

**PROPOSED REGULATION OF THE CHIEF OF THE HEARINGS  
DIVISION OF THE DEPARTMENT OF ADMINISTRATION**

(This draft replaces the one posted 11/6/2007)

**NOTICE OF INTENT TO ACT ON PROPOSED REGULATIONS  
(NOTICE OF PUBLIC HEARING)**

**ADDENDUM TO APRIL 18, 2008 NOTICE**

Attached is a copy of the Department of Administration, Hearings Division's revised Draft of Proposed Regulation Changes. The Division revised the proposed regulations after receiving public comment at the Public Workshop on November 8, 2007. The Hearings Division is looking to adopt the regulations as revised.

**Amended April 30, 2008**

Draft of Proposed Regulation Changes

Authority: NRS 616C.295, 616C.310 and Sections 6, 22 and 23 of Chapter 537 of the 2007 Statutes of Nevada and Assembly Bill 496.

**Section 1.** Chapter 616C of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to 29 inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 29 of this regulation and NAC 616C.260 to NAC 616C.336, inclusive, "senior appeals officer" means the appeals officer designated by the Chief pursuant to subsection 3 of NRS 232.215 to supervise the administrative, technical and procedural activities of the Division.*

**Sec. 3.** *Code of conduct for hearing and appeals officers*

**1.** *Maintaining the integrity of the hearings and appeals officer process.*

*(a) A hearing or appeals officer shall observe high standards of conduct so that the integrity, impartiality and independence of the hearings system is preserved, and shall act at all times in a manner that promotes public confidence in the hearings process.*

*(b) A hearing or appeals officer shall act in a manner to avoid even the appearance of impropriety.*

*~~H~~(c) A hearing or appeals officer shall not engage in conduct that reflects adversely on the hearings or appeals officer's character, competence, temperament or fitness to serve as a hearing or appeals officer. A hearing or appeals officer shall not engage in conduct involving misrepresentation, fraud, dishonesty, deceit or felonious criminal behavior.*

~~[e]~~(d) A hearing or appeals officer shall not, in the performance of official duties, by words or conduct, manifest bias or prejudice based upon sex, race, national origin, religion, sexual orientation, marital status, disability, age, or socioeconomic status.

~~[e]~~(e) A hearing or appeals officer shall not allow family, social or other relationships to influence official conduct or judgment.

~~[e]~~(f) A hearing or appeals officer shall not use the position to advance the private interests of the hearing or appeals officer or any person, nor shall a hearing or appeals officer convey the impression that anyone has a special influence with the hearing or appeals officer.

~~[e]~~(g) A hearing or appeals officer shall not testify as a character witness except pursuant to subpoena; however, a hearing or appeals officer may provide a character or ability reference for a person about whom the hearing or appeals officer has personal knowledge.

~~[g] A hearing or appeals officer shall not hold membership in any organization that the hearing or appeals officer knows is a discriminatory organization. For purposes of this rule, "discriminatory organization" means an organization that, as a policy or practice and contrary to applicable federal or state law, treats persons less favorably in granting membership privileges, allowing participation or providing services on the basis of sex, race, national origin, religion, sexual orientation, marital status, disability, age or socioeconomic status.]~~

(2) *Impartial and diligent performance of official duties.*

(a) A hearing or appeals officer shall perform diligently all official duties.

(b) A hearing or appeals officer shall provide to every person who has a legal interest in a proceeding, and to that person's lawyer or other representative authorized by law, the right to ~~[be heard according to law]~~ present evidence and argument in support of their case.

~~[c] The Hearing or Appeals Officer shall comply with all applicable statutes, codes and ethical rules that define and regulate ex parte contacts as they relate to any matter before the Hearing or Appeals Officer.]~~

(c) A hearing or appeals officer shall not engage in inappropriate ex-parte contact with any party in a proceeding before him.

(d) Inappropriate ex-parte contact is defined as follows:

(1) Contact with a hearing or appeals officer by a party to a proceeding, concerning the merits of the proceeding, outside the presence of the other party or parties.

~~[e]~~(e) A hearing or appeals officer may communicate ex-parte when circumstances require for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided that the hearing or appeals officer reasonably believes that no party will gain a procedural or tactical advantage as a result of ex-parte communication.

~~[e]~~(f) A hearing or appeals officer shall promptly disclose to the parties any communication not otherwise prohibited by this rule that will or reasonably may influence the outcome of an adversary proceeding. At a minimum, the disclosure shall identify the person with whom the communication occurred and the substance of the communication and the hearing or appeals officer shall give the parties a reasonable opportunity to respond to the information disclosed.

