

State Office of Administrative Hearings

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Chapter 159 Rules of Procedure for Administrative License Suspension Hearings

Subchapter A General

§ 159.1 Scope and Construction of this Chapter

(a) This chapter applies to contested hearings before SOAH concerning administrative suspension, denial, or disqualification of drivers' licenses under the Administrative License Revocation (ALR) Program governed by Texas Transportation Code, Chapters 522, 524, and 724.

(b) These regulations shall be construed to ensure the fair and expeditious determination of every action.

(c) These rules shall supplement the procedures required by law. To the extent that any provisions of these rules that are necessary to expedite the hearings process conflict with Texas Government Code, Chapter 2001, the provisions of this chapter shall prevail.

(d) When procedural issues arising under Texas Transportation Code, Chapters 522, 524, and 724 cannot be resolved by reference to this chapter, the APA, and applicable case law, then the presiding judge will consider and apply SOAH's Rules of Procedure in Chapter 155 of this title, and/or the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and persuasive authority established in other forums.

(e) An ALR hearing under this chapter is a civil administrative proceeding that is separate and independent from any criminal court proceedings relating to the same arrest.

§ 159.3 Definitions

In this chapter, the following terms have the meaning indicated:

- (1) Adult--An individual twenty-one years of age or older.
- (2) ALR proceeding--A civil administrative proceeding under Texas Transportation Code, Chapters 522, 524 and/or 724 and this chapter relating to a driver's license disqualification, suspension, or denial resulting from an arrest for an offense relating to the operation of a motor vehicle or watercraft while intoxicated or under the influence of alcohol or controlled substances.
- (3) Alcohol concentration--Defined in Texas Penal Code §49.01.
- (4) Alcohol-related or drug-related enforcement contact--Defined in Texas Transportation Code §524.001.
- (5) Certified breath test technical supervisor--A person who has been certified by DPS to maintain and direct the operation of a breath test instrument used to analyze breath specimens of persons suspected of driving while intoxicated.
- (6) Contested case--A proceeding brought under Texas Transportation Code, Chapter 522, Subchapter I; Chapter 524, Subchapter D; or Chapter 724, Subchapter D.
- (7) Defendant--One who holds a license as defined in Texas Transportation Code, Chapter 521, or an unlicensed driver, whose legal rights, duties, statutory entitlement, or privileges may be affected by the outcome of a contested case under this chapter.
- (8) Defense counsel--An attorney who is authorized to participate in an ALR proceeding as a current, former, or prospective representative of a Defendant. Defense counsel does not include a non-attorney representative or an attorney who is not authorized to practice law in Texas and has not obtained permission to appear pursuant to 1 Texas Administrative Code §155.201(c).
- (9) Denial--The non-issuance of a license or permit, and loss of the privilege to obtain a license or permit.
- (10) DPS or the Department--The Texas Department of Public Safety.

(11) Driver--A person who drives or is in actual physical control of a motor vehicle.

(12) Efile Texas or eFile Texas--An electronic filing service provider approved by the Texas Supreme Court for use in electronically filing and serving documents in cases at SOAH and in judicial courts of record, available at <http://www.efiletexas.gov>. In these rules, the terms “eFile Texas,” “electronic filing service provider,” and “electronic filing manager” may be used interchangeably, although they may be assigned more specific meaning as appropriate in a given context.

(13) Electronic filing or filed electronically--The electronic transmission of documents filed in an ALR proceeding by uploading the documents to the case docket using eFile Texas or another electronic filing service provider approved by the Texas Supreme Court. In these rules, the term “electronic filing” may also include the submission of digital audio and video evidence in the manner specified on SOAH’s website, but does not include the submission of filings by email, facsimile transmission, or unapproved file sharing platforms.

(14) Electronic Filing Service Provider or Electronic Filing Manager--An online web portal service offered by an independent third-party provider and approved by the Texas Supreme Court for use in electronically filing documents at SOAH and judicial courts of record, and that acts as the intermediary between the filer and eFileTexas.

(15) Electronic signature or signed electronically--An electronic version of a person’s signature that is the legal equivalent of the person’s handwritten signature. Electronic signature formats include:

(A) an “/s/” and the person’s name typed in the space where the signature would otherwise appear;

(B) an electronic graphical image or scanned image of the signature; or

(C) a “digital signature” based on accepted public key infrastructure technology that guarantees the signer’s identity and data integrity.

(16) Electronic service or served electronically--The electronic transmission and delivery of documents to a party or a party’s authorized representative by means of an electronic filing service provider.

(17) Filed--The receipt and acceptance for filing by the SOAH Chief Clerk's office.

(18) Final decision--The decision issued by a judge who hears the contested case or another judge who reviewed the record in its entirety and who is authorized under appropriate law to issue final decisions in an ALR case.

(19) Intoxicated--Defined in Texas Penal Code §49.01(2).

(20) Minor--An individual under twenty-one years of age.

(21) Operate--To drive or be in actual physical control of a motor vehicle.

(22) Peace officer--A person elected, employed, or appointed as a peace officer under Texas Criminal Procedure Code §2.12 or other law. A peace officer may also be referred to as an arresting officer.

(23) Public place--Defined in Texas Penal Code §1.07, Chapter 1, and Texas Transportation Code §524.001, Chapter 524.

(24) Research Texas or re:SearchTX--An online repository of court case records in Texas, including records filed in ALR proceedings at SOAH, available at <http://research.txcourts.gov>.

(25) Test--The taking of blood or breath specimens as set out in Texas Transportation Code, Chapters 522, 524 and 724.

(26) Videoconference--Technology that provides for a conference of individuals in different locations, connected by electronic means through audio and video signals transmitted over the Internet, where all participants have an opportunity to communicate and participate in the conference.

(27) The following terms are defined in 1 Texas Administrative Code §155.5 (relating to Definitions): Administrative Law Judge or judge; APA; authorized representative; business day; confidential information; Chief Judge; discovery; evidence; exhibits; ex parte communication; party; person; personal identifying information; TRCP; and SOAH.

§ 159.5 Computation of Time

Time shall be computed in the manner provided in 1 Texas Administrative Code §155.7.

