

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R076-15

NOTICE OF INTENT TO ACT UPON A REGULATION Notice of Hearing for the Permanent Adoption and Amendment of Regulations of the Department of Administration Division of Human Resource Management

The Personnel Commission will hold a public hearing at 9:00 a.m., on March 4, 2016 at the Legislative Counsel Building, Room 3138, 401 South Carson Street, Carson City, Nevada and by video conference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

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

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

<u>LCB File:</u>	<u>NAC#:</u>	<u>Regulation Lead Line:</u>
R076-15	NEW	Removal of ineligible grievance from procedure.
	NAC 284.658	“Grievance” defined.
	NAC 284.678	Submission, form and contents of grievance; informal discussions.
	NAC 284.6955	Hearing before Employee-Management Committee: Procedure.
	NAC 284.6957	Hearing before Employee-Management Committee: Continuance; Abeyance.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Room 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before March 4, 2016. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City,

Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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

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

Carson City

Bladel Building, 209 East Musser Street
Nevada State Library & Archives Building, 100 North Stewart Street
Nevada State Capitol Building, 101 North Carson Street
Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Street

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us
Nevada Public Notice website: <http://notice.nv.gov>
Division of Human Resource Management website: www.hr.nv.gov

**REGULATIONS PROPOSED
FOR PERMANENT ADOPTION OR AMENDMENT**

LCB File No. R076-15

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

Explanation of Proposed Change: The addition of a new regulation to Chapter 284 of NAC, proposed by the Division of Human Resource Management, will improve the efficiency of the formal grievance process by streamlining the handling of grievances that are filed by employees who are not eligible to use the process, or that do not meet the definition of a grievance, pursuant to NAC 284.658.

Based on the current regulations, a grievance that is filed by an employee ineligible to use the formal grievance process or that does not meet the definition of a grievance may proceed through the entire grievance process, up to and including a meeting of the Employee-Management Committee (EMC). This creates unnecessary work and does not resolve the employee's concern.

Agency human resource staff review grievances as they are filed and, with this amendment, will be able to request that the Division of Human Resource Management remove the grievance from the formal process when it has been filed by an ineligible employee and/or in the incorrect venue. If the Division determines that the grievance has been filed by an ineligible employee or filed in the wrong venue, the Division will remove the grievance from the process. The Division will then inform the employee that he or she is not eligible to use the grievance process and/or the grievance is in the wrong venue, and that it has been removed from the grievance process. The Division will also, if applicable, provide the employee with detailed information related to the appropriate process for the resolution of the employee's concern. Finally, the Division will communicate to the employee that he or she is eligible to appeal such a determination to the Employee-Management Committee. This will expedite a request by an employee for a hearing otherwise provided pursuant to subsection 2 of NAC 284.658, should he or she choose to do so. This is very important because the hearings listed in subsection 2 of NAC 284.658 have deadlines, some as short as 5 or 10 working days.

NEW Removal of ineligible grievance from procedure.

1. If the Division of Human Resource Management determines that a request for the adjustment of a grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in subsection 1 of NAC 284.658 or because a hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

2. If the Division of Human Resource Management determines that a request for the adjustment of a grievance is not eligible for the procedure for the adjustment of grievances set forth in NRS 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

Section 2. NAC 284.658 is hereby amended to read as follows:

Explanation of Proposed Change: The addition of “classified” to NAC 284.658, proposed by the Division of Human Resource Management, clarifies that the grievance process is available to permanent employees who are in the classified service.

As the result of the proposed new regulation, outlined in the new section, the addition of “and section 1 of this regulation,” is necessary in NAC 284.658. The new regulation will be assigned a number during codification, which will be reflected in NAC 284.658 at that time.

NAC 284.658 “Grievance” defined. (NRS 284.065, 284.155, 284.340, 284.384)

1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, *and section 1 of this regulation*, a “grievance” means an act, omission or occurrence which a permanent *classified* employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement or a contested report on performance. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, *and section 1 of this regulation*, the term “grievance” does not include any grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep’t of Personnel, 8-28-85; 10-18-89; 8-1-91; 3-27-92; R082-00, 8-2-2000; A by Personnel Comm’n by R023-05, 10-31-2005; R007-11, 10-26-2011; R026-11, 12-30-2011, eff. 1-1-2012)

Section 3. NAC 284.678 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency throughout NAC 284.678 by using the term “date

of the event leading to the grievance” to describe when the cause of the grievance occurred. The date the grievable event occurred, or date the employee learns of the grievable event, drives the timeframes required by subsection 1 of NAC 284.678. The Division also recommends the consistent amendment to subsection 2 of this regulation, which describes the information that must be provided by an employee if a letter is submitted, rather than the official form.

