

Office of Administrative Courts Policies (1 - 15)

1. [Procedures for Presenting Evidence and Position Statements in Workers' Compensation Hearings](#)
2. [Referral of Proposed Orders in Workers' Compensation Cases](#)
3. [Inquiries to the Office of Administrative Courts Regarding Specific Cases](#)
4. [Testimony of Physicians and Other Expert Witnesses In Workers' Compensation Cases](#)
5. [Filing of Pleadings, Documents and Other Communications](#)
6. [Continuation of Cases on Trailing Dockets in Workers' Compensation Cases](#)
7. [Motions and Orders Submitted by Facsimile in Workers' Compensation Cases](#)
8. [Oversized Exhibits](#)
9. [Public Inspection and Copying of Case Files](#)
10. [Electronic Mailing of Orders and Decisions in Human Services and Regulatory Law Cases](#)
11. [Face-To-Face Hearings in Cases Before the Department of Health Care Policy and Financing](#)
12. [Designee Clerks](#)
13. [Retention of Reporter Notes and Audio Recordings of Hearings](#)
14. [Discovery: Office of Administrative Courts and Division of Workers' Compensation](#)
15. [Processing of Requests for Audio Recordings](#)

Policy 1

Hearings - Evidence and Position Statements

(a) At the workers' compensation hearing, the parties may submit for the record medical and hospital records, physicians' reports, vocational reports, and records of the employer as evidence without formal identification [section 8-43-210, C.R.S.].

To avoid confusion with other exhibits that may be offered into evidence at the hearing, the following instructions apply to identifying the documents described above and other exhibits which the parties want the judge to consider:

- i. Claimants' submissions of the documents, described above, must be identified by a separate number for each document. Any other exhibits offered at the hearing will be numbered consecutively.
- ii. Respondents' submissions of the documents, described above, must be identified by a separate letter for each document. Any other exhibits offered at the hearing will be lettered consecutively.
- iii. The Office of Administrative Courts encourages parties to tab and paginate all of the submissions of documents presented under section 8-43-210, C.R.S. , and to two-hole punch the top of the submission packet.

(b) Position statements or trial briefs may be submitted at the commencement of the hearing. The judge has the discretion to allow a verbal or written response to a position statement or trial brief. The judge has the discretion to allow the submission of post-hearing position statements.

Policy 2

Orders - Proposed Orders

(a) A judge may exercise discretion to request or receive proposed orders or position statements from the parties in a workers' compensation case. The following options exist for obtaining proposed orders or position statements. These options are not exclusive, and a judge may use other mechanisms appropriate to the case.

i. Ruling from the bench and referring preparation of a proposed order to prevailing counsel. In making the referral the judge should articulate findings and conclusions, in as much detail as the judge considers appropriate, resolving conflicts in the evidence and deciding all pertinent issues. Also, the judge should provide guidance on boilerplate language, pertinent case and statutory law, and when and how to submit the proposed order. The judge's mastery of the law applicable to the facts of the case at the conclusion of the hearing is a necessary prerequisite to ruling from the bench. A judge may modify the fact findings and legal conclusions articulated at the conclusion of the hearing in the written order. Proposed orders are subject to rewriting by the judge to more accurately find facts and more accurately make legal conclusions with supporting case and statutory authority.

ii. Issuing a letter, minute order or e-mail to all attorneys, detailing specific findings and legal conclusions, and requesting the prevailing attorney to submit a proposed order. The same guidelines for bench rulings apply.

iii. Requesting post-hearing position statements with guidance from the judge on the facts, issues and law to be addressed, as appropriate.

iv. Conducting a conference call between the judge and all the attorneys or unrepresented parties to articulate findings of fact and conclusions of law, and to refer preparation of a proposed order to the prevailing party. The same guidelines for bench rulings apply. The call will be tape-recorded to prevent misunderstandings.

v. Taking the case under advisement and the judge preparing specific findings.

(b) Regardless of how the judge proceeds in accepting proposed orders or position statements, the following principles apply:

i. Ultimately, the written order of the judge controls. All orders must be properly typewritten and formatted.

ii. The judge should direct the parties preparing proposed orders or position statements to send a copy to opposing counsel (or unrepresented parties) by the same method (mail, e-mail, FAX) it is delivered to the judge. In addition, the judge should specify a time limit for any comments by opposing parties.

