

**REVISED ADOPTED REGULATION OF THE CHIEF OF THE
HEARINGS DIVISION OF THE DEPARTMENT OF
ADMINISTRATION**

LCB File No. R184-07

Effective September 29, 2008

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

AUTHORITY: §§1 and 11, NRS 616C.295 and 616C.310; §§2-7 and 12, NRS 616C.295; §§8-10 and 13-31, NRS 616C.310.

A REGULATION relating to industrial insurance; establishing a code of conduct for hearing and appeals officers for contested cases; establishing training requirements for such hearing and appeals officers; revising procedures for hearings and appeals of contested cases; and providing other matters properly relating thereto.

Section 1. Chapter 616C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. *A hearing or appeals officer shall:*

1. Act in a manner that preserves the integrity, impartiality and independence of hearings in contested cases for compensation conducted pursuant to chapters 616A to 617, inclusive, of NRS and promotes public confidence in such hearings;

2. Act in a manner that avoids the appearance of impropriety, including, without limitation, disclosing any affiliation to a party in a proceeding before the officer;

3. Perform diligently all official duties;

4. Be faithful to the law and decide matters on the basis of the facts and the applicable law, including, without limitation, judicial decisions; and

5. Maintain order and decorum in proceedings before the officer.

Sec. 3. 1. A hearing or appeals officer shall not:

(a) Engage in conduct that reflects adversely on the character, competence or temperament of the officer or on the officer's fitness to serve, including, without limitation, conduct involving misrepresentation, fraud, dishonesty, deceit or felonious criminal behavior.

(b) In the performance of the official duties of the officer, by words or conduct, manifest bias or prejudice because of race, religion, color, age, sex, disability, sexual orientation, national origin, ancestry, marital status or socioeconomic status.

(c) Act in a way that the officer knows or reasonably should know would be perceived by a reasonable person as biased or prejudiced toward any of the parties, witnesses or attorneys to a proceeding or members of the public at a proceeding.

(d) Be swayed by partisan interests, public clamor or fear of criticism.

(e) Allow family, social or other relationships or associations to influence his official conduct or judgment.

(f) Use the position of hearing or appeals officer to advance the private interests of the officer or of any other person.

(g) Convey the impression that any person has any special influence with the hearing or appeals officer.

(h) 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 frequently participates in proceedings that would ordinarily come before the officer.

(i) Use his position as a hearing or appeals officer to solicit funds for any private or public corporation or for any educational, religious, charitable, fraternal, political or civic organization or allow the prestige of his office to be used for such purposes.

(j) Use or disclose nonpublic information acquired by the hearing or appeals officer for any purpose not related to the official duties of such an officer.

(k) Make any public comment about a proceeding within the jurisdiction of the hearing or appeals officer which might reasonably be expected to affect the outcome or impair the fairness of the proceeding. The provisions of this paragraph must not be construed to prohibit a hearing or appeals officer from:

(1) Making public statements in the course of his official duties;

(2) Explaining for the public benefit procedures before the hearing or appeals officer;

(3) Responding to or defending from a criminal charge or civil claim against the hearing or appeals officer; or

(4) Responding to allegations concerning the conduct of the hearing or appeals officer during a proceeding before the officer.

(l) Unless under subpoena, testify under oath as a character witness. The provisions of this paragraph must not be construed to prohibit a hearing or appeals officer from providing a character or ability reference for a person about whom the officer has personal knowledge.

2. A hearing or appeals officer, a spouse of a hearing or appeals officer, or any other person residing in the household of a hearing or appeals officer shall not accept any gift, bequest or loan from any person who has a significant interest in a matter that is or that the hearing or appeals officer has reason to know will be before the officer.

Sec. 4. 1. *Except as otherwise provided in subsection 2, a hearing or appeals officer shall not engage in any communication or contact with a party to a proceeding before the hearing or appeals officer or with any attorney or other representative of a party outside the presence of any other party to the proceeding.*

2. *A hearing or appeals officer may communicate with a party to a proceeding before the hearing or appeals officer or with any attorney or other representative of a party outside the presence of any other party to the proceeding:*

(a) If the parties to the proceeding or the attorneys or other representatives of the parties are engaged in mediation; or

(b) For scheduling or administrative purposes or for emergencies that do not address substantive matters or issues on the merits relating to the proceeding before the hearing or appeals officer and if the officer reasonably believes that no party or attorney or other representative of a party will gain a procedural or tactical advantage as a result of the communication.

3. *A hearing or appeals officer shall disclose promptly to all parties to the proceeding any communication made pursuant to subsection 2. A disclosure required pursuant to this subsection must identify:*

(a) The person with whom the communication occurred; and

(b) The substance of the communication.

4. *A hearing or appeals officer shall provide the parties to whom a communication is disclosed pursuant to subsection 3 a reasonable opportunity to respond to the disclosure.*

Sec. 5. *As used in NRS 616C.300 and 616C.340, the Chief of the Hearings Division interprets the terms “conflict of interest” and “personal interest” to include, without limitation:*

1. A bias or prejudice concerning a party, an attorney or other representative of a party, or any other participant in the proceeding.

2. Knowledge obtained from sources outside of the proceeding of evidentiary facts that are disputed in the proceeding.

3. Service as an attorney in the matter in controversy.

4. Service of an attorney with whom the officer previously has been associated, during the period of association with the officer, as an attorney in the matter in controversy.

5. Being a material witness in the matter in controversy.

6. Having, as an individual or as a personal representative, trustee, conservator or guardian, a financial interest in the matter in controversy or any other interest that could be affected substantially by the outcome of the proceeding.

7. Being, as an individual or as a personal representative, trustee, conservator or guardian, a party to the proceeding.

8. If the spouse, a parent or a child of the hearing or appeals officer, regardless of residence, or any other person residing in the household of the officer:

(a) Has a financial interest in the matter in controversy or any other interest that could be affected substantially by the outcome of the proceeding;

(b) Is a party in the proceeding;

(c) Is an officer, director, partner or trustee of a party in the proceeding;

(d) Is acting as an attorney in the proceeding; or

(e) To the knowledge of the hearing or appeals officer, is likely to be a material witness in the proceeding.

Sec. 6. 1. *A complaint alleging that a hearing or appeals officer has violated a provision of sections 2 to 5, inclusive, of this regulation must be in writing and submitted to the senior appeals officer.*

2. The senior appeals officer shall investigate any complaint submitted pursuant to subsection 1 and shall notify the complainant of the results of the investigation not more than 60 days after the complaint is received.

3. If the senior appeals officer substantiates the complaint, the senior appeals officer shall report the results of the investigation:

(a) If the complaint involves a hearing officer, to the Director of the Department of Administration.

(b) If the complaint involves an appeals officer, to the Governor.

Sec. 7. 1. *To the extent that money is made available to the Hearings Division for the purpose of training appeals officers, an appeals officer must successfully complete annually at least 20 hours of training, which may include, without limitation, training in:*

(a) Adjudication of administrative law hearings;

(b) Industrial insurance law and practice, including, without limitation:

(1) The provisions of chapters 616A to 617, inclusive, of NRS; and

(2) The provisions of chapters 616A to 617, inclusive, of NAC;

(c) Mediation and other techniques for the resolution of disputes;

(d) Recent relevant statutory and regulatory changes and judicial decisions;

(e) Writing, evidence and ethics;

(f) Any other similar subjects approved by the senior appeals officer; and

(g) Subjects taught in courses:

(1) Offered by the National Judicial College or the National Association of Administrative Law Judiciary or attended by an appeals officer to meet the requirements of the State Bar of Nevada for continuing legal education; and

(2) Approved for the purposes of this section by the senior appeals officer, including, without limitation, any training provided by the Hearings Division.

2. Excess hours of training earned during a 12-month period may be carried over to the following year.

3. The senior appeals officer shall review the past experience of each newly appointed appeals officer to determine the training, if any, that is required immediately for that particular officer to carry out his duties and, if necessary, shall develop a plan for such training after consulting with the appeals officer.

Sec. 8. 1. *If an insurer fails to respond to a written request for a determination within 30 days after receipt of such a request, the person who made the request may:*

(a) File a request for a hearing before a hearing officer pursuant to subsection 3 of NRS 616C.315; or

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

2. A failure to file a request for a hearing within the time period specified in subsection 3 of NRS 616C.315 does not preclude a person from resubmitting a written request for a determination to the insurer.

Sec. 9. 1. *Except as otherwise provided in subsection 3, if a hearing officer receives an appeal of a final determination of an insurer that does not include, if applicable, a copy of the*

letter of the determination being appealed or, if such a copy is unavailable, the date of the determination and the issues stated in the determination, the hearing officer shall notify the claimant in writing that the claimant must, within 15 days after the date on which the hearing officer sends the notification, provide to the hearing officer:

(a) A copy of the letter of determination;

(b) If the letter of determination is unavailable, the date of the determination and the issues stated in the determination; or

(c) Proof that a letter of determination had been requested from the insurer or third-party administrator by the claimant.

↳ If the hearing officer does not receive such documentation by the date specified in the notice sent pursuant to this subsection, the hearing officer shall dismiss the appeal without prejudice in a written order for failure to pursue the appeal.

2. A claimant who submits proof that a letter of determination had been requested from the insurer or third-party administrator by the claimant pursuant to subsection 1 may request the hearing officer to issue an order requiring the insurer or third-party administrator to provide a copy of the letter of determination to the hearing officer within 10 days after the date of the order.

3. The provisions of this section do not apply for an appeal of a failure to respond to a request.

Sec. 10. 1. *An appeal of a hearing officer's decision may be consolidated with a case pending before the appeals officer:*

(a) At the request of a party to the appeal of a hearing officer's decision; and

(b) When:

- (1) Both cases involve the same claim and the same parties;*
 - (2) Both cases involve similar questions of fact or law; or*
 - (3) Consolidation would reduce duplication and judicial effort.*
- 2. A request for consolidation must be in writing and must contain:*
- (a) The name of the appeals officer who is hearing the pending case with which the appealed case would be consolidated; and*
 - (b) The appeal number of the pending case.*
- 3. A request for consolidation must be served pursuant to NAC 616C.291 and 616C.294 on all parties who appeared before the hearing officer in the case being appealed.*
- 4. The appeals officer assigned to the case with which consolidation is sought shall approve or deny the request for consolidation not later than 5 days after receiving the request.*

Sec. 11. NAC 616C.260 is hereby amended to read as follows:

616C.260 As used in NAC 616C.260 to 616C.336, inclusive, *and sections 2 to 10, inclusive, of this regulation*, unless the context otherwise requires ~~[, “licensed”]~~ :

- 1. “Hearings Division” means the Hearings Division of the Department of Administration.*
- 2. “Licensed representative” means a person who is licensed pursuant to NAC 616C.350 to 616C.377, inclusive.*
- 3. “Senior appeals officer” means the appeals officer designated by the Director of the Department of Administration pursuant to subsection 3 of NRS 232.215 to supervise the administrative, technical and procedural activities of the Hearings Division.*

Sec. 12. NAC 616C.269 is hereby amended to read as follows:

616C.269 ~~[A]~~

1. To the extent that money is made available to the Hearings Division for the purpose of training hearing officers, 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 20 hours of training, which may include, without limitation, training in:

(a) Mediation and other techniques for the resolution of disputes;

(b) Industrial insurance law and practice, including, without limitation:

(1) The provisions of chapters 616A to 617, inclusive, of NRS; and

(2) The provisions of chapters 616A to 617, inclusive, of NAC;

(c) Adjudication of administrative law hearings;

(d) Recent relevant statutory and regulatory changes and judicial decisions;

(e) Writing, evidence and ethics; and

(f) Other similar topics approved by the senior appeals officer, including, without limitation, any training provided by the Hearings Division.

2. Excess hours of training earned during a 12-month period may be carried over to the following year.

3. The senior appeals officer shall review the past experience of each newly appointed hearing officer to determine the training, if any, that is required immediately for that particular hearing officer to carry out his duties and, if necessary, shall develop a plan for such training after consulting with the hearing officer.

Sec. 13. NAC 616C.274 is hereby amended to read as follows:

616C.274 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;

(d) The number of the claim; *and*

(e) The date of injury ~~;~~ *and*

~~—(f) 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.] or, in the case of occupational disease, the estimated or approximate date of injury.~~

Sec. 14. NAC 616C.2745 is hereby amended to read as follows:

616C.2745 ~~[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. 15. NAC 616C.275 is hereby amended to read as follows:

616C.275 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 ~~1:~~

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

~~—(b) Signed]~~ *signed* by:

~~[(1)]~~ (a) The claimant's legal counsel;

~~[(2)]~~ (b) The insurer ~~1:]~~ *or a third-party administrator;* and

~~[(3)]~~ (c) 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. 16. NAC 616C.2755 is hereby amended to read as follows:

616C.2755 1. A party, other than a ~~handicapped person,]~~ *person with a communications disability*, who requires assistance in interpreting the English language during any hearing held before a hearing officer must 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 in interpreting the English language during any proceeding before an appeals officer must notify the appeals officer in writing at least 10 days before the hearing that such assistance is required. The appeals officer shall appoint an interpreter and arrange for ~~him]~~ *the interpreter* to attend the hearing at no cost to the party who requires such assistance.

3. As used in this section, ~~“handicapped person”]~~ *“person with a communications disability”* has the meaning ascribed to it in NRS 50.050.

Sec. 17. NAC 616C.277 is hereby amended to read as follows:

616C.277 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]~~,

including, without limitation:

(a) Expedition of the pending case.

(b) Hearing motions.

(c) Submission of documentary evidence.

(d) Narrowing the issues.

(e) Setting a convenient date for the primary hearing.

2. *An appeals officer* may enter any order relating to ~~those~~ *the* 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] *described in* subsection 1.~~

Sec. 18. NAC 616C.278 is hereby amended to read as follows:

616C.278 *1.* In addition to a prehearing conference authorized pursuant to NAC 616C.277, an appeals officer may, in regard to any proceeding that is being heard before him:

~~1.]~~ *(a)* Call the parties to the proceeding together for a conference to be held before the taking of testimony; and

~~2.]~~ *(b)* Recess the proceeding to hold a conference,

↳ to address any matter that, in the opinion of the appeals officer, will assist in securing the just, speedy and economical determination of the issues that are in question in the proceeding. If an appeals officer conducts a conference pursuant to this section, the appeals officer shall ensure that the official record of the proceeding contains a notation that sets forth the results of such a conference.

2. The parties to a proceeding before an appeals officer may request that the matter be assigned for mediation. Upon receipt of such a stipulated motion, the matter will be assigned to another appeals officer. The parties may agree by stipulation to assign the mediation to a specific appeals officer. The appeals officer initially assigned to the matter maintains jurisdiction over the pending matter unless the matter is resolved by mediation.

