

**ADOPTED REGULATION OF THE
NEVADA EQUAL RIGHTS COMMISSION**

LCB File No. R067-06

Effective November 16, 2006

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

AUTHORITY: §§1-4, 13-17, NRS 233.150; §§5 and 6, NRS 233.150 and 233B.120; §7, NRS 233.150 and 233B.100; §§8-12, NRS 233.150 and 233B.050.

A REGULATION relating to the Nevada Equal Rights Commission; allowing a party and certain other persons in any matter before the Commission to be represented by an attorney; establishing requirements for the disclosure of information gathered during an investigation after an action has been filed in court; providing procedures concerning advisory opinions, declaratory orders and petitions to adopt, file, amend or repeal a regulation; establishing rules for the conduct of hearings before the Commission; requiring a complainant to submit an affirmation that the allegations in a complaint are true; establishing the requirements for a request to amend a complaint; establishing that the consent of the parties is needed before the Commission will allow the presence of nonparty representatives who are not counsel at an informal meeting; removing the discretion of the Commission to dismiss a complaint if a complainant fails or refuses to participate or cooperate in an informal meeting; allowing either party to waive participation in an informal meeting; allowing the Commission to reopen a case if a party to the case shows good cause; and providing other matters properly relating thereto.

Section 1. Chapter 233 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *“Administrator” means the Administrator of the Commission.*

Sec. 3. 1. *During any stage of a matter before the Commission:*

(a) A party may represent himself;

(b) A person designated by an employer may represent the employer;

(c) The Administrator may represent himself;

(d) A member of the staff of the Commission may represent himself; or

(e) An attorney may represent any of the persons listed in paragraphs (a) to (d), inclusive.

2. An attorney representing any of the persons listed in paragraph (a) to (d), inclusive, in any matter before the Commission must:

(a) Be an active member in good standing of the State Bar of Nevada or associated with such a member of the State Bar of Nevada; and

(b) Before acting as the attorney for the person, submit to the Commission a letter which states that the attorney will represent the person in the matter.

Sec. 4. 1. *Except as otherwise provided in NRS 233.190, all information gathered by the Commission during the course of an investigation of an alleged unlawful discriminatory practice in housing, employment or public accommodations is confidential.*

2. Pursuant to paragraph (b) of subsection 3 of NRS 233.190, the Commission will disclose the information it has gathered during the course of an investigation to the complainant and the person against whom the unlawful discriminatory practice is alleged if an action has been filed in a court of competent jurisdiction concerning the complaint.

However, the Commission will not disclose this information unless the person seeking the information obtains a subpoena from the court in which the action is pending and pays any fees for the issuance or service of a subpoena required by the rules of procedure of the court which issued the subpoena.

Sec. 5. 1. *Except as otherwise provided in subsection 3, a person may petition the Commission for an advisory opinion concerning the applicability of a statute, regulation or decision of the Commission.*

2. A petition for an advisory opinion must be in writing and set forth:

(a) The name and address of the petitioner;

(b) A clear and concise statement of the specific question that the petitioner wants the Commission to answer; and

(c) A statement of the facts that relate to the question described in paragraph (b).

3. A person may not file a petition for an advisory opinion concerning a question that is an issue in a pending administrative, civil or criminal proceeding in which the person is a party.

4. The Commission may refuse to review a petition for an advisory opinion if the petition does not contain the information required by subsection 2.

5. The Commission will review a petition for an advisory opinion and issue an advisory opinion within 30 days after the date on which the Commission received the petition.

6. An advisory opinion issued by the Commission will be limited to the facts set forth in the petition.

7. The Commission will not issue an oral advisory opinion. An oral response to a petition for an advisory opinion, including, without limitation, a response given over the telephone by a member of the staff of the Commission, is not a decision or an official advisory opinion of the Commission.

Sec. 6. 1. *Except as otherwise provided in subsection 3, a person may petition the Commission for a declaratory order concerning the applicability of a statute, regulation or decision of the Commission.*

2. A petition for a declaratory order must include:

(a) The name and address of the petitioner;

(b) The reason for requesting the declaratory order;

(c) A clear and concise statement of the specific issue that the petitioner wants the Commission to decide; and

(d) A statement of the facts that relate to the issue described in paragraph (c).

