthorized practice of law, 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 at the hearing. Any attorney wishing to represent a party must file a formal written entry of appearance directly with the administrative hearings office listing their mailing address, a fax number (if any), and a valid email address. Any attorney wishing to substitute 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. 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.

E. Hearings shall be closed to the public except upon request of the licensee.

F. At request of either party, or upon the hearing officer's own initiative, hearings may be postponed or continued at the discretion of the hearing officer and upon a showing of good cause. The hearing officer shall consider only those requests made in writing at least three working days prior to the scheduled hearing absent extraordinary circumstances that the requesting party could not have known earlier. Employees of the administrative hearings office scheduling unit or the chief hearing officer may grant or deny the request on behalf of the hearing officer.

G. In all hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. Hearsay evidence may be considered and admitted into the record.

H. In hearings before the hearing officer, the rules of civil procedure for the district courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, or require written expositions of the

case as the circumstances justify, and shall render a decision according to the law and the evidence presented and admitted.

I. The hearing officer shall make and preserve a record of the proceedings.

J. Failure of a licensee to appear shall be treated as an abandonment of the right to a hearing and shall result in the suspension of the licensee's driving privileges.

K. A certificate of compliance applicable to the order for support in dispute issued to the licensee within 30 days of the scheduled hearing shall be presumptive proof that the licensee is in compliance. HSD may present evidence to rebut the presumption.

L. The hearing officer, within 30 days of the hearing, shall issue a decision granting or denying the relief requested or granting such part thereof as seems appropriate and shall inform the party's of the right to and the requirements for perfection of, an appeal to the district court and of the consequences of a failure to appeal.

[22.600.9.9 NMAC - N, 2/1/2018]

22.600.9.10 ISSUES:

The issues to be decided at the hearing are limited to whether:

A. the licensee is in compliance with a judgment and order for support;

B. the licensee is in compliance with a subpoena or warrants relating to paternity or child support proceedings; or

C. the licensee is the person whose name appears on the certified list sent to MVD from HSD.

[22.600.9.10 NMAC - N, 2/1/2018]

22.600.9.11 EVIDENCE AND PROOF:

A. In any hearing under this part, relevant evidence shall be limited to the following:

(1) a valid certificate of compliance, if one has been issued between the date of the notice and the hearing date;

(2) evidence of compliance or non-compliance with a judgment or order of support, subpoena or warrant relating to paternity or child support proceedings;

(3) evidence that the licensee is not the same person as the person whose name appears on the certified list of obligors sent to MVD by HSD; and

(4) a copy of the relevant judgment or order of support, subpoena, or warranted to paternity or child support proceedings.

B. In lieu of a hearing, a licensee may present a valid certificate of compliance to any MVD field office, pay all applicable fees and have the license reinstated. The administrative hearings office, upon receiving a certificate of compliance from HSD pertaining to a licensee whose hearing is still pending, shall issue an order dismissing the suspension and vacating the hearing.

[22.600.9.11 NMAC - N, 2/1/2018]

22.600.9.12 ORDER:

An order entered solely because the licensee is not in compliance with the judgment and order for support or not in compliance with a subpoena or a warrant relating to paternity or child support proceedings, shall provide that the license is to be reinstated upon presentation of a subsequent certificate of compliance to MVD and payment of applicable fees. MVD may order additional reasonable conditions necessary to compel compliance with MVD requirements for reapplication or reinstatement of lapsed licenses.

[22.600.9.12 NMAC - N, 2/1/2018]

22.600.9.13 APPEALS:

All appeals shall be filed in accordance with Section 39-1-1.1 NMSA 1978 and Rule 1-074 of the rules of civil procedure for the district courts.

[22.600.9.13 NMAC - N, 2/1/2018]