

POLICE OFFICER SEPARATION – TCLEOSE FORMS AND HEARINGS
(otherwise known as how to use the system to the City’s benefit)

In the beginning....

Until the late 1980’s a Texas Peace Officer could legally be appointed and sent out to fight crime without any training at all. The officer could receive training (while on the job presumably) and pass the 50 question licensing exam within one-year, otherwise he had to be terminated by law (This is now only reserved to Police Chiefs). I know this because this process changed right as I was graduating from undergraduate school with a Bachelor’s of Science in Criminal Justice – Law Enforcement and was one of those people looking to go into law enforcement as a career.

Over the past 25 years, law enforcement has transitioned from a trade to a profession, with significant regulation and limitations in the areas of licensing, continuing education requirements and independent Commission based rules and procedures for the career path. The days of “Dirty Harry” killing bad guys indiscriminately and with out incurring a significant amount of paperwork, are long gone, in return, we are supposed to gain *professional* law enforcement.

In my experience both as a police officer and as a lawyer, I have realized that a shift in the mental perspective of Police Officers has occurred with the generational changes in the workforce. The day of the selfless public servant devoting his life to protect others and asking nothing in return has faded with the Baby Boomers in the workplace. As we move from generation to generation from the Baby Boomers to the now current Y-Generation (as the newest workplace participants), significant conflict should be expected in the

workplace. The flames of this conflict, fanned by the events of September 11, 2001, have on the one hand, created an unshakable resolve of support for law enforcement officers demonstrated by increases in salary and benefits relative to other equally accessible career paths. In contrast, an ever growing cynical public holds general distrust of our government(including the police), which is exemplified in society’s call for ever more strict regulatory practices of the profession.

Therefore, the Texas Commission on Law Enforcement Standards & Education (“TCLEOSE”) has become the gateway to this new lucrative career path. Today, several hundred hours of training, in more than just the law, but the philosophy of policing is necessary. All the training and education culminates into a 400 question multiple-choice licensing examination taken electronically. We as lawyers may find the test akin to the Multi-state Bar Exam (MBE) that many of us had took as part of our licensing exam. Today, police officers have invested a great deal of time and effort to become police officers. When considering the work needed to enter into the profession with the effect negative documentation about an officer’s work can have on an officer’s ability to obtain a position, you have all the ingredients to make a highly valued commodity, the TCLEOSE License.

Eligibility for Licensure:

Texas Administrative Code Section 217.1 governs the minimum standards for initial licensure. To be entitled to a Peace Officer License in Texas, a person

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must satisfy the following minimum requirements:

1. Holds a General Educational Development test indicating high school graduation level, or be a high school graduate, or have 12 semester hours of credit from an accredited college or university;
2. Is twenty-one (21) years of age or eighteen years of age if the applicant received an associate's degree or 60 semester hours from of credit from an accredited college or university or has received an honorable discharge from the Armed Forces of the United States after at least two (2) years of active service.
3. Is fingerprinted and is subjected to a search of local, state, and U.S. national records and fingerprint files to disclose any criminal record.
4. Has not ever been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten (10) years from the date of the court order but the Commission may approved an application for special circumstance if the court-ordered community supervision for Class B misdemeanor was at least five (5) years prior to the application.
5. Is not currently indicted for any criminal offense.
6. Has never been convicted of an offense above the grade of Class B misdemeanor or Class B misdemeanor within the last ten (10) years but the

Commission may approve an application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to the application if sufficient circumstances exist.

7. Has never been convicted of a family violence offense.
8. Is not prohibited by state or federal law from operating a motor vehicle.
9. Is not prohibited by state or federal law from possessing firearms or ammunition.
10. Has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority.
11. Has been examined by a physician selected by the appointing or employing agency who is licensed by the Texas State Board of Medical Examiners and appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought and show no trace of drug dependency or legal drug use after a physical examination, blood test, or other medical test.
12. Has been examined by psychologists, selected by the appointing or employing agency licensed by the State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to

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the type of license sought and appointment to be made. A psychiatrist may also conduct the examination. The appointee must be declared in writing by that professional to be in satisfactory, psychological, and emotional health to service as the type of officer for which the license is sought within 180 days before the date of the appointment by the Agency.

13. Has not been discharged from any military service under less than honorable conditions, including specifically other than honorable conditions, bad conduct, dishonor, or any other characterization of service indicating bad character.

14. Has not had a commissioned licensed denied by final order or vote.

15. Is not currently on suspension or does not have a voluntary surrender of license currently in effect.

16. Meets the minimal training standards and passes the Commissioner’s Licensing Examination for each license sought.

17. Has not violated any Commission Rule or Provision of Occupation Code Chapter 17.01 and 18 as a U.S. citizen.

Therefore, if a person possessing this background; completes the training; and passes the licensing exam, he/she are then eligible for commission as a Police Officer in Texas.

The Peace Officer Attitude:

Police Officers are generally called upon to handle dysfunctional and/or conflict infested situations. They are expected to arrive at the scene of an incident, take control of the scene regardless of the situation, assess the circumstances, apply the law, their training and experience and then accurately diagnose the problem(s) based on information known and gathered. This task generally requires one or a combination of finesse, interactive speech skills, and sometimes even brute force. A saying in Texas between police officers in the 80’s and 90’s was “One riot, one Ranger”. This meant that regardless of the circumstances, officers are expected to take control, period. This is they way they are taught, and must be taught to carry out their jobs.