~~[(g)]~~ (g) A hearing or appeals officer shall not, while a proceeding is pending in any forum within the hearing or appeals officer's jurisdiction make any public comment that might reasonably be expected to affect the outcome or impair the fairness of the proceeding. This rule shall not prohibit a hearing or appeals officer from making public statements in the course of official duties, from explaining for public information the procedures of the forum, from establishing a defense to a criminal charge or civil claim against the hearing or appeals officer, or from otherwise responding to allegations concerning the hearing or appeals officer's conduct in the proceeding.

**The following paragraph has been moved to the new sub section 3 paragraph c.**

~~[(g)]~~ Except as provided in (b) herein, a hearing or appeals officer shall disqualify himself in a proceeding in which the hearing or appeals officer's impartiality reasonably may be questioned, including but not limited to instances when:

- ~~1. The hearing or appeals officer has a bias or prejudice concerning a party, a representative, or any other participant in the proceeding before the hearing or appeals officer, or has knowledge, obtained from sources outside the proceeding, of disputed evidentiary facts concerning the proceeding;~~
- ~~2. The hearing or appeals officer served as a lawyer in the matter in controversy, or a lawyer with whom the hearing or appeals officer previously was associated served during the period of association as a lawyer in the matter, or the hearing or appeals officer or the lawyer has been a material witness in the matter;~~
- ~~3. The hearing or appeals officer knows that the hearing or appeals officer individually or as a personal representative, trustee, conservator or guardian, or the hearing or appeals officer spouse, or any other person residing in the hearing or appeals officer household has a financial interest in the subject matter of the controversy, is a party to the proceeding or has any other interest that could be substantially affected by the outcome of the proceeding. A financial interest exists when the decision regarding the subject in controversy may substantially affect the value of a legal or equitable interest owned by the hearing or appeals officer, the hearing or appeals officer's spouse, or residents of the hearing or appeals officer's household other than ownership interests in mutual or common investment funds, insurance policies or mutual savings associations.]~~

(h) The rules concerning ex-parte communication may be relaxed in cases where the parties are engaged in mediation before the Hearings Division.

(i) A hearing or appeals officer shall be faithful to the law and shall decide matters on the basis of the facts ~~[and]~~, applicable law and Supreme Court precedence.

(j) A hearing or appeals officer shall not be swayed by partisan interests, public clamor or fear of criticism.

(k) A hearing or appeals officer shall maintain order and decorum in proceedings before the hearing or appeals officer.

(l) A hearing or appeals officer shall be swayed by personal relationships, friendships, or other personal associations.

(m) A hearing or appeals officer shall not act in a way that the hearing or appeals officer knows, or reasonably should know, would be perceived by a reasonable person as biased or prejudiced toward any of the litigants, witnesses, lawyers or members of the public.

(3) *Disqualification of a hearing officer or appeals officer*

~~[2.g](a) [Except as provided in (b) herein,] A hearing or appeals officer shall disqualify himself in a proceeding in which the Hearing or Appeals Officer's impartiality may be reasonably~~

~~[may be] questioned[.], [including but not limited to instances when:]~~

~~[2.g.1](b) [the] A hearing or appeals officer shall disqualify himself when he has a bias or prejudice concerning a party, a representative, or any other participant in the proceeding before the hearing or appeals officer, or has knowledge, obtained from sources outside the proceeding, of disputed evidentiary facts concerning the proceeding[.]. A hearing or appeals officer shall disclose any relationship or affiliation if such relationship or affiliation may create the appearance of impropriety or impartiality.~~

~~[2.g.2](c) [the] A hearing or appeals officer shall disqualify himself when he has served as a lawyer in the matter in controversy, or a lawyer with whom the hearing or appeals officer previously was associated served during the period of association as a lawyer in the matter, or the hearing or appeals officer or the lawyer has been a material witness in the matter[.].~~

~~[2.g.3](d) [the] A hearing or appeals officer shall disqualify himself when he [knows that the hearing or appeals officer] individually or as a personal representative, trustee, conservator or guardian, or the hearing or appeals officer spouse, or any other person residing in the hearing or appeals officer household has a financial interest in the subject matter of the controversy, is a party to the proceeding or has any other interest that could be substantially affected by the outcome of the proceeding. [A financial interest exists when the decision regarding the subject in controversy may substantially affect the value of a legal or equitable interest owned by the Hearing or Appeals Officer, the Hearing or Appeals Officer's spouse, or residents of the Hearing or Appeals Officer's household other than ownership interests in mutual or common investment funds, insurance policies or mutual savings associations;~~

~~2.g.4](e) [The] A hearing or appeals officer shall disqualify himself when his [the hearing or appeals officer's] spouse, parent or child wherever residing, or any other person residing in the hearing or appeals officer's household:~~

~~[2.g.4.I](1) Is a party to the proceeding or an officer, director, partner or trustee of a party;~~

~~[2.g.4.II](2) Is acting as a lawyer in the proceeding; or~~

~~[2.g.4.III](3) Is to the hearing or appeals officer's knowledge, likely to be a material witness in the proceeding.~~

