

**LCB File No. R134-03**

**PROPOSED REGULATION OF THE OFFICE  
OF THE LABOR COMMISSIONER**

(This proposed regulations was previously adopted as LCB File No. T003-02)

**NOTICE OF INTENT TO ACT UPON A REGULATION**

**NOTICE OF WORKSHOP AND HEARING FOR THE AMENDMENT OF REGULATIONS  
OF THE OFFICE OF THE NEVADA LABOR COMMISSIONER**

The Nevada Labor Commissioner will hold a public hearing at 9:00 a.m. on September 23, 2003 at 555 E. Washington Avenue, Room 4412, Las Vegas, Nevada with videoconferencing to Room 3137 of the Legislative Building, Capitol Complex, Carson City, Nevada. The purpose of the hearing is to solicit testimony from all interested persons regarding the amendment of regulations that pertain to Chapter 607 of NAC. Written comments will be received until October 5, 2003. The Labor Commissioner seeks to make permanent those regulations adopted as Temporary Regulations on September 4, 2002. The Labor Commissioner will issue a final order adopting the proposed regulations on October 6, 2003.

The Nevada Labor Commissioner will hold a public workshop at 9:00 AM, on September 22, 2003 in Room 2135 of the Nevada Legislative Building, 401 S. Carson St., Carson City, Nevada. The purpose of the workshop is to solicit comments and proposals from all interested persons regarding the amendment of regulations that pertain to Chapter 607 of NAC.

The following information is provided pursuant to the requirements of NRS 233B.0603:

**1. The need for and the purpose of the proposed regulation or amendment.**

Regulations are needed primarily to restructure the process for administrative proceedings, including contested cases, before the Labor Commissioner to more accurately reflect the administrative/regulatory/investigative nature of the agency while maintaining the notice and opportunity for a hearing in contested matters.

**2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.**

Subjects involved include:

- a. Proposed Definitions
  - 1) "Determination"
  - 2) "Party"

- b. Conduct of wage claim investigations by the Labor Commissioner; Determinations issued thereafter; objections related thereto.
- c. Inquiries and Investigations by the Labor Commissioner; Determinations issued thereafter; objections related thereto.
- d. Pleadings in cases before the Labor Commissioner.
- e. Conduct of hearings; Issuance of Opinions and Orders.
- f. Petitions for advisory opinions, declaratory orders and rulemaking
- g. Removal of references to apprenticeship provisions now covered by NAC Chapter 610.

**3. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

- a. **Adverse Effects:** No adverse effects are contemplated.
- b. **Beneficial Effects:** The new procedural regulations will mitigate the delays in resolving wage claims created by non-responsive parties and requiring parties to focus only on those issues that are in disagreement. Changing the underlying philosophy of the investigation and claim resolution processes from advocacy to fact-finding will help ensure a determination process that is fair to both employees and employers while providing an opportunity for all sides to respond and be heard.
- c. **Immediate effects:** Upon finalization of the proposed regulations, rules will be in effect that set forth how the Labor Commissioner's investigative determinations will be administered.
- d. **Long Term effects:** Long term, there should be a better regulatory climate that will benefit not only employers and the labor they employ, but also taxpayers in general. Claims will be processed in a more expeditious and focused manner. As a result, the agency will be able to invest the time saved into additional investigatory activities.

**4. The estimated cost to the agency for enforcement of the proposed regulation.**

It is not anticipated that the agency will see any increased costs as a result of these changes. As a result of increased efficiency and effectiveness, however, the per claim cost for enforcing the agency's regulations should be reduced. Reducing the number of hearings that are conducted when one or the other of the parties declines to participate will also reduce the agency's expense in that area.

**5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.**

The proposed regulations would not duplicate the regulations of any other state or federal agency and would eliminate the duplication that currently exists between NAC 607 and NAC 610, the regulations governing the State Apprenticeship Council.

**6. If the regulation is required pursuant to federal law, a citation and description of the federal law.**

While Nevada's wage and hour laws reflect many of the policies in federal law, the proposed regulations are not required pursuant to federal law.

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

The proposed regulations are not more stringent than federal regulations governing the same activities.

**8. Whether the proposed regulation establishes a new fee or increases an existing fee.**

The proposed regulation does not establish a new fee nor increases an existing fee.