The Police Officer Subordinate:

Using a quasi-military chain of command, law enforcement supervisors are charged with the responsibility of “running herd” over their subordinates.

The officers, who are trained to take control, apply the letter of the law, and are many times found to hold character traits and personalities that work well as long as *they* not anyone else, are in control. Police Officers are known to principally associate with other officers, and many, especially younger officers, have very few friends outside law enforcement. Part of this is spurred by the unique work schedules and sometimes unorthodox lifestyles due to work related activities (extra-jobs), overtime and on call status.

When the workplace deck is stacked with employees of this type, managing a

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subordinate becomes difficult and mind set among the officers can become skewed. Disciplinary action against one who is accustomed to being in control is inherently confrontational and a supervisor should expect some friction from an officer under these circumstances. On the one hand, the law allows officers in many instances to make mistakes with immunity from the consequences, and the Department is making them pay for their mistakes. Typically officers will argue the disciplinary action rather than truly argue the violation, it is the deflection of responsibility, or a rebound blame attack on the department for the officer’s misconduct. This leads to many employment disputes arising out of law enforcement staffing.

The Complaint

Chapter 614 of the Texas Government Code holds special laws applicable to Peace Officer Discipline. Before the Department Head can discipline an officer, there must be a complaint. The complaint must be in writing and must be signed by the complainant.

Further, the complaint must be given to the officer *promptly* before disciplinary action may be taken. Finally, if the disciplinary action is termination or indefinite suspension (for you civil service cities), there must be an investigation, and the investigation must produce “some evidence” supporting the misconduct alleged in the complaint.

Legislative history demonstrates the early in the bill’s life, the some evidence standard was previously heightened to a preponderance of the evidence, however,

through committee, the language was lowered to only some evidence, which is apparently below a preponderance of the evidence.

The Internal Affairs Investigation

The Investigation is the opportunity to tell a story and to paint a picture. It should start and end with documentation demonstrating compliance with Texas Government Code Chapter 614, or any other law, applicable civil service or commission rule or collective bargaining provision connected with the disciplinary process.

Maintain an Internal Affairs Investigation policy and checklist that mirror’s the actual process and follow it. If you change the process, change the policy.

The Disciplinary Decision

Now, with the investigation in hand, it comes time for the disciplinarian to determine whether the misconduct alleged is demonstrated by some evidence. If so, then departments should only punish as a means to correct the conduct, and not on the outcome.

For instance, hypothetically speaking, an officer is found to have unnecessarily ran red lights while on duty. I know, this would *never* happen in any Texas city but humor me. The investigation reveals the officer was one of seven, but he is the only officer whose conduct resulted in an accident.

What discipline should be given and to whom? All seven officers actually performed the same misconduct, but

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only one of the seven officer’s misconduct resulted in an accident. I would suggest that the “wrongdoing” is equal among the officers, the result is only different; therefore, disciplinary decisions should be made on the misconduct, not the result.

Whatever your rationale, have a rationale and a rhyme and reason for taking the action you do and have it connected to the wrongdoing. “From the hip” discipline, like Elvis, has left the building.

The Termination

The Texas Commission on Law Enforcement Standards & Education operates on a form based system. Just about everything that is reported to or comes from the Commission is on a Form.

Until a few years ago (2005), when an officer was terminated, the law enforcement agency had to characterize, in writing, the circumstances resulting in the officer’s separation from the Department. This was and is done on an F-5 Form and in the past the form merely had a blank space for the administrator to write in basically the answer to “why”?

Since September 1, 2005, the F-5 was amended to hold a multitude of categories broken into three primary sections, Honorable Discharge, General Discharge, and Dishonorable Discharge (see attached). Once the appeals are final regarding a Police Officer’s termination, the Department Head must report the officer’s separation to TCLEOSE by selecting one of the

several characterizations provided in one of the three categories. Many require supporting documentation. The form is sent to TCLEOSE and a copy is sent to the officer. The F-5 becomes part of the Licensee’s permanent Commission Record.

If a licensee is dishonorably discharged on two occasions, his license is revoked as a matter of law. If the licensee is dishonorably discharged on one occasion, and the facts of the discharge are relatively severe, the Commission can institute revocation procedures, but it is not automatic, until the second instance.

When the officer receives his/her copy of the F-5 Form, he/she is informed of their appeal rights and can appeal the characterization to the Commission for review. All the officer must do is forward a letter to TCLEOSE and he has a dispute. Any officer can do so without fee or cost.

The Appeal

Once an officer files a dispute letter, an appeal is made. TCLEOSE will send a copy of the officer’s dispute letter to the Chief of Police. The Chief, to maintain a defense, must respond by providing materials to TCLEOSE substantiating the characterization selected. If the Chief does so, TCLEOSE will then forward the entire dispute to the State Office of Administrative Hearings (“SOAH”) for a hearing on the appropriateness of the selected characterization. The dispute is held between the officer and the local governmental law enforcement agency. TCLEOSE has no role other than to

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admit the “administrative record”, which contains the dispute letter and the Departments’ response.

The hearings take place in Austin, Texas and are mini-trials operated much like a Court of Law. Attached is a question and answer sheet from the SOAH regarding their processes and procedures. The only issue in question is whether the selected characterization on the F-5 was the correct one to chose under the circumstances of the separation.