(c) If proposed orders or position statements are e-mailed, they should be e-mailed to the Office of Administrative Courts general e-mail address, 0ac-dvr@state.co.us (Denver) 0ac-csp@state.co.us (Colorado Springs) or 0ac-gjt@state.co.us (Grand Junction).

Policy 3 Inquiries

Parties or counsel should not attempt to contact a judge directly regarding a specific case. To obtain information about a case, calls should be placed to the clerk's office at (303) 866-2000.

The clerk's office can answer questions about what case number has been assigned to a matter, hearing dates, receipt of filings, and whether an order or decision has been issued. The clerk's office will transfer calls to a legal assistant when the call involves questions about procedures or procedural rules, or if a party wishes to request a conference or other communication with a judge.

Policy 4

Hearings - Testimony - Expert Witnesses

Efficient use of the time of physicians and other expert witnesses in workers' compensation cases can be enhanced by allowing experts to be "on-call" (rather than present in the hearing room until their testimony is needed), and by the use of telephone testimony.

(a) Judges have the authority to allow witnesses to be on-call, and the ability to manage that process to result in the most efficient use of hearing time for all participants. When parties have a witness on call they should advise the judge of that fact at the start of the hearing, and inform the judge of any scheduling considerations, such as the amount of lead time needed for the witness to travel to the hearing.

(b) Telephone testimony is authorized by the Colorado Rules of Civil Procedure, which are applicable to workers' compensation cases. Whenever possible the Office of Administrative Courts will make available facilities which permit the experts testifying on both sides of the case to be included in the conference call, so that each can hear the other's testimony.

Policy 5

Filing Requirements

(a) Pleadings, documents and other written communications regarding a case at the Office of Administrative Courts must be addressed to the Clerk of the Office. Written communications should not be addressed to a specific judge or other staff member of the Office. The only exceptions to this directive are:

i. Confidential mediation statements, which must be addressed to the mediation judge;

ii. Complaints and comments about judges or staff, which must be addressed to the Office Director.

iii. The Office of Administrative Courts encourages parties to tab and paginate all of the submissions of documents presented under section 8-43-210, C.R.S. , and to two-hole punch the top of the submission packet.

(b) The communications covered by this directive include pleadings, motions, briefs, letters, requests, inquiries and other contacts, and any documents comprising part of the official record of the case.

Policy 6

Hearings - Continuance - Trailing Dockets

Judges must exercise discretion in deciding what cases to continue when more cases than time allows are ready to proceed to hearing on a trailing docket. In exercising that discretion a judge will consider the following factors, among others:

Whether the case has been continued previously.

Whether any parties or witnesses have traveled from out-of-state or a great distance in-state to attend the hearing.

Whether expert witnesses are in attendance who are being compensated for their time by the parties.

The nature of the issues at hearing (for example, whether compensability or a need for medical treatment are at issue).

The relative hearing time estimates of the cases set for hearing.

The date of filing of the application for hearing.

Policy 7

Submissions via Fax

The Office of Administrative Courts receives many motions and orders by facsimile. Because of the volume of motions transmitted by facsimile, and because motions and orders submitted by facsimile do not include proposed orders and envelopes, parties may not receive conformed copies of these orders in an efficient manner. **Under no circumstances shall a fax exceed ten (10) pages. Any pages in excess of ten (10) will be discarded.**

This policy establishes a procedure that will facilitate the ability of the Office of Administrative Courts ("Office") to provide timely copies of orders when the original proposed order is submitted by facsimile.

1. Motions should not be filed by facsimile unless the hearing date is less than 15 days from the date of the facsimile transmission. Motions filed by facsimile 15 or more days prior to hearing will not be considered.
2. Responses to motions may be filed by facsimile at any time.
3. Motions and responses to motions filed by facsimile must be served on opposing parties by facsimile or personal delivery on the date of filing.
4. When a proposed order is filed by facsimile transmission the Office clerk will return the signed order by facsimile to the party who submitted the proposed order. This party will be instructed to serve copies of the order on all other parties.

When a motion, response or proposed order is filed by facsimile, copies of the motion, response or proposed order and envelopes should not be filed with the Office clerk, and will not be returned if filed.

Policy 8

Exhibits – Oversized Exhibits

(a) An oversized exhibit is any exhibit in a case before the Office of Administrative Courts (including exhibits related to motions) that does not fit in the OAC case file. Oversized exhibits include notebooks of documents, charts, photographs and models.

(b) The case name, case number and date submitted to the Office of Administrative Courts will be written on or affixed to each oversized exhibit.