~~[2.g.5](f) A hearing or appeals officer who may be disqualified under subsections (3) and (4) of this section may continue to hear the case under the following conditions:~~

~~[2.g.5.I](1) [The] A hearing or appeals officer fully discloses to the parties the basis for the disqualification; and~~

~~[2.g.5.II](2) After the disclosure, all parties agree in writing or on the record of the proceeding that the hearing or appeals officer can continue.~~

**The following have been moved to and combined with subsection 2 as paragraphs i, j, k and m.**

~~[h) A Hearing or Appeals Officer shall be faithful to the law and shall decide matters on the basis of the facts and applicable law.~~

~~(i) A Hearing or Appeals Officer shall not be swayed by partisan interests, public clamor or fear of criticism.~~

~~(j) A Hearing or Appeals Officer shall maintain order and decorum in proceedings before the Hearing or Appeals Officer.~~

~~(k) A Hearing or Appeals Officer shall not act in a way that the Hearing or Appeals Officer knows, or reasonably should know, would be perceived by a reasonable person as biased or prejudiced toward any of the litigants, witnesses, lawyers or members of the public.]~~

~~[3]~~(4). *Minimizing the risk of conflict with official obligations.*

*(a) A hearing or appeals officer shall not serve as an officer, director, trustee or advisor of a private or public corporation or of an educational, religious, charitable, fraternal, political or civic organization if the corporation or organization recurrently participates in proceedings that would ordinarily come before the hearing or appeals officer.*

*(b) A Hearing or Appeals Officer shall not use his or her official position to solicit funds for any private or public corporation or for any educational, religious, charitable, fraternal, political or civic organization or permit the use of the prestige of the office for that purpose, but may be an officer, director or trustee of such an organization. ~~[This rule does not prohibit a hearing or appeals officer from assisting an organization or governmental agency devoted to improvement of the law, legal education, the legal system or the administration of justice in raising, managing or investing funds nor does it prohibit the hearing or appeals officer from making recommendations to public and private granting agencies on projects and programs concerning the law, legal education, the legal system and the administration of justice.]~~*

*(c) Nonpublic information acquired by a hearing or appeals officer in an official capacity shall not be used or disclosed for any purpose not related to official duties. A hearing or appeals officer shall comply with applicable law and rules regulating confidential information.*

*(d) Neither a Hearing or Appeals Officer, nor a member of the family residing in the Hearing or Appeals Officer's household, shall accept a gift, bequest, or loan from any individual or legal entity who has a significant interest in a matter that is or will be pending before the Hearing or Appeals Officer.*

**Sec. 4. *Filing of complaint for violation of hearing officer and appeals officer code of conduct.***

*1. A person who wishes to complain that a hearings or appeals officer has violated the Code of Conduct contained in Section 3 of this regulation, shall submit a written complaint to the senior appeals officer. The senior appeals officer will investigate the complaint and notify the complaining person about the result of the investigation within 60 days after the complaint was received.*

*(a) A hearing officer who negligently or carelessly violates any of the provisions above shall be subject to disciplinary action up to and including suspension without pay.*

*(b) A hearing officer who knowingly or willfully violates any of the provisions above shall be subject to disciplinary action up to and including termination.*

*(c) Should an appeals officer violate any of the provisions above, the Senior Appeals Officer shall report such conduct to the Governor.*

**Sec. 5.** NAC 616C.091 is hereby amended to read as follows:

**Notice of determination to accept or deny claim.**

After receipt of a claim for compensation, the insurer shall give written notice of its determination to accept or deny the claim to the injured employee or his dependents and, if the injured employee's employer is not self-insured, to the injured employee's employer. *The acceptance of a claim will not constitute the denial of a condition unless the provisions herein are met.*

If the insurer denies the claim, *or any part thereof;*

1. The insurer shall, pursuant to NRS 616C.065, notify the Administrator of the denial.
2. The notice of denial to the injured employee or his dependents must include:
  - (a) A written statement of the right to request a hearing on the matter before a hearing officer and a form for requesting a hearing; and
  - (b) ~~[The reason for the denial.]~~ *A clear and specific statement concerning the scope of acceptance and or denial of any claim or part of claim.*
3. The insurer shall provide a copy of each notice of denial it gives pursuant to subsection 2 to the injured employee's treating physician or chiropractor.
4. The notice of denial required to be given to the Administrator pursuant to subsection 1 must include:
  - (a) A copy of the notice of denial given to the injured employee or his dependents; and
  - (b) A copy of Form C-4, Employee's Claim for Compensation/Report of Initial Treatment, that was completed by the injured employee or his dependents.
5. Each notice of denial must be given within the time prescribed in NRS 616C.065.