Persons wishing to comment upon the proposed action of Office of the Labor Commissioner may appear at the scheduled public workshop or hearing or may address their comments, data, views, or arguments, in written form, to Terry Johnson, Nevada Labor Commissioner, 555 E. Washington Avenue Suite 4100, Las Vegas, Nevada 89101. Written submissions must be received by the Labor Commissioner on or before **October 5, 2003**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Labor Commissioner may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Labor Commissioner's website located at [www.laborcommissioner.com](http://www.laborcommissioner.com), at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada and 675 Fairview Drive, Suite 226, Carson City, Nevada, respectively, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of workshop and hearing has been posted at the following locations:

Office of the Labor Commissioner  
555 W. Washington Avenue Suite 4100  
Las Vegas, NV

Carson City District Courthouse  
885 E. Musser Street  
Carson City, NV

Grant Sawyer State Office Building  
(Lobby)  
555 E. Washington Avenue  
Las Vegas, NV

Legislative Building  
401 S. Carson Street  
Carson City, NV

Office of the Labor Commissioner  
675 Fairview Drive, Suite 226  
Carson City, Nevada 89701

State of Nevada Bradley Building  
2501 Sahara Avenue  
Las Vegas, NV

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
MICHAEL TANCHEK  
DEPUTY LABOR COMMISSIONER

LCB File No. R134-03

**PROPOSED REGULATION OF THE OFFICE  
OF THE LABOR COMMISSIONER**

EXPLANATION- Matter that is *italicized* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-48, NRS 607.160(1)(b), NRS 233B.040-050; §§2-9,15, NRS 607.170; §5 NRS 607.175; §§4-13,17,18,24-48, NRS 607.205; §§4,5,7,8,14,15,17,18,22-24,34-41,43-45,47, NRS 607.207; §§8,12,13,17-19,33,36,40,43,45, NRS 607.210; §§9-11,17, 18,47, NRS 607.215; §§10-12, NRS 233B.120; §13, NRS 233B.100.

Section 1. Chapter 607 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec.2. *“Determination” means a finding by the commissioner as to whether a violation has occurred or an interpretation as to the applicability of any statute or regulation enforced by the commissioner.*

Sec. 3. *“Party” means an applicant, petitioner, complainant, respondent or interested party granted standing pursuant to Section 18.*

Sec. 4. *Inquiries and Investigations by the Labor Commissioner.*

1. *Upon his own initiative, the commissioner may investigate possible violations of law in all matters relating to his duties.*

2. *If, after the inquiry or investigation has been completed, the commissioner concludes that a violation of any laws or regulations under his jurisdiction may have occurred, the commissioner shall issue a Determination to the employer or person who is the subject of the inquiry or investigation.*

3. *The Determination shall contain:*

*(a) a clear and plain statement of the nature of the violation(s), if any;*

*(b) the statute(s) or regulation(s) alleged to be violated;*

*(c) the relevant facts;*

*(d) any fines, penalties or other relief being proposed by the commissioner; and*

*(e) notice that the employer or person who is the subject of the inquiry or investigation may object to the Determination.*

4. *If the employer or person who is the subject of the inquiry or investigation does not object to the matters set forth in the Determination, he shall resolve the matter by forwarding any amounts due equal to fines, penalties or other relief being proposed by the commissioner.*

5. *If the employer or person who is the subject of the inquiry or investigation elects to object to the Determination, he shall notify the commissioner within 15 days that the Determination is being objected to and shall provide a short statement that identifies the specific findings within the Determination that are the cause of the objection and facts to substantiate the objection.*

6. *If the employer or person who is the subject of the inquiry or investigation fails to respond to the Determination, either by resolving pursuant to subsection 4 or objecting to the issues set forth in the issues set forth in the Determination, the Commissioner shall issue an Order affirming the Determination and serve a copy of the Determination and Order by certified mail on the person who is found to have committed the violation and any other person who filed a claim or complaint with the commissioner related to the investigation.*

7. *An Order issued by the commissioner pursuant to this subsection is deemed to be the final order of the commissioner on the matter.*

Sec. 5. *Claims for wages. Upon the filing of a claim for wages pursuant to NRS Chapter 608,*

1. *The commissioner shall review the claim to determine whether or not to take jurisdiction of the claim.*

2. *If, in the opinion of the commissioner, the complainant has the ability to employ private counsel or if insufficient information is submitted to substantiate the claim, the commissioner may decline to take jurisdiction of the claim or return the claim to the claimant for further information necessary to substantiate the claim.*

3. *If the commissioner elects to take jurisdiction of the claim, the commissioner shall issue a Notice of Claim for Wages to the employer that is the subject of the investigation.*

4. *The Notice of Claim for Wages shall set forth the claim of the employee and shall include the following*

- (a) name of the employer;*
- (b) name of the employee;*
- (c) a copy of the wage claim;*
- (d) identify the statutory provision alleged to have been violated;*
- (e) the hourly wage or commission rate claimed by the employee;*
- (f) the wages alleged to be owed to the employee;*
- (g) the basis by which the wages owed were calculated;*
- (h) any proposed penalties; and*
- (i) notice that the employer may object to the claim.*

