

ADOPTED REGULATION OF THE LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

LCB File No. R034-16

Effective September 9, 2016

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

AUTHORITY: §§1-7, NRS 288.110.

A REGULATION relating to local government employees; authorizing the electronic service of certain documents; authorizing a person to request to opt out of electronic service; requiring the computation of any period prescribed by chapter 288 of NAC or an order of the Local Government Employee-Management Relations Board to be made in accordance with the Nevada Rules of Civil Procedure; prohibiting a person from attaching any document to certain documents filed with the Board; removing the requirement that the addresses of the complainant and respondent be included in a complaint filed with the Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Local Government Employee-Management Relations Board to make rules governing proceedings before the Board. (NRS 288.110)

Existing regulations require a person who files any written document or other written matter with the Board to serve a copy thereof upon the opposing party, intervener and any party in interest. (NAC 288.070) **Section 1** of this regulation authorizes the filing party to complete such service by: (1) personal service; (2) certified mail; or (3) electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format. **Section 1** also authorizes a person to request to opt out of being served by electronic service. **Section 2** of this regulation provides that the electronic service of a written document or other written matter upon a party is deemed to comply with any deadline if the written document or other written matter is transmitted electronically upon the date specified.

Existing regulations establish a method by which to compute any period prescribed by chapter 288 of NAC or an order of the Board. (NAC 288.090) **Section 3** of this regulation instead requires such computations to be made in accordance with the applicable rules of the Nevada Rules of Civil Procedure.

Existing regulations provide for the filing of a complaint, answer, prehearing statement and petition to intervene with the Board. (NAC 288.200, 288.220, 288.250, 288.260) **Sections 4-7** of this regulation, respectively, prohibit a person from attaching any document, including, without limitation, an exhibit, to any such complaint, answer, prehearing statement or petition to

intervene that is filed with the Board. **Section 4** of this regulation also removes the requirement that the addresses of the complainant and respondent be included in a complaint.

Section 1. NAC 288.070 is hereby amended to read as follows:

288.070 **1.** Except as otherwise provided in this chapter, if any written document or other written matter is filed with the Board:

~~1.1~~ **(a)** The original must be signed and filed in the form of a pleading;

~~1.2~~ **(b)** The written document or other written matter must satisfy the requirements set forth in NAC 288.231;

~~1.3~~ **(c)** The written document or other written matter must be filed in accordance with the requirements set forth in section 2 of ~~this regulation~~ *LCB File No. R010-15, which was adopted by the Local Government Employee-Management Relations Board and was filed with the Secretary of State on October 27, 2015*, if the written document or other written matter is filed electronically; and

~~1.4. The~~

(d) *Except as otherwise provided in subsection 2, the* filing party ~~must~~ *shall* serve a copy upon the opposing party, intervener and any party in interest ~~1.1~~ *by:*

(1) *Personal service;*

(2) *Certified mail at the last known address of the person; or*

(3) *Electronic service by transmitting the copy electronically as an attachment to electronic mail in portable document format.*

2. *A person may request to opt out of being served by electronic service by submitting a request to the Board. Such a request becomes effective once the Board notifies all parties in the case that the person has requested to opt out of electronic service.*

Sec. 2. NAC 288.080 is hereby amended to read as follows:

288.080 1. The issuance and service of process of papers required by this chapter must be in conformity with the Nevada Rules of Civil Procedure and the rules and regulations of the Board.

2. Any written document or other written matter required by this chapter to be filed with the Board or served upon another party shall be deemed to comply with any time deadline if it is mailed and postmarked upon the date specified ~~H~~ *or filed or transmitted electronically in accordance with section 2 of LCB File No. R010-15, which was adopted by the Local Government Employee-Management Relations Board and was filed with the Secretary of State on October 27, 2015, or subparagraph (3) of paragraph (d) of subsection 1 of NAC 288.070, as applicable, upon the date specified.*

3. If any paper is served by delivery of a copy, the delivery may be made by any person of suitable age and discretion, unless otherwise expressly provided by the Nevada Rules of Civil Procedure and the rules and regulations of the Board.

4. Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in the Nevada Rules of Civil Procedure and the rules and regulations of the Board, must be promptly filed in the Board's office before action is to be taken thereon by the Board or the parties. The proof must show the day and manner of service and may be by written acknowledgment of service, by certificate of a member of the bar, by affidavit of the person who served the papers or by any other proof satisfactory to the Board. If an affidavit of mailing or of service is attached to the original pleading, it must be attached underneath the original pleading so that the character of the pleading is easily discernible. Failure to make the proof of service required by this subsection does not affect the validity of the service. The Board may at any time allow the proof of service to be amended or supplied, unless

it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

5. A written complaint filed with the Board must be served upon the respondent, local government employer or employee organization by the complaining party within 5 days of the filing.

Sec. 3. NAC 288.090 is hereby amended to read as follows:

288.090 ~~{In computing}~~ *The computation of* any period ~~{of time}~~ prescribed by this chapter or by an order of the Board ~~{, the day of the act from which the designated period begins is not included. The last day of the period so computed is included unless it is a Saturday, Sunday or nonjudicial day. If so, the period runs until the end of the next day which is not a Saturday, Sunday or nonjudicial day. If the period prescribed is less than 7 days, intermediate Saturdays, Sundays and nonjudicial days are excluded.}~~ *must be made in accordance with Rules 6(a) and 6(e) of the Nevada Rules of Civil Procedure.*

Sec. 4. NAC 288.200 is hereby amended to read as follows:

288.200 1. In addition to any other applicable requirements set forth in NAC 288.231, a complaint must include:

- (a) The full name ~~{and address}~~ of the complainant;
- (b) The full name ~~{and address}~~ of the respondent;
- (c) A clear and concise statement of the facts constituting the alleged practice sufficient to raise a justiciable controversy under chapter 288 of NRS, including the time and place of the occurrence of the particular acts and the names of persons involved; and
- (d) The legal authority under which the complaint is made.

2. ~~The~~ A complainant shall file a complaint with the Board in the form of a pleading and shall serve a copy by certified mail on all parties in interest at their last known addresses.

3. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a complainant shall not attach any document, including, without limitation, an exhibit, to a complaint.

Sec. 5. NAC 288.220 is hereby amended to read as follows:

288.220 1. ~~The~~ A respondent may file an answer in the form of a pleading and not later than 20 days after the receipt of a complaint.

2. ~~The~~ An answer must contain a clear and concise statement of the facts which constitute a defense. The respondent must specifically admit, deny or explain each of the allegations in the complaint unless he or she is without knowledge, in which case the respondent shall so state and the statement shall be deemed a denial. Any allegation in the complaint not specifically denied in the answer, unless it is stated in the answer that the respondent is without knowledge, shall be deemed to be admitted to be true.

3. If an answer is not made within the prescribed time, the dilatory party is precluded, except with the consent of the opposing party or the Board, from asserting any affirmative defense in the proceeding.

4. An answer must be signed and filed with the Board.

5. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a respondent shall not attach any document, including, without limitation, an exhibit, to an answer.

Sec. 6. NAC 288.250 is hereby amended to read as follows:

288.250 *1.* Not later than 20 days after the service of the answer, unless otherwise ordered by the Board, each party shall file with the Board the prehearing statement of the party which includes:

~~111~~ *(a)* A plain and concise statement of the issues of fact and law to be determined by the Board which have not been resolved by negotiation or otherwise;

~~121~~ *(b)* A memorandum of law or points and authorities in support of the party's position, including a list of significant differences or close similarities of the issue or issues to any prior determinations of the Board;

~~131~~ *(c)* A list of witnesses and their qualifications, including a brief summary of their expected testimony; and

~~141~~ *(d)* An estimate, to the nearest hour, of the time needed for the presentation of the party's position.

2. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a party shall not attach any document, including, without limitation, an exhibit, to a prehearing statement.

Sec. 7. NAC 288.260 is hereby amended to read as follows:

288.260 *1.* Any person claiming an interest in a dispute or controversy which is the subject of a hearing may be made a party upon timely petition and a showing satisfactory to the Board of the person's interest in the controversy.