Many disagree with the interpretation of the statutes by TCLEOSE and its Attorney General appointed legal counsel. One larger entity, I have been told, is the Texas Department of Public Safety. The dispute is in choosing under the statutes, who are the proper parties in the SOAH proceedings.

The Dispute:

How should we interpret paragraph (c) of § 1701.4525?

§ 1701.4525. REQUEST FOR CORRECTION OF REPORT; ADMINISTRATIVE PENALTY; HEARING; APPEAL.

(a) A person who is the subject of an employment termination report maintained by the commission under this subchapter may contest information contained in the report by submitting to the law enforcement agency and to the commission a written request for a correction of the report and any evidence contesting the information contained in the report not later than the 30th day after the date the person receives a copy

of the report. The commission shall allow the head of the law enforcement agency to submit to the commission any evidence rebutting the evidence submitted by the person who is the subject of the report.

(b) The commission may order the head of a law enforcement agency to correct a person's report in a timely manner based on information submitted to the law enforcement agency and to the commission by the person under Subsection (a). An agency head ordered to correct a person's report shall correct the person's report or request a hearing conducted by the State Office of Administrative Hearings. The commission may assess an administrative penalty against an agency head who fails to make a correction or request a hearing under this subsection in a timely manner.

(c) If the commission refuses to order the head of a law enforcement agency to correct the person's report, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(d) A proceeding under Subsection (b) to contest the commission's order or under Subsection (c) to correct an employment termination report is a contested case under Chapter 2001, Government Code.

(e) In a proceeding under Subsection (b) to contest the commission's order or under Subsection (c) to correct an employment termination report for an order or report based on alleged misconduct, an administrative law judge shall determine if the alleged misconduct

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occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated or the person resigned, retired, or separated in lieu of termination. If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall order the report to be changed.

(f) The commission shall adopt rules for the administration of this section.

Added by Acts 2005, 79th Leg., Ch. 1298, § 3, eff. September 1, 2005. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1068, § 4, eff. September 1, 2007.

Last time I checked, the language used by the legislature used in subsection (c) created a conditional right to appeal, ***“If the commission refuses to order the head of the law enforcement agency to correct the person’s report.” NOT BEFORE!***

Under the statute, TCLEOSE receives the “administrative record” described above. It appears from the language in the statute that based on that information, TCLEOSE should made an initial determination as to whether the F-5 should be corrected, or whether it was appropriately completed. Once TCLEOSE made that decision based on the administrative record, and if either the head of the law enforcement agency or the officer did not agree with the decision, then could then take their disagreement to SOAH as a dispute between TCLEOSE and the disputing party.

TCLEOSE skips the initial determination and punts the entire dispute, including the parties, sending it and them all participate in a SOAH hearing without TCLEOSE making any decision.

A few interesting results occur under this interpretation. First, under the current procedure, a dispute will travel to SOAH to be reviewed twice before a final decision is made. If the officer appeals his F-5, a SOAH hearing is had. If SOAH recommends the Commission order the law enforcement head to change the F-5, then the agency head can appeal that Order to SOAH again, applying subsections (b) & (d).

Additionally, without taking a position, leaves the dispute between the agency and the officer, instead of between the Commission decision and the disputing party. This placed unreasonable burdens on local government to stop the governmental objective of their agency to battle an employment separation dispute in Austin.

While it is true that agencies can appear by phone at SOAH, many instances require the Department, or at least its primary witnesses to be present and requires counsel to be present to cross examine opposing witnesses, especially in light of our growing video surveillance of officer activity.

Finally, as stated by SOAH itself, “the State Office of Administrative Hearings (SOAH) is an independent agency created to manage contested cases and conduct hearings in those contested cases for other state agencies.” (Not local governmental entity/employee

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disputes). The Texas Education Agency, who licenses the teaching profession will use SOAH for disputes where revocation of a license occurs. TCLEOSE does likewise, but in those instances, *it is the state agency’s decision* being disputed, not the choice of a local governmental official. Driver License revocation is handled by SOAH. It is a dispute between the Texas Department of Public Safety and the licensee, even those it was the local government’s officer who arrested the person for DWI or other suspendable offense.

SOAH also deals with other forms of disputes between state agency’s and their licensees, but I have not found in my review any case other than in the new F-5 process, as interpreted by the Commission, where a dispute between a local employer and employee becomes a controversy for the State Office of Administrative Hearings.

In my opinion, this interpretation removes TCLEOSE from the requirement to take a position and from having to defend it. This is a method to avoid the costs associated with such an interpretation and shifts the burden of the dispute onto local government, and creates an absurd result. Finally, having disputes of this nature handled in this way, causes other problems for the employer, which were not first readily seen.

The War:

Currently, according to my sources at the TCLEOSE, of those F-5’s filed that are appealed, 70% of the decisions are made **in favor of the officer!** This figure raises several concerns. First of

all, the Occupations code clearly sets forth that an F-5 is a governmental record. The Texas Penal Code has a provision that categorizes a false entry into a governmental record with the intent to harm a third-party as a second degree felony, equivalent in punishment range to involuntary manslaughter.

