

Rule 33- Administrative Hearing Procedures

Effective November 15, 2023

- (a) This Rule 33 is intended to apply only to administrative hearings for revocation or suspension that are filed before the POST Hearing Officer for disqualifying incidents other than criminal convictions. This Rule does not apply to Show Cause Hearings before the Director for disqualifying criminal convictions.
- (b) Rules of Civil Procedure. To the extent practicable, and unless inconsistent with these rules, the Colorado Rules of Civil Procedure apply to matters before the POST Hearing Officer. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean the POST Hearing Officer. The following do not apply: C.R.C.P. 16 and 16.1.
- (c) Rules of Evidence. To the extent practicable, the Colorado Rules of Evidence apply in all hearings conducted by the POST Hearing Officer. Unless the context requires otherwise, whenever the word “court”, “judge”, or “jury” appears in the Colorado Rules of Evidence, such word shall be construed to mean the POST Hearing Officer. The POST Hearing Officer has the discretion to admit evidence not admissible under such rules, as permitted by § 24-4-105(7), C.R.S., or other law.
- (d) Entry of Appearance and Withdrawal of Counsel. Entries of Appearance and Withdrawals of Counsel shall be in conformance with C.R.C.P. 121 § 1-1. Any out-of-state attorney shall comply with C.R.C.P. 221.1.
- (e) Expanded Media Coverage. Expanded media coverage of cases before the POST Hearing Officer may be permitted at the discretion of the POST Hearing Officer, under such conditions as the POST Hearing Officer may designate. In determining whether expanded media coverage should be permitted, the POST Hearing Officer shall consider the following factors:
 - (I) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair hearing;
 - (II) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the proceedings;
 - (III) Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

- (f) Default Procedures. A person who receives notice of an agency adjudicatory hearing is required to file a written answer within 30 days after the service or mailing of notice of the proceeding. If a person receiving such notice fails to file an answer, the POST Hearing Officer may enter a default against that person pursuant to § 24-4-105(2)(b), C.R.S.
- (I) The POST Hearing Officer will not grant a motion for entry of a default under this statutory provision unless the following requirements are met:
- (A) The motion for entry of a default must be served upon all parties to the proceeding, including the person against whom a default is sought.
- (B) The motion shall be accompanied by an affidavit establishing that both the notice of the proceeding and the motion for entry of default have been personally served upon the person against whom a default is sought, or have been mailed by first class mail to the last address furnished to the agency by the person against whom the default is sought.
- (g) Discovery. To the extent practicable, C.R.C.P. 26 through 37 and 121, Section 1-12 and the duty to confer at Section 1-15(8) apply to proceedings within the scope of these rules, except to the extent that they provide for or relate to required disclosures, or the time when discovery can be initiated. Discovery may be conducted by any party without authorization of the POST Hearing Officer.
- (I) In addition to the requirements of C.R.C.P. 36, a request for admission shall explicitly advise the party from whom an admission is requested that failure to timely respond to the request may result in all of the matters stated in the request being deemed established unless the POST Hearing Officer on motion permits withdrawal or amendment of the admission. The failure to comply with this rule may result in the matters contained in the request being deemed denied.
- (II) Discovery requests and responses should not be filed with the POST Hearing Officer, except to the extent necessary for the POST Hearing Officer to rule upon motions involving discovery disputes.
- (III) Either party may move to modify discovery deadlines and limitations.
- (h) Determination of Motions. The duty to confer pursuant to C.R.C.P. 121 § 1-15(8) shall apply to all motions filed within the scope of these rules. Any motion involving a contested issue of law shall be supported by a recitation of

legal authority. References to agency rules shall include the appropriate Colorado Code of Regulations citation. A responding party shall have 21 days from service or such lesser or greater time as the POST Hearing Officer may allow in which to file and serve a responsive brief. Reply briefs will be permitted only upon order of the POST Hearing Officer. If so ordered, the reply brief must be filed within 7 days of the order of the POST Hearing Officer.

- (I) If facts not appearing of record before the POST Hearing Officer are to be considered in disposition of the motion, the parties may file affidavits at the time of filing the motion or responsive or reply brief. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.
 - (II) If the moving party fails to incorporate legal authority into the motion and fails to file a separate brief with the motion, the POST Hearing Officer may deem the motion abandoned and may enter an order denying the motion. Failure of the responding party to file a responsive brief may be considered a confession of the motion.
 - (III) If possible, motions will be determined upon the written motion and briefs submitted. The POST Hearing Officer may order oral argument or evidentiary hearing on the POST Hearing Officer's own motion or on request of a party. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance, the POST Hearing Officer may proceed to hear and rule on the motion.
- (i) Place of Hearing. Hearings conducted within the scope of these rules will be heard in the Ralph Carr Judicial Building. The POST Hearing Officer will make arrangements to reserve a room when necessary. The POST Hearing Officer may change the place of hearing when the convenience of witnesses and parties and the ends of justice will be served, including holding hearings virtually or telephonically.
 - (j) Prehearing Procedures, Statements and Conferences. Unless otherwise ordered by the POST Hearing Officer, each party shall file with the POST Hearing Officer and serve on each other party a prehearing statement in substantial compliance with the form available on the POST website. Prehearing statements shall be filed and served no later than 30 days prior to the date set for hearing or such other date established by the POST Hearing Officer. Exhibits shall not be filed with prehearing statements, unless ordered by the POST Hearing Officer. Exhibits shall be exchanged between the parties by the date on which prehearing statements are to be filed and served on such other date as ordered by the POST Hearing Officer.