5. *If the employer does not object to the claim, he shall settle the claim by forwarding to the commissioner for disbursement to the employee the amounts due the employee, including any penalties, as set forth in the Notice of Claim for Wages.*

6. *If the employer elects to object to the claim, he shall notify the commissioner in writing within 15 days that the claim is being objected to, provide the specific reasons upon which the claim is being objected to and facts that substantiate the reasons for the objection.*

7. *If the employer fails to respond to the Notice of Claim for Wages, either by settling or objecting to the claim, the claim shall be reduced to a Determination.*

8. *The commissioner will serve a copy of the Determination by certified mail on the person who is found to have committed the violation and any other person who filed a claim with the commissioner related to the investigation.*

Sec.6. *Investigations and Determinations of Claims for Wages. Upon receiving notice that a claim for wages is being objected to by an employer the commissioner shall commence an investigation into the facts and circumstances in dispute to determine whether a violation*

*of NRS Chapter 608 or associated regulations has occurred in the course of an employment relationship.*

*1. The commissioner may request any and all information deemed necessary to determine the facts of the dispute from any party to the dispute.*

*2. The failure of any party to provide any requested information in a timely fashion may result in that information being disregarded in any future proceeding concerning the claim.*

*3. Upon completing the investigation, the commissioner shall issue a Determination setting forth;*

*(a) the name of the employer;*

*(b) the name of the employee;*

*(c) identifying any statutory provisions relevant to the Determination;*

*(d) the wages due to the employee, if any;*

*(e) the basis on which the Determination was made;*

*(f) how any wages due were determined;*

*(g) any proposed penalties; and*

*(h) notice that the parties may object to and have the opportunity for a hearing on the Determination.*

*4. The commissioner will serve a copy of the Determination by certified mail on the person who is found to have committed the violation and any other person who filed a claim or complaint with the commissioner related to the investigation.*

#### *Sec. 7. Prehearing conferences*

*1. If any party disputes a claim or complaint, the Commissioner may require the parties to appear before him at a prehearing conference at a time and place designated by the Commissioner.*

*2. The parties may be represented by counsel at the prehearing conference.*

*3. The parties must present all evidence that substantiates their respective positions during the prehearing conference.*

*4. A prehearing conference conducted pursuant to this section may not be recorded.*

*5. Offers of settlement or any other matter discussed at the prehearing conference may not be used as an admission at a subsequent hearing and the parties will be informed as such at the beginning of the prehearing conference. This provision does not preclude evidence provided at the prehearing conference from being introduced in any subsequent proceeding.*

*6. At the prehearing conference, the parties shall make a good faith effort to resolve the matter through settlement or stipulation.*

*7. If the Commissioner determines that the matter cannot be resolved at the informal hearing, he will conduct a formal hearing to resolve the matter.*

#### *Sec. 8. Objections to Determinations of Claims for Wages.*

*1. A party who has been aggrieved by the Determination may file a written objection to the Determination with the commissioner within 15 days after the date of service of the Determination and request a hearing on the matter.*

*2. The objection must be accompanied by a short statement that identifies the specific findings within the Determination that are the cause of the objection and facts to substantiate the objection.*

*3. If the objection meets the requirements of subsections 1 and 2, or if the commissioner concludes that a hearing is merited on other grounds, the commissioner shall schedule a hearing on the Determination within ten days after the period for the objection has expired.*

*4. If an objection to the Determination*

*a. is not filed with the commissioner within the 15 day period for objection; or*

*b. does not meet the requirements of paragraph 2 above,*

*the commissioner shall issue an Order affirming the Determination.*

*c. The Order shall be the final order of the commissioner on the matter.*

*Sec. 8. Opinions and Orders of the Commissioner. After holding a hearing on a Determination issued by the commissioner, the commissioner will enter a Decision pursuant to NRS 607.215.*

*Sec. 9. Advisory opinion: Oral responses not binding. The commissioner will not render an oral advisory opinion or respond over the telephone to a request for an advisory opinion. An oral response or a response given over the telephone by a member of the commissioner's staff is not a decision or an advisory opinion of the commissioner.*

*Sec.10. Requests for Advisory Opinions.*

*1. Any interested person may request the commissioner to issue an advisory opinion concerning the applicability of a statute, regulation or decision of the commissioner.*

*2. The request for an advisory opinion must be in writing and set forth;*

*(a) the name and address of the person requesting the opinion;*

*(b) a clear and concise statement of the specific question for which the opinion is being sought; and*

