

**ADOPTED REGULATION OF THE
COMMISSIONER OF THE CONSUMER AFFAIRS DIVISION
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R122-98

Effective February 23, 1999

EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§2-43, NRS 598.0967 and 598.2808.

Sec. 1. Chapter 598 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 43, inclusive, of this regulation.

Sec. 2. *“Claim” means a written demand by a person, made under penalty of perjury, against the security posted by a registrant.*

Sec. 3. *“Claimant” means a person who has filed a claim with the division.*

Sec. 4. *“Commissioner” means the commissioner of the consumer affairs division of the department of business and industry.*

Sec. 5. *“Complainant” means a person who makes a complaint to the division.*

Sec. 6. *“Complaint” means a written or oral statement of facts made by a person that provides evidence that a registrant has been engaged or is engaging in a deceptive trade practice.*

Sec. 7. *“Deceptive trade practice” has the meanings ascribed to it in NRS 598.0915 to 598.0925, inclusive.*

Sec. 8. *“Director” means the director of the department of business and industry.*

Sec. 9. *“Division” means the consumer affairs division of the department of business and industry.*

Sec. 10. *“Hearing officer” means the commissioner or a person designated by the commissioner or the director to conduct a hearing.*

Sec. 11. *“Intervener” means a person who has been granted leave to intervene in a proceeding pursuant to section 23 of this regulation.*

Sec. 12. *“Order to show cause” means an order issued by the commissioner pursuant to subsection 1 of NRS 598.0971 directed to a person to show cause why the commissioner should not order the person to cease and desist from engaging in a deceptive trade practice.*

Sec. 13. *“Registrant” has the meaning ascribed to it in NRS 598.2805.*

Sec. 14. *“Respondent” means any natural person or business entity required to respond to a proceeding before the division.*

Sec. 15. *“Security” means a bond, irrevocable letter of credit or certificate of deposit that is deposited with the division pursuant to NRS 598.2807.*

Sec. 16. *The provisions of sections 2 to 43, inclusive, of this regulation:*

1. Apply to any hearing authorized to be conducted by the division pursuant to chapter 598 of NRS, including, but not limited to, a hearing to show cause regarding an order to cease and desist held pursuant to subsection 1 of NRS 598.0971 and a hearing to determine the distribution of security to claimants held pursuant to subsection 4 of NRS 598.2808; and

2. Do not preclude the commencement or pursuit of any additional remedies by the division.

Sec. 17. *The provisions of sections 2 to 43, inclusive, of this regulation must be liberally construed to secure a just, speedy and economical determination of all issues before the division and to carry out the purposes of chapter 598 of NRS.*

Sec. 18. *1. A party is entitled to appear in person or to be represented by an attorney.*

2. If a party is represented by an attorney at any proceeding, the attorney must be admitted to practice in this state and be in good standing before the highest court of this state.

3. If the attorney is not admitted to practice in this state, he must be associated with an attorney admitted to practice in this state.

Sec. 19. *1. Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders served thereafter must be served upon the attorney.*

2. Such service is considered valid service for all purposes upon the party represented.

Sec. 20. *An attorney of record withdrawing from the representation of a party appearing in a proceeding before the division shall immediately give written notice of his withdrawal to:*

1. The hearing officer;

2. The party whom he represented; and

3. Any other parties to the proceeding.

Sec. 21. *All claims, requests for a hearing and other correspondence regarding a hearing must be addressed to the Department of Business and Industry, Consumer Affairs Division, 1850 East Sahara Avenue, Suite 101, Las Vegas, Nevada 89104.*

Sec. 22. *1. All persons appearing in or attending a proceeding before the division shall conduct themselves in a respectful manner.*

2. *If the behavior of a person interferes with the orderly conduct of the hearing, the hearing officer may order the person to cease the improper behavior. Such an order must be made part of the record.*

3. *If the improper behavior continues or resumes, the hearing officer may exclude the person from the hearing.*

Sec. 23. 1. *A person other than the original parties to the proceeding, who believes that he may be directly and substantially affected by the proceeding, may seek an order for leave to intervene in the proceeding by filing a written motion to intervene with the hearing officer.*