What do statistics like this say to the legislature about the integrity of local governmental officials, if 70 percent of the time, the head law enforcement official cannot adequately defend his characterization of separation with an officer disputes it? The Texas Municipal Police Association was the driving lobbyist in getting the bill passed in 2005, can’t they say “See, I told you so!”

Local government must take this report seriously. It has both criminal and civil penalties, even if indirectly, as I will explain below, when completing an F-5, a law enforcement head must be placed in a position where he understands that this is his greatest opportunity to create a defense for his employment decisions.

EEOC Claims & Other Employment Disputes:

An improperly completed F-5 report that is not defensible in a SOAH hearing, can cause immeasurable harm to a local governmental entity. If completed more favorably that what was true, it can be used in a later proceeding to show that the alleged real reason for the separation offered by the local official is merely a pretext for discrimination, retaliation or other illegal employment practice.

In contrast, if completed less favorably than can be defended, it creates evidence

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to support some illegal animus held by the head of the department, that the officer was marked for failure.

In either case, the only choice is to properly conduct an investigation that meets the standards of the department and conforms to Texas law. Based on that investigation, create evidence that supports the administrator's decision to separate the law enforcement officer and characterize it accurately on the F-5. Do not modify or alter the defensible and supported basis for the separation without obtaining a settlement and release agreement from the officer in writing that waives all other claims. Avoid seeing your official governmental record that must be completed accurately subject to criminal prosecution used as Exhibit A in your official's deposition in an employment claim to create a fact issue for illegal employment practices.

Finally, treat SOAH hearings seriously, because the ramifications can be great on down the road for other claims that may be raised.

As an aside, I would encourage a city or group of cities with pending SOAH hearings challenge the procedure in a Declaratory Judgment proceeding to push the state to release local government from the unwarranted imposition of defending what should be a State agency/commission dispute.



State Office of Administrative Hearings

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Who Are We?

The State Office of Administrative Hearings (SOAH) is an independent agency created to manage contested cases and conduct hearings in those contested cases for other state agencies. It was created in 1991 by the 72nd Texas Legislature and began conducting hearings on April 15, 1992, under the Administrative Procedure and Texas Register Act, Article 6252-13a of Vernon's Texas Civil Statutes (now codified at Tex. Gov't Code Ann. §§ 2001.001, et. seq.), and Tex. Gov't Code Ann. §§ 2003.001, et. seq. Originally, SOAH provided these services to those agencies which did not employ persons whose only duty was to preside as hearings officers over matters related to contested cases before state agencies. However, certain other agencies not required by statute to use SOAH contracted to have their hearings conducted by SOAH Administrative Law Judges (ALJs) as well.

In September of 1992, SOAH commenced hearing cases for the Texas Alcoholic Beverage Commission, and in April 1993 for the Texas Department of Insurance (exclusive of rate cases), through voluntary interagency contracts, but both types of cases are now designated as SOAH cases by legislation. Newly legislated authority also included the power to conduct Texas Department of Insurance rate cases and to conduct drivers license hearings under the Administrative License Revocation (ALR) program. SOAH began conducting administrative hearings for several other state agencies during fiscal year 1994, including the Texas Lottery Commission.

Effective September 1, 1995, the 74th Texas Legislature transferred additional authority to SOAH to conduct hearings for both the Public Utility Commission of Texas (PUC) and for the Texas Natural Resource Conservation Commission (TNRCC), now named the Texas Commission for Environmental Quality (TCEQ). The statutory provisions effecting these transfers of hearing responsibility mandated the creation of separate divisions for each of those two agencies' cases, and generally provides for the temporary or permanent transfer of ALJs to help meet shifting caseloads. The 74th Legislature also added to SOAH's responsibilities by transferring contested case authority in Texas Department of Agriculture cases, and contested cases under the APA before the Texas Workers' Compensation Commission, effective January 1, 1996.

SOAH maintains its headquarters in Austin, Texas, with field offices in Corpus Christi, Dallas, El Paso, Ft. Worth, Houston, Lubbock, San Antonio, and Waco. (The Beaumont and Midland offices were closed effective 10/01/96 and 12/16/96, respectively. The Abilene and McAllen offices were closed 10/09/98 and 2/01/98, respectively. The Tyler office was closed effective 3/15/02.)

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Questions about the content of this page may be forwarded to:

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Frequently Asked Questions about SOAH

These FAQs are intended to be informational only and to provide guidance about SOAH proceedings. They are not, and are not intended to be, legal advice or counsel, and SOAH does not provide legal assistance or advice. If you need legal assistance or advice, you should consult an attorney.

Also please note the separate [Frequently Asked Questions](#) about the SOAH Tax Division.

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GENERAL

• **What is the State Office of Administrative Hearings (SOAH)?**

SOAH was created in 1991 by the Texas Legislature as a neutral, independent forum where Texas agencies or other governmental entities and private citizens or entities can resolve legal disputes. SOAH is to conduct fair and objective administrative hearings and provide timely and efficient decisions. [Tex. Gov't Code Ann. § 2003.021](#).

SOAH is divided into several teams according to subject matter and the state agencies that refer cases. SOAH's teams are as follows: Alternative Dispute Resolution; Administrative License Revocation and Field Enforcement; Economic; Licensing and Enforcement; Natural Resources; Tax; and Utilities.