**Sec. 6.** NAC 616C.269 is hereby amended to read as follows:

1. **Hearing officer: Training** ~~[in mediation and other techniques for resolution of disputes.]~~  
~~[H]~~ *a. In order to assist the hearing officers in improving their personal and professional skills and to enhance their ability to help resolve disputes before them, the division shall develop in-house training programs to aid in this process. In addition, a hearing officer must successfully complete [such training in mediation and other techniques for the resolution of disputes as may be required by the Chief of the Hearings Division of the Department of Administration.] annually, at least five hours of training [in mediation and other techniques for the resolution of disputes, workers compensation law and practice, including training in the provisions of chapters 616A to 617 of NRS, writing, evidence ethics, administrative law or similar topics as] approved by the senior appeals officer. Such training may include, but is not limited to, the following:*
  - (1) *Adjudicating administrative law hearings;*
  - (2) *Worker's Compensation law and practice pursuant to chapters 616C to 617 of the Nevada Revised Statutes;*
  - (3) *Techniques of mediation and dispute resolution;*
  - (4) *Current Supreme Court cases and legislative changes, and;*
  - (5) *Courses such as writing, evidence, ethics, or similar subjects as approved by the senior appeals officer.**Excess hours earned in one year may be carried over for the following year.*

~~[2]~~ b. The senior appeals officer will review the past experience of a newly appointed hearing officer to determine what training may be required immediately for that particular officer and develop a plan for such training after consulting with the officer.

2. Appeals Officer: Training

~~[1]~~ a. In order to assist the appeals officers in improving their personal and professional skills and to enhance their ability to help resolve disputes before them, the division shall develop in-house training programs to aid in this process. In addition, ~~[Each]~~ an appeals officer ~~[shall]~~ must successfully complete ~~[training]~~ 10 hours of training required by the senior appeals officer.] Such training ~~[will]~~ may include, ~~[at least ten hours of training annually in subjects related to adjudicating administrative law hearings, including workers compensation law and practice, training in the provisions of chapters 616C to 617 of NRS administrative law and procedures, writing, dispute resolution and mediation, ethics, evidence or similar subjects approved by the senior appeals officer.]~~ but is not limited to, the following;

- (1) Adjudicating administrative law hearings;
- (2) Worker's Compensation law and practice pursuant to chapters 616C to 617 of the Nevada Revised Statutes;
- (3) Techniques of mediation and dispute resolution;
- (4) Current Supreme Court cases and legislative changes, and;
- (5) courses such as writing, evidence, ethics, or similar subjects as approved by the senior appeals officer.

Excess hours earned in one year may be carried over for the following year.

~~[2]~~ b. To meet the requirements of this section, the senior appeals officer may approve courses attended by an appeals officer to meet the requirements of the State Bar of Nevada for continuing legal education and courses offered by the National Judicial College or the National Association of Administrative Law Judiciary.

~~[3]~~ c. The senior appeals officer will review the past experience of a newly appointed appeals officer to determine what training may be required immediately for that particular officer and develop a plan for such training after consulting with the officer.

Sec. 7. NAC 616C.270 is hereby amended to read as follows:

**Appeal to hearing officer.**

Any claimant who is aggrieved by any final determination of the insurer or the insurer's staff may appeal from the decision to a hearing officer. *The claimant shall file a copy of the determination letter with his request for hearing.*

**Sec. 8. Failure to submit determination letter; dismissal**

1. Except for an appeal of a failure to respond to a request, if a hearing officer receives a request for hearing which does not include a copy of the determination letter, the hearing officer shall order the person appealing to submit that letter within 15 days of the order.
2. If the determination letter or proof that a determination letter has been requested from the insurer or third-party administrator, is not filed within the time required by the order, the appeal will be dismissed without prejudice in a written order for failure to pursue the appeal pursuant to NAC 616C.279.

3. ~~Except as provided in subsection 2, a~~ A hearing will not be scheduled until the hearing officer receives the determination letter.

4. If a claimant requests a copy of the determination letter from the insurer or third-party administrator in order to comply with the terms of this section, the insurer or third-party administrator must provide the determination letter within 10 days of the date of the request. If the insurer or third-party administrator fails to provide the determination letter to the claimant, the hearing officer shall issue an order to the insurer or third-party administrator to provide a copy of the determination letter to the hearing officer. Upon receipt of the determination letter the hearing officer shall schedule the matter for hearing.

**Sec. 9.** NAC 616C.274 is hereby amended to read as follows:

**Form for requesting hearing before Hearing Officer or for notice of appeal; information required to be provided by insurer or third-party administrator.**

1. A request for a hearing before a hearing officer or a notice of appeal filed with the Hearings Division of the Department of Administration must be filed:

(a) On a form provided by an insurer, an organization for managed care or the Hearings Division; or

(b) On a similar form approved by the Department of Administration.