Sec. 19. NAC 616C.279 is hereby amended to read as follows:

616C.279 **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 a party who received notice of a hearing before a hearing officer, failed to appear at or participate in the hearing before the hearing officer and failed to show cause for his failure to appear at the hearing.*

Sec. 20. NAC 616C.282 is hereby amended to read as follows:

616C.282 If a party or his counsel *or licensed representative* fails or refuses to comply with NAC 616C.274 to 616C.336, inclusive, *and sections 8, 9 and 10 of this regulation*, 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 or counsel *or licensed representative* complies with the requirements.

2. Restrict or prohibit the introduction of evidence.

3. Dismiss the matter.

4. *If the failure or refusal to comply is by a licensed representative, refer the matter to the senior appeals officer for appropriate action pursuant to NAC 616C.350 to 616C.377, inclusive.*

5. *If the failure or refusal to comply is by an insurer or a third-party administrator, refer the matter to the Commissioner of Insurance for appropriate action.*

6. *If the failure or refusal to comply is by an attorney licensed in this State, refer the matter to the State Bar of Nevada for appropriate action.*

Sec. 21. NAC 616C.291 is hereby amended to read as follows:

616C.291 For the purposes of NAC 616C.282 to 616C.336, inclusive ~~[1]~~, *and sections 8, 9 and 10 of this regulation:*

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.*

2. A document *over five pages in length* may not be filed by facsimile ~~[1]~~ *unless so ordered or approved in advance by a hearing or appeals officer.* If a document *which is five pages or less in length* 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.

~~[2]~~ 3. *A document may be filed by electronic mail upon prior written approval of the Hearings Division. A document filed by electronic mail must be:*

(a) *Accompanied by an acknowledgement of receipt.*

(b) *Sent to the secretary for the hearing or appeals officer and to each party to the proceeding.*

4. 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]~~ 5. Except as otherwise provided in subsection ~~[6]~~ 8, 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.]~~ 6. 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.]~~ 7. Service by mail is complete upon mailing. Any document served by mail shall be deemed received 3 days after it is mailed.

~~[6.]~~ 8. 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 *Hearings* Division's office. If such a folder is maintained by the *Hearings* Division, it will be available for inspection by the party or his counsel during the regular business hours of the *Hearings* 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. 22. NAC 616C.297 is hereby amended to read as follows:

616C.297 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. 23. NAC 616C.300 is hereby amended to read as follows:

616C.300 1. The insurer shall, within 30 days after notice of hearing before an appeals officer or, if a prehearing conference is scheduled in the matter, on or before the date of the conference, copy all documents in the claimant's file relating to the matter on appeal and serve the copies, appropriately indexed, upon the appeals officer and all other parties.

2. The insurer shall, within 2 days before a hearing before a hearing officer, submit the following documents, appropriately numbered and indexed, to the Hearings Division : ~~{of the Department of Administration:}~~

(a) Copies of forms C-3 and C-4 or any similar forms which have been provided to the insurer pursuant to NAC 616A.480;

(b) A brief statement of the reason for the determination by the insurer; and

(c) Copies of any other documents in the claimant's file relating to the matter before the hearing officer.

3. ~~If an insurer receives a request from another party to a dispute before a hearing officer at least 10 days before the hearing, the insurer shall provide to that party, at least 2 days before the hearing, a copy of all documents to be submitted to the hearing officer.~~

~~4.]~~ Any other party to a dispute who submits documents to a hearing officer shall provide copies of the documents to the insurer at the time of the hearing.

Sec. 24. NAC 616C.303 is hereby amended to read as follows:

616C.303 1. Papers and documents filed pursuant to NAC 616C.282 to 616C.336, inclusive, *and sections 8, 9 and 10 of this regulation*, 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 documents 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 annotation, 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. *Papers and documents submitted to an appeals officer must:*

(a) *Have any personal identifying information redacted; and*

(b) If personal identifying information has been redacted, include an affirmation that the submitted papers and documents do not contain the personal identifying information of any person,

↳ unless the identity of the person is at issue.

6. Papers and documents submitted without the affirmation required pursuant to paragraph (b) of subsection 5 must not be accepted into evidence in any proceeding before an appeals officer.

7. As used in this section, “personal identifying information” has the meaning ascribed to it in NRS 616C.310.

Sec. 25. NAC 616C.305 is hereby amended to read as follows:

616C.305 1. A party who wishes ~~[a hearing or]~~ *an* appeals officer to permit discovery by deposition, ~~[or]~~ interrogatories *or production of documents* must request such discovery at any prehearing conference held in the matter or submit a written application to that 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. 26. NAC 616C.307 is hereby amended to read as follows:

616C.307 1. A party who wishes to introduce evidence *before an appeals officer* that is recorded on videotape, *as a digital recording or in any other electronic medium*, must submit to the ~~[hearing or]~~ appeals officer a written request therefor 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, *free of charge*, an unedited copy of the evidence to the opposing party ~~free of charge;~~ *and, if requested, to the appeals officer;* and

(b) Provide all equipment necessary to display the videotape, *digital recording or other electronic media* at the hearing.

Sec. 27. NAC 616C.312 is hereby amended to read as follows:

616C.312 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.]~~ 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 a written order and* 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. 28. NAC 616C.315 is hereby amended to read as follows:

616C.315 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.]~~ 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.—A]~~

2. *If a party ~~[opposing]~~ wishes to oppose a stay, the party* must 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. *The moving party may file a reply to the objection not later than 5 days after service of the objection.*

3. *An appeals officer shall not rule on an application filed pursuant to subsection 1:*

(a) If an objection is not timely filed pursuant to subsection 2, until 10 days after the application was filed.

(b) If an objection is timely filed pursuant to subsection 2, until 15 days after the application was filed.

4. ~~[The]~~ *An* appeals officer may rule on ~~[the]~~ *an* application *filed pursuant to subsection 1* without *a* hearing or may schedule a hearing on the application.

Sec. 29. NAC 616C.328 is hereby amended to read as follows:

616C.328 If a party to an appeal seeks judicial review of the opinion of an appeals officer pursuant to NRS 616C.370 ~~[, the]~~ :

1. The party shall, within 10 days after receiving the final decision of the court in which judicial review was sought, provide copies of the decision of the court to the appeals officer who rendered the opinion for which judicial review was sought.

2. The retention period for the files of the appeals officer concerning the appeal does not begin to run until the matter has reached a final determination from the highest court in which review is sought.

Sec. 30. NAC 616C.330 is hereby amended to read as follows:

616C.330 1. Every hearing before an appeals officer must be ~~[reported]~~ *recorded* as provided in NRS 616C.360.

2. A record of a proceeding maintained by the appeals officer is the official record of the proceeding.

3. The parties may supplement or amend the record upon a written stipulation approved by the appeals officer.

4. 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.

Sec. 31. NAC 616C.276 and 616C.288 are hereby repealed.

TEXT OF REPEALED SECTIONS

616C.276 Purposes for prehearings. (NRS 616C.310)

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.

616C.288 Appeal from decision of Chief. (NRS 616C.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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R184-07

The Department of Administration, Hearings Division adopted regulations assigned LCB File No. R184-07 which pertain to chapters 616C of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

1. A description of how comments were solicited from the public and affected businesses, a summary of responses from the public and affected businesses and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Administration, Hearings Division published a Notice of Workshop and a Notice of Intent to Act (Notice of Public Hearing) to solicit comments on proposed adoptions, amendments and/or repeals of regulations pertaining to Chapter 616C of the Nevada Administrative Codes. The workshop was held on November 8, 2007 via videoconference at the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, NV in room 4401 and at the Legislative Building, 401 South Carson Street, Carson City, NV in room 3137 and the Public Hearing was held on May 23, 2008 via videoconference at the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, NV in room 4412 and at the Legislative Building, 401 South Carson Street, Carson City NV in room 2134, both commenced at 9:00 A.M.

In the notice the public was notified that a copy of the proposed regulations was posted at the following locations:

Department of Administration
Hearings Division
2200 S. Rancho Dr., Sts. 210 & 220
Las Vegas, NV

Department of Administration
Hearings Division
1050 E. Williams St., Sts 400 & 450
Carson City, NV

Grant Sawyer State Office Building
555 E. Washington Ave.
Las Vegas, NV

Blasdel Building
209 E. Musser St.
Carson City, NV

Legislative Building
401 S. Carson St.
Carson City, NV

Capitol Building, Main Floor
101 N. Carson St.
Carson City, NV

Nevada State Library and Archives
100 Stewart St.
Carson City, NV

All Nevada County Public Libraries

Department of Administration Website <http://hearings.state.nv.us/>

A summary of the responses from the public and affected businesses is included in #2 of this Informational Statement and may be obtained by contacting the Department of Administration, Hearings Division at the following locations:

2200 S. Rancho Dr., Ste. 220
Las Vegas, NV 89102
Phone: (702) 486-2527

1050 E. Williams St., Ste 450
Carson City, NV 89701
(775) 687-8420

2. The number of persons who attended the workshop and public hearing, testified, and submitted written statements to the agency.

At the workshop on November 8, 2007: Las Vegas, 44 people attended and 11 testified; in Carson City, 26 people attended and 7 testified. At the public hearing on May 23, 2008: Las Vegas, 25 people attended and 6 people testified; in Carson City 12 people attended and 3 people testified. The oral testimony is summarized as follows:

Public Workshop – November 8, 2007

Section 3 – Code of conduct for hearing and appeals officers

Section 4 – Written complaint to the Senior Appeals Officer

Sam McMullin, Nevada Self Insured Association, Carson City

In reference to Section 3, subsection 1, Maintaining the integrity of the hearings and appeals process, Mr. McMullin commented that he would like to make sure there is some formality and seriousness to the hearings and appeals process. He was concerned that there is no mention of appearance and impropriety in the regulations and asked if Mr. Nix did not think it was practical or not called for. In reference to Sec. 3, subsection 2, Impartial and diligent performance of official duties, Mr. McMullin feels that paragraph d might limit the mediation contacts and he would like to make some suggestions that might be worthwhile to accommodate the mediation role in the hearing officer setting and not limit the one on one in regards to ex-parte communication.

In reference to Section 4, Mr. McMullin feels there needs to be more declaration and definition and what the possible remedies would be.

In reference to Section 3, subsection 2, paragraph g, subparagraph 5, subsubparagraph I, subsubsubparagraph i, a hearing or appeals officer shall not be swayed by partisan interests, public clamor, or fear of criticism,

Mr. McMullin feels that an appropriate addition might be that a Hearing or Appeals Officer should not be swayed by potential relationships.

In reference to Section 3, subsection 2, paragraph g, subparagraph 5, subsubparagraph I, subsubsubparagraph h, Mr. McMullin suggests an addition to include consistency, due regard for precedent, due regard for Supreme Court cases and the law in Nevada.

Mr. McMullin wants to be sure we assist in the Hearing Officers role as a mediator and a part of a solution to do things differently at that level than to just set a record.

Mercer Berens, Sierra Nevada Administrators, Las Vegas

In reference to Section 3, subsection 1, paragraph c, Ms. Berens commented that she was not sure how one could control a subjective impression of special influence and how you could regulate it.

In reference to Section 3, subsection 2, paragraph c, ex-parte contacts, Ms. Berens believes there should be language added with respect to hearing and appeals officers having direct communication with medical providers.

In reference to Section 4, Ms. Berens wanted to know the remedy with which Mr. Nix will address grievances. She wanted to know if it would be like the labor or human resources handle them. It's a disciplinary action that has faces. What would be the real ramification or punishment – ultimately, would a hearing or appeals officer be terminated or subject to losing their job? Knows the appeals officers are appointed by the Governor and would like to know how the Governor's role would play into it.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix advised Ms. Berens that this section does not address or consider this and that the language provides for an investigation and response to the complainant concerning their objection or complaint. Mr. Nix further states that the Hearings Division would have no objection to considering some other form of potential actions that could be taken based on the complaint. This section is primarily designed to require at least an investigation and a response to the complaint in a formal manner. This regulation does not address any disciplinary action or what could occur as a consequence.

Mercer Berens, Sierra Nevada Administrators, Las Vegas

Ms. Berens asked Mr. Nix if he has made any consideration as to what the disciplinary process would be.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix replied – Not formally, no.

Leslie Bell, Nevada Compfirst, Carson City

In reference to Section 4, Ms. Bell commented that she has done extensive research on how to file a complaint against an appeals officer and that there are specific rules in the judicial code and cannons that sets down an administrative process for an appeals officer because they are attorney's. She goes on to say that Mr. Nix is the proper person to start that appeal process but that there seems to be some conflict as there are already some rules related to filing complaints against an appeals officer and if the division could adopt some of these processes and avoid conflict. Ms. Bell believes we should segregate the hearing officer's as they are not counsel. Ms. Bell advised that she would forward us a copy of her research or provide it to us in written comments.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix commented that he would like very much if she would indeed forward that to us and that the division would certainly take it into consideration.

Robin Drew – Injured Worker, Las Vegas

In reference to Section 3, subsection 1, paragraph g, Ms. Drew expressed concern regarding the entire section stating that she does not believe it is any of her business what organizations a hearing or appeals officer belongs to as long as she sees no evidence of misconduct along the lines of disability, race and so forth.

In reference to Section 3, subsection 2, paragraph b, Ms. Drew advised that the code is not clear and needs to be revised. What does the right to be heard according to law mean?

In reference to Section 3, subsection 2, paragraph g, subparagraph 5, subparagraph II, subparagraph h, Ms. Drew likes this statute and feels it is extremely important.

In reference to Section 3, subsection 2, paragraph g, subparagraph 5, subparagraph II, subparagraph k, Ms. Drew feels this is also a very important statute.

In reference to Section 4, Ms. Drew expressed concern that this statute carries no force. She would like to see it full of language allowing anyone handling a complaint certain options as to what to do.

Bob Balkenbush, Thorndale, Armstrong, et al for self insured's and insurers, Carson City

In reference to Section 3, subsection 2, Mr. Balkenbush would like to recommend, or ask to be considered, some language regarding disqualification. It seems to him that the language seems to be based on challenge for cause and what he would like to be considered is some language that would affect a peremptory challenge in which you do not have to show cause. That is an impartiality standard that would be in control of the party, and the impartiality standards that have been drafted are not within the control of the party. If such language were added, that could provide independent monies to the Department of Administration for other uses.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

In reaction to Mr. Balkenbush's suggestion for peremptory challenge, she feels that if such a provision were added and if it costs money to do so then any client represented by the Nevada Attorney for Injured Workers should be exempted.

Ms. Leeder proposes adding to Section 3, subsection 1, a new paragraph h which should be that the hearings or appeals officer shall disclose affiliations to counsel to avoid the appearance of impropriety.

In reference to Section 4, Ms. Leeder states that if such a section does stay as is, Ms. Bell's comments about appeals officers and the procedures already in effect should be the course to be followed. Thinks there should be a caveat here which is that the usual procedure to challenge the ruling or conduct of an appeals officer is an appeal to District Court and does not think a new system should be initiated which abrogates the normal abuse of discretion appeal.

