

PROPOSED REGULATION OF THE SECRETARY OF STATE

LCB File No. R146-20

September 24, 2020

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

AUTHORITY: §1, NRS 240A.250; §2, NRS 240A.250 and 240A.260; §§3-21, NRS 240A.250, 240A.260 and 240A.270.

A REGULATION relating to document preparation services; prohibiting a document preparation service from impeding or interfering with an investigation conducted by the Secretary of State; setting forth the procedures for a hearing to suspend or revoke the registration of a document preparation service; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if the Secretary of State obtains information that a provision of law related to document preparation services, or an order adopted or issued pursuant thereto, has been violated, the Secretary of State may conduct or cause to be conducted an investigation of the alleged violation. (NRS 240A.260) **Section 2** of this regulation prohibits a person registered as a document preparation service from impeding or otherwise interfering with such an investigation.

Under existing law, if, after an investigation, the Secretary of State determines that a violation of law related to document preparation services, or an order adopted or issued pursuant thereto, has occurred, the Secretary of State may begin proceedings to suspend or revoke a person's registration as a document preparation service. Suspension or revocation may only be imposed after a hearing. (NRS 240A.270) **Sections 4-21** of this regulation set forth the procedures for such a hearing.

Sections 4-7 of this regulation, respectively, define the terms "hearing officer," "party," "respondent" and "staff."

Section 8 of this regulation provides that if the Secretary of State determines that a violation of law related to document preparation services has occurred and wants to begin proceedings to suspend or revoke a person's registration as a document preparation service, the Secretary of State must: (1) appoint a hearing officer; and (2) file a complaint with the hearing officer.

Section 9 of this regulation requires the hearing officer to schedule the hearing within 60 days and give notice to the respondent of the complaint.

Section 10 of this regulation requires the respondent to provide notice of witnesses and documents that will be used to support his or her position at the hearing.

Section 11 of this regulation sets forth requirements for a party to the hearing to file motions.

Section 12 of this regulation authorizes a complaint to be amended or withdrawn.

Section 13 of this regulation authorizes the hearing officer to grant a continuance of the hearing under certain circumstances.

Sections 14 of this regulation provides that if a party fails to appear at the hearing, the hearing officer may proceed with the case without participation of the absent party.

Section 15 of this regulation authorizes a party to the hearing to be represented by legal counsel.

Section 16 of this regulation authorizes the hearing officer to issue subpoenas.

Section 17 of this regulation requires a person appearing at a hearing to conform to the recognized standards of ethical and courteous conduct.

Section 18 of this regulation sets forth the standards of evidence for a hearing.

Section 19 of this regulation sets forth the procedural requirements for holding a hearing.

Section 20 of this regulation requires the hearing officer to issue a decision within 30 days of the completion of the hearing.

Section 21 of this regulation requires the hearing officer to cause a record to be made of the hearing.

Section 1. Chapter 240A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

Sec. 2. *A registrant shall not impede or otherwise interfere with an investigation conducted by the Secretary of State pursuant to NRS 240A.260, including, without limitation, by:*

- 1. Failing to comply with a request by the Secretary of State to provide documents;*
- 2. Supplying false or misleading information to an investigator or any other officer or agent of the Secretary of State; or*

3. *Concealing any facts or documents relating to the business of the registrant.*

Sec. 3. *As used in sections 3 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 7, inclusive, of this regulation have the meanings ascribed to them in this those sections.*

Sec. 4. *“Hearing officer” means a person appointed by the Secretary of State to conduct a hearing.*

Sec. 5. *“Party” means:*

1. *The respondent;*
2. *The attorney, if any, representing the respondent; and*
3. *The Secretary of State and his or her staff.*

Sec. 6. *“Respondent” means any person against whom a complaint is initiated by the Secretary of State pursuant to section 8 of this regulation in order to suspend or revoke the person’s registration as a document preparation service.*

Sec. 7. *“Staff” means the employees of the Secretary of State. The term includes, without limitation, the Attorney General and his or her duly appointed deputies when representing the Secretary of State.*

Sec. 8. *After an investigation conducted pursuant to NRS 240A.260, if the Secretary of State determines that a violation of this chapter or chapter 240A of NRS has occurred and wants to begin proceedings pursuant to NRS 240A.270 to suspend or revoke a person’s registration as a document preparation service, the Secretary of State will:*

1. *Appoint a hearing officer who must be a person who did not participate in the investigation or decision of the Secretary of State; and*
2. *File a complaint with the hearing officer.*

Sec. 9. 1. *The hearing officer must schedule the matter for a hearing within 60 days after receipt of the complaint from the Secretary of State.*

2. The hearing officer must give the respondent at least 30 days' prior notice in writing of the hearing. The notice must include, without limitation:

(a) The complaint, which must include, without limitation, an exact statement of the charges together with copies of all reports, affidavits and depositions in possession of the Secretary of State which may be used in evidence against the respondent.