§ 159.7 Other SOAH Rules of Procedure

Other SOAH rules of procedure found at Chapter 155 of this title (relating to Rules of Procedure), Chapter 157 of this title (relating to Temporary Administrative Law Judges) and Chapter 161 of this title (relating to Requests for Records) may apply in contested cases under this chapter unless there are specific applicable procedures set out in this chapter. The rules that specifically apply include:

- (1) Subchapter C, §§155.101, 155.103, and 155.105 of this title (relating to Filing Documents, Confidential Information, and Service of Documents on Parties);
- (2) Subchapter D, §§155.151 - 155.153, 155.155, 155.157 of this title (relating to Assignment of Judges to Cases, Disqualification or Recusal of Judges, Powers and Duties, Orders, and Sanctioning Authority);
- (3) Subchapter E, §155.201 and §155.203 of this title (relating to Representation of Parties and Withdrawal of Counsel);
- (4) Subchapter I, §155.417 of this title (relating to Stipulations);
- (5) Subchapter I, §155.425 of this title (relating to Procedure at Hearing);
- (6) Subchapter I, §155.431 of this title (relating to Conduct and Decorum);
- (7) Section 157.1 of this title (relating to Temporary Administrative Law Judges);
and
- (8) Section 161.1 of this title (relating to Charges for Copies of Public Information).

Subchapter B Case Administration

§ 159.51 Jurisdiction

(a) Acquisition of jurisdiction. SOAH acquires jurisdiction over a case involving a particular hearing request on the date when sufficient information required by SOAH for the scheduling of an ALR proceeding is electronically transmitted by DPS to the SOAH Chief Clerk's Office.

(b) Effect of acquisition of jurisdiction by SOAH. Once SOAH acquires jurisdiction, SOAH shall promptly schedule the hearing in accordance with §159.201 of this title (relating to Scheduling and Notice of Hearing), and DPS and the defendant may initiate discovery or move for appropriate relief.

(c) Commencement of time periods. A period of time established by these rules shall not begin to run until the hearing is initially scheduled by SOAH.

(d) Cessation of Jurisdiction. SOAH jurisdiction over a case involving a particular hearing request ends upon the date the SOAH judge issues a final decision or order of dismissal, and if applicable, the deadline for any post-judgement motions has passed. Thereafter, jurisdiction may only be extended by order of the judge to:

(1) reinstate a case as provided by §159.203(c) of this title (relating to Involuntary Dismissal);

(2) vacate a default as provided by §159.213(f) of this title (relating to Failure to Attend Hearing and Default); or

(3) correct a decision as provided by §159.254 of this title (relating to Correction of Final Decision).

(e) After the cessation of jurisdiction, SOAH has concluded its involvement in the matter and has no continuing jurisdiction, including that SOAH has no authority to enforce or correct the Department's administration of a suspension, revocation, or reinstatement of a driver's license.

§ 159.53 Filing Documents

(a) All notices, pleadings, motions, exhibits, and other documents for ALR proceedings must be filed in the manner specified by this section and in compliance with 1 Texas Administrative Code §§155.101-.103.

(b) Methods of Filing.

(1) Electronic Filing. Defense counsel and the Department shall electronically file all notices, pleadings, motions, exhibits, and other documents for an ALR proceeding at SOAH by use of eFile Texas or another electronic filing service provider approved by the Texas Supreme Court. Parties not represented by an attorney are strongly encouraged to electronically file documents but may use alternative methods of filing described in paragraph (2) of this subsection.

(A) Party Information. As soon as practicable after the initial docketing of an ALR proceeding at SOAH, each party or attorney of record shall ensure that the electronic filing manager contains complete and accurate party contact information known to the parties at the time, including the entry and verification of the mailing address, phone number, and email address of each party.

(B) Designation of Lead Counsel. If the party will be represented by an attorney, the lead counsel who is primarily responsible for the representation shall ensure that the information entered into the electronic filing manager includes the designation of lead counsel and lead counsel's state bar identification number.

(C) Service Contact Information. Each party, or lead counsel if the party will be represented by an attorney, shall ensure that the electronic filing manager contains complete and accurate service contact information known to the parties at the time of filing, including the entry and verification of the email address of each party or attorney who is required to be served.

(i) The service contact information maintained in the electronic filing manager must be sufficient to allow SOAH and the parties to electronically serve documents through eFile Texas.

(ii) SOAH may rely on the service contact information on file in eFile Texas for electronic delivery of orders, decisions, and other case-related

communications from SOAH. SOAH is not required to deliver copies of orders, decisions, or other case related communications to persons who are not identified as a party, lead counsel, or service contact for the case within eFile Texas.

(iii) Failure to enter and verify service contact information within eFile Texas may result in a failure to comply with legal requirements for service of process.

(D) Document Titles and Use of Proper Filing Codes. All documents submitted for electronic filing must be properly titled or described in the electronic filing manager in a manner that permits SOAH and the parties to reasonably ascertain its contents, including through use of the correct filing code for the type of document.

(2) Filing by Self-represented Parties. Defendants without an attorney are strongly encouraged, but not required, to file electronically in the manner described in paragraph (1) of this subsection. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery in the manner specified on SOAH's website.

(3) Alternative Filing Methods. For good cause, a judge may permit a party to file documents in paper or another acceptable form in a particular case.

(c) Requirements for All Filers.

(1) Address of Record Required. The defendant, the Department, and lead counsel for each party shall provide and maintain a current mailing address and email address on file with SOAH during the pendency of the proceeding. SOAH and the parties may maintain the parties' address information on file as part of the electronic record in eFile Texas.

(2) Pleadings and Motions. All pleadings, motions, or applications to the judge for an order, whether in the form of a motion, plea, or other form of request, must be filed with the SOAH Chief Clerk's Office in writing and signed by the party, unless presented orally during a hearing.

(3) Separate Submissions Required. Different document types cannot be combined into a single submission for filing. A party may not combine motions requesting different types of relief or action into a single filing but must submit

each motion separately. If the document submitted for filing is an exhibit, it must be properly identified as an exhibit and submitted separately from motions, pleadings, or other filings, unless the exhibit is attached as a necessary supporting document to a pleading.