2. ~~The~~ *A* petition to intervene must include the following information:

(a) The nature of the petitioner's statutory or other right;

(b) The nature and extent of the petitioner's interest;

(c) The effect of any decision in the proceedings on the petitioner's interest;

- (d) Other means available whereby the petitioner's interest may be protected;
 - (e) The extent to which the petitioner's interest may be represented by existing parties;
 - (f) The extent to which the petitioner's participation can assist in the development of a sound record;
 - (g) The extent to which the petitioner's participation will broaden the issues or delay the proceedings;
 - (h) The extent to which the petitioner's interest in the proceedings differs from that of the general public;
 - (i) How the petitioner's intervention would serve the public interest;
 - (j) If affirmative relief is sought, the type and basis of that relief;
 - (k) A statement as to whether the petitioner intends to present evidence in the proceeding;
- and
- (l) The name and address of the petitioner.

3. ~~The~~ A petition is not timely filed unless it is filed with the Board and served upon all parties by certified mail at least 30 days before the time set for the hearing. A response to the application or petition may be made by any party not later than 5 days after receipt of the application or petition.

4. Except as otherwise specifically provided by this chapter or chapter 288 of NRS, a person filing a petition pursuant to this section shall not attach any document, including, without limitation, an exhibit, to the petition.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R034-16**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 288.

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

The regulation does four things. First, the regulation authorizes the electronic service of certain documents while allowing a person to request to opt out of electronic service. Secondly, the regulation adopts the time computation rules of the Nevada Rules of Civil Procedure for the computation of any period prescribed by chapter 288 of NAC or an order of the Local Government Employee-Management Relations Board. Thirdly, the regulation prohibits a person from attaching any document to certain documents filed with the Board. Finally, the regulation removes the requirement that the addresses of the complainant and respondent be included in a complaint filed with the Board.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of this summary.

Copies of the proposed regulation, notice of workshop and notices of intent to act upon the regulations were sent by U.S. mail and/or email to all local governments and employee organizations who filed an annual report with the agency, to persons who were known to have an interest in the subject of the Local Government Employee-Management Relations Board as well as to any persons who had specifically requested such notice. These documents were also made available at the website of the Employee-Management Relations Board (EMRB), www.emrb.nv.gov, mailed to all county libraries in Nevada and posted at the following locations:

State of Nevada Local Government
Employee-Management Relations Board
2501 E. Sahara Ave., Ste. 203
Las Vegas, NV 89104

Attorney General's Office
Grant Sawyer Building
555 E. Washington Blvd.
Las Vegas, NV 89101

Supreme Court Library
201 S. Carson Street #100
Carson City, NV 89701

Nevada State Library & Archives
100 N. Stewart Street
Carson City, NV 89701

State of Nevada Bradley Building
2501 E. Sahara Ave., Main Lobby
Las Vegas, NV 89104

Clark County Personnel
500 S. Grand Central Parkway
Las Vegas, NV 89101

State of Nevada
Department of Business & Industry
1830 College Parkway, Ste. 100
Carson City, NV 89706

State of Nevada
Department of Business & Industry
555 E. Washington Blvd.
Las Vegas, NV 89101

A workshop was held on May 17, 2016, and the minutes of that meeting, attached hereto as Exhibit A, contain a summary of the discussion held regarding the proposed regulation. No written responses were received. On May 11, 2016, the Commissioner issued a Notice of Intent to Act Upon a Regulation.

A public hearing was then held on June 15, 2016, and the minutes of that public hearing, attached hereto as Exhibit B, contain a summary of the discussion held regarding the proposed regulations.

A copy of the summary of the public response to the proposed regulation may be obtained from the Local Government Employee-Management Relations Board, 2501 E. Sahara Avenue, Suite 203, Las Vegas, Nevada 89104 or via email to emrb@business.nv.gov.

3. The number of persons who:

(a) Attended each hearing:

May 17, 2016, Workshop: 1 in Las Vegas and 2 in Carson City via teleconference (not including EMRB Board members and staff)

June 15, 2016, Public Hearing: 0 in Las Vegas (not including EMRB Board members and staff)

(b) Testified at each hearing:

May 17, 2016 Workshop: 1

June 15, 2015 Public Hearing: 0

(c) Submitted to the agency written comments: 1 each at the workshop and the public hearing.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit C.