Craig Michie, Las Vegas

In reference to Section 4 and the proposals being made, he believes it is very important that we look at being able to make these decisions more available to the public so that there can be more public scrutiny for consistency and less abuse of discretion and less failure for due diligence in their performance.

Sam McMullin, Nevada Self Insured Association, Carson City

Mr. McMullin commented in reference to the last comment made about abuse of discretion, saying we're not talking about the exercise of honest discretion in terms of the merits or substance of a case, we're talking a conduct or behavior or external influences which could affect the confidence and the feeling that the decision is being rendered incorrectly and feels it needs it's separate sub standards and separate set of procedures that don't wait until there has been a decision and/or something else that is so locked in concrete in terms of process and procedure that it requires only a District Court decision. He feels the need for a system that allows some of this to be addressed before a lot of time, effort and expense is handled in it and the ability to try to raise these issues in an appropriate way with the appropriate person, which I assume is yourself (referring to Mr. Nix), and he appreciates section 4 as a very meaningful process and doesn't think we should just try to rely on the abuse of discretion argument in the context of going to a District Court.

Section 5 – Notice of Determination to accept or deny claim

Bryan Nix, Senior Appeals Officer, Las Vegas

Mr. Nix adds a note here, that he has received a comment from the Division of Industrial Relations regarding this in that there is some question as to whether or not this provision is within the jurisdiction of the Hearings Division. He advised that we will let the Legislative

Council Bureau sort this out but we would still like any comments. He also advised that if we find that this is beyond the scope of our rule making authority then we will certainly make sure that comments are submitted to the DIR if they are going to consider this as well.

Susan Sayegh, Sierra Nevada Administrators, Las Vegas

Ms. Sayegh commented that Mr. Nix took the words right out of her mouth and that section 5 was one of their objections as to the jurisdiction of the Hearings Division on the modifications of an acceptance letter, however, she would like to let us know that there is already a remedy in place, NRS 616C.160, that allows for injured workers and attorney's to submit a request to add on conditions and/or body parts, therefore this statute should not be disturbed.

Tina Sanchez/MGM-Mirage, Las Vegas

Agrees with what Ms. Sayegh just said and would like to point out in the initial claim acceptance letter, one is being accepted as the specific body part and a specific condition and that is given appeal rights, so if the injured worker agrees with the specific body part or condition being accepted, they do have an appeal right to follow that recourse. She does not understand why there would be a change in the current code.

Craig Michie, Las Vegas

Mr. Michie's concern is that oftentimes there is no lawful basis given for a denial and that this seems to end up developing into a protracted litigation and one of the objectives behind Worker's Compensation was to try to prevent protracted litigation. Somehow there needs to be a lawful basis for why an insurer would deny acceptance of a claim. This is an important area that needs to be fully reviewed. He feels that denials are simply passed out of hand.

Section 6 – Hearing Officer Training

Section 7 – Appeal to hearing officer

Section 8 – Submission of Determination Letter

Sam McMullin, Nevada Self Insured Association, Carson City

In reference to Section 6, Hearing Officer Training, Mr. McMullin feels it would be worthwhile to include things that are actually current developments in case law or other decisions of the division and to make it much more complete in terms of what they could be trained in such as consistency for understanding new court cases if they come out, annually or more frequent. The real point to all of this are the skills and the tactics to utilize as a hearing officer to help resolve these cases and giving them an enhanced portfolio of personal skills so that they can actually do that as opposed to being an evidentiary officer, and explaining what training and mediation means and supplementing that so that they understand what the training should actually focus on. Appreciates the fact that you (referring to Mr. Nix) would be working with them in developing a consistent and continued growth in terms of training skills, and the ability to do the job better.

Craig Michie, Las Vegas

Mr. Michie feels that it is important from a training perspective that if we are going to provide something that is useful we need to take a look at where we are failing. There should be an evaluation of cases that continue in litigation and they need to be properly reviewed to find out why they are failing to be resolved in a timely way which is part of the intent of the act. We need to find responsible ways in dealing with these conditions that exist in training and that area using cases within our own inventory to find resolution to meet what the obligation is, timely treatment, compensation benefits and return to work. If you could do some training on that, maybe that insight would lead us to better decisions.

Raymond Badger, Esq., Carson City

Mr. Badger commented that mediation and deciding a contested case are two separate animals and we might want to separate the two. If two parties say we want somebody to help us mediate the case, he would not agree to that unless it was in front of someone who was not going to hear the case if the issue was not resolved. He agrees that in mediation, ex-parte is very appropriate and in a contested case it is inappropriate and asks how we would do it under the present rules.

Mercer Berens, Sierra Nevada Administrators, Las Vegas

In reference to Section 7, Ms. Berens comments that in subsection 3 the language should be - except as provided in subsection 2 a hearing will not be scheduled unless the determination letter is received as set out in subsection 1.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder believes Ms. Berens was actually speaking about Section 8 and she would like to speak about section 7, Appeal to Hearing Officer. She would like to add a comma at the period that ends the section and add – or shall describe the reason for his appeal specifically and the insurer shall provide the appeal determination letter by the time of the hearing. She agrees the determination letter must be available to the hearing officer in order for everyone to know exactly what the issues are, however many of NAIW’s claimants have difficulty producing that determination letter that the insurer should have no difficulty whatsoever producing that determination letter and regardless of who produces it, there would be a procedure in accordance with the statutory provisions.

Craig Michie, Las Vegas

Mr. Michie would like to know how a claimant is to determine what a final determination is from an insurer and believes the word final is inappropriate. He also believes any determination by the insurer should be subject to appeal.

Nancyann Leeder, Carson City

In line with her comment above on Section 7, she would like to add a separate sentence in Section 8, subsection 1, - if the person does not have the letter he shall request a copy from the insurer who shall provide same to the claimant and the hearing or appeals officer within 10 days.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she also has a concern about these particular sections. She is trying to figure out how the code should read when the insurers somehow get around the requirement to give a determination letter or make a determination that lets the injured worker know what the insurer's actual determination is or in a situation when there is no real determination letter there is just whatever the insurer says. She would like to agree with Ms. Leeder that if the hearings and appeals office does not have a letter from the claimant then the appeals office maybe needs to write to the insurer and say you have 10 days to produce a letter.

Craig Michie, Las Vegas

Mr. Michie commented that he had never heard the term defacto denial until he found out that that was a fancy word that is used to describe a tactic used by insurers simply not to respond to a request for information and that a defacto denial had a legal significance. People who get injured are not born with this sophisticated understanding of how their lawful claim is going to be thwarted, but these are tactics that are imbedded in the way injured workers are treated. These people, especially at the hearing level, don't have any understanding of all of this complicated jargon; they're really interested in getting treatment in a timely way. He believes we should be very careful with regards to putting any time certain deadline on responding to this kind of thing because defacto denials occur on a regular basis and this is a concept that's unknown to hard working people.

Mike Livermore, Alternative Service Concepts, Carson City

Mr. Livermore commented that he disagrees with Ms. Leeder's comments to Sections 7 and 8 and to some degree with the comments of Mr. Michie. He personally thinks that the changes to 616C.270 are quite appropriate and cover the bases exactly as they are. There is no dismissal with prejudice and the injured

worker still has the right to submit that letter and go forward with his appeal and we would like to see it stay just the way it is, it's a fine combination of the way things need to be.

Section 9 – Form requesting hearing before Hearing Officer or for notice of appeal; information required to be provided by insurer or third-party administrator

Robin Drew, Injured Worker, Las Vegas

In reference to Section 9, subsection 1, paragraph a, Ms. Drew commented that she does not feel that it specifies that the form itself must be approved by the DIR. This should be added to make sure that the form the insurer is using contains the correct information.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms Leeder commented that she would like to add in Section 9, subsection 1, paragraph a, approved by the DIR, in paragraph b, she would like to add, or provided by the Department of Administration, and in subsection 2, paragraph f, this should not be deleted.

Mike Livermore Alternative Service Concepts, Carson City

Mr. Livermore commented that he thinks there is some confusion about the workings of NAC 616C but it also crosses over to regulations already created by the DIR that govern the use of the forms that they produce which are the regulatory required forms to be used for filing hearings and that they as third-party administrators and insurers are required to provide to the injured worker with their determination, so there really doesn't need to be any amendments or changes to subsections 1 and 2. He believes subsection 2 states fairly unequivocally to him that the insurer or third party administrator is required to pre-complete certain information on the form that they send to the injured worker not that the injured worker has to fill it out except why they are appealing and sign it and date it and submit it with a copy of the appropriate determination letter or some proof of a failure to respond, so again he would like to leave that one alone.

Mercer Berens, Sierra Nevada Administrators, Las Vegas

Ms. Berens commented that she agrees with Mr. Livermore that the proposed regulation and the language is sufficient and covers everyone quite well.

Section 10 – Unanswered written requests

Susan Sayegh, Sierra Nevada Administrators, Las Vegas

In regard to Section 10, Ms. Sayegh commented that the way they are interpreting this is that this gives attorneys and claimants endless appeal rights. They can't decipher here as to where the burden of proof will be placed onto to prove that an insurer or third-party administrator actually received this letter that would be an alleged defacto denial. Who is to supply the burden of proof that an insurer actually received the written request?

Craig Miche, Las Vegas

Mr. Michie commented on the tone and the tenor of the last suggestion. Believes this is really the basis of the fundamentals of the games that are being played in this environment, burden of proof as to whether or not somebody had sent a letter. There are obviously concerns on both sides with regards to whether a letter was sent. There should be some kind of proof positive from the insurer's side that they in fact have letters and that they can be held accountable for those types of letters being sent to claimants. Claimants don't understand these things and as long as they are being forced to submit, as a result of a workplace injury, to this environment, there has to be appropriate guidance and understanding to these terms and forms of conduct.

Mike Livermore Alternative Service Concepts, Carson City

In reference to Section 10, Mr. Livermore commented that he was pleased to see the Department of Administration address this issue as it has been a void in the regulations as it is in the statutory aspect for some time. He thinks that this pretty much puts things on the table the way they need to be. The others comments are well heeded but there is nothing within this regulation that prevents the injured worker from putting another request into the insurer or third party administrator if the first one was not received. He has no problem with meeting some form of burden of proof that they did not receive something and the injured worker can send something certified or hire an attorney to work for him, someone who will send things in a proper manner and make sure they are received.

Anne Davison, Firstier Administrators, Las Vegas

Ms. Davison commented that she agrees with Mr. Livermore with the exception that she also agrees with Ms. Sayegh and we do need to have some sort of burden or closure to it because the never ending cycle of appeals is certainly not what we need. The way it is written opens it up for a never ending appeal and thinks that the current regulations are fine, the defacto is fine and that we do need to put the burden of proof on the appeal process.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

In reference to Section 10, subsection 1, paragraph a, Ms. Leeder commented that we add – file a request for hearing – so that it matches subsection 2 thus eliminating any possible confusion to a person uneducated in Nevada workers compensation litigation procedures.

Craig Michie, Las Vegas

In response to Mr. Livermore’s comments, Mr. Michie commented that when an injured worker needs to be given the assistance of understanding and direction within this environment, it is not something that they can just go hire an attorney, they can’t hire an attorney many times. They do not have the financial resources to do that. This seems to be a mandated environment that requires when injuries occur within the workplace that this is the sole and exclusive environment in which they must traverse and you just simply cannot dismiss the importance of these considerations by saying you could have gone and gotten an attorney.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that once an insurer has been notified by way of defacto denial appeal that there is some correspondence they have not received from the claimant, the insurer is now on notice that there is an issue and the insurer can resolve the matter at this time.

No comments were made on Section 11

Section 12 Appeals Officer Training

Sam McMullin, Nevada Self Insured Association, Carson City

In reference to Section 12, Appeals Officer Training, subsection 1, Mr. McMullin wanted some clarification and asked Mr. Nix if he will personally approve the specific classes that the appeals officers will take.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix advised Mr. McMullin that the division approves the classes based on funding issues primarily but he thinks the goal here would be to establish some standards and some particular courses that we would like to see people accomplish.

Sam McMullin, Nevada Self Insured Association, Carson City

In reference to Section 12, subsection 3, Mr. McMullin commented that this is a very positive thing to have a plan, give them subject matter areas but also maybe that the plan would be specific courses they are going to take that year.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Mr. McMullins comment - I wouldn't say you are incorrect, no.

Sam McMullin, Nevada Self Insured Association, Carson City

Mr. McMullin commented that there is a bias on their side to not letting these carry over too far; maybe a 2 year limitation would be a good thing. He assumes that this would also satisfy CLE requirements for them.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Mr. McMullin – It often would if the courses that they would take pursuant to this are CLE Certified. Not necessarily all courses that they would attend would be.

Sam McMullin, Nevada Self Insured Association, Carson City

Mr. McMullin commented that they want to make sure that, to a certain extent, they are continually reinforced by training or more interested that they are trained annually and have some restriction on how many can be carried over so that they are actually getting annual training, especially in current development of laws, cases that may or may not have been decided and making sure that they're up to speed on those and that that is reinforced.

Craig Michie, Las Vegas

Mr. Michie commented that he had a question of a fundamental misunderstanding on his part. He has heard the word funding or budgeting come up and asked if these monies were appropriated by the state or are these in fact part of the monies that are suppose to be, as he has

been lead to believe, were funds from the insurer's who participate within this environment are obligated to pay for the operation?

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's reply to Mr. Michie – The Hearings Division is funded through assessments on employers, not on insurers.

Craig Michie, Las Vegas

Mr. Michie asked – So there is no state monies that are being used for this operation?

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Mr. Michie – No General Fund money is correct.

Craig Michie, Las Vegas

Mr. Michie commented that he has a problem with this particular issue in that we should not have any funding or budgeting problems. If there are things that need to be done, there should be funds made available by the employers to get the job done. If we are not adequately funded to do the things that must be done, that needs to be corrected.

In reference to Section 12, Mr. Michie feels that the appeals officers need to listen more to the injured workers and training to give them the skills in this area is substantively needed. He said that he was also lead to believe that there are in fact, reviews that are conducted of appeals officers and at this point in time these reviews go to attorneys that plead their cases before them. He believes this to be an opportunity that we can do some examination of what other peoples thoughts are in regards to how the appeals officer and maybe even hearing officers conduct themselves and suggests, strongly, that it be considered to survey injured workers.

No comments were made on Section 13

Section 14 – Assistance in interpreting English language during proceedings

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

In reference to Section 14, Ms. Leeder commented that it appears to her to be an abdication of the quasi judicial fact finder ensuring a fair hearing. The individual who has an inability to understand English cannot meaningfully participate in the case unless he can hear all of the proceedings. The presumption is that person is not able to pay for this themselves and this is the reason the Hearings Division has a budget for interpreting. If the Hearings and Appeals office needs additional funding for interpreting then it should request that money from the Legislature, it should not prohibit a meaningful participation by the individual worker by not providing interpreting for that person and by interpreting she does not mean merely for that persons

testimony but for the entire hearing because that is the only way that he knows what is taking place.