2. *The granting of leave to intervene or otherwise appear in any matter or proceeding is not construed to be a finding or determination that the person will or may be a party aggrieved by any ruling, order or decision of the division for the purposes of judicial review.*

Sec. 24. 1. *Upon receiving a claim, the division may conduct an audit to determine whether the claimant is entitled to recover against the security of the registrant.*

2. *After the division has completed its audit, the division may schedule a hearing.*

3. *If the division decides that it will take action against the security of the registrant, the division will notify the registrant at least 10 days before the date set for the hearing and request the registrant to appear and show cause why the division should not take the intended action.*

4. *If the division decides that it will not take action against the security of the registrant on behalf of the claimant, the division will notify the claimant at least 10 days before the date set for the hearing and request the claimant to appear and show cause why the division should not decline to take action.*

Sec. 25. *1. Except as otherwise provided by law, each claim against the security of a registrant has equal priority.*

2. If the security of a registrant is insufficient to pay in full all claims against the registrant, claims must be paid on a pro rata basis.

3. Acceptance by a claimant of any payment of a claim on a pro rata basis does not preclude the claimant from bringing an action against the registrant for any money that was not recovered.

Sec. 26. *1. An order to show cause must be served, directly or by certified or registered mail, return receipt requested, upon the respondent at least 10 calendar days before the date of the hearing, unless the requirement that service be made within that time is waived in writing by the respondent.*

2. An order to show cause must bear an identifying number assigned by the division and must include, but is not limited to:

(a) A statement of the charges, including, but not limited to, a brief and concise description of the matters asserted;

(b) A reference to any specific statutory provisions that the respondent is alleged to have violated;

(c) A notice of the hearing to show cause that sets forth the date, time and place of the hearing;

(d) A statement that the hearing is being held pursuant to NRS 598.0971; and

(e) An affidavit in support of the order to show cause by an investigator of the division or the attorney general, or both, stating that:

(1) An investigation was conducted; and

(2) There is reasonable cause to believe that the respondent violated the provisions listed pursuant to paragraph (b).

Sec. 27. *An order to show cause must be in substantially the following form, but may include other information:*

(Legal Caption)

TO: (Name and Address of Respondent)

COMES NOW (Name of Commissioner), Commissioner, Consumer Affairs Division, Department of Business and Industry, State of Nevada, pursuant to Nevada Revised Statutes (hereinafter "NRS") Section 598.0971, and hereby ORDERS (Name of Respondent) to show cause, if any, why the Commissioner should not order (Name of Respondent) to cease and desist from engaging in the following deceptive trade practices, in violation of NRS (Section or Sections of NRS Being Violated):

(Describe all alleged violations, using one paragraph for each alleged violation.)

IT IS FURTHER ORDERED that a copy of this Order and the affidavits in support thereof be served on (Name of Respondent) directly or by registered or certified mail, return receipt requested, no later than (Date).

TAKE NOTICE that the Commissioner has reasonable cause to believe, upon investigation, that (Name of Respondent) has been engaged or is engaging in the foregoing deceptive trade practices and that a HEARING will be held thereon at (Place Hearing is to be Held), at (Time of Hearing) on (Date).

TAKE FURTHER NOTICE that if the Commissioner determines that (Name of Respondent) has violated any of the provisions of NRS 598.0903 to 598.0999, inclusive, as alleged, or if (Name of Respondent) fails to appear for the hearing after being properly served with this order, the Commissioner may make a written report of findings of fact concerning the violation and cause to be served a copy thereof upon (Name of Respondent) and any intervener at the hearing.

TAKE FURTHER NOTICE that if the Commissioner determines in the report that any such violation has occurred, the Commissioner may order (Name of Respondent) to:

- 1. Cease and desist from engaging in the practice or other activity constituting the violation;*
- 2. Pay the cost of reporting services, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the Commissioner free of charge, charges for providing an independent hearing officer, if any, and charges incurred for service of process, if (Name of Respondent) is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive, and*

3. *Provide restitution for any money or property improperly received or obtained as a result of the violation.*

You may be present at the hearing and may be, but need not be, represented by counsel. Pursuant to Chapter 233B of NRS, you may present any relevant evidence and will be given the opportunity to cross-examine all witnesses testifying against you. At the discretion of the Commissioner, you may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Consumer Affairs Division of the Department of Business and Industry.

