

CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
DISCOVERY IN RED LIGHT AND SPEEDING MATTERS

Hearings under the Safe Traffic Operations Program ("STOP") are civil administrative proceedings that will not result in a criminal violation. Under New Mexico law, parties are not entitled to discovery of documents in an administrative hearing pertaining to the exercise of a privilege, such as driving a vehicle on the streets of Albuquerque. However, in the interests of fair and open adjudication of red light and speeding matters in the City of Albuquerque, the Office of Administrative Hearings ("OAH") will require the parties to provide limited discovery upon a discovery request that complies with this order. To facilitate discovery, OAH will schedule hearings not less than forty-five (45) days from the date the notice of hearing is mailed to the respondent or nominee.

WRITTEN DISCOVERY REQUESTS

The party seeking discovery shall serve a written request for discovery on the opposing party. Respondents shall serve the request upon the City by mailing the request to the City Attorney's Office, One Civic Plaza, Box 2248, Albuquerque, N.M. 87103 marked "ATTN: Traffic Discovery Request" on the envelope. The City shall serve the request upon the respondent by mailing a written request for discovery to the address of the registered owner of the vehicle or nominee.

Any party who propounds or responds to discovery shall mail a written certificate of initiation of or response to discovery to OAH on a form provided by OAH. The actual discovery request or documents produced by a party shall not be provided to OAH, except at a hearing on the merits that involves a discovery dispute. The certificate and the discovery request or certificate of response shall contain the following: (1) Name, address, and phone number of the requestor, (2) violation number, (3) numbers on other violations pending before OAH, (4) name of legal counsel engaged in discovery (if applicable) and (5) date of hearing.

DEADLINES

Time under this order shall be calculated in the manner provided by Rule 1-006 NMRA of the Rules of Civil Procedure for the District Courts unless otherwise provided herein. A discovery request shall be mailed to the opposing party within ten (10) days from the date the notice of hearing was mailed to the parties by OAH. A party shall produce documents or allow inspection of documents within fifteen (15) days from the date of receipt of the request for discovery from the opponent. An additional three (3) days for mailing shall be allowed.

Either party may file a motion for extension of time to respond to discovery and OAH will postpone hearings, upon good cause shown, when required for completion of discovery within at least five (5) days prior to a scheduled hearing. OAH may grant requests for extensions of time for discovery with or without a hearing. A party who requests an extension of time waives the benefit of the rule that a hearing must be held within ninety (90)

days. Extensions of the time deadline for propounding discovery are not allowed, in part, because OAH must balance the need for discovery against its commitment to a speedy resolution of these cases.

Only one discovery request is allowed because more than one round of discovery is not feasible given the fact that these hearing are set relatively quickly. Interrogatories, depositions and requests for admissions are not allowed. The City may provide discovery to the respondent by scheduling a time for inspection of records by the respondent in the manner prescribed by the Inspection of Public Records Act as amended from time to time. If the City schedules a time or offers a respondent the opportunity to inspect or make an appointment to inspect public records, the same shall be deemed a response to discovery subject to objections of the respondent that the City's response was adequate, which objection may be made only at the hearing on the merits.

SCOPE

For each category or type of document requested, the requestor shall state the relevancy of the document sought with regard to the elements of the alleged offense or affirmative defense. The stated relevance shall not be included in the certificate filed with OAH. The discovery standard is actual relevance and not whether the information sought is reasonably calculated to lead to relevant information. Discovery requests that are not relevant to an element of the offense or an affirmative defense provided by STOP are not allowed.

A respondent who asserts that the City did not provide notice of the alleged violation or notice of default in a manner reasonably calculated to apprise the respondent of the pendency of the action, including but not limited to an allegation that the City did not mail notice to an alternative address on file with the State of New Mexico Department of Motor Vehicles ("DMV"), shall state that the respondent is seeking discovery pertinent to the issue of alleged inadequate notice. Any respondent who asserts this defense is hereby warned that it is a crime under State law to fail to timely notify DMV of a change of address.

Any grievances regarding discovery shall be raised at the outset of the hearing on the merits. If OAH determines that either party has not obtained documents required for a fair hearing, OAH may continue the hearing and order compliance with a request for discovery. OAH may, upon a finding that a party is engaged in discovery in bad faith, dismiss a notice of violation or disallow an affirmative defense.

EXAMPLES OF WHAT MAY BE RELEVANT

The following is intended only as a guide. Many respondents appear without a lawyer and OAH therefore wants to provide guidelines regarding what may be relevant in these cases. You are not required to bring evidence on the matters listed, unless specifically required to do so by STOP, but you may do so if you think they are relevant to your case. Your chances of success at a hearing do not necessarily depend on whether you present evidence from the following categories. With that said, here is a list of matters that may be relevant:

1. A red light violation occurred during an authorized funeral procession being controlled by a police officer;
2. The vehicle was an authorized emergency vehicle responding to an emergency;
3. A red light violation occurred in an intersection where the alleged violator was responding to a police officer directing traffic;
4. A red light violation occurred in a blocked intersection where the alleged violator proceeded through the intersection in a vehicle that was part of a procession of vehicles operating under a valid parade permit granted by the City of Albuquerque;
5. The vehicle was stolen at the time of the alleged violation;
6. The ownership of the vehicle had lawfully been transferred and conveyed from the registered owner to another person before the time of the alleged violation;
7. The equipment or technology used to detect the alleged violation was defective, inaccurate or scientifically unreliable;
8. The equipment or technology used to detect the alleged violation was being operated or utilized by an unqualified person;
9. The alleged violation occurred during adverse conditions, such as bad weather, which would compel a reasonable person to conclude that the notice of violation should not have been issued; or
10. The procedures used to notify the alleged violator of a violation, default or hearing were in adequate or unfair;

APPEALS

A party aggrieved by a discovery ruling may appeal to the district court under the Rules of Civil Procedure for the District Courts. OAH will not stay a proceeding because a party has appealed on a discovery issue; rather, the matter may be appealed after OAH has rendered a decision on the merits. It may be helpful to parties not represented by counsel to know that the District Court in Albuquerque has already ruled on a number of issues that arise in red light and speeding hearings. No Appellate Court has rendered any decision on these issues. For your information, OAH provides the following summary of what has been decided in the District Court. You are encouraged

to seek legal advice to advise you on the strength of an appeal. Our courts have ruled that:

1. The City of Albuquerque has jurisdiction to adjudicate STOP violations as Civil Administrative Hearings and respondents are not entitled to have these matters heard as criminal proceedings under the jurisdiction of the Metropolitan Court;
2. The violation does not have to be seen by a police officer. Automated Enforcement technology is sufficient;
3. Automated Enforcement technology evidence is not inadmissible hearsay;
4. The Rules of Evidence may be relaxed in administrative hearings such as STOP hearings;
5. Automated Enforcement evidence is admissible in New Mexico under the "silent witness" rule;
6. OAH hearings do not violate due process rights protected by either the United States Constitution or the New Mexico Constitution;
7. There is no validity to an argument that OAH hearings are not fair because they are held by a hearing officer compensated by the City of Albuquerque. Almost every judge who levies a fine is compensated by the governmental entity that receives the fine money. This fact, alone, does not support an allegation of bias; and;
8. Respondents are entitled to have their cases reviewed by the District Court, a process which accords adequate review under the Right to Due Process.



Roberto Albertorio
Chief Hearing Officer
City of Albuquerque
Office of Administrative Hearings

Date: 3/26/09