**NAC 284.678 Submission, form and contents of grievance; informal discussions.
(NRS 284.065, 284.155, 284.340, 284.384)**

1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit the grievance in writing to his or her immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the date of the ~~origin of~~ *event leading to* the grievance or the date the employee learns of the ~~problem~~ *event leading to the grievance*. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His or her name;
- (b) His or her most recent date of hire;
- (c) His or her position;
- (d) His or her department, division and section;
- (e) His or her mailing address;
- (f) His or her business telephone number;
- (g) A statement that he or she is filing a formal grievance;
- (h) The date, time and place of the event *leading to the grievance* or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of the grievance;
- (j) A detailed description of the grievance, including the names of other persons involved in the event, if any;
- (k) A proposed solution of the grievance;
- (l) His or her signature; and
- (m) The date he or she signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to a contested report on performance, an employee must file a grievance that identifies the specific points of contention, if such specificity is provided, not later than 10 working days after the date the employee receives a decision regarding the review conducted by the appointing authority pursuant to NAC 284.470. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer or appointing authority to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

- (a) The person who is at the next appropriate level of the grievance process; or
- (b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the report on performance, the person who is at the next appropriate level of the grievance process above such reviewing officer or other person who prepared or reviewed the report on performance.

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

[Personnel Div., Rule XV § A part subsec. 1, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R023-05, 10-31-2005; R191-09, 4-20-2010; R007-11, 10-26-2011)

Section 4. NAC 284.6955 is hereby amended to read as follows:

Explanation of Proposed Change: The amendments to this regulation, proposed by the Division of Human Resource Management, bring it in to alignment with NRS 241.020(5), reduce administrative burden, reduce time and expense related to certain aspects of the Employee-Management Committee (Committee or EMC), and will establish regulations pursuant to NRS 284.074, which authorizes the Chair or a member of the Committee designated by the Chair to issue and enforce subpoenas.

The first amendment to subsection 1 of NAC 284.6955 changes the person to whom the required sets of documents, or “packets,” shall be submitted by both parties involved in a hearing of the Committee. There is substantial administrative work that goes into the processing of packets, which has traditionally been handled by the Clerk of the Committee (Clerk), and this change will clarify that in the regulation.

The second amendment to subsection 1 of NAC 284.6955 changes the number of sets of documents required to be submitted by both parties, from 10 to 12. The 10 copies currently required by this regulation do not provide a sufficient number for distribution to each member serving on the EMC, the Deputy Attorney General assigned to the Committee, each party to the grievance, potential witnesses, as well as having copies available for the public. As such, in preparation for each hearing, the Clerk to the EMC must create 4 additional packets, 2 employer packets and 2 grievant packets, for distribution. Increasing the number of packets from 10 to 12 will place a negligible added burden on each party to a grievance, while greatly reducing the administrative burden on the Clerk to the EMC.

The next amendment to subsection 1 increases the number of days prior to a scheduled meeting of the Committee in which packets are due. Because a list of witnesses is required to be included in the packets by both parties to a grievance, this amendment will reduce administrative pressure by allowing additional time for the Clerk to process requests for subpoenas, when necessary. Currently, requests for subpoenas are due to the Committee no later than 15 days prior to any scheduled hearing (see amendment related to the issuance and enforcement of subpoenas below). This change will bring the two deadlines into alignment.

The final amendment to subsection 1 will require that the Clerk to the EMC, rather than the Chair, forward copies of each parties' packets to the other party, which is the current practice.

The amendments to subsection 2 of this regulation clarify that the individuals authorized to reschedule a hearing for non-compliance with this subsection are either the Chair or a member of

the Committee designated by the Chair. This clarifies that there would not be a representative designated from outside the Committee, for example a Deputy Attorney General, designated to reschedule a hearing as a result of the situations listed in the subsection.

The amendment to subsection 7 creates regulations related to subpoenaed documents that pertain to a grievance, pursuant to NRS 284.074. This amendment will require that two copied of the original subpoenaed document must be submitted to the Committee under seal. This amendment also clarifies that if information contained in a subpoenaed document is found by the preparer to be of a confidential nature, the information must be redacted and such a copy must be submitted to the Committee.

The new subsection 8 of this regulation explains that the EMC may allow testimony from a person by phone or video conference from a location other than one that has been included on the agenda for a hearing. This will improve the ability for an individual in a remote location to provide testimony at a hearing, and will also reduce potential travel costs.