(b) The date, time and place of the hearing.

3. The notice required pursuant to subsection 2 must be served by personal delivery to the respondent or by certified mail to his or her last known business or home address.

4. Any answer from the respondent must:

(a) Be filed within 20 days after service of the notice; and

(b) Contain an admission or denial of each of the averments contained in the complaint and any defenses upon which the respondent will rely.

5. The answer must be served by personal delivery to the Secretary of State at his or her office in Las Vegas or Carson City or by certified mail to the Secretary of State at his or her office in Las Vegas.

Sec. 10. 1. *Not less than 5 working days before the hearing, the respondent shall provide to the Secretary of State:*

(a) A copy of all documents that are reasonably available to the respondent which the respondent reasonably anticipates will be used in support of his or her position; and

(b) A list of witnesses whom the respondent intends to call at the time of the hearing, which must include for each witness:

- (1) The name and contact information of the witness;*
 - (2) The company for whom the witness works and the title of the witness; and*
 - (3) A brief summary of the expected testimony of the witness.*
- 2. The respondent shall promptly supplement and update any documents and lists provided to the Secretary of State pursuant to this section.*
 - 3. If the respondent fails to provide any document required to be provided pursuant to this section, the hearing officer may exclude the document.*

Sec. 11. *1. All motions, unless made during a hearing, must be in writing.*

2. A written motion must be served on the opposing party and the hearing officer at least 10 working days before the hearing.

3. An opposing party may file a written response to a motion within 7 working days after the receipt of the motion by serving the written response on all parties and the hearing officer.

4. The hearing officer may require oral argument or the submission of additional information or evidence to decide the motion.

Sec. 12. *The complaint may be:*

1. Amended at any time.

2. Withdrawn at any time before the hearing begins.

Sec. 13. *The hearing officer may grant a continuance:*

1. Before the hearing, if the respondent demonstrates an inability to prepare for the hearing in a timely manner.

2. Before or during a hearing, if any party demonstrates the need for additional time for submission of further or additional proof on any subject.

Sec. 14. 1. *If a party fails to appear at a hearing and a continuance has not been requested or granted, upon an offer of proof by the other party that the absent party was given proper notice and upon a determination by the hearing officer that proper notice was given, the hearing officer may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before the hearing officer. If the respondent fails to appear at the hearing or fails to submit an answer to the notice, the charges specified in the complaint may be considered as true.*

2. Where, because of accident, sickness or other reasonable cause, a party fails to appear for a hearing or fails to request a continuance, the party may, within a reasonable period of time, not to exceed 15 days, apply to the hearing officer to reopen the proceedings, and the hearing officer, upon finding such cause sufficient and reasonable, will immediately fix a time and place for hearing and give the parties notice of the hearing. At the time and place fixed, a hearing must be held at which the party may testify in his or her own behalf or present such other evidence as may be beneficial to his or her cause. Witnesses who have previously testified are not required to appear at the second hearing unless so directed by the hearing officer.

Sec. 15. 1. *Parties shall enter their appearance at the beginning of a hearing or at any time as may be designated by the hearing officer.*

2. Appearances and representation of parties must be made as follows:

(a) A party is entitled to be heard in person or by his or her attorney.

(b) An attorney appearing as counsel in any proceeding must be an attorney at law, admitted to practice and in good standing before the highest court of this State. If the attorney

is not admitted and entitled to practice before the Supreme Court of Nevada, an attorney so admitted and entitled to practice must be associated.

3. Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders thereafter served must be served upon the attorney and service is considered valid service for all purposes upon the party represented.

4. Any attorney of record wishing to withdraw from a proceeding shall, in writing, immediately notify the hearing officer and the party he or she represented.