Sec. 28. *1. A party who wishes to contest an order to show cause may file an answer with the division. The answer must:*

- (a) Be in writing;*
- (b) Admit or deny each material allegation with specificity; and*
- (c) State with specificity any facts constituting a defense to the allegations, including, but not limited to, all affirmative defenses that are being asserted in response to the allegations.*

2. Unless the respondent states an objection to the form of the order to show cause in the answer, the respondent shall be deemed to have waived all objections to the form of the order to show cause.

3. If the respondent objects to the form of the order to show cause, the respondent shall identify with specificity why he objects to the form of the order.

Sec. 29. *1. Before a hearing, or during a hearing if good cause is shown, the division or the attorney general, or both, may issue subpoenas and subpoenas duces tecum.*

2. The division may issue subpoenas and subpoenas duces tecum at the written request of a party.

3. Subpoenas may only be issued to require the attendance of a witness at a place in this state that has been designated as a place to give oral testimony before the hearing officer.

4. Subpoenas must not be issued in blank.

5. A request for the issuance of a subpoena submitted for issuance must contain:

(a) The title and identifying number of the case;

(b) The name of the person to whom it will be directed;

(c) The date, time and place of the hearing; and

(d) The name and signature of the requesting party or his attorney.

6. In addition to the requirements listed in subsection 5, a subpoena duces tecum must also contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.

7. A subpoena must not be issued if the request is untimely, or the evidence to be offered is not material or relevant to the determination of the issues before the hearing officer.

8. If the request for a subpoena is granted, the subpoena must be issued within 5 business days after the date on which it was requested. If a request for the issuance of a subpoena is denied, the division will notify the requesting party in writing, as soon as practicable, of the reasons for the denial.

9. *A witness appearing or testifying on behalf of the division, whether or not pursuant to a subpoena, other than a party or an officer or employee of the State of Nevada testifying during his regular hours for work, is entitled to receive the same fees and expenses as are provided for witnesses pursuant to NRS 50.225.*

10. *A party requesting the issuance of a subpoena shall pay for the service of the subpoena and the fees and expenses of the witness.*

Sec. 30. 1. *A party that wishes to have an affidavit introduced in evidence at any hearing of the division must, at least 10 days before the date set for hearing, serve upon the opposing party, either personally or by registered or certified mail, return receipt requested, a copy of the affidavit which is proposed to be introduced in evidence.*

2. *A notice, in substantially the following form, must be served upon the opposing party at the same time:*

The accompanying affidavit of (Name of Affiant) will be introduced in evidence at the hearing set for the ___ day of ___, 19___. (Name of Affiant) will not be called to testify orally and you will not be entitled to cross-examine (Name of Affiant) unless you place in the mail or personally deliver to the undersigned your request to cross-examine (Name of Affiant) not later than 7 days after the date on which this notice and the enclosed affidavit were served upon you.

(Signature of Party or Counsel)

(Name of Party or Counsel)

(Address)

(Telephone Number)

3. *Unless the opposing party, within 7 days after service of a copy of the affidavit and notice, places in the mail, as evidenced by the postmarked date on the envelope, or personally delivers to the party proposing to introduce the affidavit a request to cross-examine the affiant, the opposing party shall be deemed to have waived his right to cross-examine the affiant, and the affidavit, if introduced in evidence, must be given the same weight as if the affiant had testified orally.*

4. *If an opportunity to cross-examine an affiant is not afforded to the opposing party after the opposing party so requests pursuant to this section, the affidavit may be introduced in evidence, but the affidavit must be given the same weight as other hearsay evidence.*

Sec. 31. *A party to a hearing may:*

1. *Inspect, before the hearing, all documents which may be considered by the hearing officer as part of the case presented by the division; and*

2. *Have a copy made of any such document upon payment of a fee in the amount of 25 cents per page to reimburse the division for the cost of providing the copy.*

Sec. 32. 1. *With the approval of the hearing officer, the parties may stipulate as to any fact at issue. Such a stipulation is binding upon all parties to the stipulation and may be regarded as evidence at the hearing.*