Ms. Leeder advised that there was a recent case from the Nevada Supreme Court which would appear to have some impact in which they say – An individual who needs redress for his/her rights and who is not able to speak and understand English should have an interpreter provided.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she wondered whether this section could include a question on the hearing request forms if the person might require language interpretation. She is not sure how a hearing or appeals officer can determine if testimony will even take place during a particular hearing. Agrees with Ms. Leeder in that how can a fair hearing take place if they do not understand what is going on. Believes this might be a discrimination matter.

Mike Livermore Alternative Service Concepts, Carson City

Mr. Livermore commented that they were wondering if Mr. Nix could give a little background on the reason for changing this particular statute. To some degree he agrees with the injured workers and Ms. Leeder that it can't be a fair trial unless all the parties understand what is being spoken.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Mr. Livermore – Not sure if he could adequately provide anyone with specific reasons, although in this case there were concerns about interpreters that were being hired for the purposes of allowing claimants to consult with their attorneys rather than to prepare testimony for the appeals officer. Our main concern, of course, is that we have an adequate record of the proceeding and the testimony so your comments are welcome and will certainly be considered as we proceed. All of the changes in here are primarily submitted by division employees and that's why we are here today is to get your input, from injured workers, insurers, employers, whoever's here and participating, so these comments are valuable and appreciated.

Mercer Berens, Sierra Nevada Administrators, Las Vegas

Ms. Berens commented that if the statute provides that if the burden of proof is on the injured worker, with all due consideration given to fairness at trial and appeal and all of that, why would it not be incumbent upon the injured worker to provide translation services. She is sensitive to everyone's issues and knows the Department of Administration provided interpreting services, that it was a variety of languages and seemed to work out ok.

Craig Michie, Las Vegas

Mr. Michie commented that since the injured worker is mandated by law to come to this environment for their appeals, it is incumbent upon this arena to provide the translation.

Section 15 & 16 – Scheduling of pre-hearing conferences by Appeals Officer

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix stated that Section 15 was repealed and replaced in Section 16.

Craig Michie, Las Vegas

In reference to Section 16, Scheduling of pre-hearing conferences by Appeals Officer, Mr. Michie suggested that if conditions exist where a claimant may feel that a pre-hearing conference or these activities that are often done outside his purview, may in fact be detrimental to his concerns that a claimant be able to request that these pre-hearing conferences be done on the record so that a review can be done by the claimant.

Sandra Douglass-Morgan, Esq. MGM Mirage, Las Vegas

Ms. Douglass-Morgan commented that she has a concern with Section 16, subsection 2, paragraph c, Mediating a settlement, is that if the appeals officer, during a pre-hearing conference, is privy to some information that may not be admissible at the hearing, it may affect his/her outcome. She suggests that another appeals officer do the mediation and a different appeals officer preside over the hearing should a settlement not happen.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix commented that we have had earlier testimony from Carson City on a different section concerning mediation and the necessity of perhaps making sure a different officer does the mediation.

Section 17 – Failure of party to appear

Sandra Douglass-Morgan, Esq. MGM Mirage, Las Vegas

In reference to Section 17, Failure of a party to appear, subsection 2, Ms. Douglass-Morgan would like to include an excuse for good cause similar to what is included in subsection 1.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that even though she feels this section is not necessary because the appeals officer's of course have this right anyway, it is a good provision to add for notice purposes.

Craig Michie, Las Vegas

Mr. Michie commented that he has some distress with the concept of these cases being dismissed with prejudice.

John Shook, Esq., Shook and Stone, Las Vegas

In reference to Section 17, subsection 1, Mr. Shook commented that under Section 18 it states if a party or his counsel or representative fails...., and suggests that we add to this section also, or his counsel or representative fails to appear.

Section 18 – Failure to comply with regulations

Randy Jones, Firstier Adminsitrators, Carson City

In reference to Section 18, Failure to comply with regulations, Subsection 4, Mr. Jones commented that it appears the way this is worded is if for some reason an employer's representative is sent to the Senior Appeals Officer, your only alternative is revocation of their license and notes that under subsections 5 and 6 it is for appropriate action and thinks this section needs to be amended to read the same.

Craig Michie, Las Vegas

Mr. Michie commented that revoking the license may be the only leverage that might be had to make sure there is compliance. If we're going to have enforcement and it's going to have some teeth, let's see some evidence of it.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she was concerned that this will be destined to be one of the usual, absolutely ignored codes and statutes. She would like to see this written in a way that doesn't say that the proceedings are the factor. The way it is written it seems to mean that only if the misconduct interferes with that particular proceeding will the appeals officer resort to this particular statute in order to do something about the misconduct of an attorney and others. Does not like the way it reads – the appeals officer may make such orders as are necessary to direct a course of the hearing. Would like it to say something like an appeals officer has some obligation to report it to the State Bar.

No comments were made on Section 19

Section 20 – Filing and service of documents

John Shook, Esq., Shook and Stone, Las Vegas

In reference to Section 20, Mr. Shook commented that he would encourage the administrator to consider e-mail like there is in District Courts now and it has worked very well.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix comments that the division is in the process of going out on a request for information to look at some e-filing systems and that we're very interested in electronic resolutions to these types of issues.

Anne Davison, Firstier Administrators, Las Vegas

Ms. Davison commented that she agrees with Mr. Shook in that this particular section is backward in time and loved hearing about what Mr. Nix commented about in regard to e-filing. Obviously we're all going paperless so if you could consider something like the e-mail and that type of scanning document that would be outstanding.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder agreed with Mr. Shook and Ms. Davison. She commented that the disadvantage of both faxing and e-mail is the same, you have to pay for the paper when you print out the document, however, she suggests a halfway point until the Department of Administration actually does go into e-filing – if you do want to limit faxes, limit them only to evidence packets and documents of more than 5 pages, then you would still be allowing some emergency type faxes that may be required.

Gary Millikin, Nevada Contractors Insurance Company, Las Vegas

Mr. Millikin commented that he agrees with the previous 3 speakers on the e-mail and if you are going to allow faxes you should have some kind of guideline as to what/when something can be faxed.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she is concerned about this section and another section which allows parties to serve the injured worker's counsel without serving the injured worker.

Dalton Hooks, Esq., Las Vegas

Mr. Hooks commented that he agrees with Mr. Shook and with Ms. Leeder on the halfway point and suggests another halfway point might be to produce a document on PDF, file that and have the Hearings Division accept it yet will still turn the original into the division.

No comments were made on Section 21

Section 22 – Papers and documents

Barbara Gruenewald, Esq., Carson City

In reference to Section 22, Papers and documents, subsection 6, Ms. Gruenewald commented that when filing with the District Court she must sign an affidavit each time and is a pain to do

so. She would suggest in paragraph 5 add – to allow an appeals officer to strike or redact the Social Security Number from any document that is filed and not have paragraphs 6 and 7.

Craig Michie, Las Vegas

Mr. Michie commented that he would like to suggest that on the blank back sides of the documentation generated by the Hearings Division contain instructions and information about Nevada Attorney for Injured Workers or other routes to understanding a lot of these complex aspects of Worker’s Compensation.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she agrees with Ms. Gruenewald that Section 22, subsection 6 is very burdensome. She believes that requiring an affirmation on all documents is unnecessary as many of the documents that are filed do not have any exhibits and that if we leave subsection 6 in, the documents which require an affirmation should be restricted to those which might actually have a social security number such as exhibits or motions that have exhibits attached.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix commented that there is law that requires parties not to submit documents to government agencies with those numbers. We’ll take those comments into consideration and we certainly don’t want to make the practice before our division more difficult than it already is.

Mike Livermore Alternative Service Concepts, Carson City

Mr. Livermore commented that he agrees with the statements before him but has a question of does this subsection also include the formal documents in filing the claim including the C-1, C-3 and C-4 which may have a social security number on them. It seems to him that they may be governed under a different section of NRS 239B.030 in that that information is required to be submitted to a government agency, and likewise, the statute suggests that if the identity of the person might be in question then the redaction is not necessary and he does not see that that aspect of things is taken into consideration in subsection 5 where he suggests we might append that with a statement that goes after the citation of the statute stating that unless the identity of the person is in question, which he believes does occur periodically in Worker’s Compensation.

No comments were made on Section 23

Section 24 – Evidence recorded on videotape, digital recording, or other electronic media

Craig Michie, Las Vegas

In reference to Section 24, Mr. Michie starts by playing a recording of a personal phone message from a doctor which he calls an illustrated example of substantive evidence. Claimants having to file documents 14 days in advance to be able to provide substantive evidence that is germane to elements within a case can at times be difficult and suggests that when the division looks at

limitations on the presentation of evidence by claimants who don't have the resources just simply have the facts – some allowance needs to be made if delays are beyond their control.

Anne Davison, Firstier Administrators, Las Vegas

In reference to both Sections 23 and 24, Ms. Davison asks Mr. Nix why the hearing officers were being taken out.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Ms. Davison's question – I think in Section 23 because those particular provisions are pertinent to an appeals officer, not a hearing officer. I don't think there are depositions, interrogatories and such. Section 24, I think we're just trying to expand it beyond videotape, making sure that if somebody wants to play some kind of media to an appeals officer, that they have the equipment in order to do that.

Mercer Berens, Sierra Nevada Administrators, Las Vegas

Ms. Berens commented that she just wants to make clear that there isn't some other place where exclusion of electronic media or video tape or recording is prohibited at the hearing officer level.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Ms. Berens – No, I don't think this is a prohibition. I think this was intended to be an expansion on simply the reference to the technology.

John Shook, Esq., Shook and Stone, Las Vegas

In reference to Section 24, subsection 3, Mr. Shook commented that he would like clarification on whether the appeals officer wants a copy or is it saying that the 14 days should not be provided unless the appeals officer requests....

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Mr. Shook – I think it was intended to refer to the next sentence which is – is if the appeals officer requests you provide the equipment to display the particular technology.

Dalton Hooks, Esq., Las Vegas

Mr. Hooks commented that he heard the discussion of the hearing officer being taken out of Section 24 and believes it does appear from the language that the division is intentionally removing the hearing officer from the equation and that they do present, when they have video, it is important to be able to present those at each step.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Mr. Hooks – I think it actually was intended to remove the requirement of a written request to the hearing officer because there's simply not 14 days available to do that in that proceeding because it's so quick.

Dalton Hooks, Esq., Las Vegas

Mr. Hooks' response to Mr. Nix – So perhaps another subsection that clarifies what the intent is with regard to that might be helpful.

Section 25 – General requirements for motions

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

In reference to Section 25, General requirements for motions, subsection 3, Ms. Leeder commented that this would like a change the customary rule which comes from the District Court rules which gives the party with the burden of proof the right to reply and therefore rebut the opposition's argument. She believes that's improper and they argue that subsection 3 should not be deleted.

Section 26 – Consolidation of cases before the Appeals Officer

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

In reference to Section 26, Consolidation of Cases before the Appeals Officer, subsection 2, Ms. Leeder commented that Nevada Attorney for Injured Workers would not be able to comply and suggests that the division put a period after – in writing.

Section 27 – Stay of decision of Hearing Officer

Craig Michie, Las Vegas

In reference to Section 27, Stay of decision of Hearing Officer Mr. Michie commented that he believes this is just a tactic used to prevent an individual ultimately from receiving timely lost wage compensation and other compensation in the pursuit of a lawful claim. It would appear as if a stay is something that should be responsibly argued and that stay would only be given an opportunity for a responsible argument for an appeals officer. He would hate to see that this stay of a decision by a hearing officer is used successfully as a tactic to simply allow injured workers who don't have the resources to survive the time it takes to get to an appeals officer hearing to simply fall off the face of the map.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented in reference to the new subsection 3, she asks that there be a comma at the end that requires the appeals officer to give time for an opposition to be filed as usually an opposition has 10 days.

Dalton Hooks, Esq., Las Vegas

Mr. Hooks commented that he agrees with Ms. Leeder, however, that the moving party should be entitled to a reply and this is not listed in the statutes.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented asking why there is nothing here about the stay of a decision of the DIR and that she would like to have some understanding of that.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's reply to Ms. Drew – I think the issues of the stays are applicable to the hearing officers, I believe that's what this section references.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew comments that she is troubled by the fact that it does not include stay of DIR decisions and apparently there is no reason why the DIR decisions are not included here.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's reply to Ms. Drew – I can't tell you that other than we have jurisdiction over the decisions of the hearing officers, we don't have jurisdiction over DIR decisions until there is an appeal of that decision.

No comments were made on Section 28

Section 29 – Records of hearings

Craig Michie, Las Vegas

Mr. Michie commented that he would like to suggest that once a recording of an appeals officer's hearing was conducted that a copy of that recording on disc be simply made available to a claimant without charge.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she would suggest, in subsection 1, after the new word recorded be inserted - in it's entirety. In subsection 2, after the word hearing, be inserted – if it is entire and audible. In other words, if we cannot recapture a record on appeal from the recording itself, the normal rule in appellate procedure is that the attorney's would get together and come up with a facsimile of the record. It seems to her that that would be in question given the limitation that's here. She has had instances where the recording has stopped for some reason or another.

Sandra Douglass-Morgan, Esq. MGM Mirage, Las Vegas

Ms. Douglass-Morgan commented that she is confused on subsection 3 and asked if actual recordings will be available to people who are not parties to the proceeding and can they be ordered by non parties, and if not transcribed would they be available only audibly for the parties of the proceeding.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Ms. Douglass-Morgan – This provision is to simply clarify that any party to the proceeding can come to the division and read the transcript of the proceeding if they don't wish to pay for their own copy of it. Under our contract we're not allowed to make copies of the transcript to provide to parties. So we'll allow anybody to come in, review the transcript if we have one in our agency. I think that's the primary intent of subsection 3.

Craig Michie, Las Vegas

Mr. Michie commented that it is his understanding that a transcript would only be produced in the event that somebody was filing an appeal.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

Mr. Nix's response to Mr. Michie – That's the only time that we (meaning the division) would order a transcript. Any party can order a transcript of a proceeding if they're willing to bear the cost of it.

Craig Michie, Las Vegas

Mr. Michie commented that on behalf of claimants, he would like to ensure that there would be access to review said recording without charge.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she suggests, in subsection 3, to leave the interested person language and to delete the party to the proceeding because unless interested person is included she thinks this rule would conflict with the brand new rule coming out of the Nevada Supreme Court as to what should be open to whom.

Bryan Nix, Senior Appeals Officer, Hearings Division, Las Vegas

In response to Ms. Leeder's comment Mr. Nix advised that we will review that and that he appreciated her comment.

Mike Livermore Alternative Service Concepts, Carson City

Mr. Livermore commented that if the recording is the official record of the proceeding must it not then be available for review in your office rather than the transcript. Specifically, that would be something for you to review if there was a code of conduct issue raised before you about the performance of duties, as that recording could be seriously, evidence of bias, prejudice towards any party or representative, etc. He would like that added as another subsection that states that the official record of the proceeding, i.e. the recording, is available for review by an interested party.

