

PROPOSED REGULATION OF THE BOARD OF WILDLIFE COMMISSIONERS

LCB File No. R074-16

PRACTICE AND PROCEDURE BEFORE BOARD OF WILDLIFE COMMISSIONERS

Hearings

NAC 501.140 Applicability. (NRS 501.181) The provisions of NAC 501.140 to 501.190, inclusive, apply to any matter that is within the jurisdiction of the Commission.

NAC 501.150 Request for hearing concerning denial, revocation or suspension of license or permit; time and notice of hearing; stay of decision of Department. (NRS 501.181)

1. A person who is aggrieved by a decision of the Department must submit a written request for a hearing before the Commission within 30 *calendar* days after he receives a notice from the Department pursuant to subsection 3 of NRS 233B.127 that his license or permit will be denied, revoked or suspended. Otherwise, his right to the hearing shall be deemed waived. The date of receipt of the notice from the Department that the license or permit will be denied, revoked or suspended shall be deemed to be:

(a) The date that is indicated on the signed certified mail receipt; or

(b) If the person refuses to accept delivery of the notice, 3 *calendar* days after the date the certified mail has been refused by the person.

2. The hearing must be requested on a form provided by the Department.

3. The Commission will include the hearing on the agenda for the next regularly scheduled meeting, *or hold a special and separate meeting* of the Commission that is conducted after the

Department receives the request for a hearing, unless the appellant and Department agree otherwise in writing.

4. The Department shall *send by certified* mail a notice of hearing in *regards to the appeal request* that complies with the provisions of NRS 233B.121_ not less than 20 *calendar* days before the date of the hearing. *In the Department's statement of legal authority and jurisdiction* ~~of the notice~~ *per NRS 233B.121 subsection 2(b), the Department shall clarify that if a person has been convicted they will only be able to appeal procedural error, and that a criminal case will not be retried on its merits.*

There is a rebuttable presumption that the notice of hearing has been received by an appellant 10 *calendar* days after the date the notice was deposited in the United States mail.

5. Any contention that improper notice was given by the Department shall be deemed waived unless the contention is raised at the hearing.

6. Except as otherwise provided in NRS 501.1816, the Department may grant a stay of its decision to deny, revoke or suspend the license or permit pending the hearing before the Commission if the Department determines that:

- (a) There is good cause to stay its decision; and
- (b) A stay will not have a detrimental impact on wildlife.

NAC 501.153 Filing and service of certain documents before hearing on appeal. (NRS 501.181) At least 14 *calendar* days before the date set for a hearing for an appeal, each party to the appeal must file with the Commission and serve upon all other parties to the appeal:

- 1. All documents that the party intends to introduce as evidence at the hearing; and
- 2. A written statement setting forth:
 - (a) The name and address of the party;

- (b) The reason for the appeal, if the party is the appellant;
- (c) A brief statement supporting the position of the party; and
- (d) If the party intends to introduce witnesses, a list setting forth the name of each witness together with a brief summary of the proposed testimony of the witness.

NAC 501.155 Representation of appellant or petitioner. (NRS 501.181) An appellant or a petitioner may be represented by an attorney who is licensed to practice law in this State. *If the appellant has retained an attorney to represent him or her, he or she will notify the Department in advance. The Wildlife Commission and the Department will each be represented by a separate Deputy Attorneys General.*

NAC 501.160 Conduct at hearing; maintenance of order. (NRS 501.181)

1. A person appearing before the Commission shall act in a courteous manner that is conducive to the proper functioning of the Commission.

2. The Commission may take any action that it determines is necessary to maintain order during a hearing, including, without limitation:

(a) Excluding the appellant or petitioner or the attorney for the appellant or petitioner from the hearing;

(b) Excluding a witness from the hearing; and

(c) Limiting the taking of testimony and presentation of evidence during the hearing.

NAC 501.165 Hearing de novo; evidence and allegations at certain hearings. (NRS 501.181, 501.1818)

1. Except as otherwise provided in subsection 2, a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506,

inclusive, of NRS and any regulations adopted pursuant to those chapters will be conducted by the Commission as a hearing de novo.