2. *Notwithstanding the existence of a stipulation, the hearing officer may require proof of the existence of the facts that are the subject of the stipulation.*

Sec. 33. *After a hearing has commenced, the hearing may be continued by the hearing officer upon his own motion or, if good cause is shown, upon the request of a party.*

Sec. 34. 1. *The commissioner may designate a person to act as hearing officer.*

2. *The decision of the hearing officer is subject to review and approval by the commissioner.*

3. *If the commissioner designates a person to act as hearing officer, the commissioner retains the right, at any time, to assume responsibility for presiding over the hearing, and any authority granted to a hearing officer in sections 2 to 43, inclusive, of this regulation is also granted to the commissioner.*

4. *If the commissioner is unable to preside over the hearing and does not designate a hearing officer, the director shall appoint a hearing officer to preside over the hearing, whose decision is subject to review and approval by the director.*

Sec. 35. *The hearing officer shall:*

1. *Call the hearing to order and note the appearances of the parties who are present;*

2. *Ascertain whether the persons commanded to appear under subpoena are present, and whether the documents, books, records and other evidence requested by subpoena are present in the hearing room;*

3. *Ascertain whether a copy of the notice of intended action or order to show cause, whichever is applicable, has been served on the appropriate parties;*

4. *Hold appropriate conferences before or during the hearing;*

5. *Rule on any procedural matter;*
6. *Rule on the admissibility of evidence and receive evidence;*
7. *Rule on the admissibility of any amendments to the order to show cause;*
8. *Act upon any pending motions, petitions or applications that do not involve a final determination of the proceeding;*
9. *Issue appropriate interim orders;*
10. *Recess or continue the hearing as necessary;*
11. *Set reasonable limitations on the time for presentation of oral testimony;*
12. *Administer the oath to all persons whose testimony will be taken;*
13. *Ascertain whether a party desires to have a witness excluded from the hearing room until the witness is called to testify; and*
14. *Make proposed findings of fact, opinions and conclusions of law.*

Sec. 36. *The hearing must be recorded using equipment for recording sound or must be reported by a court reporter certified pursuant to chapter 656 of NRS.*

Sec. 37. *If a party who has been served with a proper notice of a hearing fails to appear at the hearing, and a continuance of the hearing has not been requested and granted:*

1. *The failure to appear by the party may be entered in the record;*
2. *Evidence may be heard; and*
3. *The matter may be considered and disposed of on the basis of the evidence before the hearing officer in the manner required by this section.*

Sec. 38. 1. *The respondent may cross-examine witnesses in the order in which the division presents them.*

2. *When the division has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and the calling of witnesses on his behalf. The division may cross-examine witnesses in the order in which the respondent presents them.*

3. *When the respondent has completed his presentation, the division may call any rebuttal witnesses.*

4. *The hearing officer may question counsel for the parties or witnesses at any time during the proceeding.*

5. *If a party does not testify in his own behalf, he may be called and examined as if under cross-examination.*

6. *The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Evidence must be introduced and considered in accordance with the provisions of NRS 233B.123. Any relevant evidence, including, but not limited to, a claim in lieu of or in addition to the testimony, may be admitted and is sufficient in itself to support a finding if it is the sort of evidence commonly relied upon by reasonable and prudent persons in the conduct of their affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.*

7. *Depositions of witnesses and parties may not be taken and no formal discovery of evidence will be allowed.*

8. *Briefs must be filed upon the order of the hearing officer. The time for filing briefs will be set by the hearing officer conducting the hearing.*

9. *Rules of privilege recognized by law must be given effect.*

10. *Objections to evidentiary offers may be made and must be noted in the record. If an objection is made to the admission of evidence, such evidence may be received subject to a later ruling by the hearing officer. If an objection to the admission of evidence is sustained, the offering party may make an offer of proof for the record.*

11. *Oral argument is not allowed unless requested by the hearing officer. The hearing officer may request that the parties summarize their presentations.*

12. *The hearing officer may adjourn the hearing for the submittal of further evidence or to hear further testimony when justice would not be served otherwise, and may adjourn the hearing at the request of any party for good cause shown, but for not more than 30 days after the date scheduled for the first hearing.*