2. An insurer or the third-party administrator for an insurer shall provide the following information on each form used to request a hearing:

(a) The name and last known mailing address of the claimant;

(b) The name under which the employer was doing business at the time of the injury and the last known mailing address and telephone number of the employer;

(c) If the insurer is a self-insured employer:

(1) The name, address and telephone number of the self-insured employer; and

(2) The name, address and telephone number of the third-party administrator of the self-insured employer, if any.

~~(I)~~ The number of the claim; *and*

~~(II)~~ The date of injury; ~~and~~

~~(III) If the request is for a hearing before a hearing officer, a copy of the letter of determination of the insurer or, if such a copy is unavailable, the date of the determination of the insurer and the issues stated in the determination.]~~

**Sec. 10. Unanswered written requests.**

1. If an insurer fails to respond to a claimant's written request within 30 days, the claimant may thereafter:

(a) File a ~~request~~ ~~for~~ hearing within 70 days of the date the unanswered request was mailed to the insurer; or

(b) Resubmit the unanswered written request to the insurer for determination.

2. The failure to file a request for hearing within the period specified under NRS 616C.315(3) does not preclude a claimant from resubmitting an unanswered written request to the insurer for determination by the insurer.

Sec. 11. NAC 616C.2745 is hereby amended to read as follows:

**Hearing on decision concerning accident benefits made by organization for managed care.**

~~[A hearing or]~~ An appeals officer shall not convene a hearing on a dispute that is required to be submitted to a procedure for resolving disputes pursuant to NRS 616C.305 until a final decision is rendered pursuant to that procedure or the dispute is not resolved pursuant to that procedure within 14 days after it was submitted.

Sec. 12. is hereby moved to and combined with Sec. 6

~~[Appeals Officer: Training~~

~~1. Each appeals officer shall successfully complete training required by the senior appeals officer. Such training will include at least ten hours of training annually in subjects related to adjudicating administrative law hearings, including workers compensation law and practice, training in the provisions of chapters 616C to 617 of NRS administrative law and procedures, writing, dispute resolution and mediation, ethics, evidence or similar subjects approved by the senior appeals officer. Excess hours earned in one year may be carried over for the following year.~~

~~2. To meet the requirements of this section, the senior appeals officer may approve courses attended by an appeals officer to meet the requirements of the State Bar of Nevada for continuing legal education and courses offered by the National Judicial College or the National Association of Administrative Law Judiciary.~~

~~3. The senior appeals officer will review the past experience of a newly appointed appeals officer to determine what training may be required immediately for that particular officer and develop a plan for such training after consulting with the officer.]~~

Sec. 13. NAC 616C.275 is hereby amended to read as follows:

**Procedure for submission of contested claim directly to Appeals Officer; objection to submission.**

1. Parties to a contested claim who wish to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer must:

(a) If a request for a hearing before a hearing officer has been filed, submit to the hearing officer a written stipulation to forego the hearing before the hearing officer.

(b) If a request for a hearing before a hearing officer has not been filed, submit to a hearing officer a request for a hearing and a written stipulation to forego the hearing before the hearing officer.

2. The written stipulation required by subsection 1 must be:

(a) Filed with the hearing officer ~~[no later than 10 days before the scheduled hearing;]~~ and

(b) Signed by:

(1) The claimant's legal counsel;

(2) The insurer *or third-party administrator*; and

(3) The employer, if the employer has notified the parties or the Hearings Division of the Department of Administration that he will participate in the contested claim.

~~[3. If a contested claim is submitted directly to an appeals officer pursuant to a written stipulation of the claimant and insurer and the employer objects thereto, the employer must file with the appeals officer a written objection to the stipulation within 15 days after receipt of the order submitting the contested claim to the appeals officer. The appeals officer shall rule on the objection within 10 days after receipt of the objection. If the appeals officer~~

~~determines that the submission of the contested claim directly to an appeals officer is not appropriate, he shall remand the contested claim to a hearing officer. If the appeals officer determines that the submission of the contested claim directly to an appeals officer is appropriate, he shall schedule a hearing pursuant to subsection 5 of NRS 616C.345.]~~

**Sec. 14.** NAC 616C.2755 is hereby amended to read as follows:

**Assistance in interpreting English language during proceedings.**

1. A party, other than a ~~handicapped person~~ *person with a disability*, who requires assistance in interpreting the English language during any hearing held before a hearing officer ~~must~~ *shall* arrange for such assistance, at no cost to the Hearings Division of the Department of Administration, before the scheduled hearing.
2. A party who requires assistance interpreting the English language ~~during any proceeding before an appeals officer~~ *for purposes of presenting testimony before an appeals officer* must notify the appeals officer in writing at least 10 days before the hearing that such assistance is required. *The notice must include an affirmation that the party requesting interpretive assistance intends to present testimony at the hearing and that the testimony is necessary to establish an element of his appeal before the appeals officer.* The appeals officer shall appoint an interpreter and arrange for him to ~~attend~~ *interpret testimony at* the hearing at no cost to the party who requires such assistance.
3. As used in this section, ~~“handicapped person”~~ *“person with a disability”* has the meaning ascribed to it in NRS 50.050.