2. At a hearing conducted pursuant to NRS 501.1816, the Commission will:

(a) Allow to be presented only evidence that is in the record regarding the suspension or revocation of the license, permit or privilege that is on file with the Department; and

(b) Consider only allegations of procedural error committed by the Department that affect the substantive rights of the appellant.

3. The appellant's criminal case shall not be reheard on its merits.

NAC 501.170 Discovery. (NRS 501.181) The Commission will limit discovery for a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters to evidence that is relevant and admissible pursuant to NAC 501.165.

NAC 501.175 Continuance. (NRS 501.181)

1. Except as otherwise provided in subsection 2, the date of a hearing may be continued once by a written stipulation from the appellant and the Secretary of the Commission.

2. The date of a hearing may be continued more than once if the moving party submits a written motion for a continuance to the Commission. The Commission will grant the motion only if:

(a) Good cause exists to continue the hearing; and

(b) A continuance will not prejudice the nonmoving party.

NAC 501.179 Dismissal upon failure of appellant to appear. (NRS 501.181) If an appellant fails to appear at a hearing after receiving adequate notice of the hearing and the appellant does not show good cause for the failure to appear at the hearing, the Commission may

dismiss the appeal with prejudice. An appeal that is dismissed pursuant to this section may not be reconsidered by the Commission. The dismissal of an appeal pursuant to this section is a final decision for purposes of judicial review.

(Added to NAC by Bd. of Wildlife Comm'rs by R198-05, eff. 2-23-2006)

NAC 501.185 Procedure; burden of proof. (NRS 501.181, 501.1818)

1. The Commission will use the following procedure, in the order set forth in paragraphs (a) to (i), inclusive, for a hearing regarding a revocation or suspension of a license or permit ordered pursuant to the provisions of NRS 501.1812 to 501.1818, inclusive, and any regulations adopted pursuant to those sections:

- (a) The hearing will be called to order by the Chairman of the Commission.
- (b) The request for a hearing and notice of hearing will be entered into the record.
- (c) The Commission may, on its own motion or that of a party, exclude witnesses from the hearing.
- (d) The Commission will consider any:
 - (1) Preliminary motions;
 - (2) Stipulations; and
 - (3) Proposed orders that the Department and the appellant have agreed to pursuant to a settlement.
- (e) The Department will present its evidence and then be cross-examined by the appellant and questioned by the Commission.
- (f) The appellant will present its evidence and then be cross-examined by the Department and questioned by the Commission.

(g) The Department and appellant will present any rebuttal evidence and then be cross-examined by the other party and questioned by the Commission on issues limited to the rebuttal evidence.

(h) Closing arguments will be presented by the Department and then by the appellant.

(i) The Commission will deliberate and then render orally its order with separately stated findings of fact and conclusions of law.

□ The Department has the burden of proof in a hearing regarding a revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters.

2. The Commission will use the following procedure, in the order set forth in paragraphs (a) to (e), inclusive, for a hearing regarding a denial of an appellant's application for a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulation adopted pursuant to those chapters:

(a) The appellant will present its evidence and then be cross-examined by the Department and questioned by the Commission.

(b) The Department will present its evidence and then be cross-examined by the appellant and questioned by the Commission.

(c) The Department and the appellant will present any rebuttal evidence and then be cross-examined by the other party and questioned by the Commission on issues limited to the rebuttal evidence.

(d) Closing arguments will be presented by the appellant and then by the Department.

(e) The Commission will deliberate and then render orally its order with separately stated findings of fact and conclusions of law.

□ The appellant has the burden of proof in a hearing specified in this subsection.

3. The Commission may deviate from the order of procedure set forth in subsections 1 and 2 and allow or limit questioning to elicit all relevant, nonrepetitive testimony and evidence.

(Added to NAC by Bd. of Wildlife Comm'rs by R083-98, eff. 9-25-98; A by R198-05, 2-23-2006)

NAC 501.190 Official record; transcription. (NRS 501.181)

1. The official record of a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters will serve as the order of the Commission, unless otherwise stated by the Commission during the hearing.

2. A party may request a transcription of the official record of the hearing. The transcription must be produced at the expense of the requesting party.

3. A party may request a copy of the order of the Commission as transcribed from the official record of the hearing.