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• **What is an administrative law judge?**

An administrative law judge (ALJ) is a neutral presiding officer who acts independently of the referring agencies, conducts the hearing, listens to the evidence and arguments of the parties, and in most cases, writes a recommendation for the person or body at the referring agency who will ultimately decide the case. In some cases, the ALJ may issue a final decision. In addition, the ALJ is authorized to conduct conferences before and after the hearings, issue written orders, and generally control the course of the hearing. See [1 Tex. Admin. Code §155.15](#). All SOAH ALJs are licensed Texas attorneys.

Preparation for, and the basic procedures of, a SOAH hearing are addressed in subsequent FAQs.

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- **What is an administrative hearing?**

An administrative hearing is conducted in basically the same way as a trial at the courthouse with the parties, including the referring agency, presenting evidence to the ALJ, who acts as both judge and jury. The hearing is conducted independently of the agency that referred the case to SOAH, and the referring agency is prohibited from attempting to influence the ALJ's decision in any way.

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- **Do I need an attorney, or may I represent myself?**

If you are a party in a SOAH hearing, you are not required to be represented by an attorney. You may represent yourself. You are not entitled to have an attorney appointed for you. You may, however, hire an attorney to represent you at your own expense. The staff of the referring agency is usually represented by a state-employed attorney. If you choose to represent yourself, you will need to know the law and rules applicable to your case because the ALJ will not give you legal advice or assist you in presenting your case. You will also be expected to comply with SOAH's procedural rules, which can be found at www.soah.state.tx.us.

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- **What are the applicable laws governing the hearings?**

Applicable law in a case may include the following:

The statutes governing the referring agency and the rules adopted by that agency;
SOAH's procedural rules, which are codified at [1 Tex. Admin. Code Chapters 155 through 159](#);
The Administrative Procedure Act, [Tex. Gov't Code Ann. Chapter 2001](#);
The Texas Rules of Evidence;
The Texas Rules of Civil Procedure; and
For administrative license revocation cases, [Tex. Transp. Code Ann. Chapters 524 and 724](#).

The laws and rules are available at many public and county courthouse libraries. SOAH's rules are available on its website at www.soah.state.tx.us.

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- **Can I resolve my dispute without having an administrative hearing?**

Yes, there are options for resolving the dispute without a hearing. You may be able to settle your case through direct discussions with the referring agency. If you decide that you would like to attempt to settle your case, you should consult with your attorney, or if you are representing yourself, the referring agency. There are ways to dispose of your case informally by agreement among the parties. Settlement negotiations will be between you and the referring agency's representatives. The ALJ presiding in your case will not participate in any settlement negotiations unless it occurs in the context of a mediated settlement conference.

Also, SOAH conducts mediations in appropriate circumstances. Mediation is an alternative method of resolving a dispute in which the parties, with the assistance of a trained neutral called a mediator, explore the possibility of crafting a mutually satisfactory resolution of their dispute. Whereas litigation is, by its very nature, adversarial, mediation is a collaborative process. The parties, not a third party, control whether or not the dispute is resolved. If the parties to a contested case try mediation, but the mediation is not successful, they still have the right to a contested case hearing presided over by an ALJ who was not the mediator. For more information about ADR at SOAH - how to determine if mediation should be tried, how to request mediation, and how to prepare for a mediation, go to SOAH's website at www.soah.state.tx.us and click on "[Alternative Dispute Resolution \(ADR\) - \(Includes ADR Model Guidelines and TISNP\)](#)". ("TISNP" means Texas Intergovernmental Shared Neutrals Program.) It will take you to the main ADR page where a click on the ADR link will take you to detailed information links.

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- **What if I need an interpreter?**

If you need a language interpreter or an interpreter for the hearing- or sight-impaired, you must file a written request with SOAH at least seven days prior to the proceeding at which the interpreter will be needed. SOAH will arrange and pay for the interpreter. *See* SOAH's rule at [1 Tex. Admin. Code §155.43\(g\)](#). In your request, be sure to state what kind of interpreter is needed, and, if requesting a language interpreter, the language needed.

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- **Will the hearing room be accessible to people with disabilities?**

Yes. All hearing rooms at SOAH are accessible to people with disabilities.

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- **May I observe a SOAH hearing prior to attending my hearing?**

Yes. If you would like to attend a hearing, you may go to SOAH's hearing rooms located on the fourth floor of the William P. Clements Building, 300 West 15th Street in Austin, and check the daily schedule of hearings (the docket), which is posted outside Suite 408. The docket is also available on SOAH's website at www.soah.state.tx.us. The docket will tell you who the parties are, approximately how long the hearing will last, the ALJ presiding over the hearing, the room where the hearing will be held, and whether or not the hearing is confidential. Unless the hearing is confidential, you may attend any hearing of your choice. Please observe the rules of proper decorum in the hearing room.

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BEFORE THE HEARING

- **How will I know if my case has been sent to SOAH?**

The referring agency should notify you that your case is being referred to SOAH. In addition, you will receive a formal, written notice of hearing from the referring agency.

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- **What is a notice of hearing?**

After the referring agency has referred the case to SOAH, you or your attorney will receive a written notice of hearing that will set out the date, time, place, and subject matter of your hearing. You should receive the notice of hearing at least ten days before the hearing. *See* [Tex. Gov't Code Ann. §§2001.051](#) and [2001.052](#).