3. A person may not file a petition for a declaratory order concerning an issue in a pending administrative, civil or criminal proceeding in which the person is a party.

4. The Commission may refuse to review a petition for a declaratory order if the petition does not contain the information required by subsection 2.

5. The Commission may:

(a) Conduct a hearing to determine issues of fact or to hear arguments relating to a petition for a declaratory order and issue reasonable orders to govern the conduct of a hearing.

(b) Request that the petitioner provide additional information or arguments relating to the petition.

(c) Issue a declaratory order based on the contents of the petition and any material submitted with the petition.

(d) Consider any relevant decisions of the Commission or any other entity which applies or interprets the statute, regulation or decision in question.

(e) Consider any other information that the Commission deems relevant to the issue the Commission is deciding.

(f) Issue any reasonable order to assist the review of the petition.

6. The Commission will mail a copy of the declaratory order to the petitioner within 60 days after the date on which:

(a) The petition is filed;

- (b) *The Commission conducts a hearing concerning the petition; or*
- (c) *The Commission receives any additional information or written argument,*

↳ *whichever occurs later.*

7. The Commission will maintain a record of all the declaratory orders the Commission issues, and the Commission will index each declaratory order by subject matter.

Sec. 7. 1. *Pursuant to NRS 233B.100, any interested person may petition the Commission for the adoption, filing, amendment or repeal of any regulation.*

2. A petition for the adoption, filing, amendment or repeal of a regulation must include:

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

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

(c) *The proposed language of the regulation to be adopted, filed, amended or repealed;*

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

and

(e) *Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation.*

3. The Commission may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if the petition does not include the information required by subsection 2.

4. The Commission will notify the petitioner in writing of the Commission's decision regarding the petition within 30 days after the date on which the petitioner filed the petition. If the Commission approves a petition for the adoption, filing, amendment or repeal of a

regulation, the Commission will initiate regulation-making proceedings concerning that regulation within 30 days after the date on which the petitioner filed the petition.

Sec. 8. 1. *In conducting an investigation, inquiry or hearing, the Commission is not bound by the technical rules of evidence and the informality in any proceeding or the manner or order of the taking of testimony does not invalidate any order, decision or regulation adopted, approved or confirmed by the Commission.*

2. Generally, the Commission will follow the rules of evidence used in the courts of this State, but the Commission, in its discretion, may relax those rules if deviation from those rules will aid in ascertaining the facts.

3. To be admitted at a hearing, evidence must be material and relevant to the issues presented at the hearing.

4. If a party at a hearing objects to the admissibility of evidence, the Commission may receive the evidence subject to any subsequent ruling of the Commission.

5. The Commission may, with or without objection, exclude inadmissible, incompetent, cumulative or irrelevant evidence.

6. If a party objects to the introduction of evidence, the party shall briefly state the grounds of the objection at the time the evidence is offered.

Sec. 9. 1. *With the approval of the Commission, the parties may stipulate to any fact at issue by written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record.*

2. Any stipulation is binding upon all parties to the stipulation and may be treated as evidence at the hearing.

3. The Commission may demand proof by requiring evidence of facts stipulated.

Sec. 10. *The Commission may, before or during a hearing, and on a proper showing, grant continuances for submission of further proof of any matter, or for any other just cause.*

Sec. 11. 1. *The Commission may order the parties to a hearing to file briefs, and the Commission may specify a time limit for the filing of those briefs.*

2. When a party to a hearing files a brief, the party must file three copies of the brief with the Commission.

3. An acknowledgement of service or a certificate of mailing must accompany each brief to other parties of record.

4. Following the filing of briefs and after deciding contested motions, the Commission may set the matter for oral argument and give reasonable notice to all parties.

Sec. 12. *The Commission will cause a record to be made of all formal hearings. If a party to a hearing wants a copy of the transcript of a hearing, the party may obtain it from the Commission upon payment of the proper fee.*

Sec. 13. NAC 233.002 is hereby amended to read as follows:

233.002 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 233.005, 233.007 and 233.008 *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 14. NAC 233.070 is hereby amended to read as follows:

233.070 1. Each complaint must contain:

(a) The full name and mailing address of the person making the complaint;

(b) The full name and mailing address of the respondent; ~~and~~

(c) A clear and concise statement of the facts and allegations, including pertinent dates, which if true would support a finding that probable cause exists to believe that an unlawful discriminatory practice has occurred ~~§~~; *and*

(d) An affirmation that the allegations in the complaint are true, which must be signed by the complainant under penalty of perjury.

