

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R192-09

Effective July 1, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 284.065, 284.155, 284.376 and 284.390; §§2-5, NRS 281.641, 284.065, 284.155, 284.376 and 284.390.

A REGULATION relating to the State Personnel System; revising the process for selecting hearing officers in certain hearings; revising provisions governing practice before a hearing officer of the Department of Personnel; revising the standard for granting a continuance for certain hearings; and providing other matters properly relating thereto.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

1. For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the Director shall provide to each party to the claim:

(a) A list of three qualified hearing officers; or

(b) A list of five qualified hearing officers.

2. If the Director provides a list of:

(a) Three qualified hearing officers, each party may strike one name from the list; or

(b) Five qualified hearing officers, each party may strike two names from the list,

↪ and shall return the list with the remaining names to the Director not later than 10 days after receipt of the list.

3. *Except as otherwise provided in subsection 5, each person whose name is struck from the list pursuant to subsection 2 is ineligible to serve as a hearing officer in that claim.*

4. *Except as otherwise provided in subsection 5, the Director shall select a hearing officer for the hearing from among the persons whose names were not struck from the list pursuant to subsection 2.*

5. *If, for any reason, all of the hearing officers whose names were not struck from the list pursuant to subsection 2 are unqualified or otherwise unavailable to serve as a hearing officer for the hearing, the Director may provide a new list of hearing officers to the parties in the manner provided in this section or may select any qualified hearing officer who is available to serve as a hearing officer in the hearing.*

Sec. 2. NAC 284.774 is hereby amended to read as follows:

284.774 1. NAC 284.774 to 284.818, inclusive, ~~[governs]~~ *and section 1 of this regulation govern* hearings in all cases relating to dismissals, suspensions, demotions and involuntary transfers before the hearing officer ~~[]~~ *and hearings for a written appeal filed pursuant to NRS 281.641.*

2. ~~[The]~~ *Except as otherwise provided in subsection 3, the* hearing officer ~~[may modify or alter]~~ *shall use* the hearings procedures established in NAC 284.774 to 284.818, inclusive, *and section 1 of this regulation and any hearings procedures provided by the Department of Personnel* if ~~[experience and circumstances indicate such action and]~~ interested parties have proper notice of any procedural changes or are not prejudiced thereby. *A copy of the hearings procedures is available by contacting the Department of Personnel at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.*

3. Each hearing officer may ~~[from time to time]~~ adopt supplementary rules governing practice before him not inconsistent with ~~[NAC 284.774 to 284.818, inclusive.]~~ *the provisions of subsection 2. The supplementary rules must be made available, in writing, to all parties not less than 5 business days before a hearing.*

Sec. 3. NAC 284.778 is hereby amended to read as follows:

284.778 **1.** A request for an appeal ~~[and other pertinent communications directed to the hearing officer]~~ must be addressed to the Director.

2. *A copy of any written communication directed to a hearing officer must be sent to the Hearing Clerk of the Department of Personnel.*

3. *A party shall not communicate with a hearing officer regarding the merits of a case:*

(a) Except in the presence of all parties to the hearing; or

(b) Unless all parties to the hearing are notified of the communication in advance.

4. *Unless otherwise agreed upon in writing by all parties, an offer or demand of settlement made by a party must not be disclosed to or proposed by a hearing officer before the issuance of a final decision by the hearing officer.*

Sec. 4. NAC 284.786 is hereby amended to read as follows:

284.786 **1.** Hearings may be continued beyond the period originally scheduled or recessed until a future date which is agreeable to the hearing officer and the parties if good cause is shown.

2. *A party may request a continuance not later than 5 business days before the date of the scheduled hearing by filing a written motion or stipulation with the hearing officer. Notice of the motion or stipulation and a copy of the motion or stipulation must be sent to each party to the hearing and to the Department of Personnel.*

3. A party may contest a request for a continuance submitted by another party by filing a written motion with the hearing officer not later than 2 business days after receiving the notice of the request for a continuance. Notice of the motion and a copy of the motion must be sent to each party to the hearing and to the Department of Personnel.

4. A hearing officer shall not grant a continuance requested on the day of a scheduled hearing, unless:

(a) The hearing officer, any party, the legal counsel for a party or a primary witness cannot attend the hearing because of an emergency;

(b) The hearing exceeds the time allotted for the day; or

(c) The hearing officer recesses the hearing until a future date.

5. If a hearing officer recesses a hearing until a future date pursuant to a request for a continuance which is filed on the day of the scheduled hearing, the hearing must be held not later than 20 business days after the date of the request for a continuance, unless there is a conflict with the schedule of the hearing officer.

Sec. 5. This regulation becomes effective on July 1, 2010.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE NO. R192-09**

The following statement is submitted for amendments to Nevada Administrative Code (NAC) 284.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notice of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the website of the Department of Personnel (DOP), <http://dop.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

Department of Personnel Blasdel Building 209 E. Musser St Carson City, NV 89701	Grant Sawyer State Office Bldg. 555 E. Washington Blvd Suite 4401 Las Vegas, NV 89101
Nevada State Library and Archives 100 Stewart St Carson City, NV 89701	Capitol Building Main Floor Carson City, NV 89701
Legislative Building 401 S. Carson St Carson City, NV 89701	Gaming Control Board 1919 College Parkway Carson City, NV 89701

Attached are excerpts from the minutes from the workshop that apply to this regulation.

A public hearing by the Nevada Personnel Commission was held on May 21, 2010. There were no comments received from the public regarding this regulation.

2. The number of persons who:

- (a) **Attended each hearing:** May 21, 2010, Personnel Commission meeting (hearing), 38 attendees
- (b) **Testified at each hearing:** May 21, 2010, Personnel Commission meeting, 3 testified
- (c) **Submitted written comments:** None

3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were not solicited, as the regulation does not affect businesses.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Changes were made reflecting comments from Catherine Thayer to clarify that parties need to notify and address any additional motions to the Director of Personnel except when scheduling a hearing.

Due to Kareen Masters' comments about disclosure of settlements to a hearing officer, an amendment included "...*settlement made by a party must not be disclosed to or proposed by a hearing officer.*"

Although Catherine Thayer's suggestion to change the language in regards to written motions for continuance was included in the original draft, ultimately it was not included in the final revisions completed by the Legislative Counsel Bureau.

Catherine Thayer responded that 10 working days was not practical to conduct a hearing following a request for continuance; the language was changed to "*20 business days.*"

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

This regulation does not have a direct economic effect on either a regulated business or the public.

6. The estimated cost to the agency for enforcement of the adopted regulation:

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendment duplicates.

8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

This regulation does not include any provisions that are more stringent than any federal regulation.

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

No fees are associated with this regulation.

- 10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

This regulation is specific to State government agencies and has no impact on small businesses.