*(c) a statement of facts that support the opinion being sought.*

*3. The commissioner shall review the request and issue a response within 30 days.*

*4. An advisory opinion is limited to the facts and circumstances as set forth in the request.*

*Sec.11. Petitions for Declaratory Orders.*

*1. Except as otherwise provided in subsection 4, any person may petition the commissioner to issue a declaratory order concerning the applicability of a statute, regulation or decision of the commissioner.*

*2. The original and one copy of the petition must be filed with the commissioner.*

*3. The petition must include:*

*(a) The name and address of the petitioner;*

*(b) The reason for requesting the order or opinion;*

*(c) A statement of facts that support the petition; and*

*(d) A clear and concise statement of the question to be decided by the commissioner.*

*4. An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding in which the interested person is a party.*

*5. The commissioner may refuse to review a petition that requests him to issue a declaratory order if the original petition is not accompanied by one copy of the petition or the petition does not contain the information required by section 3 above.*

*6. The commissioner may:*

*(a) Conduct a hearing to determine issues of fact or to hear argument related to the petition and may enter reasonable orders that govern the conduct of such a hearing.*

*(b) Request the petitioner to provide additional information or arguments relating to the petition.*

*(c) Issue a declaratory order or an advisory opinion based upon the contents of the petition and any material submitted with the petition.*

*(d) Consider relevant decisions that have been issued by the commissioner or any other agency which apply or interpret the statute, regulation or decision in question.*

*(e) Consider any other information he deems relevant in reaching a decision; or*

*(f) Enter any reasonable order to assist his review of the petition.*

*7. The commissioner will maintain a record of the order that is indexed by subject matter and mail a copy of the order to the petitioner within 60 days after:*

*(a) The petition is filed;*

*(b) An informal hearing is conducted; or*

*(c) Any additional information or written argument is received by the commissioner, whichever occurs later.*

#### *Sec. 12. Petitions for Adoption, Filing, Amendment or Repeal of a Regulation*

*1. Any person who wishes to petition for the adoption, filing, amendment or repeal of a regulation of the commissioner must file with the commissioner, the original and one copy of the petition.*

*2. The petition must include:*

*(a) The name and address of the petitioner;*

*(b) A clear and concise statement, including the proposed language, of the regulation to be adopted, filed, amended or repealed;*

*(c) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation;*

*(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation;*

*3. The commissioner may refuse to act upon a petition that requests the adoption, filing, amendment or repeal of a regulation if:*

*(a) The original petition is not accompanied by one copy of the petition; or*

*(b) The petition does not contain the information required in section 2, above.*

*4. The commissioner will notify the petitioner in writing of his decision whether or not to act on the petition within 30 days after the petition is filed.*

#### *Sec. 13. Representation.*

*1. Any third person representing a party must be an employee of the party or must be either a member or associated with a member in good standing of the Nevada State Bar except that the commissioner may, in his sole discretion and upon a showing of good cause, permit some other person to provide representation.*

*2. A representative wishing to withdraw from a proceeding before the commissioner must provide written notice of his intent to withdraw to the commissioner and each party to the proceeding.*

Sec.14. *Ability to employ counsel.*

*If it appears to the commissioner that a complainant or wage claimant can afford to employ private counsel, the commissioner may inquire into the complainant or wage claimant's financial condition in order to determine whether to take jurisdiction of the matter.*

Sec. 15. *Employees covered by collective bargaining agreements*

*If it appears to the commissioner that a complainant or wage claimant has relief under the terms of a collective bargaining agreement, the commissioner may decline to take the matter under consideration until all remedies under the collective bargaining agreement have been exhausted unless the complainant or wage claimant can clearly demonstrate that the relief provided under the collective bargaining is inadequate or unavailable.*

Sec. 15. *Limitation of actions. Wage claims and complaints will not be considered for acts that occurred more than 24 months prior to the date of filing, unless a different period is required by law.*

Sec. 16. *Petitions for Reconsideration.*

*1. Within ten days after a decision of the commissioner is rendered, any party aggrieved by the decision may file a petition for reconsideration if they believe that the decision is arbitrary, capricious, an abuse of discretion or otherwise contrary to law.*

*2. The petition must set forth with specificity the basis for the petition and the applicable facts supporting the petition.*

*3. Within five days of receipt of the petition, the commissioner shall either grant or deny the petition or set the matter for further hearing solely on the issues raised in the petition.*

Sec. 17. NAC 607.010 is hereby amended to read as follows:

~~[Practice rules:]~~ Scope and construction.

1. This regulation governs all practice and procedure before the labor commissioner whenever he is acting to adopt regulations, *conduct inquiries and investigations* or to determine contested cases.