2. *The Commission must receive a complaint containing all the information required by subsection 1 within 10 working days after the date on which the Commission transmits a complaint form to the complainant.*

3. A complaint may be amended to:

(a) Cure technical defects or omissions;

(b) Clarify or amplify allegations; or

(c) Allege additional unlawful discriminatory practices directly related to or growing out of the subject matter of the original complaint.

↪ Any such amendment relates back to the original filing date.

4. *A request to amend a complaint must be in writing and must be approved by the Administrator or his designee.*

Sec. 15. NAC 233.090 is hereby amended to read as follows:

233.090 1. A complainant may petition *the Administrator or his designee* for reconsideration of a dismissal of his complaint.

2. The petition must:

(a) Be in writing; *and*

(b) ~~Be notarized; and~~

~~(c)~~ State specifically the grounds upon which it is based.

3. The petition must be filed in the office of the Commission within 15 days after the day on which the complainant received notice of the dismissal.

4. If the complainant fails to comply with the provisions of this section, the Commission will dismiss his petition.

Sec. 16. NAC 233.105 is hereby amended to read as follows:

233.105 1. At an informal meeting to attempt a settlement of the case, the Commission or any of the participating parties may take verbatim notes. The informal meeting may not be recorded electronically.

2. Statements which pertain to the allegations in the complaint or proposals for settlement may not be introduced as evidence of liability at a subsequent public hearing.

3. ~~[A party is not required to submit physical or documentary evidence at the informal meeting. If a party offers any physical or documentary evidence that pertains to the allegations in the complaint at the informal meeting, the Commission may use this evidence in a subsequent investigation and a party may introduce this evidence at a public hearing.~~

~~—4.— A party who participates in the informal meeting may represent himself or may be represented by an attorney. An attorney appearing as counsel at the informal meeting must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada, he must be associated with an attorney so admitted and entitled to practice.~~

~~—5.]~~ During the informal meeting, each party is entitled to be heard personally or through counsel regarding the allegations in the complaint or to discuss settlement of the case. All questions and statements must be addressed to the Commission. Not more than three persons,

including any attorney appearing as counsel, may participate in the informal meeting on behalf of either party.

~~[6.— If a complainant fails or refuses to participate in an informal meeting when scheduled, or fails or refuses to cooperate with the Commission at the informal meeting, the Commission may terminate its efforts and dismiss the complaint.~~

~~—7.]~~ *4. The parties must consent to the presence of non-party representatives at the informal meeting, except the consent of the parties is not required for the presence of an attorney appearing as counsel for a party.*

5. Either party may waive the right to participate in the informal meeting. If either party fails to cooperate with the Commission in any matter concerning the informal meeting, the Commission will consider such a failure to cooperate a waiver of the right to participate in the informal meeting.

6. The informal meeting may be conducted by means of a telephone conference or similar method of communication by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

Sec. 17. NAC 233.220 is hereby amended to read as follows:

233.220 1. A case may be closed if:

(a) The Commission determines that the complainant is uncooperative in the settlement, investigation or determination of his case. For purposes of this paragraph, a complainant will be deemed uncooperative if:

(1) The Commission cannot locate or communicate with the complainant at the mailing address provided in the complaint;

- (2) The complainant verbally or physically abuses or threatens a member of the Commission;
- (3) The complainant consistently misses appointments, meetings or hearings scheduled by the Commission; or
- (4) The complainant exhibits any other behavior that the Commission deems to hinder the resolution or determination of his case.
- (b) The complainant requests the Commission to close the case.
- (c) The parties settle the case.
- (d) The Commission finds that no probable cause exists to believe that an unlawful discriminatory practice has occurred.
- (e) The attempt to mediate between *or reconcile* the parties fails and the Commission determines that the facts of the case do not warrant a public hearing.
- (f) A party files a lawsuit involving any of the allegations in the complaint.
- (g) There is any other final disposition of the case.
2. Any ground for early closure of a case must be documented and will be made a part of the file.
3. The Administrator shall, by mail, notify each party of the closing of a case pursuant to this section.
4. ~~The~~ *Unless a party shows good cause to reopen a case, the* Commission will not reopen a case that was closed based on facts and allegations which are the same as or similar to those facts and allegations set forth in the original complaint.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R067-06**

The Nevada Equal Rights Commission adopted regulations assigned LCB File No. R067-06 which pertain to chapter 233 of the Nevada Administrative Code on September 13, 2006.

