

LCB File No. R055-98

**NOTICE OF PUBLIC WORKSHOP AND HEARING FOR THE AMENDMENT
AND ADOPTION OF REGULATIONS OF THE
DEPARTMENT OF ADMINISTRATION
HEARINGS DIVISION**

The Department of Administration, Hearings Division, 555 EAST WASHINGTON, LAS VEGAS, NV 89101 (702) 486-2525 is proposing the adoption of regulations pertaining to chapter 616A to 616D of Nevada Administrative Code.

A CARSON CITY public workshop has been set for 11:00 a.m., on THURSDAY, APRIL 30, 1998, at the LEGISLATIVE COUNCIL BUREAU, ROOM 2149, located at 401 SOUTH CARSON STREET, CARSON CITY, NV 89710-4747. A public hearing will be held following the informal workshop.

A LAS VEGAS public workshop has been set for 9:30 a.m., on FRIDAY, MAY 01, 1998, at the GRANT SAWYER BUILDING, ROOM 4412 A/B/C, located on the 4th Floor at 555 EAST WASHINGTON AVE (NE corner Las Vegas Blvd and Washington), LAS VEGAS NV 89101. A public hearing will be held following the informal workshop.

The purpose of the public workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations. A public hearing will be held following the informal workshop.

The purpose of the hearing is to receive comments from all interested persons regarding the amendment and adoption of regulations (LCB File RO...). If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Administration, Hearings Division may proceed immediately to act upon any written submissions.

1. The proposed regulations are being adopted pursuant to NRS 233B.063, 616C.295, 616C.310 and are being adopted in order to update and clarify procedures regarding the petition which requests the adoption, filing, amendment or repeal of a regulation of the division, clarification of the appeals officer authority and the appointment of special appeals officers by the governor.
2. The proposed regulations will cover such issues as the qualifications and education a person must possess if they wish to serve as a special appeals officer and the duties of the special appeals officer.

3. The proposed regulations will address the scope and costs related to inter-agency or inter-local agreements in a contested case or any other case in which a “fair hearing” or impartial adjudication is required.
4. It is estimated that there will be no economic effect on the public or on business affected by the regulations.
5. It is estimated that there will be no cost to the Hearing Division for enforcement of the proposed regulations.
6. The regulations do not overlap or duplicate other agency regulations.
7. This regulation does assess the ability of the appeals officer to impose certain fees and/or costs but no new fees are established by the proposed regulations.

Persons wishing to comment upon the proposed action of the Department of Administration, Hearings Division, may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Department of Administration, Hearings Division, 555 East Washington 3300, Las Vegas, NV 89101. Written submissions must be received by the Hearings Division on or before Friday, April 24, 1998.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Hearings Division, 555 East Washington 3300, Las Vegas, Nevada 89101 and also the Hearings and Appeals Division at 1050 East Williams 450, Carson City, Nevada 89710, and in all counties in which an office of the agency is not maintained, at the public library, for the inspection and copying by members of the public during business hours. The text of each regulation will include the entire text of any section of the Nevada Administrative code which is proposed for amendment or repeal. Copies 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 of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principle reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following NEVADA COUNTY PUBLIC LIBRARIES:

ATTN BARBARA MATHEWS DIR
CHURCHILL CO LIBRARY
5553 S MAINE ST
FALLON NV 89406

ATTN DIANE HARTSOCK DIR
TONOPAH PUBLIC LIBRARY
P O BOX 449/171 CENTRAL ST
TONOPAH NV 89049

ATTN DARRYL BATSON DIR
LAS VEGAS CLARK CO LIBRARY
833 LAS VEGAS BLVD N
LAS VEGAS NV 89101

ATTN JEANNE MUNK DIR
PERSHING CO LIBRARY
P O BOX 781/1125 CENTRAL
LOVELOCK NV 89419

ATTN SARA JONES DIR
ELKO CO LIBRARY
720 COURT ST
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ESMERALDA COUNTY
GOLDFIELD PUBLIC LIBRARY
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EUREKA BRANCH LIBRARY
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950 CAMPTON ST
ELY NV 89301