2. ~~[This regulation applies to the state apprenticeship council whenever it acts to adopt regulations or hold hearings regarding alleged violations of an apprenticeship agreement.]~~ *Proceedings before the Labor Commissioner are investigative in nature. These rules are designed to give all persons who may be affected by a decision of the commissioner notice and the opportunity to have their evidence and opinions considered prior to any final decisions made or sanctions imposed by the commissioner.*

Sec. 18. NAC 607.020 is hereby amended to read as follows:

~~[Practice rules: Definitions.]~~ As used in NAC 607.010 to 607.630, inclusive, unless the context otherwise requires, the words and terms defined in this section have the meanings ascribed to them in this section.

1. "Applicant" means a person who is applying for any right or authority from the *labor* commissioner ~~[or council]~~.

2. "Commissioner" means the labor commissioner *or his duly authorized representative*.

3. “Complainant” means a person who has *filed a complaint with* ~~[complained to]~~ the commissioner ~~[or council]~~ of any act or person, and includes the commissioner ~~[or council if either of them]~~ *if he* brings the complaint on ~~[its]~~ *his* own motion.

4. ~~["Council" means the state apprenticeship council.]~~

5. “Interested party” means a person who may be *substantially, but not necessarily directly* affected by the order or decision issued in a proceeding.

6. “Person” means a natural person, partnership, association, corporation or other entity, public or private.

7. “Petitioner” means a person who has petitioned for affirmative relief, but who is not a complainant *or applicant*.

8. “Regulation” means NAC 607.010 to 607.630, inclusive.

9. “Respondent” means a person against whom a complaint *or determination* has been filed ~~[or of whom an investigation is being conducted]~~ *or a party appealing from a determination*.

Sec. 19. NAC 607.030 is hereby amended to read as follows:

~~[Practice rules:]~~ Construction. This regulation will be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner ~~[or the council]~~.

Sec. 20. NAC 607.040 is hereby amended to read as follows:

~~[Practice rules:]~~ Deviation~~[s]~~ *from Regulations*. In special cases, upon a showing of good cause *or upon the commissioner’s own motion*, the commissioner ~~[or council]~~ will permit deviation from these rules if:

1. compliance is impractical or unnecessary;
2. *the deviation would not adversely affect the substantial interests of the parties; and*
3. *the person requesting the deviation provides a specific reference to each provision of this chapter from which deviation is requested.*

Sec. 21. NAC 607.050 is hereby amended to read as follows:

~~[Practice rules:]~~ Communications. Formal written communications and documents must be addressed to the ~~[labor]~~ commissioner ~~[or the state apprenticeship council]~~ and will be deemed to be officially received only when delivered to the office of the commissioner ~~[or the council]~~.

Sec. 22. NAC 607.110 is hereby amended to read as follows:

~~[Practice rules:]~~ *Parties*; Rights of parties.

1. ~~[Interested parties who may]~~ *Subject to the discretion of the commissioner, [interested parties who demonstrate that they will]any person who may* be directly and substantially affected by the proceeding may *be made a party to the proceeding* enter appearances, introduce evidence and ~~[, subject to the discretion of the commissioner or council]~~, otherwise participate in the proceeding.

2. *Subject to the discretion of the commissioner, a person who demonstrates a substantial, but not necessarily direct, interest in the outcome of the proceeding may be granted status as an interested party.*

3. At any hearing, all parties ~~[except]~~ *including* interested parties may enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the proceeding.

Sec. 23. NAC 607.130 is hereby amended to read as follows:

~~[/Practice rules: Pleadings:]~~ Every pleading before the commissioner ~~[or council]~~ must be designated as an application, petition, complaint, ~~[or]~~ answer. *For the purposes of this chapter, Determinations shall be construed as complaints and objections to Determinations shall be construed as answers.*

Sec. 24. NAC 607.140 is hereby amended to read as follows:

~~[/Practice rules: Pleadings: Verification:]~~ **Certification.** Every pleading, except a complaint brought by or on behalf of the commissioner ~~[or council]~~, must be signed *and dated* by the party submitting it.

Sec. 25. NAC 607.150 is hereby amended to read as follows:

~~[/Practice rules: Pleadings:]~~ Filing.

1. ~~[An original and eight legible copies of every pleading must be filed with the council in all matters before it.]~~

~~[2]~~1. An original and two legible copies of every pleading *except a complaint brought by or on behalf of the commissioner* must be filed with the commissioner in all matters before him.

~~[3]~~2. The ~~[council or]~~ commissioner may direct that the party who filed a pleading make copies of it available to any other person who has requested copies, if the ~~[council or]~~ commissioner first determines that the person making the request may be affected by the proceeding.