Notice date: 5/12/2006; 8/11/2006
Hearing date: 6/13/2006; 9/13/2006

Date of adoption by agency: 9/13/2006
Filing date: 11/16/2006

INFORMATIONAL STATEMENT

This permanent regulation will augment and clarify the manner in which the Nevada Equal Rights Commission continues to achieve expeditious, high quality resolutions of employment discrimination charges and ensures efficient, effective and coordinated civil rights laws are enforced.

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

The Nevada Equal Rights Commission (NERC) held a public workshop, via videoconference, on the above referenced regulation at the following locations:

RENO Tuesday, June 13, 2006 1:30 P.M. Department of Employment, Training & Rehabilitation Corporate Boulevard Office 1325 Corporate Blvd., Room 130	LAS VEGAS Tuesday, June 13, 2006 1:30 P.M. Department of Employment, Training & Rehabilitation Convention Center Plaza 101 Convention Center Drive, Suite 925
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The workshop notice and copies of the proposed regulation listed above were sent via facsimile to all county libraries in Nevada, and to various community based organizations. The workshop in Reno had no individuals from the public in attendance; the Las Vegas workshop had one person in attendance. No adverse comments were received.

The Nevada Equal Rights Commission (NERC) held a public hearing, via videoconference, to consider this regulation on September 13, 2006 at the following locations:

LAS VEGAS Wednesday, September 13, 2006 1:30 P.M. Department of Employment, Training & Rehabilitation Meeting Room 2800 E. St. Louis Ave	RENO Wednesday, September 13, 2006 1:30 P.M. Department of Employment, Training & Rehabilitation Corporate Boulevard Office 1325 Corporate Blvd., Room 130
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The hearing agenda was sent via facsimile to be posted at the following locations: Department of Employment, Training and Rehabilitation (DETR), Director 's Office North, 500 E. Third St., Carson City, NV 89701; DETR, Director's Office South, 2800 E. St. Louis Ave., Las Vegas, NV 89104; Nevada State Library, 100 Stewart St., Carson City, NV 89701; Legislative Building, 401 S. Carson St., Room 3143, Carson City, NV 89701; Grant Sawyer Building, 555 E. Washington Ave., Room 4406, Las Vegas, NV 89101. Copies of the agenda, public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to community based organizations. Information about the regulation was also made available on the DETR website at www.nvdetr.org (click on "Public Meetings and Notices) and all county libraries in Nevada.

The public notice for the workshop was posted on May 12, 2006; workshop conducted on June 13, 2006. The public hearing notice was posted on August 11, 2006; public hearing conducted on September 13, 2006.

2. The number of persons who attended the NERC Regulatory Hearing:

- (a) Attended September 13, 2006 hearing: 10
- (b) Testified on this Regulation at the hearing: -0-
- (c) Submitted to the agency written comments: -0-

3. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from businesses and/or the community as indicated in number 1 above.

4. 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 Nevada Equal Rights Commission adopted the regulation without change on September 13, 2006. Discussion and consensus on the proposed changes were obtained prior to the Hearing and during the public workshop process.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

There is no adverse economic impact on the businesses regulated. NAC Chapter 233 is being amended to codify the process for an individual who has been discriminated against based on federal and state laws that the Nevada Equal Rights Commission oversees to seek remedy.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no additional costs to the agency.

7. 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.

The regulation does not overlap or duplicate any regulations of other state or local government agencies. There is no overlapping or duplication of federal regulations.

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

There are no provisions in the proposed regulations more stringent than federal regulations that regulate the same activity.

9. 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.

The proposed regulations do not establish a new fee or increase an existing fee.