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- **What should I do if I cannot attend the hearing on the day scheduled?**

You or your attorney should file with SOAH a written motion for continuance, which is a request for the hearing to be rescheduled, stating why you cannot attend the hearing on the day scheduled and asking for the hearing to be rescheduled to another date. You must file the motion at least five days before the hearing unless there is a good reason for a later request, and you must send a copy to the other party. **The motion must specify a proposed date or dates to which the hearing should be reset, indicate that you have contacted or attempted to contact the other party about your request, and state whether the other party objects to the continuance. A continuance request may be denied for failure to provide this information.** *See* [1 Tex. Admin. Code §155.29\(f\)](#). The other party has a right to respond to

your motion. The ALJ will rule on your motion in a written order that will be sent to you or, if you are represented by counsel, your attorney. The ALJ has the discretion to grant or deny your motion. In addition, the ALJ will not call the other party to determine whether it agrees to the continuance. If your motion for continuance does not indicate that you have contacted the other party, a ruling on your motion will be delayed until the ALJ receives a response from the other party.

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- **Who should I send my motion to?**

Your motion should be filed with SOAH, and a copy of the motion must also be sent to the other party. *See* [1 Tex. Admin. Code § 155.29\(f\)](#). **A copy of any document or motion you file must be sent to the ALJ and also to every other party in your case.**

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- **I sent in a motion for continuance, and I haven't heard anything. Must I still attend the hearing?**

If you filed a motion for continuance (a request for the rescheduling of a hearing) and you haven't received an order from the ALJ, you should assume your motion has not been granted and you should be prepared to attend the hearing. You may call the ALJ's assistant (but not the ALJ) to check on the status of your motion.

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- **Do I have the right to ask for information about my case held by the other parties?**

Yes. In most cases, the [Administrative Procedure Act](#), the law creating SOAH, and SOAH's rules allow a party to prepare for hearing by "discovering" relevant information from the other party. You have the right to make discovery requests from the other parties at any time after your case is referred to SOAH but before the hearing begins. SOAH's procedural rule at [1 Tex. Admin. Code §155.31](#) discusses the types of discovery permitted and sets out general discovery procedures. The ALJ presiding in your case has the authority to enter particular orders governing discovery as may be required by the circumstances of the case.

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- **I want to make sure a witness appears at my administrative hearing. How can I do that?**

In order to compel a witness to appear, a subpoena for his/her appearance must be issued. A subpoena is an order that requires a witness to appear and testify or to produce books, records, and other information at the hearing. In most cases, SOAH does not issue subpoenas. If you would like to subpoena a witness, you must direct your request for a subpoena to the referring agency. *See* [1 Tex. Admin. Code §155.31\(e\)](#).

Witnesses may also appear at the request of parties, but a request does not assure their appearance.

SOAH does issue subpoenas in administrative license revocation cases. *See* [1 Tex. Admin. Code §159.17](#) for the procedure to be followed.

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- **How should I prepare for the hearing?**

Be as prepared as you can for the hearing. Make sure you know all of the facts about your situation and have with you the necessary documents or other information you believe are relevant. If you have an attorney, he or she will most likely help you prepare. If you do not have an attorney, become familiar with SOAH's procedural rules at [1 Tex. Admin. Code ch. 155](#) so that you can meet deadlines and otherwise be as prepared as possible to present your case. The rules can be found on SOAH's website at www.soah.state.tx.us. You should also familiarize yourself with the statutes

and rules governing the agency with whom you have the dispute. Those should be set out in the notice of hearing.

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• **May I call an ALJ to discuss my case?**

No. The [Administrative Procedure Act](#) does not allow communication about the case between the ALJ and any party outside the hearing or other proceeding, such as a prehearing conference, without the presence of all parties to the case.

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• **Where will my hearing be held?**

Most hearings are held at the Clements Building located at 300 West 15th Street in downtown Austin, Texas. The Clements Building is located on the north side of 15th Street between Guadalupe and Lavaca Streets. SOAH's hearing rooms are on the fourth floor of the building. Go to Suite 408 to locate your hearing's room assignment.

SOAH has field offices located in other cities throughout Texas that are used primarily for administrative license revocation hearings. A list of SOAH's field offices and directions to the offices is posted on SOAH's website at www.soah.state.tx.us. The notice of hearing you receive will tell you the location of the hearing.

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• **Where should I park?**

There are several pay parking garages near the Clements Building, including one on Guadalupe Street across the street from the building. There are also pay surface lots, metered parking spaces, and a few unmetered parallel parking spaces at various locations around the building. There is no visitor parking in the parking building adjacent to the Clements Building. If your hearing is in one of the field offices or other location, you should check with the particular field office to determine parking accommodations.

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• **Must I present identification to enter the Clements Building?**

Yes. You must present a government-issued form of identification and sign in with the security officer in the lobby of the Clements Building. It is helpful to know your SOAH docket number and the name of the case when you sign in. After you sign in, the officer will give you a visitor's badge, and you will be allowed to use the elevator.

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• **I am unable to come to Austin for my hearing. Are there any alternatives?**

You may file with SOAH a motion to appear by telephone, stating the reason why you want to appear by telephone, the telephone number where you can be reached, and that you will be the person testifying by telephone at the hearing. A copy of your motion to appear by telephone must also be sent to the other party in the case. SOAH's procedural rule [1 Tex. Admin. Code §155.45\(a\)](#) governs motions to appear by telephone.

