

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R076-15

Proposed Amendments to Permanent Regulations

NAC 284.658 is hereby amended to read as follows:

Explanation of Proposed Change: The language in NAC 284.658 serves to define what a grievance is and what it is not. These amendments, proposed by the Division of Human Resource Management, will improve the efficiency of the formal grievance process by streamlining the handling of grievances that are filed by employees who are not eligible to use the process pursuant to subsection 1, or grievances that do not meet the definition of a grievance, pursuant to subsection 2.

Based on the current regulations, a grievance that is filed by an employee ineligible to use the formal grievance process or that does not meet the definition of a grievance may proceed through the entire grievance process, up to and including a meeting of the Employee-Management Committee (EMC). This creates unnecessary work and does not resolve the employee's concern.

The first amendment simply clarifies that the grievance process is available to permanent employees who are in the classified service.

The second amendment provides the Division with the authority to remove any grievance from the grievance process that is filed by an employee not eligible to file a grievance or where there is a different hearing process for the resolution of the employee's concern. By eliminating the requirement of an agency to respond to an inappropriately filed grievance, the agency can focus on providing responses necessary through the appropriate process as outlined in subsection 2.

Agency human resource staff review grievances as they are filed and, with this amendment, will be able to request that the Division of Human Resource Management remove the grievance from the formal process when it has been filed by an ineligible employee or in the incorrect venue. The agency will be responsible for informing the employee that he or she is not eligible to use the grievance process and/or the grievance is in the wrong venue. The agency is also responsible for providing the employee with detailed information related to the appropriate process for the resolution of the employee's concern. This will expedite a request by an employee for a hearing otherwise provided pursuant to subsection 2, should he or she choose to do so. This is very important because the hearings listed in subsection 2 have deadlines, some as short as 5 or 10 working days.

NAC 284.658 "Grievance" defined. (NRS 284.065, 284.155, 284.340, 284.384)

1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, a "grievance" means an act, omission or occurrence which a permanent *classified* employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in

an organization of employees or the interpretation of any law, regulation or disagreement or a contested report on performance. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, the term “grievance” does not include any grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.

3. The Division of Human Resource Management will remove from consideration and adjustment any grievance filed by an ineligible employee pursuant to subsection 1, or for which a hearing is provided pursuant to subsection 2 and NRS 284.384.

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep’t of Personnel, 8-28-85; 10-18-89; 8-1-91; 3-27-92; R082-00, 8-2-2000; A by Personnel Comm’n by R023-05, 10-31-2005; R007-11, 10-26-2011; R026-11, 12-30-2011, eff. 1-1-2012)

NAC 284.678 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency throughout NAC 284.678 by using the term “date of the event” to describe when the cause of the grievance occurred. The date the grievable event occurred, or date the employee learns of the problem, drives the timeframes required by subsection 1. The methods for which a grievance may be filed are also described in subsection 1, which are to use the official form, or to write a letter when the official form is not available. The official grievance form uses the term “event date,” and “event date” is also used in subsection 2 which lists the information required when the official form is not available and a grievance is filed using a letter.

NAC 284.678 Submission, form and contents of grievance; informal discussions. (NRS 284.065, 284.155, 284.340, 284.384)

1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit the grievance in writing to his or her immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the ~~{date of the origin}~~ ***date of the event*** of the grievance or the date the employee learns of the problem. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His or her name;
- (b) His or her most recent date of hire;
- (c) His or her position;
- (d) His or her department, division and section;
- (e) His or her mailing address;
- (f) His or her business telephone number;
- (g) A statement that he or she is filing a formal grievance;
- (h) The date, time and place of the event or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of the grievance;

(j) A detailed description of the grievance, including the names of other persons involved in the event, if any;

(k) A proposed solution of the grievance;

(l) His or her signature; and

(m) The date he or she signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to a contested report on performance, an employee must file a grievance that identifies the specific points of contention, if such specificity is provided, not later than 10 working days after the date the employee receives a decision regarding the review conducted by the appointing authority pursuant to NAC 284.470. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer or appointing authority to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

(a) The person who is at the next appropriate level of the grievance process; or

(b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the report on performance, the person who is at the next appropriate level of the grievance process above such reviewing officer or other person who prepared or reviewed the report on performance.

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

[Personnel Div., Rule XV § A part subsec. 1, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R023-05, 10-31-2005; R191-09, 4-20-2010; R007-11, 10-26-2011)

NAC 284.695 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will reduce time and expense associated with meetings of the Employee-Management Committee (Committee or EMC), related to grievances that are outside of its jurisdiction or based on one of its previous decisions.

Much staff time and expense is required related to meetings of the Committee to handle requests for consideration of grievances submitted. For example, the State of Nevada employees required to dedicate time to EMC meetings include Committee members, agency staff, staff of the Attorney General's Office, the grievant, and a representative, if chosen, who may also be a State employee. Also necessary is the dedicated time of two Clerks to the Committee, employed by the Division of Human Resource Management, to schedule, coordinate, and attend Committee meetings in Carson City and Las Vegas. Additionally, preparation time and time and expense related to travel is also necessary for these employees related to meetings of the EMC.

With this amendment, attendance and travel time related to inappropriately filed grievances will be eliminated, and preparation time will be reduced to that of one member of the Committee who has been selected to serve as a representative of management, and one member of the Committee who has been selected as a representative of employees, who will determine whether or not the

grievance was appropriately filed, or make a decision based upon a previous decision of the Committee. Any grievance determined to have been appropriately filed and/or not based on a previous decision of the Committee will move forward in the process for consideration by a full hearing of the Committee. Employees who have filed grievances that are determined to be in the incorrect venue or whose grievance was decided based on a decision previously made by the EMC will be notified by the Clerk to the Committee. The employee will be provided with a detailed justification for the determination, and also with detailed information related to the proper process for the resolution of his or her concern, if appropriate. In the event the designated management and employee representatives cannot agree on whether or not the grievance has been appropriately filed and/or a decision has previously been made will advance to a full hearing of the Committee.

