

**PROPOSED REGULATION OF THE  
PERSONNEL COMMISSION**

**LCB File No. R192-09**

March 4, 2010

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

AUTHORITY: §1, NRS 281.641; §2, NRS 284.065, 284.155, 284.376 and 284.390; §§3-5, NRS 281.641, 284.065, 284.155, 284.376 and 284.390.

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

**Section 1.** NAC 281.315 is hereby amended to read as follows:

281.315 1. The provisions of this section and NAC 284.774 to 284.806, inclusive, *and section 2 of this regulation* and 284.818 govern the procedure for conducting a hearing for a written appeal filed pursuant to NRS 281.641.

2. A party may appear in person and may be represented by an attorney or another person of his choice, if the party chooses not to represent himself.

3. All testimony must be under oath administered by the hearing officer.

4. The appeal must be heard in the following manner:

(a) The opening statement for the state officer or employee.

(b) The opening statement for the employer, unless reserved.

(c) Presentation of the state officer's or employee's case, followed by cross-examination. The state officer or employee must establish that:

(1) He was a state officer or employee on the date of the alleged reprisal or retaliatory action;

(2) He disclosed information concerning improper governmental action; and

(3) The alleged reprisal or retaliatory action was taken against him within 2 years after the date he disclosed the information concerning improper governmental action.

(d) If the state officer or employee establishes the facts set forth in paragraph (c), presentation of the employer's case, followed by cross-examination, to establish that the employer did not engage in the alleged reprisal or retaliatory action or that the action was taken for a legitimate business purpose and was not the result of the disclosure of information concerning improper governmental action by the state officer or employee.

(e) If the employer establishes a legitimate business purpose for the alleged reprisal or retaliatory action, the state officer or employee may introduce evidence, followed by cross-examination, to demonstrate that the stated business purpose is a pretext for the reprisal or retaliatory action.

(f) The parties may respectively offer rebutting testimony only, unless the hearing officer permits additional evidence upon the original cause.

(g) The argument for the state officer or employee.

(h) The argument for the employer.

(i) The closing argument for the state officer or employee.

(j) Submission of the appeal for a decision.

**Sec. 2.** Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

1. *For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the Director shall provide to each party to the claim a list of three or more qualified hearing officers.*

2. *Each party may strike not more than one name from the list of qualified hearing officers and must return the list with the remaining names to the Director not later than 10 days after receipt of the list.*

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

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

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

**Sec. 3.** NAC 284.774 is hereby amended to read as follows:

284.774 1. NAC 284.774 to 284.818, inclusive, ~~governs~~ *and section 2 of this regulation govern* hearings in all cases relating to dismissals, suspensions, demotions and involuntary transfers before the hearing officer ~~and~~ *and hearings for a written appeal filed pursuant to NRS 281.641.*

2. ~~The~~ *Except as otherwise provided in subsection 3, the* hearing officer ~~may modify or alter~~ *shall use* the hearings procedures established in NAC 284.774 to 284.818, inclusive, *and*

*section 2 of this regulation and any hearings procedures provided by the Department of Personnel if ~~[experience and circumstances indicate such action and]~~ interested parties have proper notice of any procedural changes or are not prejudiced thereby. **A copy of the hearings procedures is available by contacting the Department of Personnel at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.***

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

**Sec. 4.** NAC 284.778 is hereby amended to read as follows:

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

*2. Any written communication directed to a hearing officer must be sent to the hearing clerk of the Department of Personnel.*

*3. A party shall not communicate with a hearing officer:*

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

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

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

**Sec. 5.** NAC 284.786 is hereby amended to read as follows:

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

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

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

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

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

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

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

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