You may also file with SOAH a motion to appear by videoconference. Videoconference motions are governed by [1 Tex. Admin. Code §155.45\(b\)](#). Your motion must state the reason for your request and the city of your residence. In deciding whether to grant your motion, the ALJ will consider the relevant factors, including the availability of videoconferencing facilities.

You may also file motions to appear by telephone or by videoconference for a witness.

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- **I sent a motion to participate by telephone, but I haven't heard if the motion has been granted. What should I do?**

Under SOAH's rule, a timely motion to appear by telephone that is not opposed will be deemed granted without the ALJ issuing an order. See [1 Tex. Admin. Code §155.45\(a\)](#). If you haven't received an order, it means that your motion was granted, and you may appear at the hearing by telephone. If the ALJ denies your motion, you will receive a written order so that you will know in advance that your motion has not been granted.

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- **I am appearing by telephone at my hearing. How do I introduce documents at the hearing?**

Any documents that you wish to use as evidence at the hearing must be filed with SOAH at least three days in advance of the hearing and served on all of the parties. See [1 Tex. Admin. Code §155.45\(e\)](#). If you fail to timely file the documents, a hearing on your case may be delayed until you comply with the rule.

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- **May I ask for my hearing to be held somewhere other than Austin?**

You may file a motion for change of venue if you would like to request that your hearing be held somewhere other than Austin. The ALJ will consider a number of factors in deciding whether to grant your motion, including legislative restrictions on travel, the amount in controversy, the estimated length of the hearing, the availability of facilities, costs to and preferences of the parties, and the location of witnesses. See [1 Tex. Admin. Code §155.13](#).

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THE HEARING

- **How does a hearing proceed?**

The people that attend the hearing are the ALJ, the parties and their attorneys, the witnesses, and perhaps a court reporter. Most hearings are open to the public, so there may be people present who are not associated with the dispute. Hearings can last anywhere from a few minutes to an entire week or longer, depending on the subject of the hearing. The hearing procedure will have most of the following elements, although it will vary depending on the hearing. The hearing may be more compressed or more complex depending on the nature of the case and the number of parties.

- **Opening statement** - Each party may explain its position in the case, briefly outlining what it will prove. The opening statement is not evidence. The party with the burden of proof will be asked to make its opening first and the other party will follow. An opening statement is not necessary or required but it is helpful to the ALJ in order to understand your position.
- **Presentation of evidence** - In most cases, the party requesting action has the burden of proof and must show by evidence (testimony, documents, *etc.*) it is entitled to that relief. Usually, this party presents its evidence first, followed by the other party or parties.
- **Witnesses** - Each party may call witnesses, who are placed under oath. Witnesses first answer questions from the party who called them and then may be cross-examined by opposing parties. In some circumstances, witnesses may be required to wait outside the hearing room until they are called to testify.
- **Exhibits** - If a party intends to offer a document into evidence, the party must provide a copy for the ALJ, a copy for each other party, and a copy for itself. The person who prepared the document may need to testify about it before it can be admitted as evidence. If the author of a document is not present to testify, the document may be considered hearsay and may not be admitted into evidence. Letters to the ALJ or the referring agency are not evidence unless offered by one of the parties and admitted.
- **Objections** - Any party may object to questions, testimony, or exhibits. An objection must have a legal reason. The ALJ will either "sustain" the objection (excluding the testimony or exhibit from the record) or "overrule" the objection (admitting the evidence into the record).
- **Closing statement** - Each party may summarize what the evidence shows and argue why the ALJ should

recommend a decision in that party's favor. The closing statement is not evidence. It may be either written or oral. If it is written, it may include any posthearing briefing ordered by the ALJ.

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- **What is the burden of proof?**

The burden of proof in administrative hearings is the civil standard "by a preponderance of the evidence." This means that a proposition is more likely than not. The burden of proof in administrative hearings is never the criminal standard of "beyond a reasonable doubt."

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- **Does the referring agency have the burden of proof or do I?**

Generally, the party that refers the case to SOAH must meet its burden of proof to prevail. However, in some cases, if the private party or entity is challenging an action by an agency, it will have the burden of proof. In cases where it may not be clear who has the burden of proof, the ALJ can assign the burden based on the circumstances of the case. See [1 Tex. Admin. Code §155.41](#).

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- **What happens if I don't attend the hearing, or don't participate in the proceedings?**

If you are the party that does not have the burden of proof in the hearing and you don't attend the hearing, a default may be entered against you if the evidence indicates that you were provided with adequate notice of the hearing. A default means that all allegations of fact made against you in the notice of hearing are deemed to be true, and the party that alleged these facts against you will not have to submit any additional proof. If a default is warranted, the PFD will likely recommend that the sanction sought against you be imposed by the referring agency. See [1 Tex. Admin. Code §155.55](#).

If you are either the party with the burden of proof in the proceeding or the party requesting affirmative relief, and you don't appear at the hearing, the other party may be entitled to move for dismissal of the case for failure to prosecute. See [1 Tex. Admin. Code §155.56](#).

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- **May I bring a witness to the hearing?**

You may bring one or more witnesses to testify on your behalf. If the ALJ has entered any prehearing orders in your case, the prehearing order may require the parties to exchange the names of their witnesses and to outline the witnesses' testimony in advance of the hearing so that the parties can prepare.

