

# ALR Hearing Officer Manual Instructions

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This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

**Legal Division**

**October 1, 2016**

## **INTERPRETER'S OATH**

**Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret to the Court the questions that may be asked of a witness, and the answers that the witness shall give to the questions under the pains and penalties of perjury.**

*This is a sample script that is generally appropriate if an attorney appears with or without the appellant. If the appellant is present, address him or her directly when explaining the purpose for the hearing.*

*You will develop your own script and your own phrasing. You are not required to adhere to this.*

This is the administrative license revocation hearing for {APPELLANT}. I am {your name}, the designated hearing officer. It is about {time} on {date}. I am in the {wherever you are} with {Appellant} and her attorney, {lawyer's name}. Also present is/are Officer(s) {name} and {name}.

The purpose of the hearing is to determine whether the appellant's operator's license or driving privileges should be revoked based on the sworn report the officers filed with the Department of Motor Vehicles. It is the appellant's opportunity to demonstrate by a preponderance of the evidence why his license or privileges should not be revoked.

I will take official notice of the Nebraska Revised Statutes and Title 247 NAC Chapter 1.

*[Exhibits may consist of the notice of hearing, petition, and a sworn report. If the driving abstract shows a prior ALR within the last fifteen years, include the abstract as an exhibit]*

I have x# exhibits, Mr. {Attorney}. Go over the exhibits by number. Ask for objections to each, receive or reserve receipt.

*[if appellant objects or indicates a preference, identify the exhibits and offer them one at a time]*

*[If the appellant objects to the sworn report on foundation you can reserve, lay minimal foundation and receive after or you may overrule the objection and address in the report and recommendation to the Director at the close. Do not attempt to lay foundation for the tests. The sworn report is the prima facie case]*

*[If you lay some foundation for the sworn report at the beginning of the hearing,] Swear the officer in.*

Name? Spell the last name for the record. Please.

How are you employed?

Were you so employed and on duty on [date of the arrest]?

On that date, did you have contact with the appellant?

How did this contact come about?

*[improvise as appropriate from here out]*

*Location. ID driver, etc.*

Did you make any observations about this driver? What did you notice?

Did you do anything based on those observations?

In general, what happened during those tests?

*[if the appellant objects on foundation, simply move to the next question. Do not attempt to lay foundation for the tests. The sworn report is the prima facie case]*

What did you do next?

*[Again, if the appellant objects, move on]*

Then what did you do?

Did you take him somewhere?

What happened then?

*[If Appellant refused]*

Did you inform him that refusal was a separate offence he could be charged with?

What did Appellant do to show his refusal?

Did you give him more than one opportunity to give you a chemical test?

As a result of the arrest, did you complete a sworn report to file with the department of motor vehicles?

Do you have a copy of that document with you? Does it have an identifying number in the upper right corner? What is it? *Alternative:* Do you have a document # \_\_\_\_\_?

Did you sign it in the presence of a notary?

Do you have any preliminary matters?

*Alternately, if there are no objections to the sworn report at the start of the hearing, you can streamline the questions. For example:*

As a result of the arrest, did you complete a sworn report to file with the department of motor vehicles?

Is Exhibit ? a copy of that report?

Did you sign it in the presence of a notary?

Officer so-and-so is present and available for questions. Do you have any questions, if so I will put him/her under oath.

Name? Spell the last name for the record. Please.

How are you employed?

Were you so employed and on duty on [date of the arrest]?

On that date, did you have contact with the appellant?

How did this contact come about?

*[improvise as appropriate from here out]*

*Location. ID driver, etc.*

Did you make any observations about this driver? What did you notice?

Did you do anything based on those observations?

In general, what happened during those tests?

*[if the appellant objects on foundation, simply move to the next question. Do not attempt to lay foundation for the tests. The sworn report is the prima facie case]*

What did you do next?

*[Again, if the appellant objects, move on]*

Then what did you do?

Did you take him somewhere?

What happened then?

*[If Appellant refused]*

Did you inform him that refusal was a separate offence he could be charged with?

What did Appellant do to show his refusal?

Did you give him more than one opportunity to give you a chemical test?

As a result of the arrest, did you complete a sworn report to file with the department of motor vehicles?

Do you have a copy of that document with you? Does it have an identifying number in the upper right corner? What is it? *Alternative:* Do you have a document # \_\_\_\_\_?

Did you sign it in the presence of a notary?

*[If you receive the sworn report at the beginning of the hearing, you can streamline the questions. For example:]*

As a result of the arrest, did you complete a sworn report to file with the department of motor vehicles?

Is Exhibit ? a copy of that report?

Did you sign it in the presence of a notary?

It is a true and accurate copy of the document you completed?

I will receive Exhibit \_\_\_\_\_, pursuant to Title 247 NAC Chapter 1.006.01.