(c) When a file containing one or more oversized exhibits is returned to an agency, the oversized exhibits will be returned to the agency as well. The Office of Administrative Courts will note on the case file that oversized exhibits are included in the record.

(d) When a file containing one or more oversized exhibits will not be returned to an agency, oversized exhibits will be disposed of by the Office of Administrative Courts 60 days after the case file is closed. Parties may retrieve oversized exhibits within the 60-day period. Oversized exhibits will not be returned unless the time period for appeal or filing of exceptions has run.

Policy 9

Inspection/Copying of Case Files

(a) Whether case files at the Office of Administrative Courts are open to public inspection will vary. Public inspection and copying of any Office of Administrative Courts case file will not be allowed when inspection is prohibited by statute, regulation, an order of a court of record or the order of an administrative law judge.

(b) Judges' notes are subject to the deliberative process privilege and are not open to public inspection or copying.

(c) It is beyond the scope of this Policy to list public inspection provisions for all of the cases at the Office of Administrative Courts. However, the following general principles apply to the types of cases most frequently encountered at the Office.

i. Generally, files of cases heard for the Department of Regulatory Agencies, the Department of Public Health and Environment, and the Secretary of State are open for public inspection and copying. However, in any particular case inspection may be prohibited by a specific statute or regulation, an order of a court of record or the order of an administrative law judge. In addition, pleadings or exhibits containing the names of patients of health care providers and institutions are confidential and are not open to public inspection or copying.

ii. Pursuant to statute and department regulations, files of cases heard for the Department of Human Services and the Department of Health Care Policy and Financing are not open to public inspection or copying.

iii. Pursuant to statute, workers' compensation files are not open to public inspection or copying.

iv. Generally, files of cases heard for the Department of Education are open to public inspection and copying. However, in any particular case inspection may be prohibited by a specific statute or regulation, an order of a court of record or the order of an administrative law judge. Pursuant to federal regulation, files of cases under the Individuals with Disabilities Education Act are not open to public inspection or copying.

(d) When a case file is not open to public inspection a party, an attorney for a party or the attorney's employee may inspect and copy their own case file upon presenting the Clerk's office with adequate proof of authority and identification.

(e) When a case file is not open to public inspection a non-attorney representative of a party may inspect and copy the case file of the party he or she represents only upon written authorization by the party, presentation of adequate identification, and approval of the Director of the Office of Administrative Courts or the Director's designee.

(f) The Clerk's Office of the Office of Administrative Courts will copy documents for a charge of 25 cents per page.

Policy 10

Service – Electronic

(a) An Administrative Law Judge is authorized to serve any Final Agency Order in cases decided pursuant to the Administrative Procedure Act on counsel or unrepresented parties by electronic mail if the attorney or unrepresented party to be served with the order agrees on the record to service by electronic mail.

(b) The electronic signature of a judge on an order or of a Office of Administrative Courts staff member on a certificate of service complies with the signature requirements of Section 24-71.3-107, C.R.S.

Policy 11

Hearings - Face to Face - Health Care Policy and Financing (HCPF)

The regulations of the Colorado Department of Health Care Policy and Financing provide that telephone conference hearings may be conducted as an alternative to face-to-face hearings. Rule 8.057.7.B, 10 CCR 2505-10. It is the policy of the Office of Administrative Courts that hearings involving the Department of Health Care Policy and Financing will be scheduled as telephone hearings unless the administrative law judge grants a party's request to set the hearing as face-to-face.

(a) Either the appellant or the agency may file a written request for a face-to-face hearing. The requesting party must provide a reason why the hearing should be held as a face-to-face hearing.

(b) Written requests for a face-to-face hearing must be filed at the Office of Administrative Courts, 633 17th Street, Suite 1300, Denver, Colorado 80202, and be received at least 10 days before the hearing.

(c) A copy of the written request must be sent to the other party in the case.

(d) The other party may file a written response to the request for a face-to-face hearing with the Office of Administrative Courts no later than 3 business days before the hearing.

(e) The hearing will be set as a face-to-face hearing if the administrative law judge finds that the requesting party has established good cause for a change in the hearing. A face-to-face hearing may also be scheduled if the administrative law judge determines on his or her own motion that due process requires a face-to-face hearing.

Policy 12

Designee Clerks

In Workers' Compensation cases the Director of the Office of Administrative Courts has designated clerks (designee clerks) in the main and regional offices of the Office of Administrative Courts who may grant or deny uncontested motions, including but not limited to an extension of time to commence a hearing for up to sixty days if no previous extensions of time have been granted and the parties agree.