Sec. 26. NAC 607.160 is hereby amended to read as follows:

~~[/Practice rules:]~~ Service. Notices, **Determinations**, findings of fact, opinions and orders of the ~~[council or]~~ commissioner, and any document filed by a party, may be served by mail. Service will be deemed to be complete when a true copy of the document, properly addressed and with postage paid, is deposited in the United States mail *or personally served upon a party*.

Sec. 27. NAC 607.170 is hereby amended to read as follows:

~~[/Practice rules:]~~ Proof of service. Each document *that* ~~[which]~~ is required to be served must contain an acknowledgment of service or certificate of mailing.

Sec. 28. NAC 607.180 is hereby amended to read as follows:

~~[/Practice rules: Pleadings:]~~ Amendments. The commissioner ~~[or council]~~ may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed and defects, which do not affect a substantial right of a party, will be disregarded.

Sec. 29. NAC 607.200 is hereby amended to read as follows:

~~[/Practice rules:]~~ Pleading: Complaints to commissioner.

1. Upon ~~[his own initiative or upon]~~ the complaint of any ~~[interested]~~ person, the commissioner may ~~[investigate]~~ *conduct hearings into* possible violations of law in all matters relating to his duties.

2. *The complaint must include:*

a. *The full name and address of the complainant;*

b. *The full name and address of the respondent;*

*c. A clear and concise statement of the facts sufficient to establish that the alleged violation occurred, including the date, time and place of the alleged violation and the names of the persons involved;*

*d. The statute or regulation alleged to have been violated.*

2. The complaint must be in writing and signed ~~[and verified]~~ by the person making it. Two copies of the complaint must be filed with the commissioner ~~[within 24 months after the last act complained of, unless a shorter period is required by law].~~

*3. The complaint must include a certification that the facts stated in the complaint are true to the best knowledge and belief of the person making the complaint.*

*4. The complainant must serve a copy of the complaint on the respondent and any other party identified in the complaint.*

5. If, from the complaint ~~[or from other official records of the commissioner],~~ it appears that the charges may be well founded, the commissioner will send written notice to the person charged at least ~~[14]~~ 15 days before the date fixed for the hearing. The notice must itemize the charges and set forth the date of the hearing.

Sec. 30. NAC 607.210 is hereby amended to read as follows:

~~[Practice rules: Pleadings:]~~ Answer.

1. A respondent has ~~[10]~~ 15 days after being served a complaint in which to file his answer with the commissioner ~~[or council].~~

*2. The respondent must also serve a copy of the answer on the complainant and any other persons who are parties to the proceeding.*

3. Matters alleged by way of affirmative defense must be separately stated and numbered.

4. If the respondent fails to answer within ~~[10]~~ 15 days, ~~[he will be deemed to have denied generally the allegations of the complaint, and except with the consent of all opposing parties and the commissioner or council, he may not raise any affirmative defense at the hearing]~~ *the commissioner may deem the respondent to be in default and issue a Decision and Order based solely on the facts as presented in the complaint.*

5. ~~[If no answer is filed, the hearing will proceed solely upon the issues set forth in the complaint, unless the hearing is continued to a future date by order of the commissioner or council].~~ *A Decision issued by the commissioner pursuant to this subsection is deemed to be the final order of the commissioner on the matter.*

Sec. 31. NAC 607.310 is hereby amended to read as follows:

~~[Practice rules: Hearings:]~~ Notice of Hearings.

1. Hearings of a matter before the commissioner will be held before the commissioner or his duly appointed representative.

2. ~~[Hearings of a matter before the council will be held before three or more members of the council.~~

~~—3.]~~ Notice of the place, date and hour of a hearing must be served at least ~~[20]~~ 15 days before the date set for the hearing.

~~[4]~~ 3. A hearing ~~[which]~~ *that* has previously been continued may be reset on at least 10 days' notice.

~~[5]~~ 4. Every hearing will be held at a place in the state designated by the commissioner ~~[or council]~~ in the notice of hearing.

Sec. 32. NAC 607.320 is hereby amended to read as follows:

~~Practice rules:~~ Subpoenas.

1. Upon proper application, the commissioner will issue subpoenas for the attendance of witnesses or the production of documents, books or other records at a hearing conducted by him ~~or by the council~~.

2. ~~Applications~~ *Requests* for subpoenas must be made to the commissioner in writing.

3. ~~Applications~~ *Requests* for subpoenas for the production of documents, books or other records must be made in writing specifying as clearly as possible the documents, books and records desired.