**Sec. 15.** NAC 616C.276 is hereby repealed and re-enacted under NAC 616C.277

~~[NAC 616C.276 Purposes for prehearings.~~

- ~~— A prehearing may be held for:~~
- ~~— 1. Speeding up the pending case.~~
- ~~— 2. Hearing motions.~~
- ~~— 3. Mediating a settlement.~~
- ~~— 4. Submittal of documentary evidence.~~
- ~~— 5. Narrowing issues.~~
- ~~— 6. Setting a convenient date for the main hearing.~~
- ~~— 7. Any other purpose which would facilitate the proceedings.]~~

**Sec. 16.** NAC 616C.277 is hereby amended to read as follows:

**Scheduling of prehearing conferences by Appeals Officer.**

1. An appeals officer may schedule a prehearing conference in any appeal filed to discuss settlement, discovery, scheduling, or other matters pertinent to the appeal and may enter any order relating to those matters.  
~~[2. If an appeals officer is requested pursuant to subsection 6 of NRS 616C.345 to schedule a hearing within 60 days or more than 90 days after the date the notice of appeal is filed, the appeals officer may consider the request at any prehearing conference scheduled pursuant to subsection 1.]~~
2. *A prehearing may be held for:*
  - (a) Speeding up the pending case.*
  - (b) Hearing motions.*
  - ~~*(c) Mediating a settlement.]*~~

- ~~[(c)]~~ *Submittal of documentary evidence.*
- ~~[(d)]~~ *Narrowing issues.*
- ~~[(e)]~~ *Setting a convenient date for the main hearing.*
- ~~[(f)]~~ *Any other purpose which would facilitate the proceedings.*

**Sec. 17. Scheduling of mediation conference by appeals officer.**

- 1. An appeals officer may schedule a mediation conference where a request has been filed by a party or on his own order.*
- 2. When a mediation conference does not result in a resolution of the matter, the appeals officer shall, upon a motion of either party, have the matter reassigned to another appeals officer.*

**Sec. ~~[(7)]~~ 18.** NAC 616C.279 is hereby amended to read as follows:

**Failure of party to appear.**

1. If a party who appeals fails to appear after due notice has been given and good cause is not shown for the failure to appear, the hearing officer or appeals officer may dismiss the case with prejudice.
- 2. An appeals officer may dismiss with prejudice an appeal by ~~[an insurer, third-party administrator or employer]~~ a party who received notice of a hearing before a hearing officer and failed to appear or participate in the hearing before the hearing officer and who failed to show good cause for their failure to appear.*

**Sec. ~~[(8)]~~ 19.** NAC 616C.282 is hereby amended to read as follows:

**Failure to comply with regulations.**

If a party or his counsel *or representative* fails or refuses to comply with NAC 616C.274 to NAC 616C.336, inclusive, the hearing or appeals officer may make such orders as are necessary to direct the course of the hearing, including, but not limited to, the following:

1. Continue the hearing until the party, counsel or representative complies with the requirements.
2. Restrict or prohibit the introduction of evidence.
3. Dismiss the matter.
- 4. If the failure is by a licensed representative, refer the matter to the senior appeals officer of the division for ~~[revocation of any license granted]~~ appropriate action pursuant to NAC 616C.350 to NAC 616C.377, inclusive.*
- 5. If the failure is by an insurer or third-party administrator, refer the matter to the Insurance Commissioner for appropriate action.*
- 6. If the failure is by an attorney, refer the matter to the State Bar of Nevada for appropriate action.*

**Sec. ~~[(9)]~~ 20.** NAC 616C.288 is hereby repealed

~~[NAC 616C.288 Appeal from decision of Chief. NRS616C.310~~

~~—An appeal by an insurer from a decision of the Chief of the Industrial Insurance Regulation Section must be made by filing a notice of appeal with an appeals officer within 30 days after the date of service of the Chief's decision.]~~

Sec. ~~[20]~~ 21. NAC 616C.291 is hereby amended to read as follows:

**Filing and service of documents.**

1. Filing occurs when the original document is received by and is in the actual physical custody of the ~~[agency or officer with whom the document must be filed]~~ *Hearings Division of the Department of Administration*. A document may not be filed by facsimile. If a document is received by facsimile, the document will be accepted and the date of receipt stamped on the document. If a document is received by facsimile and the original of the document is received within 3 business days after it is received by facsimile, the original will be stamped with the date it is received, but shall be deemed filed on the date the facsimile was received.