- (I) The authenticity of exhibits, statutes, ordinances, regulations or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the POST Hearing Officer and served on other parties no later than 10 days prior to hearing.
- (II) The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use letters.
- (III) In the event of noncompliance with this rule, the POST Hearing Officer may impose appropriate sanctions including, but not limited to, the striking of witnesses, exhibits, claims and defenses.
- (IV) Prehearing conferences may be held at the request of either party or upon motion of the POST Hearing Officer.
- (V) A case management conference shall be held at the request of either party or at the discretion of the POST Hearing Officer. The party requesting the case management conference shall confer with all other parties as necessary upon the content of the proposed case management order. An example of a format for a case management order appears on the “Forms” tab of the POST website. The party requesting the case management conference shall submit the proposed case management order to the POST Hearing Officer no later than 3 days before the case management conference.
- (k) Motions for Continuance. Continuances shall be granted only upon a showing of good cause. Motions for continuance must be filed in a timely manner. Stipulations for a continuance shall not be effective unless and until approved by the POST Hearing Officer.
- (l) Subpoenas. Upon oral or written request of any party or of counsel for any party, the POST Hearing Officer shall sign a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Unless otherwise provided by agency statute, rule or regulation, practice before the POST Hearing Officer regarding subpoenas shall be governed by C.R.C.P. 45.

- (l) Any attorney representing a party to a proceeding before the POST Hearing Officer may issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing.
- (m) Settlements. Parties shall promptly notify the POST Hearing Officer of all settlements, stipulations, agency orders or any other action eliminating the need for a hearing. POST shall file a motion to dismiss when a case has settled.
- (n) Ex Parte Communications. With the exception of scheduling or other purely administrative matters, a party or counsel for a party shall not initiate any communication with the POST Hearing Officer pertaining to a matter before the POST Hearing Officer unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with the POST Hearing Officer or directed to the POST Hearing Officer by any party shall be served upon all other parties or their counsel.
- (o) Procedure for expedited hearings. The POST Hearing Officer may, in their discretion, adjust deadlines and court dates to meet any specific statutory deadlines for revocation or suspension, when applicable.
- (p) Computation and Modification of Time. In computing any period of time prescribed or allowed by these rules, the provisions of C.R.C.P. 6 shall apply. The time periods of these rules may be modified at the discretion of the POST Hearing Officer.
- (q) Filing of Pleadings and Other Papers. Pleadings and other papers must be filed with the POST Hearing Officer by email at: posthearingofficer@coag.gov.
- (l) All pleadings and papers filed with the POST Hearing Officer shall contain the case number assigned by POST at the time of referral.
- (r) Service of Pleadings and Other Papers. Service of pleadings or other papers on a party or on an attorney representing a party may be made by hand delivery, by mail to the address given in the pleadings, by facsimile transmission to a facsimile number given in the pleadings, or to the party's last known address, or with agreement of the parties, by e-mail. When a party is represented by an attorney, service shall be made on the attorney.
- (l) Pleadings or other papers sent to the POST Hearing Officer must contain a certificate of service attesting to service on the opposing party and in the case of service by mail providing the address where pleadings or other papers were served.
- (II) Attorneys and parties not represented by attorneys must inform the POST Hearing Officer and all other parties of their current address and of any change of address during the course of the proceedings.

- (s) Testimony by Telephone or Other Electronic Means. Upon motion of any party the POST Hearing Officer may conduct all or part of a hearing virtually or telephonically. The motion must be filed sufficiently prior to hearing to permit a response and ruling.
 - (I) All arrangements for the taking of testimony by telephone or videophone shall be made by the party requesting such testimony, who shall be responsible for all costs associated with the testimony.
 - (II) Exhibits and other documents that will be used or referred to during all or part of a hearing conducted by telephone or other electronic means must be filed with the POST Hearing Officer and, unless previously supplied, provided to all other parties at least two days before the hearing.
- (t) Court Reporters. The POST Hearing Officer will not supply court reporters. If any party wishes to have all or a portion of a proceeding transcribed by a court reporter, that party may make private arrangements to do so at that party's own expense.
 - (I) All POST hearings will be, at minimum, audio recorded. The recording will be made available to any party upon request.
- (u) Exhibit Notebooks. Whenever a party is represented by an attorney, that party shall supply an exhibit list and three notebooks of tabbed exhibits at the commencement of every merits hearing. The notebooks shall be for the POST Hearing Officer, the opposing party, and the testifying witness. All documentary exhibits listed in such party's prehearing statement, unless they are too lengthy, shall appear in the exhibit notebooks.