*4. The party requesting the subpoena must submit a copy of the requested subpoena in a form suitable for execution by the commissioner.*

5. The commissioner may:

(a) Deny or revoke an unreasonable or oppressive subpoena; or

(b) Grant a subpoena for the production of documents, books or other records upon the condition that the party making the application deposit with the commissioner enough money to cover the reasonable cost of producing the materials, upon a motion by the respondent to the subpoena at or before the time specified in the subpoena for compliance.

*6. If a subpoena is issued, it shall be the responsibility of the party requesting the subpoena to effect proper service.*

Sec. 33. NAC 607.330 is hereby amended to read as follows:

~~Practice rules: Hearings:~~ Failure to appear.

1. If the complainant or respondent fails to appear at a scheduled hearing and no continuance has been requested or granted, the commissioner ~~or council~~ may hear the evidence of witnesses who have appeared and may proceed to consider the matter ~~and dispose of it~~ on the basis of the evidence before ~~it~~ *him*.

2. Any person who failed to appear for a scheduled hearing or to request a continuance because of accident, sickness or other reasonable cause may, within 15 days after the failure, apply to the commissioner ~~or council~~ to reopen the proceedings.

3. The commissioner ~~or council~~, upon finding the cause sufficient and reasonable, will immediately fix a time and place for the hearing and give notice thereof.

4. At the time and place fixed, a hearing will be held at which the person may testify in his own behalf or present other evidence beneficial to his cause.

5. Witnesses who have previously testified need not appear at ~~a second~~ *additional* hearings on the same matter unless so directed by the commissioner ~~or council~~.

Sec. 34. NAC 607.340 is hereby amended to read as follows:

~~Practice rules: Hearings:~~ Conduct of persons.

*1. Any person appearing in a proceeding must conform to recognized standards of ethical and courteous conduct required of practitioners before the courts of this state. Every party to a hearing, his counsel and all spectators shall conduct themselves in a respectful manner.*

~~No person may smoke at a hearing in session unless permitted by the commissioner.~~ *Contumacious conduct by any person at any hearing before the commissioner is a ground for the exclusion of that person from that hearing and for summary suspension of that person from further participation in the proceedings. The commissioner will bar any person excluded pursuant to this subsection from attending any further proceedings of the*

*commissioner unless the commissioner grants a petition by that person pursuant to subsection 3.*

*3. Any person excluded from proceedings of the commissioner pursuant to subsection 2 may petition the commissioner to rescind the exclusion. The commissioner will grant the petition if he finds sufficient evidence that the contumacious conduct that led to the exclusion of the person will not reoccur.*

Sec. 35. NAC 607.350 is hereby amended to read as follows:

~~Practice rules: Hearings:~~ Preliminary procedure. The commissioner ~~for the presiding member of the council~~ will call the proceeding to order, ~~and~~ take the appearances *of the parties, hear and rule upon showings of direct and substantial interests from interested parties* and make any necessary introductory remarks. ~~The parties may then make opening statements.~~

Sec. 36. NAC 607.360 is hereby amended to read as follows:

~~Practice rules:~~ Hearings: Order of procedure. Matters will be heard at a hearing in the following order *unless otherwise set forth in the Notice of Hearing or, if in the opinion of the commissioner at the time of the hearing, a more expeditious order is warranted:*

1. ~~Opening statements for complainant and respondent.~~ *Statement of the case by the commissioner.*

2. *Presentation of any prior determination.*

3. *Inquiry by the commissioner.*

4. *Cross-examination of person presenting prior determination.*

~~2~~5. Presentation of *applicant, petitioner or* complainant's case~~, followed by cross-examination~~.

6. *Inquiry by the commissioner.*

7. *Cross examination of applicant, petitioner or complainant's witnesses.*

~~3~~8. Presentation of respondent's case, if any~~, followed by cross-examination~~.

9. *Inquiry by the commissioner.*

10. *Cross examination of respondent's witnesses.*

~~4~~11. Rebuttal testimony by complainant, if any.

~~5~~12. Rebuttal testimony by respondent, if any.

~~6~~13. Closing arguments:

(a) Argument for complainant.

(b) Argument for respondent.

(c) Rebuttal argument for complainant.

Sec. 37. NAC 607.370 is hereby amended to read as follows:

~~Practice rules: Hearings:~~ Oaths. All testimony to be considered in hearings will be taken under oath. Before taking the witness stand, each person shall swear before the commissioner ~~for council~~ to the truthfulness of the testimony he is about to give in the hearing.

Sec. 38. NAC 607.380 is hereby amended to read as follows:

~~Practice rules: Hearings:~~ Consolidation.

1. The commissioner ~~for the presiding member of the council~~ may consolidate two or more proceedings into one hearing whenever it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by consolidation.