13. *Any documentary or real evidence introduced at the hearing must be marked for identification by the court reporter or hearing officer. If such evidence is admitted by the hearing officer, it must be marked as the exhibit of the offering party.*

14. *The hearing officer shall indicate for the record that the hearing is terminated and that he will issue a written decision after considering all of the evidence admitted pursuant to NRS 233B.123.*

15. *Notice of the order of the commissioner or director must be served on all parties in accordance with NRS 233B.125. The order of the commissioner or director becomes effective after proper service of the notice.*

Sec. 39. 1. *If the hearing officer is a designee of the commissioner or director, the director will review the order and enter the final order affirming, modifying or setting aside the decision.*

2. *If a decision is rendered orally, the time to file a petition for judicial review does not begin to run until:*

(a) The decision and order are reduced to writing and signed by the commissioner or director; and

(b) Written notice of the decision and of the order is mailed, postage prepaid, to the parties.

Sec. 40. *1. The transcribed record of a hearing will be retained for 90 days after the date of the decision and order, at which time it will be destroyed or reused, unless a petition for judicial review has been filed pursuant to chapter 233B of NRS.*

2. A certified copy of the transcription will be made available to a party upon request at the division.

Sec. 41. *1. A party may obtain a copy of the transcript of a hearing from the official reporter upon payment of the fees fixed therefor.*

2. A party who files a petition for judicial review pursuant to chapter 233B of NRS may purchase a copy of the transcript of the hearing at an amount equivalent to the costs or fees charged by the official reporter for preparing the transcript.

Sec. 42. *Payment of any costs, fees, fines, penalties, charges or restitution authorized by statute or regulation to be collected by the division, or ordered by the commissioner or the director to be paid by a party pursuant to paragraph (b) or (c) of subsection 2 of NRS 598.0971 or any regulation must be made by cashier's check, money order or other certified instruments payable to the division.*

Sec. 43. *1. If a petition for judicial review of the decision has not been filed, upon written application by a party within 15 days after service of a copy of the decision and order, a rehearing may be ordered upon such terms and conditions as the hearing officer considers just and proper.*

2. An application for rehearing must not be granted except upon a showing that:

(a) A party was not properly served with a notice to appear;

(b) There is additional evidence that is material, necessary and reasonably calculated to change the decision of the hearing officer, and good cause existed for the failure to present that evidence at the hearing;

(c) A material fact or point of law was overlooked or misconstrued as set forth in the decision; or

(d) There has been a change in the laws affecting the decision.

3. The application for rehearing must:

(a) Be supported by an affidavit of the party or his counsel showing cause for failing to appear or failing to present the evidence at the hearing;

(b) State with particularity:

(1) The reason why the additional evidence is necessary and material and why the additional evidence was not introduced at the hearing; or

(2) The material fact or point of law which, in the opinion of the party, has been overlooked or misconstrued;

(c) Contain every argument in support of the position of the party that he desires to present;

(d) Not exceed 10 pages in length; and

(e) Be served upon the opposing party at least 10 days before the date of the rehearing.

4. Matters already presented in briefs or oral arguments may not be reargued in the application for rehearing. No point may be raised for the first time in an application for rehearing.

5. A party may file and serve an answer to the application for rehearing. The answer must be filed within 5 days after the party receives the application for rehearing.

6. An application for rehearing does not operate to stay the order or excuse compliance with or suspend the effectiveness of the challenged order, except as otherwise ordered by the commissioner or the director.

7. An application for rehearing does not toll the time for filing a petition for judicial review.

8. Oral argument on an application for rehearing must not be allowed.

9. If an application is granted, upon rehearing, rebuttal evidence to the additional evidence must be allowed. After rehearing, the commissioner or the director may modify his decision and order as the additional evidence may warrant.

Sec. 44. NAC 598.100 is hereby amended to read as follows:

598.100 As used in NAC [598.110, 598.115, and this section:

1. “Commissioner” means the commissioner of consumer affairs.

2. “Deceptive trade practice” has the meanings ascribed to it in NRS 598.0915 to 598.0925, inclusive.] 598.100, 598.110 and 598.115, and sections 2 to 43, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 to 15, inclusive, of this regulation have the meanings ascribed to them in those sections.