ATTN SHERRY ALLEN DIR
HUMBOLDT CO LIBRARY
85 EAST 5TH ST
WINNEMUCCA NV 89445

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LANDER COUNTY
BATTLE MTN BRANCH LIBRARY
P O BOX 141
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LINCOLN CO LIBRARY
93 MAIN ST
P O BOX 330
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ATTN SALLY EDWARDS DIR
CARSON CITY LIBRARY
900 N ROOP ST
CARSON CITY NV 89701

CHRISTIAN FREER-PARSONS DIR
LYON CO LIBRARY
20 NEVIN WAY
YERINGTON NV 89447

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DOUGLAS CO LIBRARY
P O BOX 337
MINDEN NV 89423

ATTN STEVE SCHLATTER DIR
MINERAL CO LIBRARY
P O BOX 1390/FIRST & A ST
HAWTHORNE NV 89415

Copies of the attached notice have also been mailed to the following parties:

ROBERT GUINTA ESQ
608 S SIXTH ST
LAS VEGAS NV 89101

HORIZON HEALTH CARE
1755 E PLUMB LN 266
RENO NV 89502

JAY BREWER ESQ
501 S RANCHO DR C-16
LAS VEGAS NV 89106

MANAGED CARE CONSULTANTS
4160 S PECOS
LAS VEGAS NV 89121

RAY BADGER ESQ
312 W THIRD ST
CARSON CITY NV 89703

LIBERTY MUTUAL
P O BOX 52037
PHOENIX AZ 85072-2037

W R GIBBENS CO
P O BOX 14097
LAS VEGAS NV 89114

H DOUGLAS CLARK ESQ
1900 E FLAMINGO RD 253
LAS VEGAS NV

VIRGINIA HUNT ESQ
1785 E SAHARA 275
LAS VEGAS NV 89104

FRANK GATES SERVICE CO
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89104

CRAIG KENNY ESQ
723 S SEVENTH
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GEORGE BOCHANIS ESQ
631 S NINTH
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SAHARA WORKERS COMP
P O BOX 98888
LAS VEGAS NV 89193-8888

CAROLYN CAMPBELL ESQ
CLARK COUNTY DST ATTY
P O BOX 552215
LAS VEGAS NV 89155-1711

DOUGLAS QUON ESQ
CITY ATTORNEY
243 WATER ST
HENDERSON NV 89015

CITY OF HENDERSON
240 WATER ST
HENDERSON NV 89015

LESLIE STOVALL ESQ
717 S THIRD ST
LAS VEGAS NV 89101

DIR/IIRS
2500 W WASHINGTON 104
LAS VEGAS NV 89106

BALLYS WORKERS COMP
3645 S LAS VEGAS BLVD
LAS VEGAS NV 89109-4307

J MICHAEL MCGROARTY ESQ
801 S RANCHO DR E-1
LAS VEGAS NV 89106

DEAN HARDY ESQ
610 S NINTH ST
LAS VEGAS NV 89101

CITY OF LAS VEGAS WRKS COMP
400 E STEWART AVE
LAS VEGAS NV 89101

SHIRLEY LINDSEY ESQ
SIIS LEGAL DEPT
P O BOX 26929
LAS VEGAS NV 89126-0929

O H M S
6900 WESTCLIFF DR 600
LAS VEGAS NV 89128

CDS OF NV
1055 E TROPICANA AVE 800
LAS VEGAS NV 89119

JOHN STUART CO INC
2835 S JONES BLVD 4
LAS VEGAS NV 89102

MARVIN GROSS ESQ
3017 W CHARLESTON BLVD 50
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HUMANA/MCO/WORKERS COMP
2770 S MARYLAND PKWY 100
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PRIME HEALTH
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LAS VEGAS NV 89109

MERCER BERENS
NEVADA ADMINISTRATORS
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HELMSMAN
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ROSIE KAATZ
GATES MCDONALD CO NV
P O BOX 71000
LAS VEGAS NV 89170

CORESOURCE
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LAS VEGAS NV 89101-7051