(4) Confidential Filing Required. To avoid the public disclosure or redaction of confidential information or personal identifying information necessary for the resolution of an ALR proceeding, all documents submitted for filing shall be designated as “confidential” at the time of submission. Failure to correctly submit documents as “confidential” may result in the record being publicly-accessible through the re:SearchTX court records portal.

(5) Exhibit Submission.

(A) Prefiling Required. All exhibits shall be prefiled at least two days before the hearing to avoid unnecessary surprise or delay. The judge, in his or her discretion, may grant or deny the presentation and admission of exhibits that were not timely prefiled in accordance with this section.

(B) Organization of Exhibits. Exhibits should be numbered sequentially, and multipage documents shall be paginated or Bates stamped. If multiple exhibits are combined into a single document for submission, then the document must be bookmarked to allow the judge and parties to locate each exhibit within the record.

(C) DPS Notice of Hearing. The Department must file a copy of the notice of hearing and any amended or corrected notices of hearing.

(D) Audio and Video Evidence. Evidentiary exhibits in the form of audio or video recordings shall be filed electronically in the manner specified on SOAH’s website. Audiovisual evidence may only be submitted in a common, non-proprietary file format (e.g., MP4, WMV, AVI, MPEG) that can be reviewed by the judge and presented at the hearing without the need for special equipment or software.

(E) Supplemental Exhibits. Any exhibits admitted at a hearing that were not prefiled as required by this section, shall be filed electronically by the party who offered the exhibit by no later than the next business day after the conclusion of the hearing. The parties may only supplement the record with

exhibits that were offered and admitted as evidence, or for which an offer of proof was presented at the hearing.

§ 159.55 Service of Documents on Parties

(a) Service Required. On the same date a document is filed at SOAH, a copy shall also be sent to each party or the party's lead counsel if the party is represented by an attorney. Documents shall be served in the manner specified by this section and in compliance with 1 Texas Administrative Code §155.105.

(b) Service Contact Information. It is the responsibility of DPS and defense counsel, if the defendant is represented by counsel, to ensure that complete and accurate service contact information is entered in the electronic filing manager for each party or attorney who is required to be served. SOAH or the Department may assist an unrepresented defendant with entering the defendant's service contact information into eFile Texas.

(c) Method of Service.

(1) Electronic Service. A document filed electronically at SOAH must be served electronically through the use of eFile Texas or another electronic filing service provider approved by the Texas Supreme Court if the email address of the party or attorney to be served is on file with the record of the case. If the email address of the party to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under paragraph (2) of this subsection.

(2) Alternative Service. If the email address of the party to be served is on not file with the record of the case, then the document may be served in person, by mail, by commercial delivery service, by fax, or by such other manner as directed by the judge. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery to serve documents to the Department.

(3) Service of Audio and Video Exhibits. The requirement to serve audio and video exhibits to the other party may be satisfied if the audio or video recordings are filed electronically at SOAH in the manner specified under §159.53 (relating to Filing Documents), and an electronic copy or online access to such exhibits is provided to the party or attorney to be served.

(d) Certificate of Service. A person filing a document shall include a certificate of service that certifies compliance with this section and 1 Texas Administrative Code §155.105. A certificate of service shall be sufficient if it substantially complies

with the following example: “Certificate of Service: I certify that on {date} , a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., electronic filing, regular mail, hand-delivery, fax, certified mail.} {Signature}”

(e) Proof of Service. Proof of service may be established by evidence that the document required to be served was electronically served to the party, or if party has legal representation, to party’s counsel, at email address of record on file in the electronic filing manager. Alternatively, proof of service may be established by evidence that the document was served in accordance with subparagraph (c)(2) of this subsection to the last known address, as reflected on defendant’s notice of suspension, request for hearing, driving record or similar documentation.

(f) Delivery of SOAH Orders. All orders issued by the SOAH judge are considered received by the party upon SOAH’s electronic transmission of the order to eFile Texas, if the recipient’s email address is on file as part of the electronic record in eFile Texas.

§ 159.57 Representation of the Parties

(a) Representation. A defendant may represent himself or herself, or may employ an attorney representative who is authorized to act as defense counsel. Defendants who are not represented by an attorney may obtain information about representing themselves in ALR proceedings on SOAH's public website at www.soah.texas.gov. SOAH cannot appoint an attorney or provide legal advice for a self-represented litigant.

(b) Appearance of Counsel. Defense counsel who has not otherwise entered an appearance as a matter of record in the proceeding at SOAH shall electronically file a notice of representation that contains the attorney's mailing address, email address, and telephone number. At the time of filing, defense counsel shall enter and verify their service contact information within eFile Texas, including the designation of lead counsel.

(c) Designation of Lead Counsel.

(1) Each party represented by counsel shall designate the lead counsel who is primarily responsible for the representation.

(2) When more than one attorney makes an appearance on behalf of a party, the attorney whose signature first appears on the initial pleading for a party shall be designated as lead counsel for that party unless another attorney is specifically designated in writing and/or within eFile Texas.

(3) If necessary to promote efficiency due to the large number of ALR cases, DPS may designate the lead attorney for the DPS region to which the case is assigned as lead counsel within eFile Texas, even if another DPS attorney appears on behalf of the Department at the hearing.

(4) All delivery of service of process and case-related communications shall be sent to the lead counsel as designated within eFile Texas.

§ 159.59 Withdrawal and Substitution of Counsel

(a) Defense counsel may withdraw from representing a party only if a written motion showing good cause for withdrawal is filed by the withdrawing attorney, the substituting attorney, or the defendant.

(1) If another attorney is to be substituted as defense counsel for the defendant, the motion shall state: the substituted attorney's name, mailing address, telephone number, and email address; that the substituting attorney has been notified of all pending settings and deadlines; and that the substituting attorney approves the substitution.