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- **May I bring documents as evidence?**

Yes. Be sure to bring copies for the judge and all other parties. The ALJ may have entered a prehearing order requiring the parties to list or exchange the exhibits they intend to offer into evidence at the hearing on a specified date *before* the scheduled hearing date.

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- **What should I wear to the hearing?**

There is no dress code for hearings at SOAH, but because hearings concern substantial legal rights and interests, we request that you respect the occasion and the tribunal by dressing appropriately. Many people choose to wear suits or other business attire to hearings, but you do not need to buy business clothing if you do not already have it. Attorneys

are always expected to dress in business attire.

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- **How should I address the ALJ at my hearing?**

You should address the ALJ as “Your Honor” or “Judge.”

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- **What if I have an emergency at the last minute and cannot attend the hearing?**

If you have an emergency, call SOAH’s Docketing Division at 512-475-3445, if possible, and explain the situation. One of the docket clerks will notify the ALJ that you are unable to attend the hearing. **It is important to notify SOAH of your emergency as soon as you can so that the ALJ can take appropriate action, if necessary.**

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- **How will the testimony be recorded?**

The testimony will be recorded via tape recorder or by a court reporter. SOAH does not provide a court reporter. *See [1 Tex. Admin. Code §155.43](#).*

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- **How do I get a copy of the hearing testimony?**

If a court reporter recorded the hearing, you may request that he or she prepare a transcript and provide you a copy. The cost of the transcript is the responsibility of the party making the request. However, parties may agree to share the cost of the transcript. If the testimony was recorded on tape, you should file a written request with SOAH for a copy of the hearing tape. Cost is \$1.00 per tape.

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- **Will the ALJ make a decision on my case at the hearing?**

No. In most cases, after the hearing record is complete, the ALJ will send all the parties either a Proposal for Decision (PFD) or a final Decision and Order based on the evidence admitted at the hearing.

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- **What is a Proposal for Decision?**

A PFD is a written document that contains the ALJ’s discussion of the evidence and issues, findings of fact and conclusions of law, and a recommendation of a specific outcome to the ultimate decision maker of the referring agency, such as a board or commission. *See [1 Tex. Admin. Code §155.59](#).*

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- **In what cases does the ALJ issue a Decision and Order?**

In Administrative License Revocation hearings, Texas Department of Insurance Division of Workers’ Compensation hearings, Department of Family and Protective Services hearings, and the Office of the Attorney General’s Title IV-D child support hearings, the SOAH ALJ makes the final decision and issues the final written Decision and Order.

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- **Will I have to pay for my hearing?**

In most instances, you will not have to pay for your hearing. Please note, however, that if you retain an attorney to represent you, you are responsible for paying her fees. Also, if you want a copy of a tape or transcript of your hearing, you will be responsible for paying those costs. Finally, some referring agencies have the authority to assess the costs of the hearing against the losing party, but you should check the particular agency's statute to determine if it has that authority.

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AFTER THE HEARING

- **Will the ALJ ask for additional information after the hearing?**

It is possible that the ALJ will ask the parties to brief a particular issue, or she may hold the record open for the filing of additional evidence if she, in her discretion, deems it necessary. It depends on the case. It is always the best practice to be completely prepared at the hearing; you should not rely on the ALJ to hold the record open after the hearing.

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- **May I provide the ALJ with additional information after the hearing?**

No, not unless it is requested by the ALJ. When writing the PFD or the Decision and Order, the ALJ may not consider any evidence that is not in the hearing record. You should be careful to present any evidence that you want the ALJ to consider at the hearing or to give your attorney all relevant information. As noted in the preceding FAQ, the ALJ has the discretion to ask for posthearing briefing or for the submission of additional evidence, but parties may not submit additional information or evidence absent the ALJ's request.

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- **Will I receive a copy of the ALJ's PFD or Decision and Order?**

Yes. The ALJ will send a copy of the PFD or Decision and Order to the referring agency and all parties. The PFD or Decision and Order will be sent to the mailing address that appears in the filings in the case. It is your responsibility to inform the ALJ and the other parties if you change your mailing address at any time during the course of the case.

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- **When will the ALJ issue the PFD or Decision and Order?**

In most cases, you should receive a copy of the PFD or Decision and Order not later than 60 days after the close of the hearing record. However, in certain cases, the deadline may be shorter or longer.

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- **May I challenge or object to the ALJ's PFD or Decision and Order?**

Each party may object to the PFD by filing written exceptions with SOAH and with the referring agency. The deadline for filing exceptions and any replies to exceptions is set out in [1 Tex. Admin. Code § 155.59\(c\)](#).

Different procedures apply to a Decision and Order. You should consult the specific statute of the referring agency and the Administrative Procedure Act, [Tex. Gov't Code Ann. § 2001.145](#), to determine the appropriate course of action.

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• **For agencies in which a PFD is issued, will I have an opportunity to appear and speak to the final decision-makers?**

It depends on the referring agency. You should direct your inquiry or request to appear to the agency.

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• **Is there an appeal from the agency's final decision?**

Yes. In most cases, you have the right to appeal the final order of an agency to the Travis County District Court. However, you should check the specific law governing the contested cases handled by the referring agency to determine your appellate rights.

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Questions about the content of this page may be forwarded to:

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