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HENDERSON NV 89016

DAVID ALLEN ASSO
810 S CASINO CNTR
LAS VEGAS NV 89101

MIRAGE WORKERS COMP
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LAS VEGAS NV 89109

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W C 4
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ETHEL PIPP
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CLAIMS MGMT CORP
2265 B RENAISSANCE DR
LAS VEGAS NV 89119

F H P WORKERS COMP
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BOX 9
LAS VEGAS NV 89102

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LAS VEGAS NV 89102

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DIVERSIFIED MGMT GROUP
P O BOX 18599
RENO NV 89511

SILVER STATE DISPOSAL
RISK MANAGEMENT
P O BOX 98508
LAS VEGAS NV 89193-8508

MGM GRAND WORKERS COMP
LOSS PREVENTION DEPT
3799 S LAS VEGAS BLVD
LAS VEGAS NV 89109

BOYD GROUP
WILLIAM WERNER ESQ
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LAS VEGAS NV 89109

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P O BOX 2670
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DANIEL SCHWARTZ ESQ
GUGINO & SCHWARTZ
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LAS VEGAS NV 89102

LAURENCE IRWING ESQ
BERNSTEIN & ASSOCIATES
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RENO NV 89509

LAWRENCE BERNARD ESQ
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RENO NV 89503

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RENO NV 89505

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RENO NV 89501

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312 W THIRD ST
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PROPOSED REGULATION OF THE CHIEF OF THE HEARINGS DIVISION
OF THE DEPARTMENT OF ADMINISTRATION

LCB FILE NO. R055-98

February 5, 2004

- Explanation: (1) Matter in *ITALICS* is new;
(2) Matter in BRACKETS [] is material to be deleted

AUTHORITY: **NRS 233B.050, 616C.310 and 616C.395**

Section 1. Chapters 616A to 616D, inclusive of NAC are hereby amended by adding Sections 2 to 9, inclusive, of this regulation.

Section 2.

1. *A petition which requests the adoption, filing, amendment or repeal of a regulation of the division must be filed with the chief of the hearings division.*

2. *The petition must include:*

(a) *The name and address of the petitioner;*

(b) *A clear and concise statement of the regulation to be adopted, filed, amended or repealed;*

(c) *If the petition requests the adoption of a regulation, the full text of the proposed regulation;*

(d) *The reason for the adoption, filing, amendment or repeal of the regulation; and*

(e) *The statutory authority for the adoption, filing, amendment or repeal of the regulation.*

Section 3.

1. *The chief of the hearings division will not review a petition which requests the adoption, filing, amendment or repeal of a regulation unless the original petition is accompanied by three (3) copies of the petition. The chief of the hearings division will notify the petitioner in writing of his decision within thirty (30) days after the petition is filed.*

Section 4.

1. *For the purposes of subsection 2 of Section 1 of Chapter 625 of the Statutes of Nevada 1997, at page 3092, the term "without good cause" includes, but is not limited to:*

(a) Failure of a party to provide medical reports, videotapes or evidence which the party proposes to introduce at the time of the proceeding to any party in a timely manner;

(b) Failure to comply with an order granting or denying a stay;

(c) Failure to comply with regulations adopted pursuant to Chapters 616A to 616D, inclusive of NRS;

(d) Misconduct or failure to act in a respectful manner during any proceeding before a hearings officer or an appeals officer; or

(e) Any other act which unreasonably caused a continuance or delay in the scheduled hearing.

(f) Failure of any attorney or representative of a party to contact the appeals officer more than twenty-four (24) hours prior to the scheduled date and time of a hearing or appeals officer conference to notify the appeals officer that the matter has been or will be resolved, settled, dismissed or continued, whether by stipulation, agreement or motion.

(g) Failure of a party to appear pursuant to NAC 616C.279.

(h) Failure of a party to submit a proposed order within the time required by NAC 616C.306.

2. The appeals officer may order the payment of any costs related to the failure of a party, including, but not limited to:

(a) Costs for court reporting or recording services, transcription services ;

(b) Costs for medical examinations, reports or testimony;

(c) Reasonable travel costs for any party or witness;

(d) Costs for interpreter services; or

(e) Any other costs incurred by the hearings division and reasonably related to the failure of a party.