Sec. 16. *1. The hearing officer may issue a subpoena requiring the production of books and papers or the attendance of a witness from any place in the State to the place designated for a hearing for the purpose of taking testimony before the hearing officer.*

2. A party desiring the hearing officer to issue a subpoena must submit an application in writing to the hearing officer stating the reasons why a subpoena is requested.

3. The hearing officer may require that a subpoena requested by a party for the production of books, papers, accounts or other documents be issued only after the submission of an application in writing, which specifies as clearly as may be, the books, papers, accounts or other documents desired.

4. The hearing officer, upon receipt of an application for a subpoena, shall:

(a) Grant the application and issue the subpoena;

(b) Deny the application; or

(c) Schedule a hearing to decide whether to grant or deny the application.

5. All costs incident to a subpoena issued at the request of respondent must be paid by the respondent, and the hearing officer may demand payment of the costs before the issuance of a subpoena.

Sec. 17. A person appearing at a hearing shall conform to the recognized standards of ethical and courteous conduct. All parties to hearings and spectators shall conduct themselves in a respectful manner.

Sec. 18. 1. In conducting any hearing, the hearing officer is not bound by the technical rules of evidence, and any informality in any proceeding or in the manner of taking testimony does not invalidate any order or decision of the hearing officer. Rules of evidence before the courts of Nevada may be generally followed but may be relaxed in the discretion of the hearing officer if deviation from the technical rules of evidence will aid in ascertaining the facts.

2. Any evidence offered at a hearing must be material and relevant to the issues of the hearing. The hearing officer may exclude inadmissible, incompetent, repetitious or irrelevant evidence or order that presentation of that evidence be discontinued.

3. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the hearing officer. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. Formal exceptions to rulings are unnecessary and need not be taken.

4. Sworn declarations may be introduced in lieu of testimony if a witness resides outside the State of Nevada.

5. The hearing officer may take official notice of judicially cognizable facts and of recognized technical facts within the specialized knowledge of the hearing officer, including the following matters:

(a) Rules, regulations, official reports, decisions and orders of the Secretary of State and any regulatory agency of the State of Nevada.

(b) Contents of decisions, orders, standards or records of the Secretary of State.

(c) Matters of common knowledge and technical facts of established character.

(d) Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference.

Sec. 19. 1. The hearing officer shall:

(a) Call the hearing to order and note the appearances of the parties who are present.

(b) Administer the oath to all persons whose testimony will be taken as follows:

Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?

(c) Ascertain whether either party desires to have a witness excluded from the hearing room until the witness is called. A witness may be excluded upon the motion of the hearing officer or upon the motion of either party. If a witness is excluded, the witness will be instructed not to discuss the case during the pendency of the proceeding. The respondent and staff must be allowed to remain present at the hearing.

(d) Ascertain whether a copy of the complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.

(e) Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.

(f) Request staff to proceed with the presentation of the Secretary of State's case.

2. The respondent may cross-examine witnesses in the order that staff presents them.

3. *Witnesses or counsel may be questioned by the hearing officer at any time during the proceeding.*

4. *Evidence which is to be introduced or which is used by a witness:*

(a) *Must first be marked for identification; and*

(b) *May be received by the hearing officer at any point during the proceeding.*

5. *When staff has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and calling of witnesses on behalf of the respondent.*

6. *Staff may cross-examine witnesses in the order that the respondent presents them.*

7. *When the respondent has completed his or her presentation, staff may call any rebuttal witnesses.*

8. *When all testimony for staff and respondent has been given and all evidence has been submitted, the hearing officer may request staff and the respondent to summarize their presentations.*

9. *The hearing officer may waive or modify any provision of this section if necessary to expedite or ensure the fairness of the hearing.*

Sec. 20. 1. *The hearing officer shall issue a decision within 30 days of the completion of the hearing and include in the final decision findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based upon a preponderance of the evidence.*

2. *The decision of the hearing officer must be served by sending a copy by certified mail to the parties of record or their representatives. Additional copies of orders may be obtained upon written request.*

3. The decision of the hearing officer is a final decision for the purpose of judicial review.

Sec. 21. *The hearing officer shall cause a record to be made of the hearing, in accordance with NRS 233B.121. Parties desiring copies of transcripts may obtain them from the Office of the Secretary of State upon payment of the fees fixed for them.*