No other comments were offered at this point and Mr. Nix asked for any other comments on any provision either in Las Vegas or Carson City. No one came forward so Mr. Nix concluded the workshop adding that the division will allow for any written comments to be submitted until the deadline of November 30, 2007 which we'll also take into consideration. He thanked everyone for attending.

The division received 4 written comments by the deadline of November 30, 2007. These comments are summarized as follows:

Bob Balkenbush, Thorndale, Armstrong, et al for self insured's and insurers, Carson City

Mr. Balkenbush proposed changes to section 3.2(g) to read: "In any contested case pending before an appeals officer, each side to the contested case is entitled, as a matter of right, to one change of appeals officer by filing a request for change of appeals officer. Each appeals officer proceeding, whether consisting of a single contested case or consolidated contested cases, shall be treated as having only two sides.

Proposed changes to section 3.2(g)(1): A party wishing to exercise the right to a change of appeals officer, as a matter of right, shall file a document entitled "Request for Change of Appeals Officer, as a Matter of Right." The request may be signed by a party or by an attorney for a party, and it shall state the name of the appeals officer to be changed, and it shall neither specify grounds, nor be accompanied by an affidavit. If one of two or more parties on one side of a contested case files such a request for change of appeals officer, no other party on that side may file a separate request.

Proposed changes to section 3.2(g)(2): A request for change of appeals officer, as a matter of right, shall be filed in writing with the appeals officer in which the case is pending and a copy served on the opposing party. Such a request shall be accompanied by a fee of \$75.00, which is to be made payable to the Nevada Department of Administration, Hearings Division. The Nevada Attorney for Injured Workers is exempt from this filing fee. The filing fee shall be used by the Nevada Department of Administration, Hearings Division for the reasonable and necessary expenses of appeals officers and hearing officers, and the support of the Hearings Division, incurred in the performance of its quasi judicial duties, and thereafter for other expenditures deemed reasonable and necessary by the Nevada Department of Administration.

Proposed changes to section 3.2(g)(3): Within 10 days of the request for change of appeals officer, as a matter of right having been filed, the senior appeals officer shall:

(a) In an appeals office in which there are more than two appeals officers randomly reassign the contested case to another appeals officer within the appeals office;

(b) In an appeals office in which there are two or less appeals officers, assign the contested case to the remaining appeals officer. Alternatively, the senior appeals officer may reassign the contested case to an appeals officer of another appeals office.

Proposed changes to section 3.2(g)(4): A request for change of appeals officer, as a matter of right may not be filed with any appeals officer who has made any ruling on a contested matter or commenced hearing any contested matter in the contested case.

Proposed changes to section 3.2(g)(5) The appeals officer with whom a request for change of appeals officer, as a matter of right, is filed shall not contact any party or the attorney representing any party, nor shall the appeals officer direct any communication to the senior appeals officer with respect to reassignment of the contested case in which the request for change of appeals officer was filed.

Proposed changes to section 3.2(g)(6): The filing of an affidavit of bias or prejudice without specifying the facts upon which the disqualification is sought, which results in a transfer of the contested case to another appeals officer is a waiver of the parties' rights to transfer the matter to another appeals officer by filing an affidavit of bias or prejudice without specifying the facts upon which the disqualification is sought.

Proposed changes to section 3.2(h): 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's spouse, or any other person residing in the hearing or appeals officer's 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;

(4) The hearing or appeals officer, 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;

(I) Is a party to the proceeding or an officer, director, partner or trustee of a party;
(II) Is acting as a lawyer in the proceeding; or
(III) Is to the hearing or appeals officer's knowledge, likely to be a material witness in the proceeding.

(5) 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;

(I) The hearing or appeals officer fully discloses to the parties the basis for the disqualification; and

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

Proposed changes to section 3.2(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.

Proposed changes to section 3.2(j) A hearing or appeals officer shall not be swayed by partisan interests, public clamor or fear of criticism.

Proposed changes to section 3.2(k) A hearing or appeals officer shall maintain order and decorum in proceedings before the hearing or appeals officer.

Proposed changes to section 3.2(l) 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 other litigants, witnesses, lawyers or members of the public.

Leslie Bell, Nevada Compfirst, Carson City

Ms. Bell believes that the language found in the Supreme Court's Model Code of Conduct for Judicial Employees in the State of Nevada (copy attached to letter) sufficiently satisfied, by reference, the Legislative intent of AB496, however, there may be an opinion by the Commission on Judicial Discipline that state that employees of the Department of Administration, Hearings Division are not covered under the definition of "Judicial Employee".

Ms. Bell states that regarding comments made related to voluntary mediation of disputed workers' compensation matters, that she supports any effort made by the Division to streamline and expedite the resolution of contested matters and that mediation may provide an outlet to the current process.

Shirley Burke, Culinary Workers Union, Las Vegas

Ms. Burke states that in regards to section 7 she is in agreement with Nancyann Leeder, Nevada Attorney for Injured Workers, in that she has had too many occurrences where an injured worker has not received a determination letter from the insurer and that most workers do not understand the mechanics of workers compensation. If they have not received a determination with their appeal rights, how would they know how to navigate the system? She states that this brings up another subject discussed under section 10 in that the insurers would like the injured workers to

send their letters by certified mail. Why are the determinations not sent certified mail? Even if the insurers send copies to the Division that does not guarantee that the injured worker received their copy.

In regard to section 14, Ms. Burke states that it would only seem fair to have state interpreters made available at the appeals level to anyone that does not communicate in English.

In regard to section 16, Ms. Burke feels that prehearing conferences should be recorded to prevent an injured worker from feeling there has been an impropriety.

Robin Drew, Injured Worker, Las Vegas

In regard to section 3.1(c), Ms. Drew comments that in order for this regulation to have any relevance it is necessary for the regulation to do more than describe ideals, it must describe consequences for any violations of this code.

In regard to section 3.1(g), Ms. Drew comments that it is no one's business what lawfully existing organizations an officer has membership in.

In regard to section 3.2(b), Ms. Drew states that this section must specify in unambiguous terms what the statement "the right to be heard according to law" actually means.

In regard to section 3.2(g)(1), Ms. Drew comments that "this section needs to be carefully rewritten for the real world".

In regard to section 3.2(k), Ms. Drew comments that she resoundingly concurs with this particular proposed section exactly as written.

Public Hearing – May 23, 2008

Section 2

Craig Michie, Las Vegas

Mr. Michie wanted to know what form the recording of the public hearing was being handled.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix responded to Mr. Michie's question: I believe it is a digital audio recording.

Craig Michie, Las Vegas

Mr. Michie commented that appeal officers must be licensed attorney's in the state of Nevada and do operate under a certain code of conduct as such and that some of the ethical requirements suggested seem duplicative but that this might be an advantage.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she presumes that the ethical conduct of hearings and appeal officers are in addition to the rules of conduct of attorney's.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix's response to Ms. Drew: We certainly haven't changed any of the laws that already exist in that regard. We're merely adopting these standards at the requirement of the legislature and these standards are typical of the rules for administrative law judges across the country. This is pretty much taken from the standard code that you find in most states, these types of issues. They are not quite as restraining as the rules of judicial conduct for judges. There's a little more flexibility. They're not as rigid in some of the issues regarding political involvement and some of those other issues where judges are more tightly constrained than administrative law judges. They are not intended to replace or overrule or override any other standard of conduct that may be out there in Nevada law.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew then went on to comment that she suggests that regulations should state very clearly that these rules do not replace the rules that all attorney's in Nevada are suppose to follow.

Section 3

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that when a person complains about a hearing or appeals officer she wanted to know what the senior appeals officer can do about specific complaints such as felonious criminal behavior.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix's response to Ms. Drew: There is no distinguishing language in these regulations concerning the nature of the complaint. These are prohibitions on these types of behavior.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she was concerned that there are mentions to prohibitions on these types of behavior but no mention of specifics as to the methods that the senior appeals officer uses when looking at a complaint and would like to see that in these regulations. She would also like this section to say that hearing and appeals officers cannot show favoritism to a party that has the money to pay for legal representation.

In the section that says that the hearing and appeals officer shall not "convey the impression", Ms. Drew feels this is too vague and would like to make this clearer and less vague.

Ms. Drew commented that she has a concern with the section that states that the hearing and appeals officers are not prohibited from writing a character or ability reference for a person that they have personal knowledge and would like to change it to “with whom the hearing or appeals officer had direct working knowledge”.

In section 4.1 – ex-parte communication – Ms. Drew would like to know how anyone would ever know and would like the hearing and appeals officers to keep logs of all communication.

Craig Michie – Las Vegas

In support of the comments by Ms. Drew, he would like logs kept of all communication when a litigant is pro se.

Robin Drew, Injured Worker, Las Vegas

In section 4.2(a) – Ms. Drew is concerned where it states that ex-parte communication may be relaxed during mediation. She is afraid they will participate in all kinds of ex-parte communication and then claim immunity.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix explained the process of mediation to Ms. Drew and why the word relaxed was used.

Craig Michie – Las Vegas

Mr. Michie would like to know if it is the intent here that mediation would also be conducted by – whom?

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix’s response to Mr. Michie – It’s not the intent to create a mediation process. We took comments from the workshop and tried to incorporate them. We envision that certain people may request mediation at the appeal level and we would be willing to accommodate that if such a request were made.

Craig Michie – Las Vegas

Mr. Michie suggested that to avoid a “relaxed atmosphere”, to have the mediation done by an outside party.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix’s response to Mr. Michie: Mediation as we see it would be an effort to resolve an issue that would otherwise be litigated. No one is restricted from mediating a matter outside the

division and then bringing the result of that mediation as a settlement for the hearing or appeals officer to approve.

Craig Michie – Las Vegas

Mr. Michie also commented that he would like to see public disclosure of complaints made about the hearing and appeals officers.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she would like to suggest again (made the suggestion at the workshop on November 8, 2007) adding a new subsection to section 3 (m) that hearing and appeals officers shall disclose affiliations to counsel to avoid the appearance of impropriety.

Section 4

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder suggested that if the parties wish to engage in mediation a different hearing officer or in section 18, appeals officer would be the mediator, therefore the existing assigned hearing or appeals officer need not go forward. This way we do not have the problem of preemptory challenging the existing assigned officer. If the mediation is unsuccessful we go back to the assigned hearing or appeals officer and go forward with the hearing.

Barbara Gruenewald, Esq., Carson City

Ms. Gruenewald agrees with Ms. Leeder and strongly suggests that Mr. Nix consider the previous suggestion regarding mediation.

Sam McMullin, Nevada Self Insured Association, Carson City

Mr. McMullin commented that he agrees with Ms. Leeder's suggestion for section 3 and both Ms. Leeder and Ms. Gruenewald on the suggestion for section 4. He would also like to see added in section 4 where it states "a party to a proceeding" would like it to include attorney or representative.

Section 5

No comments were made on section 5.

Section 6

Craig Michie – Las Vegas

Mr. Michie commented that he would like to reiterate his comments made previously regarding the complaint process.

Sam McMullin, Nevada Self Insured Association, Carson City

Ms. McMullin commented that this section raises questions and needs more clarity. What will be the effect of filing a certain complaint and will it remain confidential?

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that section 3.1(a) states with real specificity the conduct of the hearing or appeals officer and section 6 does not get specific as to the conduct or action that can be done. She commented that she does not see any force or authority.

In section 6.3(b) Ms. Drew would prefer that it states the Governor is informed of all complaints. She would also like to understand more of how a complaint will affect the complaining party and cases assigned to hearing or appeals officers whom the complaint is about.

Mercer Berens, Sierra Nevada Administrators, Las Vegas

Ms. Berens' comments on section 3.1(g) and 6.2 – Ms. Berens believes that to have some mechanism in place to monitor and to provide for consequences for ill behaved officers is a good thing. She does not believe that any hearing or appeals officer would intentionally engage in behavior that would put anyone at risk, particularly the injured worker. Mr. Nix's addressing the issue of complaints is a good start.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew's comments on section 6.2 – She would like to see in this section that it specifies not just the result of the complaint but that it narrows down the options the senior appeals officer has and wants the notification to the complainant to state that the Governor will be informed of the matter.

Section 7

Craig Michie – Las Vegas

Ms. Michie's comments on 7.1 and 7.2 were that he feels that 10 hours is not enough training and that excess hours should not be rolled over to the next year.

Section 8

Susan Sayegh, Sierra Nevada Administrators, Las Vegas

Ms. Sayegh commented that the burden of proof should go both ways and that the injured worker should prove that they sent a request to the insurer or third-party administrator.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that if a hearing is filed for a defacto denial, the insurer becomes aware at that time that a request had been made. The insurer could resolve the issue by simply complying and give the determination letter to the injured worker instead of letting it go to hearing. She would also like the insurer to confirm receipt of all correspondence from injured workers.

Craig Michie – Las Vegas

Mr. Michie commented that C1 and C4 forms are filled out for each on the job accident and believes these should be triggers that automatically provide notice to the employer/insurer that there is a pending obligation on behalf of the employer to an injured worker.

Section 9

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she would like to add to the end of 9.2 – within 10 days.

Section 10

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that section 10.2(b) be deleted as NAIW at times does not get appointed until after the filing.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she would like to see it state that the consol will only occur if a party requests it.

Craig Michie – Las Vegas

Mr. Michie commented that there should be no reason to delay a hearing due to a consolidation of cases.

Section 11

There were no comments on section 11.

Section 12

Craig Michie – Las Vegas

Mr. Michie commented that he would like to echo his previous comments made in section 7.

Sam McMullin, Nevada Self Insured Association, Carson City

Mr. McMullin commented that as in section 7 regarding the appeals officers, he would like to see more hours of training and no carry over. He would also like to see it include the language as in section 7.1(d) – recent relevant statutory and regulatory changes and judicial decisions.

Craig Michie – Las Vegas

Mr. Michie agreed with Mr. McMullin’s comments and would also like to see it include sensitivity training.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she would like to delete the word “successfully” in section 12.1. She also believes the hearing officer’s training should be double or triple that of the appeals officers and that the hours should not carry over into the next year. In section 12.3, Ms. Drew would like to see the word “newly” deleted. She would like this section to say that the training would be open to the public whenever possible.

Craig Michie – Las Vegas

Mr. Michie commented that he agrees with Ms. Drew on all comments made above.

Section 13

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder would like to suggest in section 13.2 that the date of injury be changed to the approximate date of injury because of occupational diseases.

Dalton Hooks, Esq., Las Vegas

Ms. Hooks commented that he understands Ms. Leeder’s point but that he would not want to see it changed to just approximate date but that it should specify approximate date in case of occupational disease.

Craig Michie – Las Vegas

In section 13.2(d), Mr. Michie would like it to include the history of claim numbers not just the current number.

Section 14

No comments were made on section 14.

Section 15

No comments were made on section 15.