~~[Documents required to be filed as provided for in NAC 616C.297(1)(a) and NAC 616C.300(2)]~~ *Hearing or appeal evidence packets or documents of any nature over 5 pages may not be filed by facsimile unless otherwise ordered or approved in advance by a hearing or appeals officer.*

2. *Parties may file documents with the division by e-mail. All documents filed by e-mail shall be sent with an acknowledgement of receipt attached to be deemed received by the division. All documents sent by e-mail shall be copied to the hearing or appeals officer's secretary and all parties to the case.*

~~[2]~~ 3 Except as otherwise provided in subsection 5 of NRS 616C.345, if service is to be made upon a party represented by counsel or by a licensed representative the service must be made upon counsel or the licensed representative unless service upon the party is ordered by the appeals officer.

~~[3]~~ 4 Except as otherwise provided in subsection 6, service upon counsel or upon a party must be made by delivering or mailing a copy of the document to the counsel or the party at his last known address or, if the address is not known, by leaving the copy at the office of the hearing or appeals officer.

~~[4]~~ 5 Delivery of a copy of the document is made by:

- (a) Handing it to the party or his counsel;
- (b) Leaving it at the office of the party or his counsel with a clerk or other person in charge thereof or, if there is no one in charge, leaving it in a conspicuous place therein; or
- (c) Leaving it at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion residing therein.

~~[5]~~ 6 Service by mail is complete upon mailing. Any document served by mail shall be deemed received 3 days after it is mailed.

~~[6]~~ 7 If requested by a party or his counsel, the Hearings Division of the Department of Administration will serve a document upon the party or his counsel by placing the document in a folder maintained for that purpose at the Division's office. If such a folder is maintained by the Division, it will be available for inspection by the party or his counsel during the regular business hours of the Division. A document served pursuant to this subsection shall be deemed received 3 days after the document is placed in the party's folder.

Sec. ~~[21]~~ 22. NAC 616C.297 is hereby amended to read as follows:

**Requirements for filing and service of information.**

1. Within the times prescribed in subsection 2, all parties shall file with the appeals officer and serve upon all other parties:

- (a) All documents to be introduced as evidence at the hearing;
- (b) A statement of the issues to be raised;

- (c) A list of witnesses, a brief summary of proposed testimony, and a statement whether any of the testimony is to be taken by use of the telephone; and
  - (d) An estimate of the length of time required to present the case, including rebuttal testimony and argument.
2. Except as otherwise provided in [NAC 616C.305](#) or as otherwise ordered by an appeals officer after any prehearing conference conducted by the appeals officer, the materials required under subsection 1 must:
- (a) Be filed by the appellant at least 14 days before the scheduled hearing;
  - (b) Be filed by a respondent at least 7 days before the scheduled hearing;
  - (c) Include a comprehensive index; and
  - (d) Include pages that are separately numbered. ~~[-; and~~
  - ~~(e) Be accompanied by a cover sheet approved by the Hearings Division of the Department of Administration, with no other attachments.]~~

**Sec. ~~[22]~~ 23.** NAC 616C.303 is hereby amended to read as follows:

**Papers and documents.**

- 1. Papers and documents filed pursuant to [NAC 616C.282](#) to [NAC 616C.336](#), inclusive, need not conform to any particular format.
- 2. All papers and documents and copies thereof must be legible.
- 3. A party shall furnish to the counsel for any other party, or to the party if he is not represented by counsel, copies of all papers and document served upon any party or filed with the appeals officer.
- 4. Papers and documents offered as evidence, except for good cause shown, must not be marked with highlighting, underlining, any annotations, or other device that serves to draw attention to one part of the document over another part or one document over another document or to comment on the contents of the document.
- 5. Documents submitted to the hearing or appeals officer shall have social security numbers redacted as required by NRS 239B.030.*
- 6. Documents containing social security numbers or other identifying information prohibited by NRS 239B.030 submitted to an appeals officer shall include an affirmation that the documents submitted ~~[do not contain social security numbers of any person]~~ have had the social security number or other identifying information redacted.*
- 7. Documents containing social security numbers or other identifying information prohibited by NRS 239B.030 submitted without such an affirmation will not be accepted into evidence in any proceeding before the appeals officer.*

**Sec. ~~[23]~~ 24.** NAC 616C.305 is hereby amended to read as follows:

**Request or application to permit discovery by deposition or interrogatories.**

- 1. A party who wishes ~~[a hearing or]~~ *an* appeals officer to permit discovery by deposition or interrogatories must request such discovery at any prehearing conference held in the matter or submit a written application to that appeals officer at least 30 days before the hearing. The application must:
  - (a) Set forth the reason why the discovery is necessary; and
  - (b) Be accompanied by the appropriate orders for discovery.
- 2. The ~~[hearing or]~~ appeals officer shall approve or deny the application within 5 days after the receipt of the application.

