

**ADOPTED REGULATION OF  
THE PERSONNEL COMMISSION**

**LCB File No. R010-14**

Effective October 24, 2014

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

AUTHORITY: §1, NRS 281.641, 284.065.

A REGULATION relating to state personnel; revising provisions relating to the selection of a hearing officer for certain personnel hearings; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Under existing law, a state officer or employee against whom certain employment actions are taken has the right to request a hearing. (NRS 281.641, 284.376, 284.390) Existing regulations require the Administrator of the Division of Human Resource Management of the Department of Administration to provide a list of qualified hearing officers to each party involved in each such hearing requested. Each party to such a hearing may strike names from the list provided, and the Administrator is required to select a hearing officer from among the persons whose names were not struck from the list. (NAC 284.780) This regulation instead requires the Personnel Commission to provide for a qualified hearing officer for each such hearing. If the hearing officer is unable to serve as the hearing officer, the Commission will provide for an alternate hearing officer.

**Section 1.** NAC 284.780 is hereby amended to read as follows:

284.780 1. For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the ~~{Administrator shall}~~

*Commission will* provide ~~{to each party to the claim:~~

~~—(a) A list of three} for a~~ qualified hearing ~~{officers; or~~

~~—(b) A list of five qualified hearing officers.} officer.~~

2. If ~~{the Administrator provides a list of:~~

~~—(a) Three~~ *it is determined that the* qualified hearing ~~{officers, each party may strike one name from the list; or~~

~~—(b) Five qualified hearing officers, each party may strike two names from the list, and shall return the list with the remaining names to the Administrator 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 Administrator 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~~ *officer provided for pursuant to subsection 1 is precluded from serving due to a conflict of interest or is* otherwise unavailable to serve as a hearing officer for the hearing, the ~~{Administrator may}~~ *Commission will* provide ~~{a new list of hearing officers to the parties in the manner provided in this section or may select any}~~ *for a* qualified hearing officer who is available to serve as a hearing officer in the hearing.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066**  
**Informational Statement**  
**LCB File #R010-14**

**1. A clear and concise explanation of the need for the adopted regulation.**

This regulation amendment is required to reflect the decision of the Personnel Commission, at its January 10, 2014 meeting, to use the Hearings Division Appeal Officers to decide employee appeals of a suspension, demotion, termination, in-voluntary transfer, and/or a “Whistle Blower” complaints. The Commission will no longer hire a pool of independent contractors to perform this function. Prior to this amendment a hearing officer would be assigned by the Administrator of the Division of Human Resource Management. The amendment clarifies that the Personnel Commission selects the hearing officers and no longer makes reference to the Administrator of the Division of Human Resource Management. This amendment will allow the Hearings and Appeals Division to assign an Appeals Officer to serve as a hearing officer for personnel related appeals. Based upon comments received at the April 11, 2014 Personnel Commission meeting, the Administrator of the Hearings Division is developing a strike method to be used to assign an Appeal Officer to a case. This procedure along with procedures for the assignment of an alternate hearing officer will be presented for adoption at the next Personnel Commission meeting. An alternate hearing officer, independent contractor, will be used in the event that the Appeals Officers of the Hearings Division either have a conflict of interest or a personnel interest in a case.

**2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notices of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the Division of Human Resource Management website, [www.hr.nv.gov](http://www.hr.nv.gov); the Legislative Counsel Bureau (LCB) website, [www.leg.state.nv.us](http://www.leg.state.nv.us); the Nevada Public Notice website, [www.notice.nv.gov](http://www.notice.nv.gov); emailed to all county libraries in Nevada, and physically posted at the following locations:

Blasdel Building	Grant Sawyer State Office Bldg.
209 E. Musser Street	555 E. Washington Blvd.
Carson City, NV 89701	Las Vegas, NV 89101
Nevada State Library and Archives	Legislative Building
100 Stewart Street	401 S. Carson Street
Carson City, NV 89701	Carson City, NV 89701

A regulation workshop was conducted by the Division of Human Resource Management on January 8, 2014.

No comments were received at the regulation workshop; however, one written comment was received from the American Federation of State, County and Municipal Employees (AFSCME) Local 4041. They prefer a strike method for the selection of a hearing officer.

A public hearing was held by the Nevada Personnel Commission on April 11, 2014.

At the public hearing, the definition of a “qualified hearing officer” was requested by the AFSCME Local 4041. In response, it was stated that the experience required for a qualified Appeals Officer for the Hearings Division is listed in NAC 616C and he or she is required to be a licensed attorney in the State of Nevada.

A representative from the Peace Officers Research Association of Nevada stated that the proposed language would cause more problems than the current language and would not be in support of changing the regulation. He stated that the strike method is very important.

Based upon the comments received, Brian Nix, Administrator of the Hearings Division, committed to return to the next Personnel Commission meeting with procedures for a strike method of selection.

The current hearing officer contracts are due to expire on June 30, 2014. The amendment to this regulation will take effect on July 1, 2014.

Comments from the regulation workshop and public hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

- 3. The number of persons who:**
  - (a) Attended each hearing:** January 8, 2014 – 28; April 11, 2014 - 55
  - (b) Testified at each hearing:** January 8, 2014 – 0; April 11, 2014 – 2
  - (c) Submitted written comments:** 1
  
- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

John Childers  
Labor Representative  
AFSCME Local 4041  
Las Vegas, NV  
childers@nvafscme.org

Jeanine Lake  
Labor Representative  
AFSCME Local 4041  
Las Vegas, NV  
(702) 431-3113  
Jeanine@nvafscme.org

Ron Drehr  
PORAN  
PO Box 40415  
Reno, NV 89514

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

Comments were not solicited from businesses, as the regulation does not affect businesses. Comments were solicited from affected parties including employees and employee associations. Comments from the workshop and Personnel Commission hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

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

This regulation amendment was changed based on suggestions received by during the pre-adoption review. The Personnel Commission approved this change.

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**  
**(a) Estimated economic effect on the businesses which they are to regulate.**  
**(b) Estimated economic effect on the public which they are to regulate.**

This regulation does not have a direct economic effect on either a regulated business or the public. It only impacts the State of Nevada classified service.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

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

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

The regulation does not overlap any federal or state mandated regulation.

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

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

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

No fees are associated with this regulation.