*Alternately, if there are no objections to the sworn report at the start of the hearing, you may simply say:*

Officer so-and-so is present and available for questions. Do you have any questions, if so I will put him/her under oath.

*Invite appellant to conduct cross examination.*

*Following cross, give appellant an opportunity to present a case*

Do you have any evidence?

*Followed by argument*

Argument?

*Confirm Appellant's address.*

I make a report and recommendation to the director. Her decision will be mailed to the appellant within seven days of today's date. A copy will also be mailed to you *[the attorney]*

I will close the hearing at {time}.



## ORDERS

Orders are formatted according to the Hearing Officer's personal preference. Several sample Orders are included.

### REQUIRED LANGUAGE

1. The headings and subheading contain "proposed" findings of facts and conclusions of law and "recommended" order.
2. The Certificate of Adoption and Order language is required.
3. The Certificate of Service is required.
4. Reinstatement Procedures and Appeal Information is also required language except for Dismissals.

### GENERAL FORMAT

1. First Paragraph includes Date, time, HO, by teleconference or location for in person. Officer so and so of (agency) filed a Sworn Report with the Department of Motor Vehicles stating that Appellant was arrested pursuant to Neb. Rev. Stat. 60-6,197 for driving under the influence of alcohol (or for driving under the influence of alcohol and refusing to submit to a chemical test). Who was present ie: Appellant \_\_\_\_\_, attorney for Appellant \_\_\_\_\_, Officer (s) \_\_\_\_\_. Include the location for Appellant and attorney. Who testified.
2. Take notice of Statutes, Title 247 NAC Chapter 1, other may include Title 177 Chapter 1 and Contents of Directors file.
3. List Exhibits
4. Proposed findings of fact. Include only what you find to be facts. Address testimony you don't accept in law section as necessary.
5. Proposed Conclusions of law. Give statement of any arguments made by Appellant or his/her attorney and identify the issues raised. Address issues raised. If none, say Appellant presented no evidence and that the matter was submitted on the record. Keep language simple and straight forward, but support reasoning on technical issues with case law. Remember, the average motorist has a high school education or less, but Judges will review on appeal.
6. Recommended Order. Remember you are making a "recommendation"; the Director can accept or reject your recommendation and issue a different order at her discretion.
7. Certificate of Adoption and Order

8. Certificate of Service

9. Reinstatement Procedures and Appeal Information.

Required  
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DECISION COVER SHEET

LICENSE NUMBER \_\_\_\_\_

PLEASE CIRCLE DECISION:

REV - REVOCATION

DOA - DISMISS NO OFFICER

DMA - DISMISS MERITS

HEARING START TIME \_\_\_\_\_

HEARING STOP TIME \_\_\_\_\_

CIRCLE IF APPLICABLE :      NEW ADDRESS

ADD / DELETE ATTORNEY

## INDEX TO SAMPLES

Consisting of Exhibits and possible exhibits referred to in the course of a given hearing.

1. Notice of hearing.
2. Petition for hearing
3. Invalid sworn report.
4. Valid sworn report, same person.
5. Lincoln sworn report with Field observation report.
6. Instructions for reading a driving record
7. Driver's abstract with prior administrative revocations
8. Internal abstract for out-of-state licensee.
9. Print of Inquiry Screen with phone numbers for hearing.
10. Notice which is sent with yellow temporary license in blood test
11. Attachment 4 checklist for preliminary breath test.
12. Post arrest chemical test advisement form
13. Attachment 2 checklist for Datamaster, with printout.
14. Automatic order of revocation.

## READING THE ABSTRACT

The abstract has three sections:

1. The top portion contains information about the license holder.
2. The next section is divided from the top by the heading:

### CONVICTION/ADMINISTRATIVE ADJUDICATIONS

This section lists criminal charges. The first date under a charge name is the citation date, the middle date is the Court judgment date. Then comes the court and the county issuing the conviction. The points assessed and various other pieces of information are listed which do not affect the ALR process.

3. The third section is divided by the heading:

### ADMINISTRATIVE WITHDRAWALS

This section lists administrative actions taken by DMV. A person's license may be suspended or revoked for several statutory reasons such as failure to provide proof of insurance coverage, failure to pay child support, failure to pay a judgment arising out of a motor vehicle accident and ALR. The entry lists the reason for the withdrawal followed by the date of the withdrawal. The next line gives the date the person is able to reapply for a license or to reinstate their driving privileges, followed by the date they actually received their new license. If the reason for revocation is due to an administrative revocation based on an alcohol arrest, there is a citation date as well. The citation date on the ALR should match a citation date under the criminal section above.

Before completing the Order following a hearing, check the abstract for prior Administrative License Revocations. The length of revocation which is part of the hearing Order is dependent on the presence of one or more prior administrative revocations.

4. The abstract should be completed with a certification and the signature of the administrator of the Driver Records Division, currently Betty Johnson.