(2) If the defendant has no substitute attorney, the motion shall state: the defendant's last known mailing address, telephone number, and email address; that the defendant has been notified of all pending settings and deadlines; and whether the defendant consents to the withdrawal. If the defendant does not consent to the withdrawal, the attorney also must affirm that the defendant has been served with a copy of the motion and informed of the right to object to the withdrawal.

(b) A motion to withdraw must be served on all parties and must include a certificate of conference.

(c) An attorney will remain a defendant's attorney of record until a filed motion to withdraw has been granted by the judge.

(d) If the motion to withdraw is granted, the withdrawing attorney shall immediately forward the notice of hearing, all additional information about settings and deadlines, and any discovery obtained for the case to a self-represented defendant or, if the defendant is represented by counsel, to the substitute attorney.

(e) To ensure the delivery of service of process and future case-related communications upon the withdrawal or substitution of counsel, defense counsel shall verify and update the contact information in the electronic filing manager as follows:

(1) If the defendant has no substitute attorney, the withdrawing attorney shall verify and update the party contact information and service contact information for the defendant within eFile Texas.

(2) If the defendant will be represented by a substitute attorney, then the substitute attorney shall file a notice of appearance, and shall verify and update the service contact information and lead counsel designation for the record of the case within eFile Texas.

(f) The Department may substitute one attorney for another by entering an appearance at the hearing or by providing notice to the defendant, or defense counsel if defendant is represented by an attorney, without necessity for a motion or order. Upon such substitution, the Department shall verify and update the service contact information and designation of lead counsel for the record of the case within eFile Texas to ensure the delivery of service of process and future case-related communications to the Department.

§ 159.61 Electronic Case Records Access

(a) **Electronic Document Repository.** The case records for ALR proceedings at SOAH are available online through re:SearchTX, an electronic court records system approved by the Texas Supreme Court. This system serves as an official repository for SOAH case records.

(b) **Accuracy and Completeness of Records.** The electronic records available through re:SearchTX are automatically updated with the filing or issuance of any new documents in the ALR proceeding through eFile Texas. Case records available through re:SearchTX may be relied upon in the same manner as an original or certified copy. The repository includes file stamped copies of all current case records, but does not necessarily include:

- (1) The electronic recording of the hearing;
- (2) Evidentiary exhibits in the form of audio or video recordings; and
- (3) The written transcript of the hearing, if any.

(c) **Access to Records.** Users of re:SearchTX must establish an eFile Texas account or a re:SearchTX account. Access to ALR case records is determined by the security role assigned to the individual within eFile Texas for the particular case. To access ALR case records at SOAH through re:SearchTX, users must be properly designated within the eFile Texas system as one of the following:

- (1) A defendant who has used eFile Texas to file at least one document in the case and is listed as a party to the case;
- (2) Lead counsel for the case, with a Texas state bar number that is electronically linked with the case in eFile Texas; or
- (3) A member of lead counsel's eFile Texas firm profile, where lead counsel's Texas state bar number is electronically linked with the case in eFile Texas.

(d) **Attorney use of re:SearchTX.** Attorneys shall establish access to re:SearchTX, and are expected to obtain and maintain a sufficient level of technical competency to monitor case activity and obtain their own case records through the use of eFileTexas and re:SearchTX for the ALR cases in which they are authorized to appear.

Subchapter C Witnesses and Subpoenas

§ 159.101 Subpoenas Generally

(a) Scope.

(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.

(2) A subpoena must be issued on the form provided at www.soah.texas.gov.

(3) The party that causes a subpoena to be issued must take reasonable steps to avoid imposing undue burden or expense on the person served.

(4) A party or attorney that violates the requirements of this subchapter will be subject to sanctions as determined by the judge, including, but not limited to, the loss of authority to issue subpoenas for ALR hearings.

(5) If a party that requests or issues a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released from the subpoena and the subpoena will have no continuing effect.

(b) Attorney-issued subpoenas. An attorney who is authorized to practice law in the State of Texas may issue up to two subpoenas for witnesses to appear at a hearing. One subpoena may be issued to compel the appearance of the peace officer who was primarily responsible for the defendant's stop or initial detention and the other may be issued to compel the appearance of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.

(c) Subpoena request filed with judge.

(1) Not later than ten days prior to the hearing, a party may file a subpoena request with SOAH that demonstrates good cause to compel a witness's appearance in person or by telephone or video conference, when:

(A) a party intends to call more than two peace officers to testify as witnesses;

(B) a party seeks to compel the appearance of witnesses who are not peace officers;

(C) a party seeks to compel the appearance of the breath test operator or technical supervisor and, by affidavit based on personal knowledge, has established a genuine issue concerning the validity of the breath test that requires the appearance of the witness to resolve; or

(D) a defendant, who is not represented by an attorney, seeks to compel the appearance of witnesses.

(2) A request for subpoena that is not granted prior to the hearing may be re-urged at the hearing. If the judge grants the request for a subpoena at the hearing, the hearing shall reconvene at a later date for the appearance of the witness.

(d) Judge's discretion. The decision to issue a subpoena, as described in subsection (c) of this section, shall be in the sound discretion of the judge assigned to the case. The judge shall refuse to issue a subpoena if:

(1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious; or

(2) good cause has not been demonstrated.

§ 159.103 Issuance and Service of Subpoenas

(a) A party that issues or is granted a subpoena duces tecum shall be responsible for having the subpoena served, and may be required to advance the reasonable costs of reproducing any documents or tangible things requested.

(b) A subpoena must be served at least five days before the hearing, and must include a copy of the notice of hearing or other information that is sufficient to notify the witness of how to appear, including instructions and information for joining a videoconference or telephone conference call if applicable.

(c) Method of Service. A subpoena must be served by delivering a copy to the witness. The subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party to the case and is 18 years of age or older. A subpoena is served by:

- (1) hand-delivering a copy of the subpoena to the witness in-person;
- (2) electronically transmitting a copy of the subpoena to the last known electronic address of the witness, with acknowledgment of receipt; or
- (3) mailing a copy of the subpoena by certified mail with return receipt requested, or delivering a copy of the subpoena by express delivery service with signature required, to the last known address of the witness unless:
 - (A) the applicant for the subpoena requests in writing that the subpoena not be served by certified mail or express delivery; or
 - (B) there is insufficient time to ensure delivery of the subpoena to the witness five days before the hearing for which the witness is being subpoenaed.
- (4) If the witness is a party and is represented by an attorney of record in the proceeding, then the subpoena may be served to the witness's attorney by a method described in this section.
- (5) If the witness is a peace officer, then the subpoena may be served by an accepted method of alternative service established by a peace officer's law enforcement agency.