Section 16

Bobbette Bond – Culinary Union, Las Vegas

Ms. Bond commented that she will save most of her other comments for the written portion when Mr. Nix advises the cut off time for this but would specifically like to understand why in section 16.2 an interpreter would only be provided for testimony and why we are limiting the ability for someone who is English challenged to understand what is going on during the proceeding.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix explains the intent of this section and advises all that due to our tight schedule, written comments would be accepted until the end of next week which would be May 30, 2008.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she believes this language to be unduly restrictive and that our primary concern should be in having a fair hearing. She believes this section needs substantial changes.

Craig Michie – Las Vegas

Mr. Michie commented that he agrees with Ms. Leeder and that this section affects an entire class of injured workers.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented that she believes an translator should be provided no matter what and at no cost to the injured worker.

Craig Michie – Las Vegas

Mr. Michie commented that he does not like the language “a person with a communication disability.”

Section 17

No comments were made on section 17.

Section 18

Jim Werbeckes – Employers Insurance Company of Nevada, Carson City

Mr. Webeckes commented on section 18.2 that he would like to have “upon his motion” removed.

Section 19

Craig Michie – Las Vegas

Mr. Michie would like this section to be sensitive to the injured worker who does not fully understand this process.

Section 20

Craig Michie – Las Vegas

Mr. Michie would like to know what jurisdiction the Commissioner of Insurance and the State Bar has and what kind of conduct and activity the 2 entities can participate in and to what degree.

Section 21

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder questioned what does acknowledgment of receipt mean in section 21.3

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix explains this section.

Sam McMullin, Nevada Self Insured Association, Carson City

Mr. McMullin would like more allowance on this section than just 5 pages.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix explains the intent of this section.

Section 22

No comments were made on section 22.

Section 23

Mercer Berens, Sierra Nevada Administrators, Las Vegas

Ms. Berens asked if this was the District Court directive.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix explained that this is a state law and that we will try to make this as easy as possible for the parties.

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she does not agree with the language and would like more clarification.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix explained that the LCB made changes to our version and will discuss with them again.

Section 24

Jim Werbeckes – Employers Insurance Company of Nevada, Carson City

Mr. Werbeckes suggested that in section 24.1 after deposition we add a comma, take out or and make the statement read “A party who wishes an appeals officer to permit discovery by deposition, interrogatories or production of documents.....”

Section 25

Craig Michie – Las Vegas

Mr. Michie commented that substantive evidence that is readily available not being allowed to be provided is a substantive deterrent to justice being done.

Bryan Nix, Senior Appeals Officer, Hearings Division

Mr. Nix explained that this section was created for both sides to be sure that if it is requested to be submitted into evidence the other side receives a copy prior to the hearing and that we have the appropriate equipment available on which to play the evidence.

Craig Michie – Las Vegas

Mr. Michie commented that he wants to be sure that the appeals officers are able to identify that the activity inside their hearing is in fact being recorded. He thinks we should have attendants available to assist the appeals officers so that they are not distracted.

Section 26

No comments were made on section 26.

Section 27

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented on section 27.3 that the appeals officer should not rule on the motion until the 11th day.

Dalton Hooks, Esq., Las Vegas

Mr. Hooks commented that there is no protection in the regulations for the reply to the objection and would like the 5 days to submit a reply to the objection added.

Craig Michie – Las Vegas

Mr. Michie commented that he wanted to know what the penalties are for those who do not play by the rules. He believes there is no downside to not replying.

Section 28

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder commented that she would like an alternative should there be a problem with the recording of the hearing.

Robin Drew, Injured Worker, Las Vegas

Ms. Drew commented on section 28.1 that she wanted to know why the party has to send the decision to the appeals officer believing the higher court should be responsible. She believes this section should not exist at all.

Craig Michie – Las Vegas

He would also like us to add interim orders and such to the reporting of timeliness and to hold appeals officers responsible for compliance

Section 29

Craig Michie – Las Vegas

Mr. Michie commented that the hearing officers should also be recorded and he believes the appeals officers need to focus on the hearing and not worry about the recording and that all parties should be aware of whether the recording is running properly.

Section 30

No comments were made on this section.

Mr. Nix concluded the hearing and announced that if anyone would like to submit any written comments were welcome to do so and our deadline would be May 30, 2008.

There were 2 written comments submitted by the May 30, 2008 deadline. These comments are summarized as follows:

Nancyann Leeder, Nevada Attorney for Injured Workers, Carson City

Ms. Leeder states that she is in favor of a change to section 18.2, however she believes that if a party requests mediation the matter is assigned to a different appeals officer and should the mediation not be successful then the matter reverts back to the originally assigned appeals officer for hearing.

In regard to section 29.3 Ms. Leeder comments that she would like this section deleted or if not deleted then the time the appeals officer would need to wait to make a decision would have to allow time for mailing, and therefore could be a 13 day automatic stay (not 10 or 11).

In regard to section 10.2(b), Ms. Leeder would like this deleted.

In regard to section 29, Ms. Leeder suggests adding subsection 4 which should read: If any differenced arises as to whether the appeals office's record truly discloses what occurred, the appellant may prepare a statement of the evidence or proceedings from the best means available, including appellant's recollection. The statement shall be served upon respondent, who may serve objections or propose amendments within 10 days after service. The statement and any objections or amendments shall be submitted to the appeals officer to resolve the difference so the record is made to conform to the truth. The record as settled and approved shall be the official record.

Robin Drew, Injured Worker, Las Vegas

In regard to section 2.4, Ms. Drew would like it to be amended to read "be faithful to the law and decide matters solely on the basis of the facts and the applicable law, including, without limitation, judicial decisions.

In regard to section 3.1(b), Ms. Drew would like this subsection to include "by words or conduct manifest bias or prejudice because of...Pro Se status".

In regard to section 3.1(f), Ms Drew would like it to be amended to include "or of any other person... use the position of hearing or appeals officer to advance the interests of any organization.

In regard to section 4.3, Ms. Drew would like it to be amended to include "shall disclose promptly to all parties to the proceeding... (c) Shall keep a record of any and all communication or contact with a party to a proceeding before the hearing or appeals officer. This record shall be available for inspection by any party to the proceeding.

In regard to section 6.2, Ms. Drew would like to amend it to include ...”notify the complainant of the results of the investigation... including notifying the complainant whether the complaint has been substantiated and reported to the Governor pursuant to subsection 3.

In regard to section 6.3(b), Ms. Drew would like to amend it to eliminate the word if in the sentence “If the senior appeals officer substantiates the complaint... and would like it to read “Whether or not the senior appeals officer substantiates the complaint...

In regard to section 8, Ms. Drew would like to retain this section as written.

In regard to section 10, Ms. Drew would like to amend this section to include a clear prohibition against any party or officer using consolidation as a method of delaying due process.

In regard to section 16, Ms. Drew would like to delete this section as being an unconstitutional violation of due process rights of people who speak English as a second language and as a civil rights violation which discriminates against injured workers on the basis of race or nationality.

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

Comments were solicited from affected business in the same manner as they were solicited from the public (see question #1) and are included in this statement along with comments from the public.

4. If the regulations were adopted without changing any part of the proposed regulations, a summary of the reasons for adopting the regulation without change and/or reasons for making any changes to the regulations as proposed.

The Division made several revisions to the proposed regulations which include changes suggested by those who testified at both the workshop and public hearing, by those who submitted written comments, for further clarification and refinement and revised text and placement by the Legislative Counsel Bureau. The changes to the proposed regulations are as follows:

Authority: Sections 1 and 11, NRS 616C.295 [5] and 616C.310; [and] Sections [6], 2-7 [22] and [23] 12, [of] [Chapter 537 of the 2007 Statutes of Nevada and Assembly Bill 496] NRS 616C.295; Sections 8-10 and 13-31, NRS 616C.310. **These changes were made by the LCB.**

A REGULATION relating to industrial insurance; establishing a code of conduct for hearing and appeals officers for contested cases; establishing training requirements for such hearing and appeals officers; revising procedures for hearings and appeals of contested cases; and providing other matters properly relating thereto. **This was added by the LCB.**

Section 1. Chapter 616C of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to [29] 10, inclusive, of this regulation. **This change was made by the LCB.**

~~[Sec. 2.]~~ **Sec. 11.** As used in sections 2 to 29 of this regulation and NAC 616C.260 to NAC 616C.336, inclusive.

3. “[s] Senior appeals officer” means the appeals officer designated by the [Chief] Director of the Department of Administration pursuant to subsection 3 of NRS 232.215 to supervise the administrative, technical and procedural activities of the Hearings Division. This section was moved to section 11.3 and text revised by the LCB.

Section 3 was placed in different sections and text revised by the LCB (except where noted).

~~[Sec. 3. Code of conduct for hearing and appeals officers]~~ **Sec. 2.** A hearing or appeals officer shall:

~~[1. Maintaining the integrity of the hearings and appeals officer process.]~~

~~(a) 1. [A Hearing or Appeals Officer shall observe high standards of conduct so]~~ Act in a manner that preserves the integrity, impartiality and independence of ~~[the]~~ hearings ~~[system is preserved]~~ in contested cases for compensation conducted pursuant to chapters 616A to 617, inclusive, of NRS and ~~[shall act at all times in a manner that]~~ promotes public confidence in ~~[the]~~ such hearings; ~~[process.]~~ This section was moved to section 2.1 and text revised by the LCB.

2.2 Act in a manner that avoids even the appearance of impropriety, including, without limitation, disclosing any affiliation to a party in a proceeding before the officer; This section was added by the Division based on public comment at the workshop and/or public hearing.

Sec. 3. 1. A hearing or appeals officer shall not:

~~(b) 3.1(a) [A Hearing or Appeals Officer shall not]~~ ~~[e]~~ Engage in conduct that reflects adversely on the ~~[Hearings or Appeals Officer's]~~ character, competence ~~[-]~~ or temperament of the officer or on the officer's fitness to serve, ~~[as a Hearing or Appeals Officer.]~~ including, without limitation, ~~[A Hearing or Appeals Officer shall not engage in]~~ conduct involving misrepresentation, fraud, dishonesty, deceit or felonious criminal behavior. This section was moved to section 3.1(a) and text revised by LCB.

~~(e) 3.1(b) [A Hearing or Appeals Officer shall not,]~~ In the performance of the official duties of the officer, by words or conduct~~[-]~~ manifest bias or prejudice ~~[based upon sex,]~~ because of race, ~~[national origin,]~~ religion, color, ~~[sexual orientation, marital status, disability,]~~ age, sex, disability, sexual orientation, national origin, ancestry, marital status or socioeconomic status. This section was moved to section 3.1(b) and text revised by LCB.

~~(d) 3.1(e) [A Hearing or Appeals Officer shall not]~~ ~~[a]~~ Allow family, social or other relationships or associations to influence his official conduct or judgment. This section was moved to section 3.1(e) and text revised by LCB.

~~(e) 3.1(f) [A Hearing or Appeals Officer shall not]~~ Use the position of hearing or appeals officer to advance the private interests of the ~~[Hearing or Appeals]~~ officer or of any person~~[-]~~. ~~[nor shall a Hearing or Appeals Officer]~~ 3.1(g) Convey the impression that ~~[anyone]~~ any person has ~~[a]~~ any special influence with the ~~[H]~~ hearing or ~~[A]~~ appeals ~~[O]~~ officer. This section was moved to sections 3.1(f) & 3.1(g) and text revised by LCB.

(f) 3.1(l) ~~[A Hearing or Appeals Officer shall not testify as a character witness except pursuant to] Unless under subpoena[;], testify under oath as a character witness. [however,] The provisions of this paragraph must not be construed to prohibit a [H] hearing or [A] appeals [Ø] officer [may] from [provide] providing a character or ability reference for a person about whom the [Hearing or Appeals Ø] officer has personal knowledge. This section was moved to section 3.1(l) and text revised by LCB.~~

~~(g) A Hearings 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. This section was removed by the division based on public comment solicited at the workshop.~~

~~[(2) Impartial and diligent performance of official duties.]~~

~~[(a) 2.3 [A Hearing or Appeals Officer shall] [p] Perform diligently all official duties[;]; This section was moved to 2.3 and text revised by LCB.~~

~~[(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.] This section was omitted by LCB.~~

~~[(e) 4.1 Except as otherwise provided in subsection 2, [The] A [H] hearing or [A] appeals [Ø] officer shall not engage in any communication or [comply with all applicable statutes, codes and ethical rules that define and regulate ex parte] contact [s] with a party to a proceeding [as they relate to any matter] before the [H] hearing or [A] appeals [Ø] officer outside the presence of any other party to the proceeding. This section was moved to section 4.1 and text revised by LCB.~~

~~[(d) 4.2 A [H] hearing or [A] appeals [Ø] officer may communicate [ex parte] with a party to a proceeding: This section was moved to section 4.2 and text revised by LCB.~~

~~(a) If the parties to the proceeding are engaged in mediation; or This section was added by the division based on public comment solicited at the workshop and public hearing.~~

~~[(f) (b) [when circumstances require] For scheduling [;] or administrative purposes or for emergencies that do not [deal with] address substantive matters or issues on the merits [;] relating to the proceeding [provided that] before the [H] hearing or [A] appeals [Ø] officer and if the officer reasonably believes that no party will gain a procedural or tactical advantage as a result of [ex parte] the communication. This section was moved to sections 4.2(b) and text revised by LCB.~~

~~[(e) 4.3, 4.3(a) & 4.3(b) A [H] hearing or [A] appeals [Ø] officer shall disclose promptly [disclose] to [the] all parties to the proceeding any communication made [not otherwise prohibited by this rule that will or reasonably may influence the outcome of an adversary proceeding.] pursuant to subsection 2. [At a minimum, the] A disclosure [shall] required pursuant to this subsection must identify: 4.3(a) [‡] The person with whom the communication occurred; and 4.3(b) [‡] The substance of the communication. 4.4 [and the] A [H] hearing or [A] appeals [Ø] officer shall [give] provide the parties to whom a communication is disclosed pursuant to subsection 3 a reasonable opportunity to respond to the [information disclosed] disclosure. This section was moved to sections 4.3, 4.3(a) & 4.3(b) and text revised by LCB.~~

~~[(f)] 3.1(k) [A Hearing or Appeals Officer shall not, while a proceeding is pending in any forum within the Hearing or Appeals Officer's jurisdiction] [m] Make any public comment about a proceeding within the jurisdiction of the hearing or appeals officer [that] which might reasonably be expected to affect the outcome or impair the fairness of the proceeding. [This rule shall]The provisions of this paragraph must not be construed to prohibit a [H] hearing or [A] appeals [O] officer from: 3.1(k)(1) [m] Making public statements in the course of his official duties [;]; 3.1(k)(2) [from] [e] Explaining for the public [information the] benefit procedures [of the forum,] before the hearing or appeals officer; 3.1(k)(3) [from establishing a defense]Responding to or defending from a criminal charge or civil claim against the [H] hearing or [A] appeals [O] officer [;]; or 3.1(k)(4) [from otherwise] [r] Responding to allegations concerning the conduct of the [H] hearing or [A] appeals [O] officer. [s] [conduct in the]during a proceeding [.] before the officer. This section was moved to 3.1(k), 3.1(k)(1), 3.1(k)(2), 3.1(k)(3) and 3.1(k)(4) and text revised by LCB.~~