Policy 13

Retention of Reporter Notes and Audio Recordings of Hearings

The Office of Administrative Courts will retain all reporter notes and audio recordings of hearings for at least three years following the date the notes were taken or the recording was made. Reporter notes may be destroyed, and audio recordings erased or destroyed, at the conclusion of this three-year period.

Policy 14

Discovery: Office of Administrative Courts and Division of Workers' Compensation

1. Section 8-43-201, C.R.S., gives the Administrative Law Judges (ALJs) of the Office of Administrative Courts (OAC) original, concurrent jurisdiction with the Director of the Division of Workers' Compensation (DOWC) to deal with contested workers' compensation matters. When the OAC is dealing with contested workers' compensation matters, it stands in the shoes of the DOWC - it is the agency.
2. Ordinarily, discovery concerning non-parties is limited to depositions upon an order of an ALJ. Discovery concerning the agency itself (DOWC or OAC) is even more limited. Absent a compelling reason, discovery is limited to a public records request under the State Public Records Act, Section 24-72-201 et seq., C.R.S., or an order of an ALJ after a hearing on the issue of "compelling reason for discovery concerning the agency."

Policy 15

Processing of Requests for Audio Recordings

1. Hearings at the Office of Administrative Courts are recorded on a digital format and saved for a period of 3 years (see Policy 13).
2. A party to the case or their representative (the relationship must be documented by either an entry of appearance or a signed statement from one of the parties prior to making the request) may request a copy of any hearing recorded in their case.
3. Any request for a copy of a hearing must be made in writing.
 - a. In Workers Compensation (“WC”) matters that are not part of a Petition to Review and any General Services (“GS”) case that does not involve a request by a Medicaid recipient, the Audio Request form should be used.
 - b. In WC matters where a Petition to Review is involved, the Petition to Review – Transcript form should be used.
 - c. In Medicaid cases where the Appellant is requesting the audio recording, the HCPF Transcript Request form should be used.
 - d. If none of these forms are used, the request must still be made in writing and include the following information:
 - i. Name of the requestor (must be a party or representative of a party to the case)
 - ii. Case number for the hearing
 - iii. Date and time of the hearing
 - iv. Location of the hearing
 - v. The name of the Administrative Law Judge (“ALJ”) who heard the case
 - vi. How the copy of the hearing should be delivered to the requestor:
 1. Send to a transcriptionist for preparation of a written transcript
 2. Call the requestor for pick up

3. Mail to the requestor in a self addressed stamped envelope.
4. A fee of \$1.00 is assessed for any copy request that does not involve an appeal of an ALJ's order. If the request is made in conjunction with the filing of a Petition to Review, the filing of exceptions or a request for Judicial review, there is no charge other than the cost of postage.
5. The OAC has the capability to upload files ("FTP") to certain transcriptionists. However, this connection MUST be established prior to the request. Currently the OAC has established a connection with the following:
 - a. Agren Blando
 - b. Apex
 - c. AV Trans
 - d. Federal Reporting
6. If the requestor wants to have a hearing uploaded via FTP, the requestor's transcription service must contact OAC staff to establish this connection prior to the copy request being made.
7. Due to the size of the files involved, hearings cannot be e-mailed.
8. The standard turn around for audio requests is 3 business days from the receipt of the request at the OAC.
9. The requestor can request that their audio recording be processed on an expedited basis. This request must be made in writing and state the reason why the request needs to be processed on an expedited basis. This request will be given to the hearing ALJ for review. If the ALJ approves the expedited request, a copy of the hearing will be available within 1 business day of the ALJ's approval.
10. When a request is made for a CD to be picked up, the clerk processing this request will call the requestor when the CD is available for pick up. No additional notification will be given. If the CD is not picked up within a week of the notification, the CD will be destroyed.
11. When a request indicates that the recording is to be sent to a transcriptionist, whether in conjunction with a Petition to Review or not, the transcriptionist will be provided the electronic copy of the following:
 - a. Notice of Hearing
 - b. Final Order for the case (if available)

- c. The written request for the audio recording
- d. If the request is in conjunction with a Petition to Review, additional documents may be provided in accordance with the PTR process.

If these documents are to be sent via e-mail, a copy of the e-mail with the attached documents will also be sent the requestor (if an e-mail is provided).

If these documents are to be sent via US Mail, the requestor will provide an envelope addressed to the transcription service with sufficient postage to cover the CD and the documents.