(d) After a subpoena is served upon a witness, the subpoena and the return of service of the subpoena must be filed at SOAH at least three days prior to the hearing. The return must show:

- (1) the date, time, and manner of service, if served by hand delivery;
- (2) the acknowledgment of receipt, if served by email;
- (3) the return receipt if served by certified mail;
- (4) the signed proof of delivery, if served by express delivery service; or
- (5) other confirmation as appropriate, if served to a party's attorney or a peace officer's law enforcement agency.

(e) A subpoenaed witness whose assigned work location or residence is more than 150 miles from the designated hearing location is entitled to appear by telephone or videoconference.

(f) A party seeking the admission of subpoenaed documents or audiovisual evidence at the hearing must prefile the exhibits in advance of the hearing in the manner specified by §159.53 of this chapter.

(g) Service upon opposing party.

- (1) A party that issues a subpoena must serve the opposing party with a copy of the subpoena on the same date it is issued.
- (2) A party that requests a subpoena from a SOAH judge must serve the opposing party with a copy of the request at the time it is filed with SOAH.
- (3) When a subpoena has been served, and not less than three days prior to the hearing, a party that has served a subpoena must provide the opposing party with a copy of the return of service.
- (4) If a party fails to serve a copy of a subpoena or a subpoena return on the opposing party, the subpoena may be rendered unenforceable by the judge.

(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party that requested the continuance shall promptly notify

any subpoenaed witnesses of the new hearing date and serve a copy of the notice on the opposing party.

§ 159.104 Witness Fees

- (a) **Witness Fees.** Upon the subpoenaed witness's appearance at the hearing, the party that issued the subpoena shall tender a witness fee check or money order in the amount of \$10 to the witness, unless the witness waives the fee.
- (b) **Travel Reimbursement.** If the witness traveled more than 25 miles round-trip to the hearing from the witness's office or residence, mileage reimbursement must also be tendered at the same time. The amount of mileage reimbursement will be determined in accordance with the travel rates established by the Comptroller of Public Accounts at <https://fm.xcpa.state.tx.us/fm/travel/travelrates>.
- (c) If the witness is a peace officer, then any amounts for the witness fee and/or travel reimbursement shall be sent to the peace officer's attention at the peace officer's employing law enforcement agency.
- (d) If the hearing is conducted by videoconference or telephone conference call, then the party who issued the subpoena shall mail the witness fee check or money order to the witness within one business day of the conclusion of the hearing unless the witness fails to appear at the hearing. Also within one business day of the conclusion of the hearing, the party shall file with SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.
- (e) If a party who served a subpoena on a witness fails to appear at a hearing, that party shall mail the witness fee check or money order to the witness within one day from receipt of a default decision or any other order issued by the judge ordering payment of the fee and mileage reimbursement. Also within one day from receipt of the judge's order, the party shall file with SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.
- (f) Procedures relating to witness fees and mileage reimbursement if a subpoena request is denied or a subpoena is quashed are governed by §159.105 of this chapter.

§ 159.105 Motions to Quash or for Protective Order

(a) On behalf of a subpoenaed witness, a party may move to quash a subpoena or for a protective order. A party that moves to quash a subpoena must serve the motion on the other party at the time the motion is filed with SOAH.

(b) A party may seek an order from the judge at any time after the motion to quash or motion for protective order has been filed.

(c) In ruling on motions to quash or for protection, the judge must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The judge also may impose reasonable conditions on compliance with a subpoena.

(d) If a subpoena request is denied or if a subpoena is quashed, any witness fee or mileage reimbursement fee that has been tendered to a witness shall be returned to the party that tendered the fees except that, if a subpoena is quashed after a witness has already appeared for a hearing, the party that subpoenaed the witness must tender the witness fee check to the witness.

Subchapter D Discovery

§ 159.151 Prehearing Discovery

(a) A request for discovery may not be filed before SOAH acquires jurisdiction over a case involving a particular hearing request and the hearing is initially scheduled by SOAH.

(b) No party shall file copies of discovery requests with SOAH.

(c) Depositions, interrogatories, and requests for admission shall not be permitted in ALR proceedings, and the discovery rules of the Texas Rules of Civil Procedure requiring initial disclosures without awaiting a discovery request do not apply to an ALR proceeding.

(d) Both parties have the right to review, inspect, and obtain copies of any non-privileged documents or records in the other party's possession.

(e) A request for discovery must be on a separate document from other pleadings and notices and clearly labeled as a request for discovery.

(f) A defendant's request for discovery from DPS's ALR Division shall be served to the Department or the DPS attorney of record at the email address(es) reflected in eFile Texas. DPS's request shall be served on Defendant at the address of record.

(g) Except as provided in subsection (j) of this section, responses to discovery shall be sent to the requesting parties within five days after receipt of the request.

(h) If a party does not have any or all of the documents in its actual possession, it shall respond within five days of the request, stating that it does not have the documents in its actual possession. A party must supplement all its discovery responses within five days from the time the party receives the discoverable documents.

(i) If a document sought through discovery is received by the requesting party fewer than ten days before the scheduled hearing, the judge may grant a continuance on the request of either party.

(j) A defendant may request inspection, maintenance, and/or repair records for the instrument used to test the defendant's breath specimen for the period covering 30 days prior to the test date and 30 days following the test date. If the records are

not in the actual possession of DPS, then DPS shall inform the defendant of the proper person or other third party entity from whom the defendant can obtain discovery, if known. If the records are in the actual possession of DPS, then DPS shall supply the records to the defendant within ten days of receipt of the request. If DPS fails to provide properly requested records after the defendant has paid reasonable copying charges for them, evidence of the breath specimen shall not be admitted into evidence.