2. The commissioner ~~{or the presiding member of the council}~~ will determine the order of procedure in a consolidated hearing.

Sec. 39. NAC 607.410 is hereby amended to read as follows:

~~{Practice rules:}~~ Rules of evidence: Admissibility: Objections.

1. In conducting an investigation, inquiry or hearing, the commissioner ~~{and council are}~~ *is* not bound by the technical rules of evidence and no informality in any proceeding or in the manner of taking of testimony invalidates any order, decision or regulation adopted, approved or confirmed by the commissioner ~~{or council}~~.

2. Rules of evidence used in the courts of this state *shall* ~~{may}~~ be generally followed, but may be relaxed in the discretion of the commissioner ~~{or council}~~ if deviation from the technical rules of evidence will aid in ascertaining the facts.

*3. Evidence admitted at hearings must be material and relevant to the issues.*

~~{3}~~*4.* If an objection is made to the admissibility of evidence, the evidence may be received but it is subject to any subsequent ruling of the commissioner ~~{or council}~~.

~~{4}~~*5.* The commissioner ~~{or council}~~ may, with or without objection, exclude inadmissible, incompetent, cumulative or irrelevant evidence.

~~{5}~~*6.* A party objecting to the introduction of evidence shall briefly state the grounds of objection at the time the evidence is offered.

~~{6. Evidence admitted at hearings must be material and relevant to the issues.}~~

Sec. 40. NAC 607.420 is hereby amended to read as follows:

~~{Practice rules:}~~ Stipulations.

1. With the approval of the commissioner ~~{or the presiding member of the council}~~, the parties may stipulate to any fact at issue by written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record.

2. Any stipulation is binding upon all parties to it, and may be treated as evidence at the hearing.

3. The commissioner ~~{or the presiding member of the council}~~ may demand proof by requiring evidence of facts stipulated.

Sec. 41. NAC 607.430 is hereby amended to read as follows:

~~{Practice rules:}~~ Depositions. The commissioner ~~{, council}~~ or any party to any proceeding may depose witnesses in the manner prescribed by *the Nevada Rules of Civil Procedure* ~~{law and rule of court for depositions in civil actions}~~.

Sec. 42. NAC 607.440 is hereby amended to read as follows:

~~{Practice rules:}~~ Continuances. The commissioner ~~{or council}~~ may, before or during a hearing, and on a proper showing, grant continuances for submission of further proof of any matter, or for any other just cause.

Sec. 43. NAC 607.450 is hereby amended to read as follows:

~~{Practice rules:}~~ Briefs.

1. The commissioner ~~{or council}~~ may order briefs to be filed and specify a time limit for their filing.

~~{2. Eight copies of any requested brief must be filed with the council in matters before it.}~~

~~[3]~~2. Three copies of any requested brief must be filed with the commissioner in matters before him.

~~[4]~~3. ~~[Each brief must be accompanied by an acknowledgment of service or a certificate of mailing]~~ *An acknowledgment of service or a certificate of mailing must accompany each brief* to other parties of record.

~~[5]~~4. Following the filing of briefs and after deciding contested motions, the commissioner ~~[or council]~~ may set the matter for oral argument and give reasonable notice to all parties.

Sec. 44. NAC 607.460 is hereby amended to read as follows:

~~[Practice rules:]~~ Official notice. The commissioner ~~[or council]~~ may take official notice of:

1. Rules, regulations, official reports, decisions, and orders of the commissioner ~~[or council]~~ and of any regulatory agency of the state~~[.];~~

2. The contents of decisions, orders, standards or records of the commissioner ~~[or council]~~~~[.];~~

3. Matters of common knowledge and established technical or scientific facts~~[.];~~ *and*

4. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference if:

(a) Proper and definite reference to the documents was made by the party offering them; and

(b) The documents are published and generally circulated so that the parties in interest are given an opportunity to examine the documents and present rebuttal evidence.

Sec. 45. NAC 607.510 is hereby amended to read as follows:

~~[Practice rules:]~~ Transcripts. The commissioner ~~[or council]~~ will cause a record to be made of all formal hearings. Parties desiring copies of a transcript may obtain it from the ~~[clerk]~~ commissioner upon payment of the proper fee.

Sec. 46. NAC 607.520 is hereby amended to read as follows:

~~[Practice rules:]~~ Submission of matter for decision. Unless otherwise ordered, a proceeding stands submitted for decision by the commissioner ~~[or council]~~ after the taking of evidence, the filing of briefs or the presentation of oral argument required by the commissioner ~~[or the presiding member of the council]~~.

Sec.47. The following sections of NAC 607 are hereby repealed:

NAC 607.190

NAC 607.530

NAC 607.610