3. The appeals officer may order that payment be made to the State of Nevada, Department of Administration, or directly to the provider of the service or other person entitled to such costs.

Section 5.

1. The senior appeals officer will maintain a list of special appeals officers appointed by the governor who are available to conduct hearings in the resolution of workers' compensation disputes, or contested claims for compensation, pursuant to NRS 616C.340. Each special appeals officer must be an attorney who has been licensed to practice law before all the courts of this state for a minimum of two (2) years.

2. The designation of a special appeals officer to any particular case before the hearings division will be made from the list at the discretion of the senior appeals officer. Notice of such a designation will be given to the parties in the case.

3. *The senior appeals officer shall consider the venue of the case, the availability of any special appeals officer, workload, considerations, promptness in setting and deciding cases, particular expertise or other matters bearing on the assignment of the case.*

4. *As used in this section, the term "special appeals officer" includes those appointed pursuant to NRS 616C.340 as amended by Section 1 of Chapter 653 of the Statutes of Nevada 1997, page 3234.*

Section 6.

If the division is requested by any agency, pursuant to an inter-agency or inter-local agreement, to hold a hearing in a contested case or any other case in which a "fair hearing" or impartial adjudication is required which is not a contested case pursuant to Chapters 616A to 616D, inclusive:

1. *The senior appeals officer will assign the case to an appeals officer or special appeals officer for hearing.*

2. *The agency requesting the hearing shall pay, or arrange to pay, the costs for the hearing as determined by the department of administration, including costs for interpreters and court reporters or court recorders.*

3. *The appeals officer assigned to the case shall follow any specific, applicable statutes or regulations establishing the procedures to be used for the hearing. If there are no specific statutes or regulations establishing procedures, the appeals officer will rely on the provisions of Chapter 233B of NRS and the regulations of the division under Chapters 616A to 616C of NAC.*

Section 7.

In any proceeding, the appeals officer may call all parties together for a conference before the taking of testimony, or may recess the hearing for a conference for the purposes of securing just, speedy and economical determination of all issues. The appeals officer shall state on the record the results of the conference.

Section 8.

1. All parties to a hearing, their counsel, representatives and spectators shall conduct themselves in a respectful manner.

2. All parties representing parties in a proceeding shall conduct themselves in accordance with the rules of professional conduct adopted by the Supreme Court of Nevada.

Section 9.

Any party appealing a decision of the appeals officer to a district court or the Nevada Supreme Court shall, within 10 days of filing of that court's decision, provide a copy of the final decision of each court to the senior appeals officer and the appeals officer rendering the original findings of fact, conclusions of law and order in that case.

NAC 616C.282

Section 11. NAC 616C.282 is hereby amended to read as follows:

616C.282 If a party or his counsel fails or refuses to comply with NAC 616C.274 to 616C.336, [inclusive] *and sections 2 to 10, inclusive of this regulation*, the hearing or appeals officer may make such orders as are necessary to direct the course of the hearing, including, but not limited to, the following:

1. Continue the hearing until the party or counsel complies with the requirements.
2. Restrict or prohibit the introduction of evidence.
3. Dismiss the matter.
4. *If the matter is before an appeals officer, assess costs pursuant to Chapter 625 of the Statutes of Nevada 1997, page 3092 and section 4 of this regulation.*

NAC 616C.306

Section 12. NAC 616C.306 is hereby amended to read as follows:

616C.306 [1.] An appeals officer may [direct] *order* a party to prepare proposed findings of fact and conclusions of law and decision. If an appeals officer [directs] *orders* a party to prepare such a document, the party shall [serve, at least 5 days before submission of the document] *submit the document directly* to the appeals officer[, a copy of the document upon all parties who have appeared at the hearing.] *within 14 days of the order by the appeals officer.*

[2. Any party who opposes any matter contained in a document prepared pursuant to an order of the appeals officer shall file notice of his opposition with the appeals officer within 5 days after service on the party of the document.]