~~[(g)] 5.1 [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:] As used in NRS 616C.300 and 616C.340, the Chief of the Hearings Division of the Department of Administration interprets the terms "conflict of interest" and "personal interest" to include, without limitation: This section was moved to section 5 and text revised by LCB.~~

~~[(1)] 5.1 the Hearing or Appeals Officer has [a] A bias or prejudice concerning a party, an attorney [a] or other representative[;] of a party, or any other participant in the proceeding. [before the Hearing or Appeals Officer, or has] [k]5.2 Knowledge [;] obtained from sources outside the proceeding [;] of [disputed] evidentiary facts [concerning] that are disputed in the proceeding [;]. This section was moved to section 5.1 and 5.2 and text revised by LCB.~~

~~[(2)]5.3 [the Hearing or Appeals Officer served as a lawyer in the matter] Service as an attorney in the matter in controversy[;]. 5.4 [or a lawyer] Service of an attorney with whom the [Hearing or Appeals] [O] officer previously [was] has been associated, [served] during the period of association with the officer as an [lawyer] attorney in the matter [;] in controversy. 5.5 [or the Hearing or Appeals Officer or the lawyer has been] Being a material witness in the matter [;] in controversy. This section was moved to 5.3, 5.4 & 5.5 and text revised by LCB.~~

~~[(3)] 5.6 [the Hearing or Appeals Officer knows that the Hearing or Appeals Officer individually]Having, as an individual 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] in controversy [;is a party to the proceeding] or [has] any other interest that could be [substantially] affected substantially 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;] This section was moved to 5.6 and text revised by LCB.~~

~~[(4)] 5.7 [The Hearing or Appeals Officer,] Being, as an individual [the Hearing] or [Appeals Officer's] or as a personal representative, trustee, conservator or guardian, a party to the proceeding. 5.8 If the spouse, parent or child of the hearing or appeals officer, [wherever residing,] regardless of residence, or any other person residing in the [Hearing or Appeals Officer's] household of the officer: This section was moved to 5.7 & 5.8 and text revised by LCB.~~

5.8(a) Has a financial interest in the matter in controversy or any other interest that could be affected substantially by the outcome of the proceeding;

~~[(H)]~~ 5.8(b) Is a party ~~[to]~~ in the proceeding; 5.8(c) ~~[or]~~ Is an officer, director, partner or trustee of a party in the proceeding;

~~[(H)]~~ 5.8(d) Is acting as an ~~[lawyer]~~ attorney in the proceeding; or

~~[(H)]~~ ~~[(s)]~~ 5.8(e) To the ~~[Hearing or Appeals Officer's]~~ knowledge ~~[-]~~ of the hearing or appeals officer, is likely to be a material witness in the proceeding. These sections were moved to sections 5.8(a), 5.8(b), 5.8(c), 5.8(d) & 5.8(e) and text revised by LCB.

~~[(5)]~~ 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:

~~(I)~~ The Hearing or Appeals Officer fully discloses to the parties the basis for the disqualification; and

~~(II)~~ After the disclosure, all parties agree in writing or on the record of the proceeding that the Hearing or Appeals Officer can continue. This section was omitted by LCB stating "No exceptions".

~~[(h)]~~ 2.4 ~~[A Hearing or Appeals Officer shall]~~ ~~[b]~~ Be faithful to the law and ~~[shall]~~ decide matters on the basis of the facts and the applicable law ~~[-]~~, including, without limitation, judicial decisions; and This section was moved to 2.4 and text revised by LCB.

~~[(i)]~~ 3.1(d) ~~[A Hearing or Appeals Officer shall not]~~ ~~[b]~~ Be swayed by partisan interests, public clamor or fear of criticism. This section was moved to 3.1(d) and text revised by LCB.

~~[(j)]~~ 2.5 ~~[A Hearing or Appeals Officer shall]~~ ~~[m]~~ Maintain order and decorum in proceedings before the ~~[Hearing or Appeals]~~ ~~[O]~~ officer. This section was moved to 2.5 and text revised by LCB.

~~[(k)]~~ 3.1(c) ~~[A Hearing or Appeals Officer shall not]~~ ~~[a]~~ Act in a way that the ~~[Hearing or Appeals]~~ ~~[O]~~ officer knows, or reasonably should know ~~[-]~~ would be perceived by a reasonable person as biased or prejudiced toward any of the ~~[litigants]~~ parties, witnesses [,] or ~~[lawyers]~~ attorneys to a proceeding or members of the public at a proceeding. This section was moved to 3.1(c) and text revised by LCB.

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

~~[(a)]~~ 3.1(h) ~~[A Hearing or Appeals Officer shall not]~~ ~~[s]~~ 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]~~ frequently participates in proceedings that would ordinarily come before the ~~[Hearing or Appeals]~~ ~~[O]~~ officer. This section was moved to 3.1(h) and text revised by LCB.

~~[(b)]~~ 3.1(i) ~~[A Hearing or Appeals Officer shall not]~~ ~~[t]~~ Use his ~~[or her official]~~ position as a hearing or appeals officer to solicit funds for any private or public corporation or for any educational, religious, charitable, fraternal, political or civic organization or ~~[permit]~~ allow the ~~[use of the]~~ prestige of ~~[the]~~ his office for ~~[that]~~ such purposes ~~[-]~~. ~~[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.]~~ This section was moved to 3.1(i), text revised and omitted by LCB.

~~[(e)] 3.1(j) Use or disclose [N] nonpublic information acquired by [a] the [H] hearing or [A] appeals [O] officer [in an official capacity shall not be used or disclosed] for any purpose not related to the official duties of such an officer. [A Hearing or Appeals Officer shall comply with applicable law and rules regulating confidential information.]~~ This section was moved to 3.1(j), text revised and omitted by LCB.

~~[(d)] 3.2 [Neither] [a] A [H] hearing or [A] appeals [O] officer, [nor a member of the family] a spouse of a hearing or appeals officer, or any other person residing in the [Hearing or Appeals Officer's] household[;] of a hearing or appeals officer shall not accept any gift, bequest [;] or loan from any [individual or legal entity] person who has a significant interest in a matter that is or that the hearing or appeals officer has reason to know will be [pending] before the [Hearing or Appeals O] officer.~~ This section was moved to 3.2 and text revised by LCB.

~~[Sec. 4.]~~ **Sec. 6. 1.** A ~~[person who wishes to complain]~~ complaint alleging that a hearing(s) or appeals officer has violated ~~[the Code of Conduct contained in Section 3]~~ a provision of sections 2 to 5, inclusive, of this regulation [;] ~~[shall submit a written complaint]~~ must be in writing and submitted to the senior appeals officer.

2. The senior appeals officer ~~[will]~~ shall investigate ~~[the]~~ any complaint submitted pursuant to subsection 1 and shall notify the ~~[complaining person]~~ complainant ~~[about]~~ of the results of the investigation ~~[within]~~ not more than 60 days after the complaint ~~[was]~~ is received.

3. If the senior appeals officer substantiates the complaint, the senior appeals officer shall report the results of the investigation:

(a) If the complaint involves a hearing officer, to the Director of the Department of Administration.

(b) If the complaint involves an appeals officer, to the Governor.

This section was moved to section 6 by LCB. Changes to this section were made by the Division based on public comment solicited at the workshop and/or public hearing and text revised by LCB.

Sec. 4. (See Sections 3.2(a), 3.2(d), 3.2(e), 3.2(f))

~~[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.

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.~~ **Changes to this section were omitted due the fact it was determined to be the jurisdiction of the Division of Industrial Relations Department.**

Sec. 5 (See section 3)

~~[Sec. 6.]~~ **Sec. 12.** NAC 616C.269 is hereby amended to read as follows:

~~[Hearing officer: Training]~~ **616C.269 [A]** [in mediation and other techniques for resolution of disputes.]

1. To the extent that money is made available to the Hearings Division for the purpose of hearing officers, 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 [twenty] 20 hours of training, which may include, without limitation, training in:

(a) [m] Mediation and other techniques for the resolution of disputes [;];

(b) [workers compensation] Industrial insurance law and practice, including, without limitation: [training in] [t]

(1) The provisions of chapters 616A to 617, inclusive, of NRS [;]; and

(2) The provisions of chapters 616A to 617, inclusive, of NAC;

(c) Adjudication of [writing, evidence ethics,] administrative law hearings;

(d) Recent relevant statutory and regulatory changes and judicial decisions;

(e) Writing, evidence and ethics; and [or]

(f) Other similar topics [as] approved by the senior appeals officer, including, without limitation, any training provided by the Hearings Division.

2. Excess hours of training earned [in one year] during a 12-month period may be carried over [for] to the following year.

[2] 3. The senior appeals officer [will] shall review the past experience of a newly appointed hearing officer to determine what training, if any, that [may be] is required immediately for that particular hearing officer to carry out his duties and, if necessary, shall develop a plan for such training after consulting with the hearing officer. This section was moved to section 12 and text revised by LCB. Changes to this section were made by the Division based on public comment solicited at the workshop and/or public hearing.

Sec. 6 (See section 4)

~~[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.~~ This section was omitted by LCB.

Sec. 7 (See section 12)

~~[Sec. 8.]~~ **Sec. 9.** 1. Except ~~[for an appeal of a failure to respond to a request,]~~ as otherwise provided in subsection 3, if a hearing officer receives an ~~[request for hearing which does not include a copy]~~ appeal of ~~[the]~~ a final determination of an insurer that does not include, if applicable, a copy of the letter of determination being appealed or, if such a copy is unavailable, the date of the determination and the issues stated in the determination, the hearing officer shall ~~[order]~~ notify the ~~[person appealing]~~ claimant in writing that the claimant must ~~[to submit that letter]~~ within 15 days ~~[of the order]~~ after the date on which the hearing officer sends the notification, provide to the hearing officer:

(a) A copy of the letter of determination;

(b) If the letter of determination is unavailable, the date of the determination and the issues stated in the determination; or

(c) Proof that a letter of determination had been requested from the insurer or third-party administrator by the claimant.

If the hearing officer does not receive such documentation by the date specified in the notice sent pursuant to this subsection, the hearing officer shall dismiss the appeal without prejudice in a written order for failure to pursue the appeal.

~~[2. If the determination letter 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.]~~

2. A claimant who submits proof that a letter of determination had been requested from the insurer or third-party administrator by the claimant pursuant to subsection 1 may request the hearing officer to issue an order requiring the insurer or third-party administrator to provide a copy of the letter of determination to the hearing officer within 10 days after the date of the order.

~~[3. Except as provided in subsection 2, a hearing will not be scheduled until the hearing officer receives the determination letter.]~~ This section was omitted by LCB.

3. The provisions of this section do not apply for an appeal of a failure to respond to a request. This section was moved to section 9, text revised and omitted by LCB. This section was added by the Division based on public comment solicited from the workshop and/or public hearing.

Sec. 8. 1. If an insurer fails to respond to a written request for a determination within 30 days after receipt of such a request, the person who made the request may:

(a) File a request for a hearing before a hearing officer pursuant to subsection 3 of NRS 616C.315; or

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

2. A failure to file a request for a hearing within the time period specified in subsection 3 of NRS 616C.315 does not preclude a person from resubmitting a written request for a determination to the insurer. This section was added by the Division based on public comment solicited at the workshop and/or public hearing. Placement and text revised by LCB.

[~~Sec. 9.~~] **Sec. 13.** 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: **This deletion was made by LCB.**
 - (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.
 - (d) The number of the claim; *and*
 - (e) The date of injury [~~; and~~
 - (f) ~~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.]~~ *or, in the case of occupational disease, the estimated or approximate date of injury.*

This section was moved to section 13 by LCB. Changes to this section were made by the Division based on public comment solicited at the workshop and/or public hearing.

Sec. 9. (See section 8)

~~[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) Request a 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.]~~ **This section was omitted by LCB.**

Sec. 10. (See section 26)

[~~Sec. 11.~~] **Sec. 14.** 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.

This section was moved to section 14 and text revised by LCB. No comments were made on this section at the workshop or public hearing and no changes to this section were made by the Division.

Sec. 11. (See section 2) NAC 616C.260 is hereby amended to read as follows:

NAC 616C.260 As used in NAC 616C.260 to 616C.336, inclusive, and sections 2 to 10, inclusive, of this regulation, unless the context otherwise requires [~~, “licensed”~~]: This section was revised by LCB.

1. “Hearings Division” means the Hearings Division of the Department of Administration. This section was added by LCB.

2. “Licensed representative” means a person who is licensed pursuant to NAC 616C.350 to 616C.377, inclusive. This section was added by LCB.

3. (See section 2) This section was revised by LCB.

This section was added by the LCB. No comments were made on this section at the public hearing and no changes were made by the Division.

~~[Sec. 12.]~~ *Sec. 7*

~~[Appeals Officer: Training]~~

1. To the extent that money is made available to the Hearings Division for the purpose of training appeals officers, ~~[Each]~~ an appeals officer ~~[shall]~~ must successfully complete ~~[training]~~ annually at least 20 hours of training, which may include, without limitation, training in: ~~[required by the senior appeals officer. Such training will include at least ten hours of training annually in subjects related to adjudicating]~~

(a) Adjudication of administrative law hearings [~~;~~];

(b) Industrial insurance [including workers compensation] law and practice, including, without limitation:

(1) ~~[training in]~~ [~~†~~] The provisions of chapters 616[~~€~~] A to 617, inclusive, of NRS; and

(2) The provisions of chapters 616A to 617, inclusive, of NAC;

(c) ~~[administrative law and procedures, writing, dispute resolution and]~~ [~~m~~] Mediation [~~;~~] and other techniques for the resolution of disputes;

(d) Recent relevant statutory and regulatory changes and judicial decisions;

(e) Writing, evidence and ethics [,] ; ~~[evidence]~~

(f) ~~[or]~~ Any other similar subjects approved by the senior appeals officer [~~;~~] ; and

(g) Subjects taught in courses:

(1) Offered by the National Judicial College or the National Association of Administrative Law Judiciary or attended by an appeals officer to meet the requirements of the State Bar of Nevada for continuing legal education; and

(2) Approved for the purposes of this section by the senior appeals officer, including, without limitation, any training provided by the Hearings Division.

2. Excess hours of training earned ~~[in one year]~~ during a 12-month period may be carried over ~~[for]~~ to 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]~~ shall review the past experience of ~~[a]~~ each newly appointed appeals officer to determine ~~[what]~~ the training, if any, that ~~[may be]~~ is required immediately for that particular officer to carry out his duties and, if necessary, shall develop a plan for such training after consulting with the ~~appeals~~ officer. This section was moved to section 7 and text revised by LCB. Changes to this section were made by the Division based on public comment solicited at the workshop and/or public hearing.