5. 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 businesses in the same manner as they were solicited from the public, namely via mailings to all local governments and employee

organizations who have filed an annual report with the agency plus to others who were known to have an interest in the subject of the Local Government Employee-Management Relations Board as well as to any persons who had specifically requested such notice. Comments were received at the workshop plus a written comment was also received prior to the public hearing. The minutes of both the workshop and the public hearing, as well as the small business impact statement and the summary may be obtained as instructed in the response to question #2.

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.

The agency received two written comments, one each at the workshop and the public hearing, requesting a modification to the proposed amendment prohibiting the attaching of documents to complaints, answers and pre-hearing statements. The Board deliberated on the matter but decided to adopt the regulation without change. The Board believed it was an issue of fairness as attaching exhibits to those documents does not give opposing parties the opportunity to object to their inclusion, as they would have that right either at a hearing or on a motion to dismiss. The problem is further compounded because the staff forwards those documents to the Board in preparation for the Board's hearing on the matter, and if such documents include exhibits then the Board sees those exhibits when the exhibits might otherwise properly not belong in the record, or when, at a hearing, they may have been excluded and not allowed into evidence. Furthermore, nothing prohibits the introduction of such exhibits at the appropriate time. Finally, the Board noted that it does not decide cases alone on just a complaint, answer and/or prehearing statement and thus no party would be prejudiced by the adoption of this rule.

Please see the minutes of the public hearing (Exhibit B attached hereto) for further comments.

7. The established economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

The proposed amendments will improve interaction with the agency. Regulatory changes effective in early 2015 allowed for the electronic filing of documents with the agency. Sections 1 and 2 would allow parties to electronically serve those same documents on other parties to a case, thus eliminating the need to either mail those documents or else personally serve other parties with those documents, thus saving both time and expense. There is a provision in Section 1 that would allow a person to opt out of being served by electronic service. This request came from the user community at the agency's annual open forum in January 2016.

Documents subsequent to the filing of a complaint have deadlines for when they must be filed. Section 3 of the regulation simplifies the computation of these deadlines by adopting the Nevada Rules of Civil Procedure 6(a) and 6(e). These

rules are well understood by attorneys who practice in the state courts. Adopting the same rules will improve consistency and ease understanding of those who practice before the agency. This request came from the user community at the agency's annual open forum in January 2016.

Sections 4, 5, 6 and 7 prohibit a person from attaching any document, including an exhibit, respectively, complaints, answers, prehearing statements and petitions. All filings with the agency become part of the administrative record for a given case. This has been a means whereby a person attempts to get a document into the administrative record without an opposing party having an opportunity to object to the document. Documents may still become part of the administrative record either by the filing of a motion or other document related thereto or at a hearing. Both of these instances allow an opposing party to object to a given document and thus makes for a better record of the case. There is a beneficial effect in that less paperwork will be filed with the agency, absent a full hearing occurring later in the case.

Section 4 also removes the requirement that the addresses of the complainant and respondent be included in a complaint. This request came from the user community at the agency's annual open forum in January 2016, at which time a concern was expressed that including the addresses in the complaint is a security concern, especially for public safety employees. Moreover, the agency already has addresses on file for all local governments and employee organizations, as well as for the attorneys who practice before the agency. Thus the regulation would slightly simplify the drafting of a complaint

Neither will there be any adverse effects on the public. This is for the same reasons as stated above.

(b) Both immediate and long-term effects.

There will be no immediate or long-term adverse effects on the businesses that the EMRB regulates. For the reasons stated in #7a above, the proposed regulations will have both immediate and long-term beneficial effects on those businesses.

There will be no immediate or long-term adverse effects on the public. For the reasons stated in #7a above, the proposed regulations will have both immediate and long-term beneficial effects on the public in that any cases filed have the potential of being handled more efficiently through such means as the electronic service of pleadings.

8. The estimated cost to the agency for enforcement of the adopted regulations.

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

- 9. A description of any regulations of other state or 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.**

There are no other state or government agency regulations that the proposed regulation duplicates.

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

There are no federal regulations that apply.

- 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.**

This regulation does not provide a new fee or increase an existing fee.

SEE COPY FILED WITH STATE LIBRARY AND ARCHIVES FOR ATTACHMENTS.