(k) A party who seeks relevant, probative records from a third party may request issuance of a subpoena duces tecum pursuant to Subchapter C (relating to Witnesses and Subpoenas) to have the evidence produced for the hearing. A person subpoenaed to produce records need not appear at the hearing unless the person is also commanded to attend and give testimony. If a person subpoenaed under this section does not appear or otherwise respond to the subpoena, the judge may grant a continuance to allow for enforcement of the subpoena.

Subchapter E Hearing and Prehearing

§ 159.201 Scheduling and Notice of Hearing

- (a) On receipt of a timely request for hearing, DPS shall promptly refer the case to SOAH for a hearing to be conducted by a SOAH judge. After SOAH acquires jurisdiction over the matter in accordance with §159.51 of this title (relating to Jurisdiction), then SOAH has primary responsibility for the scheduling of a hearing.
- (b) SOAH shall schedule hearings to be conducted at the earliest possible date, taking into consideration the availability and feasibility of videoconference technology as a means to promote the prompt, fair, and cost-effective resolution of ALR proceedings. To the extent possible, cases shall be scheduled by geographic region based on the defendant's county of arrest.
- (c) Once the notice of hearing scheduling the hearing is issued, the hearing may be removed from that docket only upon timely request pursuant to §159.207 of this title (relating to Continuances), by order of the judge, or by agreement of the parties and with the ALJ's consent.
- (d) It is a rebuttable presumption that the notice of the hearing was served to the defendant on the same date as the date listed in the notice.
- (e) SOAH will provide timely access to ALR scheduling information on SOAH's website at www.soah.texas.gov.

§ 159.203 Waiver or Dismissal of Hearing

(a) Waiver of Request for Hearing. The defendant may waive the request for hearing at any time before the administrative order is final. If the defendant requests a waiver after the notice of hearing is issued, the judge will enter an order accepting the waiver.

(b) Rescission of Notice of Suspension. If, after issuing a notice of hearing, DPS rescinds a notice of suspension, it shall immediately inform SOAH and the defendant of the rescission by the filing of a notice of rescission. A judge shall issue an order dismissing the case from SOAH's docket once the notice of suspension has been rescinded.

(c) Involuntary Dismissal. A judge may dismiss a case on his or her own motion if the record shows no activity by the filing of pleadings or otherwise has occurred for a period of 120 days, or the case has not been brought to hearing with due diligence after multiple continuances to allow the parties to prepare for hearing.

(1) Notice of the judge's intention to dismiss must be sent to the parties at least 15 days prior to the effective date of dismissal. The judge may, but is not required to, conduct a hearing on the dismissal. The order of dismissal shall:

(A) state the reason for dismissal;

(B) inform the parties of an opportunity to seek reinstatement of the case;
and

(C) inform the parties that the case is dismissed unless:

(i) a party files a motion to reinstate the case on the docket not later than 15 days after the issuance of the order; and

(ii) the motion to reinstate specifies the basis for the motion and addresses the grounds for dismissal stated in the judge's order.

(2) The judge may grant a motion to reinstate the case if the moving party shows valid and compelling reasons for the delay or inaction, or the judge finds that extraordinary circumstances exist that require reinstatement of the case.

(3) In the event a timely motion for reinstatement is not decided by written order of the judge within 30 days after the dismissal order is signed, the motion shall be deemed overruled by operation of law.

(4) Dismissal under this section removes the case from the SOAH docket and rescinds the notice of suspension without a decision on the merits.

§ 159.205 General Request for Relief

After a hearing has been scheduled before SOAH, any party making a request that requires an interim order must file a motion that describes the relief requested. The motion must contain a certificate of service and a certificate of conference stating whether the opposing party has agreed to the request. Motions must be filed no later than five days before the hearing date, but for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing.

§ 159.207 Continuances

(a) A request for continuance will be considered in accordance with the provisions of Texas Transportation Code § 524.032(b) and (c) (relating to rescheduling a hearing upon a defendant's request), § 524.039 (relating to appearance of technicians), and Texas Transportation Code § 724.041(g).

(b) A judge may grant a continuance if the motion is supported by good cause, consent of the parties, or operation of law.

(c) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b), the granting of continuances shall be in the sound discretion of the judge, provided, however, that the judge shall expedite the hearings whenever possible. A party requesting a continuance may file a written motion or present the motion orally at the hearing. The motion shall include:

(1) the specific reason for the continuance;

(2) a statement of the number of motions for continuance previously filed in the case by each party; and

(3) for written motions, a certificate of service and a certificate of conference as required by §159.205 of this title (relating to General Request for Relief). Failure to include a certificate of service and a certificate of conference when filing a motion for continuance may result in denial of the continuance request or subsequent continuance requests in the same case.

(d) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b), no party is excused from appearing at a hearing until notified by SOAH that a motion for continuance has been granted.

(e) Responses to a motion for continuance, if any, should be promptly submitted in writing, except a response to a motion for continuance made on the date of the hearing may be presented orally at the hearing.

§ 159.209 Participation by Telephone or Videoconference

(a) Videoconference. Upon appropriate notice, SOAH may allow or require an ALR hearing to be conducted by videoconference.

(1) The notice for a videoconference hearing shall include log-in information for joining the videoconference and provide an option for participants to access the hearing audio by telephone.

(2) If a party files a written objection within a reasonable time after receiving notice of a videoconference hearing, and states good cause for the objection, the judge shall timely rule on the objection in a manner consistent with Rule 21d of the Texas Rules of Civil Procedure.

(3) The judge may require a witness to appear on camera as a condition of being allowed to testify in a videoconference hearing.

(b) Telephone Conference Call. After SOAH acquires jurisdiction, a party may file a consent motion or notice of agreement by the parties to conduct an ALR hearing by telephone conference call. The judge may grant the motion and schedule the hearing to be conducted by telephone conference call with proper notice to the parties.

(1) The notice shall include dial-in information or instructions for joining the telephone conference call and include instructions for submitting documents and evidence to be considered in the proceeding.