Finally, the amendment to subsection 9 of NAC 284.6955 clarifies that the member of the Committee acting as the Chair for a meeting of the EMC can recognize a member to ask a question of a party or a witness.

NAC 284.6955 Hearing before Employee-Management Committee: Procedure. (NRS 284.065, 284.155, 284.384) If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695, the following procedure must be followed:

1. Each party shall submit to the ~~{Chair}~~ *Clerk* of the Committee ~~{or his or her designated representative}~~ *10* *12* copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than ~~{12}~~ *15* working days before the scheduled date of the hearing. The ~~{Chair or his or her designated representative}~~ *Clerk of the Committee* shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing at his or her discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, the grievance must be dismissed with prejudice unless he or she can show in writing to the Committee's satisfaction that the reason for noncompliance was beyond his or her control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as "Exhibit____" indicated by consecutive Arabic numerals, beginning with the number "1."

(b) Documents or materials presented by the employer must be marked at the bottom of the page as "Exhibit____" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the employer offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance.

5. Each person who provides a statement at the hearing shall state his or her name, address, and occupation for the record.

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The Committee may request additional witnesses or information as it deems necessary.

7. *If a subpoena is issued for a document and the person named in the subpoena determines that the document contains confidential information, the person must provide to the Committee by the date specified in the subpoena:*

(a) Two copies of the original document, submitted under seal, and

(b) One copy of the document with the confidential information redacted.

8. *For good cause shown, the Committee may take testimony from a person by telephone or video conference whether or not the person is at a location designated on the agenda as a location for the hearing.*

9. Upon proper recognition by the Chair or ~~this or her designated representative,~~ *the member of the Committee designated to act as the Chair during the hearing,* any member of the Committee may ask a question of a party or witness at any time during the hearing.

(Added to NAC by Personnel Comm'n, eff. 8-1-91; A by Dep't of Personnel, 11-16-95; A by Personnel Comm'n by R026-11, 12-30-2011, eff. 1-1-2012)

Section 5. NAC 284.6957 is hereby amended to read as follows:

Explanation of Proposed Change: The amendments to this regulation, proposed by the Division of Human Resource Management, will reduce staff time and expense to the State, and create efficiency in the process related to grievances that have been submitted to the Employee-Management Committee (Committee or EMC) for consideration.

The first change to subsection 1 of NAC 284.6957 adds language that will allow a grievance to be placed into abeyance. Placing a grievance into abeyance essentially places the grievance on hold when an outside situation is creating or could create a delay in the hearing of the grievance by the Committee. This could be appropriate in a variety of situations. For example, placing a grievance into abeyance would be suitable when an investigation is being conducted, and the outcome may impact an employee's grievance. It would also be appropriate in a situation where the grievant will be away from the office for an extended period of time, such as on approved Family and Medical Leave (FMLA), administrative leave, or when a court proceeding within the court system will be taking place.

The second proposed amendment to subsection 1 of NAC 284.6957 changes the person to whom a request for a continuance or a request to have a grievance placed into abeyance should be submitted. This change makes it clear that requests of the Committee are to be submitted to the Clerk who, in turn, sends the requests to the Chair or a member of the Committee designated by the Chair, depending on who will act as the Chair of the Committee for that grievance, as well as to the appropriate parties pursuant to NRS 233B.126. This statute allows the communication between either party to a hearing and those assigned to render a decision or make findings of fact and conclusions of law in a contested case, such as the EMC, only when there has been notice provided and an opportunity for all to participate.

The amendments to subsection 2 of NAC 284.6957 will reduce staff time and related expenses of scheduling and conducting a full hearing of the EMC to determine if a continuance or the placement of a grievance into abeyance is appropriate. This will allow the Chair or a member of the Committee designated by the Chair to grant a continuance or place a grievance into abeyance instead of requiring a decision of the full Committee. This allows decisions to be made more quickly regarding emerging issues.

NAC 284.6957 Hearing before Employee-Management Committee: Continuance; Abeyance. (NRS 284.065, 284.155, 284.384)

1. A party may request a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 ~~by submitting a request for a continuance~~ *or request to have a grievance held in abeyance. The party must submit the request* to the ~~Chair~~ *Clerk* of the Committee ~~for his or her designated representative~~ at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection 2 of NAC 284.695, in which case he or she may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The ~~Committee~~ *Chair or a member of the Committee designated by the Chair* may grant a request for a continuance *or a request to have a grievance held in abeyance* if good cause is shown.

(Added to NAC by Dep't of Personnel, eff. 3-27-92; A 11-16-95)