Sec. ~~[24]~~ 25. NAC 616C.307 is hereby amended to read as follows:

**Evidence recorded on videotape, *digital recording, or other electronic media.***

1. A party who wishes to introduce evidence *before an appeals officer* that is recorded on videotape, *digital recording or other electronic media* must submit to the ~~[hearing or]~~ appeals officer a written request therefore and a summary of the evidence so recorded in the statement of the issues to be raised at the hearing at least 14 days before the hearing or as otherwise allowed by the ~~[hearing or]~~ appeals officer.
  2. The ~~[hearing or]~~ appeals officer shall grant or deny the request within 5 days after the receipt of the request.
  3. The party requesting the introduction of such evidence shall:
    - (a) At least 14 days before any hearing, or as otherwise allowed by the ~~[hearing or]~~ appeals officer, provide an unedited copy of the evidence to the opposing party free of charge; *and if requested by the appeals officer;*
    - b) Provide all equipment necessary to display the videotape, *digital recording or other electronic media* at the hearing.
- (4) The deadlines provided herein for submitting electronic media to the appeals officer do not apply in proceedings before the hearing officer.*

Sec. ~~[25]~~ 26. NAC 616C.312 is hereby amended to read as follows:

**General requirements for motions.**

1. All motions, except those made during the hearing, must be filed with the appeals officer and a copy thereof served by the moving party upon all other parties.
  2. Within 10 days after the service of a motion, an opposing party may serve and file its written opposition thereto.
- ~~[3. The moving party may serve and file a reply within 5 days after service of the opposition to the motion.]~~
- ~~[4.]~~ 3 Points and authorities may be filed with the motion.
- ~~[5.]~~ 4 All motions are submitted for decision:
- (a) Ten days after the filing of the motion if a written opposition is not filed;
  - (b) Five days after the filing of a written opposition; or
  - (c) At the time designated by the appeals officer if a hearing on the motion has been ordered.
- ~~[6.]~~ 5 The appeals officer may *by written order*, for good cause:
- (a) Change any times prescribed in this section; or
  - (b) Order a hearing on the motion.
- ~~[7.]~~ 6 All motions requesting the entry of an order must include alternate proposed orders approving and denying the motion.

Sec. ~~[26]~~ 27. *Consolidation of Cases before the Appeals Officer.*

1. *A party may request that an appeal of a hearing office decision be consolidated with a case pending before the appeals officer when:*
  - (a) *Both cases involve the same claim and the same parties;*
  - (b) *Both cases involve similar questions of fact or law; or*
  - (c) *Consolidation would reduce duplication and judicial effort.*
2. *The party requesting consolidation of an appeal of a hearing officer decision shall make the request in writing. ~~[and shall file the request at the same time that the request for Hearing before the Appeals Officer is filed.]~~*

3. *The request for consolidation must contain the following items:*
  - (a) *The name of the Appeals Officer to whom the party wishes to consolidate the new appeal, and*
  - (b) *The appeal numbers pending before the Appeals Officer.*
4. *The request for consolidation must be served as provided in NAC 616C.291 and NAC 616C.294 on all parties who appeared before the hearing officer.*
5. *The appeals officer assigned to the case where consolidation is sought shall approve or deny the request within 5 days.*

**Sec. ~~[27]~~ 28.** NAC 616C.315 is hereby amended to read as follows:

**Stay of decision of Hearing Officer.**

~~[1. An appeal from a decision of a hearing officer to an appeals officer does not stay the effectiveness of the decision of the hearing officer.]~~

~~[2]~~ 1 An application for a stay of a decision of a hearing officer must:

- (a) Be filed with an appeals officer;
- (b) Be served on all opposing parties;
- (c) Contain supporting points and authorities; and
- (d) Include alternate proposed orders approving and denying the application.

~~[3]~~ 2 A party opposing a stay ~~[must]~~ *may* file an objection with the appeals officer within 10 days after receipt of a copy of the application for a stay and serve a copy of the objection on all opposing parties.

~~[4]~~ 3. *An appeals officer shall not rule on a motion for stay until 10 days after the motion has been filed unless a response to the motion has been filed within that 10 day period.* The appeals officer may rule on the ~~[application]~~ *motion* without hearing or may schedule a hearing on the ~~[application]~~ *motion*.

**Sec. 28. *Retention of files when Judicial Review is sought.***

*When any party seeks judicial review the retention period for files of the appeals officer shall not begin to run until the matter has reached a final determination from the highest court in which review is sought.*

**Sec. 29.** NAC 616C.330 is hereby amended to read as follows:

**Records of hearings.**

1. Every hearing before an appeals officer must be ~~[reported]~~ *recorded* as provided in NRS 616C.360.

2. *The appeals office's recording of the hearing is the official record of the proceeding.*

3. After a transcript has been filed with the appeals officer, it is available for review in the office of the appeals officer by any ~~[interested person]~~ *party to the proceeding.*