Sec. 12. (See section 6)

~~[Sec. 13.]~~ Sec. 15 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) S]~~ signed by:

~~[(1)]~~ (a) The claimant's legal counsel;

~~[(2)]~~ (b) The insurer or a third-party administrator; and

~~[(3)]~~ (c) 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.]~~

This section was moved to section 15 and text revised by LCB. No comments were made on this section at the workshop or public hearing and no changes were made by the Division.

Sec. 13. (See section 9)

[~~Sec. 14.~~] **Sec. 16** 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 communications disability*, who requires assistance in interpreting the English language during any hearing held before a hearing officer ~~shall~~ *must* 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]~~ *for the 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]~~ *the interpreter* 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 communications disability"* has the meaning ascribed to it in **NRS 50.050**. *This section was moved to section 16 and text revised by LCB. Comments on this section were made at both the workshop and public hearing. After consideration of the comments made, the Division decided that this regulation better serves the Division as is.*

Sec. 14. *(See section 11)*

[~~Sec. 15.~~] **Sec. 31** 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.]~~

This section was moved to section 31 by LCB. No comments were made on this section at the workshop or public hearing and the Division decided to repeal this section by combining it with NAC 616C.276.

Sec. 15. *(See section 13)*

[~~Sec. 16.~~] **Sec. 17** 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 *including, without limitation:* ~~[and may enter any order relating to those matters.]~~

- (a) ~~[Speeding up]~~ *Expedition of the pending case.*
- (b) *Hearing motions.*

~~[(c) Mediating a settlement.]~~

~~[(d)] (c) [Submittal of] Submission of documentary evidence.~~

~~[(e)] (d) Narrowing the issues.~~

~~[(f)] (e) Setting a convenient date for the [main] primary hearing.~~

~~[(g)] (f) Any other purpose which would facilitate the proceedings.]~~

2. An appeals officer may enter any order relating to [those] the 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] *described in* subsection 1.~~

This section was moved to section 17 and text revised by LCB. No comments were made on this section (except subsection 2(c) for which mediation has been addressed in a different section) and the Division decided to adopt this section as is.

Sec. 16. (See section 14)

~~[Sec. 17.]~~ *Sec. 19* 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 at or participate in the hearing before the hearing officer and failed to show cause for his failure to appear at the hearing. This section was moved to section 19 and text revised by LCB. Changes to this section were made by the Division based on public comments solicited at the workshop and/or public hearing.*

Sec. 17. (See section 16)

~~[Sec. 18.]~~ *Sec. 20* NAC 616C.282 is hereby amended to read as follows:

~~[Failure to comply with regulations.]~~

If a party or his counsel *or licensed representative* fails or refuses to comply with ~~NAC~~ *616C.274* to ~~NAC~~ *616C.336*, inclusive, *and sections 8, 9 and 10 of this regulation*, 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 [;] *or counsel or licensed representative* complies with the requirements.

2. Restrict or prohibit the introduction of evidence.

3. Dismiss the matter.

4. *If the failure or refusal to comply is by a licensed representative, refer the matter to the [S] senior*

~~[A] appeals [Ø] officer [of the Division for revocation of any license granted] for appropriate action pursuant to NAC 616C.350 to [NAC] 616C.377, inclusive.~~

5. If the failure or refusal to comply is by an insurer or third-party administrator, refer the matter to the ~~[Insurance]~~ Commissioner of Insurance for appropriate action.

6. If the failure or refusal to comply is by an attorney licensed in this State, refer the matter to the State Bar of Nevada for appropriate action. This section was moved to section 20 and text revised by LCB. Changes to this section were made by the Division based on public comment solicited at the workshop and/or public hearing.

Sec. 18. NAC 616C.278 is hereby amended to read as follows:

1. In addition to a prehearing conference authorized pursuant to NAC 616C.277, an appeals officer may, in regard to any proceeding that is being heard before him:

~~[1] (a)~~ Call the parties to the proceeding together for a conference to be held before the taking of testimony; and

~~[2] (b)~~ Recess the proceeding to hold a conference, to address any matter that, in the opinion of the appeals officer, will assist in securing the just, speedy and economical determination of the issues that are in question in the proceeding. If an appeals officer conducts a conference pursuant to this section, the appeals officer shall ensure that the official record of the proceeding contains a notation that sets forth the results of such a conference.

2. The parties to a proceeding before an appeals officer may request that the matter be assigned for mediation. Upon receipt of such a stipulated motion the matter will be assigned to another appeals officer. The parties may agree by stipulation to assign the mediation to a specific appeals officer. The appeals officer initially assigned to the matter maintains jurisdiction over the pending matter unless the matter is resolved by mediation. This section was added by the Division based on public comment solicited at the workshop and/or public hearing. Text revised by LCB.

~~[Sec. 19.]~~ **Sec. 31.** 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.] This section was moved to section 31 by LCB.~~

Sec. 19. (See section 17)

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

~~[Filing and service of documents.]~~ For the purposes of NAC 616C.282 to 616C.336, inclusive [:] and sections 8, 9 and 10 of this regulation:

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.]~~

2. A ~~[D]~~ document[s] over five pages in length ~~[required to be filed as provided for in NAC 616C.297(1)(a) and NAC 616C.300(2)]~~ may not be filed by facsimile unless [otherwise] so ordered or approved in advance by a hearing or appeals officer. If a document which is five pages or less in length 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.

3. A document may be filed by electronic mail upon prior written approval of the Hearings Division. A document filed by electronic mail must be:

(a) Accompanied by an acknowledgement of receipt.

(b) Be sent to the secretary for the hearing or appeals officer and to each party to the proceeding.

~~[2.]~~ 4. 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.]~~ 5. Except as otherwise provided in subsection ~~[6]~~, 8, 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.]~~ 6. 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.]~~ 7. Service by mail is complete upon mailing. Any document served by mail shall be deemed received 3 days after it is mailed.

~~[6.]~~ 8. 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 *Hearings* Division's office. If such a folder is maintained by the *Hearings* Division, it will be available for inspection by the party or his counsel during the regular business hours of the *Hearings* Division. A document served pursuant to this subsection shall be deemed received 3 days after the document is placed in the party's folder. **This section was moved to section 21 and text revised by LCB. Changes were made to this section by the Division in order to get the parties to discontinue faxing multiple documents instead of complying with the rules of submitting documents prior to the hearing date and further changes made based on public comment solicited at the workshop and public hearing.**

Sec. 20. (See section 18)

~~[Sec. 21.]~~ **Sec. 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.~~ **This section was moved to section 22 by LCB. No comments were made on this section at the workshop or public hearing, therefore no changes were made to this section by the Division.**

Sec. 21. (See section 20)

~~[Sec. 22.]~~ **Sec. 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, and **sections 8, 9 and 10 of this regulation**, 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. *Papers and [D] documents submitted to [the hearing or] an appeals officer [shall] must:*
 - (a) *[H] Have [social security numbers] any personal identifying information redacted; [as required by NRS 239B.030.] and*
 - [6.] (b) [Documents submitted to an appeals officer shall] If personal identifying information has been redacted, include an affirmation that the [documents] submitted papers and documents do not contain [social security numbers] the personal identifying information of any person[-], unless the identity of the person is at issue.*
- [7.] 6. Papers and [D] documents submitted without [such an] the affirmation required pursuant to paragraph (b) of subsection 5 [will] must not be accepted into evidence in any proceeding before [the] an appeals officer.*
7. **As used in this section, “personal identifying information” has the meaning ascribed to it in NRS 616C.310. This section was moved to section 23 and text revised by LCB. Changes to this section were made by the Division to conform to NRS 239B.030.**

Sec. 22. (See section 21)

[~~Sec. 23.~~] *Sec. 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 *or production of documents* 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. *This section was moved to section 24 by LCB. The change to this section was made by the Division based on public comment solicited at the public hearing.*

Sec. 23. (See section 22)

[~~Sec. 24.~~] *Sec. 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, *as a digital recording or in any other electronic [media] medium*, 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, *free of charge*, an unedited copy of the evidence to the opposing party ~~[free of charge;]~~ *and, if requested [by] to the appeals officer; and*

(b) Provide all equipment necessary to display the videotape, *digital recording or other electronic media* at the hearing. *This section was moved to section 25 and text revised by LCB. No other changes were made to this section. Comments were made and addressed at the workshop and public hearing.*

Sec. 24. (See section 23)

[~~Sec. 25.~~] *Sec. 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 a written order* ~~[.]~~ and 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. **This section was moved to section 26 and text revised by LCB. No other changes were made to this section. No comments were made on this section at the workshop or public hearing.**

Sec. 25. (See section 24)

~~[Sec. 26. Consolidation of Cases before the Appeals Officer.]~~ **Sec. 10**

1. ~~[A party may request that] [a]~~ An appeal of a hearing officer's decision be consolidated with a case pending before the appeals officer ~~[when]:~~

- ~~(a)~~ At the request of a party to the appeal of a hearing officer's decision; and
- ~~(b)~~ When:

~~[(a)]~~ (1) Both cases involve the same claim and the same parties;

~~[(b)]~~ (2) Both cases involve similar questions of fact or law; or

~~[(c)]~~ (3) Consolidation would reduce duplication and judicial effort.

2. ~~[The party requesting] A~~ request for consolidation ~~[of an appeal of a hearing officer decision shall make the request] must be~~ in writing and **must contain:** ~~[shall file the request at the same time that the request for Hearing before the Appeals Officer is filed.]~~

~~(a)~~ The name of the ~~[A]~~ appeals ~~[O]~~ officer ~~[to whom the party wishes to consolidate the new appeal, and] who is hearing the pending case with which the appealed case would be consolidated; and~~

~~(b)~~ The appeal number[s] of the pending ~~[before the Appeals Officer] case.~~

~~[3. The request for consolidation must contain the following items:]~~

~~[4.]~~ 3. ~~[The] A~~ request for consolidation must be served ~~[as provided in] pursuant to~~ NAC 616C.291 and NAC 616C.294 on all parties who appeared before the hearing officer **in the case being appealed.**

~~[5.]~~ 4. The appeals officer assigned to the case ~~[where] with which~~ consolidation is sought shall approve or deny the request for consolidation ~~[within] not later than 5 days after receiving the request.~~ **This section was moved to Sec. 10 and text revised by LCB. Changes to this section were made by the Division based on public comment solicited at the workshop and/or public hearing.**

Sec. 26. (See section 25)

Sec. 27. 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. *If [A] a party [opposing] wishes to oppose a stay, the party [may] must 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. The moving party may file a reply to the objection not later than 5 days after service of the objection.*

3. *An appeals officer shall not rule on an application filed pursuant to subsection :*

(a) If an objection is not timely filed pursuant to subsection 2, until 10 days after the application was filed.

(b) If an objection is timely filed pursuant to subsection 2, until 15 days after the application was filed.

4. ~~[The]~~ *An appeals officer may rule on [the] an application filed pursuant to subsection 1 without a hearing or may schedule a hearing on the application. Changes were made to this section by the Division based on public comment solicited at the workshop and/or public hearing. Text revised by LCB.*

Sec. 28. NAC 616C.328 is hereby amended to read as follows:

~~[Retention of files when Judicial Review is sought.]~~

~~[When any]~~ *If a party to an appeal seeks judicial review of the opinion of an appeals officer pursuant to NRS 616C.370 [the] :*

1. *The party shall, within 10 days after receiving the final decision of the court in which judicial review was sought, provide copies of the decision of the court to the appeals officer who rendered the opinion for which judicial review was sought.*

2. ~~[t]~~ *The retention period for files of the appeals officer concerning the appeal [shall] does not begin to run until the matter has reached a final determination from the highest court in which review is sought. No comments were made on this section at the workshop or public hearing. Changes were made to this section by the Division for the good of the Division.*

Sec. 29 NAC 616C.300 is hereby amended to read as follows:

616C.300 1. The insurer shall, within 30 days after notice of hearing before an appeals officer or, if a prehearing conference is scheduled in the matter, on or before the date of the conference, copy all documents in the claimant's file relating to the matter on appeal and serve the copies, appropriately indexed, upon the appeals officer and all other parties.

2. The insurer shall, within 2 days before a hearing before a hearing officer, submit the following documents, appropriately numbered and indexed, to the Hearings Division ~~[of the Department of Administration]~~:

(a) Copies of forms C-3 and C-4 or any similar forms which have been provided to the insurer pursuant to NAC 616A.480;

(b) A brief statement of the reason for the determination by the insurer; and

(c) Copies of any other documents in the claimant's file relating to the matter before the hearing officer.

~~3. [If an insurer receives a request from another party to a dispute before a hearing officer at least 10 days before the hearing, the insurer shall provide to that party, at least 2 days before the hearing, a copy of all documents to be submitted to the hearing officer.]~~

[4] 3. Any other party to a dispute who submits documents to a hearing officer shall provide copies of the documents to the insurer at the time of the hearing. **Changes to this section were made by the Division**

~~[Sec. 29.]~~ **Sec. 30** 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]~~ A record of ~~[the]~~ a proceeding maintained by the appeals officer is the official record of the proceeding.

3. *The parties may supplement or amend the record upon written stipulation approved by the appeals officer.*

~~[3.]~~ 4. 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.

Changes were made to this section by the Division based on public comment solicited at the workshop and public hearing and text revised by LCB.

~~[Sec. 30]~~ **Sec. 31.** *NAC 616C.276 and NAC 616C.288 are hereby repealed.*

616C.276 Purposes for prehearings. (NRS 616C.310)

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.

No comments were made on this repeal at the workshop or public hearing. This section was moved to section 31 by LCB.

616C.288 Appeal from decision of Chief. (NRS 616C.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.

No comments were made on this repeal at the workshop or public hearing. This section was moved to section 31 by LCB.

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 in each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

The Division does not estimate any immediate adverse economic effect of the proposed regulations on regulated businesses; the long-term economic effect is the same. The Division does not estimate any immediate adverse economic effect of the proposed regulations on the public. The long-term effect is the same. The Division estimates the immediate and long-term beneficial effects on both regulated businesses and the public is the needed additions, clarifications and updates of the regulations already in affect.

6. The estimated cost to the Division for enforcement of the proposed regulations:

The Division estimates that the cost of implementation and enforcement to be minimal (training of the hearing and appeals officers). The Division already enforces substantially similar regulations. The changes to these regulations do not appear to place a significant economic burden on the Division.

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

In reference to our proposed amendments to NAC 616C.091, Notice of determination to accept or deny claim, the Division along with the LCB determined that this regulation was the jurisdiction of the Division of Industrial Relations, Department of Business and Industry and the proposes changes by this Division were removed. The proposed regulations are not required by federal law, they are, however, more stringent than federal law; there is no equivalent federal laws.

8. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation changes do not establish any new fees nor do they increase any existing fees.