(2) Before a witness is allowed to give testimony by telephone, the judge will confirm that the witness is the person he or she has been represented to be, which may require the witness to provide reasonable verification of their identity under oath.

(c) Procedural Rights and Duties. All substantive and procedural rights and duties apply to telephone or videoconference hearings, subject only to the limitations of the physical arrangement. The parties shall contact their respective witnesses to assure their availability at the hearing.

§ 159.210 Hearing on Written Submission

(a) A party may file a motion or notice of agreement by the parties to convert an oral proceeding to a hearing on written submission at any time after SOAH acquires jurisdiction. The motion should acknowledge that the moving party or parties have filed and served or exchanged copies of all evidence necessary for resolution of the case.

(b) To expedite resolution of the case, the judge shall liberally grant requests to conduct hearings on written submission.

(c) For hearings conducted on written submission, the opportunity for the presentation of oral testimony and the examination of witnesses is waived by the parties. The factual matters asserted and evidence presented for the judge's consideration shall consist solely of the pleadings, motions, admitted exhibits, and orders filed in the administrative record.

(d) The judge shall issue a written decision for a hearing conducted on written submission in the same manner as provided by §159.253 of this title (relating to Decision of the Judge). The parties may appeal the decision as provided by §524.041 of the Texas Transportation Code.

§ 159.211 Hearings

(a) Procedures.

(1) Hearings shall be conducted in accordance with the APA, Texas Government Code, Chapter 2001, when applicable, and with this chapter, provided that if there is a conflict between the APA and this chapter, this chapter shall govern. If a conflict exists between this chapter and the Texas Transportation Code, Chapters 522, 524, or 724, and these rules cannot be harmonized with those chapters, the applicable Texas Transportation Code provision controls.

(2) Once the hearing has begun, the parties may be off the record only when the judge permits. If a discussion off the record is pertinent, the judge will summarize it for the record.

(3) ALR hearings shall be conducted in a fair and expeditious manner. In the interest of justice and efficiency, the judge may determine the order in which cases are heard, impose reasonable conditions on the length of time required for a hearing, question witnesses, and protect witnesses from abusive, repetitious, or unreasonably prolonged questioning.

(4) The judge shall exclude testimony or any evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Evidence. Except as otherwise provided by Texas Government Code § 2001.081, the rules of evidence as applied in a non-jury civil case in a district court of this state shall apply in ALR proceedings.

(c) Witnesses and affidavits.

(1) All witnesses shall testify under oath.

(2) An officer's sworn report of relevant information shall be admissible as a public record. However, the defendant shall have the right to subpoena the officer in accordance with §159.103 of this title (relating to Subpoenas). If the defendant timely subpoenas an officer and the officer fails to appear without good cause, information obtained from that officer shall not be admissible. In the alternative, if the party who requested the subpoena wants to seek enforcement of the subpoena, the judge may grant the party a continuance.

(3) The judge, on his or her own motion or on request of a party, may allow the testimony of any witness to be taken by telephone or videoconference, provided that all parties have the opportunity to participate in and hear the proceeding. All substantive and procedural rights apply to the telephone or videoconference appearance of a witness, subject to the limitations of the physical arrangement as described in §159.209(c) of this title (relating to Participation by Telephone or Videoconference).

(4) If a witness, in preparation for or during testimony, reviews any document that has not been prefiled and the opposing party requests an opportunity to review the document, the judge may allow the witness to present or read the document to the opposing party.

(d) Record of hearing.

(1) The judge shall make an accurate and complete recording of the oral proceedings of the hearing.

(2) SOAH will maintain a case file that includes the recording, pleadings, evidence, and the judge's decision.

(3) SOAH will maintain case files in accordance with the terms of its records retention schedule.

(e) Interpreters. When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the hearing. If the defendant fails to make a timely request, the judge may provide an interpreter or may continue the hearing to secure an interpreter. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with § 2001.055 of the APA;

(2) reader services or other communication services for blind and sight-impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

(f) Simultaneous ALR Appearances. If defense counsel is scheduled to appear in more than one ALR proceeding at the same time, the attorney may request the

judge to facilitate the attorney's appearance at both hearings by controlling the order in which cases are heard.

§ 159.213 Failure to Attend Hearing and Default

(a) If a party fails to appear for the hearing, the judge, on his or her own motion or on request of the opposing party, may proceed in that party's absence on a default basis.

(b) For a telephone or videoconference hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than fifteen minutes after the scheduled time for hearing:

(1) failure to attend the telephone conference call or videoconference at the scheduled time; or

(2) failure to exercise due diligence to address a technical difficulty with attending a videoconference by contacting the SOAH Chief Clerk's Office for assistance or by utilizing the option to access the hearing audio by telephone.

(c) A default under this section must be supported by adequate proof that the notice of hearing was properly filed and served in accordance with §159.53 of this title (relating to Filing Documents) and §159.55 of this title (relating to Service of Documents on Parties).

(1) A rebuttable presumption that proper notice was given to a defendant is established by evidence that the notice of hearing was electronically served to the defendant, or if defendant has legal representation, to defense counsel, at the email address provided under §159.53 and §159.55 of this title, or at the email address as reflected on defendant's request for hearing. Alternatively, the judge may consider evidence that the notice of hearing was timely provided to defendant or if defendant has legal representation, to defense counsel, at the mailing address reflected on defendant's notice of suspension, driving record, or similar documentation presented by DPS.

(2) A rebuttable presumption that proper notice was given to DPS is established by evidence that information regarding the date, time, and location or method of appearance was electronically transmitted to the Department by the SOAH Chief Clerk's Office or issued by the judge to the DPS attorney of record at the email address(es) reflected in eFile Texas. Alternatively, the judge may consider evidence that notice of the scheduled hearing was published on SOAH's website and/or available to DPS through re:SearchTX.

(d) Defendant's Failure to Appear. A Defendant who requests a hearing and fails to appear without good cause waives the right to a hearing on the merits, and the judge will issue a decision and order authorizing the Department to suspend the Defendant's driver's license.

(e) Department's Failure to Appear. If the Department fails to appear through its attorney without good cause, the judge will issue an order dismissing the case without suspension or disqualification. A case dismissed under this subsection is dismissed with prejudice and may not be refiled.

(f) Within ten business days after the issuance of a default decision and order, the defaulting party may file a written motion with SOAH requesting that the default order be vacated because the party had good cause for failing to appear. In the motion, the party must state the grounds for their failure to appear and whether the motion is opposed. Regardless of whether the motion is opposed, the judge may rule on the motion without setting a hearing or may set a hearing to consider the motion. A hearing on a motion to vacate a default order may be held by videoconference or telephone conference call. If the judge finds good cause for the party's failure to appear, the judge shall vacate the default order and reset the case for a hearing.

Subchapter F Disposition of Case

§ 159.251 Hearing Disposition

(a) If the judge finds that DPS proved the requisite facts as specified in Texas Transportation Code §§522.105, 524.035, or 724.042 by a preponderance of the evidence, the judge shall grant DPS's petition.

(b) If the judge finds that DPS did not prove all of the requisite facts by a preponderance of the evidence, the judge shall deny DPS's petition, and DPS shall not be authorized to suspend or deny the defendant's license or disqualify the defendant from receiving a license for the conduct at issue.

§ 159.253 Decision of the Judge

(a) Upon conclusion of the hearing, the judge shall issue a written decision that includes findings of fact and conclusions of law.

(b) The decision of the judge is final and appealable. Except as authorized by §159.254 of this title (relating to Correction of Final Decision) no party shall file a motion for rehearing or request to modify a decision with SOAH.

(c) The judge's decision does not determine the effective dates of any suspension that may be enforced by DPS.

(d) Any automated case data exchanged by SOAH with DPS regarding the disposition of ALR proceedings is provided for the sole purpose of administrative convenience and is not part of the administrative record. The outcome of a particular proceeding as reflected by the judge's final written decision or order takes precedence over any conflicting data reported to the DPS Enforcement and Compliance Service.

(e) DPS is solely responsible for ensuring that the Department administers the defendant's driving record and any suspension in a manner that is consistent with the judge's final disposition of the case.

§ 159.254 Correction of Final Decision

(a) SOAH has no continuing jurisdiction to modify an ALR decision after it has been signed, except that the judge, on his or her own motion or on request of a party, may amend an ALR decision to:

(1) correct a clerical error in the original written decision, including, but not limited to, the unintentional entry of a decision using the wrong form or template; or

(2) conform the decision to reflect the correct statutory period of suspension.

(b) A request for correction must be filed as soon as possible after the error is discovered, but not later than 10 business days after the issuance of the original decision, and must specify the clerical error or period of suspension that is proposed for correction.

(c) The filing of a motion to correct a decision does not extend the deadline for appeal under Texas Transportation Code § 524.041 or stay any action that has been previously authorized.

(d) A corrected decision may only be issued if the error is apparent on the face of the record and a correction is required to accurately reflect the judge's intent at the time the original decision was entered. A corrected decision cannot be based on a request for reconsideration or new evidence or arguments that were not presented at the hearing on the merits, and may not be used to correct judicial error.

(e) The judge is not required to act on a request for correction of a final decision. Any corrected decision must be issued by the judge not later than the 29th day after the date the original ALR decision was signed.

§ 159.255 Appeal of Judge's Decision

(a) Record on Appeal. Except as described by subsection (d) of this section, a person who appeals a SOAH decision is responsible for filing the record on appeal with the court. The record on appeal shall consist of the following:

- (1) the file-marked or stamped copy of all parties' motions or other pleadings;
- (2) all written orders or decisions issued by the judge and any evidence of transmittal to the parties;
- (3) all exhibits admitted into evidence;
- (4) all exhibits not admitted into evidence but made a part of the record by a party as an offer of proof or bill of exceptions; and
- (5) a transcription of the proceedings electronically recorded by SOAH.

(b) Notice to SOAH Required. A person who appeals a decision shall file a copy of the petition of appeal with SOAH. The copy submitted for filing must be filed-stamped or certified by the clerk of the court in which the petition is filed. Filing under this section satisfies the requirements of Transportation Code, § 524.041(c) to provide SOAH with a copy of the petition.

(c) Appeal Transcript Requests. A person who intends to pursue the appeal a suspension may obtain a written transcript of the administrative hearing by filing a written request to SOAH, together with a filed-stamped or certified copy of the petition of appeal, within ten days of filing the appeal and paying the applicable fees. The fees shall not exceed the actual cost of preparing or copying the transcript, and upon receipt of the fees, SOAH shall promptly furnish both parties a certified copy of the record. SOAH is not required to prepare a written transcript for non-appealed cases, or to furnish a free transcript to a party who is unable to pay the applicable fee for preparation of the transcript.

(d) Essential Need or Occupational License Only. A person who appeals a suspension for the sole purpose of seeking an essential need or occupational driver's license may be excused from filing the record on appeal if the administrative record is not required by local rules of the court where the appeal is filed.

(e) Records Retention for Appealed Cases. For three years after notice of an appeal is filed, SOAH will maintain the file and original recording of proceedings. A copy of the file and recording will be available for review by the parties or a reviewing court, if needed.

(f) If a case is remanded for taking of additional evidence, the appellant must file with SOAH, within ten days of the signing of the reviewing court's remand order, a request for relief, including setting a hearing on remand. The request must include a copy of the remand order.

(g) A remand under this section does not stay the suspension of a driver's license.

§ 159.257 Disposition of Criminal Charges and Expunction of Records

(a) Except for acquittal of a criminal charge as provided by § 524.015(b) or § 724.048(c) of the Texas Transportation Code, the disposition or expunction of a criminal charge relating to an arrest that forms the basis of the ALR proceeding does not affect a driver's license suspension or bar any matter in issue in an ALR proceeding.

(b) The records of ALR proceedings at SOAH are subject to expunction only upon receipt by SOAH of a judicial court order of expunction that complies with the requirements of Texas Code of Criminal Procedure Article 55.06.

(c) A judicial court order of expunction based on the dismissal, and not the acquittal, of criminal charges does not require or authorize SOAH to expunge records relating to the ALR proceeding.