NAC 284.695 Submission of grievance to Employee-Management Committee. (NRS 284.065, 284.155, 284.340, 284.384) If an employee is not satisfied with the decision rendered by the highest administrator in the department pursuant to NAC 284.690, the employee may request consideration of the grievance by the Committee pursuant to its rules. The employee must submit the request to the Committee within 10 working days following his or her receipt of the decision from the highest administrator. The request must include all appropriate documentation, a citation of the statutes and regulations pertinent to the grievance, if any, the specific points of disagreement or contention and supporting evidence. ~~—The Committee will, within 45 working days after the receipt of the employee's request:~~

~~—1. Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or~~

~~—2. ~~Hold~~ Except as otherwise provided in NAC 284.6957, within 45 working days after the receipt of the employee's request:~~

1. One member of the Committee who has been selected to serve as a representative of management and one member of the Committee who has been selected as a representative of employees will answer the employee's request without a hearing if the case is based upon the Committee's previous decisions or it does not fall within the Committee's jurisdiction; or

2. The Committee will schedule a hearing to determine the proper disposition of the request. If a hearing is ~~held,~~ *scheduled*, the Committee will:

(a) Except as otherwise provided in paragraph (b), provide at least 21 working days' written notice to all parties concerned.

(b) Provide notice to the employee by:

(1) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(2) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chair approves of such notice.

(c) Render a decision within 45 days after the closure of the hearing.

[Personnel Div., Rule XV § A part subsec. 6, eff. 8-11-73; A 6-9-74; 7-3-76; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 10-18-89; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 3-27-92; 11-12-93; 3-23-94; 11-16-95; A by Personnel Comm'n by R118-10, 5-5-2011; R007-11, 10-26-2011)

NAC 284.6955 is hereby amended to read as follows:

Explanation of Proposed Change: The amendments to this regulation, proposed by the Division of Human Resource Management, bring it in to alignment with NRS 241.020(5), reduce administrative burden, reduce time and expense related to certain aspects of the Employee-Management Committee (Committee or EMC), and establishes regulations pursuant to NRS 284.074, which authorizes the Chair or a member of the Committee designated by the Chair to issue and enforce subpoenas.

The first amendment to subsection 1 of this regulation changes the person to whom the required sets of documents shall be submitted. There is a high level of administrative work that goes into the processing of packets, which has traditionally been handled by the Clerk, and this change will clarify that in the regulation.

The first amendment to subsection 1 of this regulation changes the number of sets of documents, or “packets,” required to be submitted by both parties, from 10 to 12. The 10 copies currently required by this regulation do not provide a sufficient number for distribution to each member serving on the EMC, the Deputy Attorney General assigned to the Committee, each party to the grievance, potential witnesses, as well as to having copies available for the public. As such, in preparation for each hearing, the Clerk to the EMC must create 4 additional packets, 2 employer packets and 2 grievant packets, for distribution. Because it is required that the packets are to be bound, it can be time consuming and tedious for the Clerk to the Committee to disassemble, duplicate properly, and reassemble them. Increasing the number of packets from 10 to 12 will place a negligible added burden on each party to a grievance, while greatly reducing the administrative burden on the Clerk to the EMC.

The second amendment to subsection 1 increases the number of days prior to a scheduled meeting of the Committee in which packets are due. Because a list of witnesses is required to be included in the packets by both parties to a grievance, this amendment will reduce administrative pressure by allowing additional time for the Clerk to the Committee to process requests for subpoenas, when necessary. Currently, requests for subpoenas are due to the Committee no later than 15 days prior to any scheduled hearing (see amendment related to the issuance and enforcement of subpoenas below). This change will bring the two deadlines into alignment.

The amendment to subsection 2 of this regulation clarifies the individuals authorized to reschedule a hearing for non-compliance with this subsection to either the *Chair or a member of the Committee designated by the Chair*. This clarifies that there would not be a representative designated from outside the Committee, for example a Deputy Attorney General, designated to reschedule a hearing as a result of the situations listed in the subsection.

The next amendment to this regulation will allow the Chair or a member of the Committee designated by the Chair, rather than a quorum, to determine whether or not an employee who fails to meet the deadline for his or her packets for a rescheduled hearing will have his or her grievance dismissed with prejudice. This change will reduce the costs and expenses related to a full hearing of the EMC, similar to the explanation of change for amendments to NAC 284.695.

The final amendment to this regulation creates regulations related to the issuance and enforcement of subpoenas requiring attendance of individuals at an EMC hearing, as well as for

documents deemed to pertain to the grievance, pursuant to NRS 284.074. This amendment also clarifies that if information is contained in a subpoenaed document is of a confidential nature, the information must be redacted and submitted to the Committee. In addition, two copies of the original document, submitted under seal must be submitted to be reviewed by the Committee only if necessary. For efficiency purposes, this amendment also allow the Committee to take testimony from an individual via telephone or video conference from a location not noticed on an agenda, and specifies that a request for a subpoena to be issued to an individual or for document must be submitted no later than 15 days prior to a scheduled meeting of the EMC. This provides adequate time for the grievant to serve the subpoena, for the supervisor of a subpoenaed individual to arrange for coverage while he or she is attending the hearing, and for the production and submission of any subpoenaed documents.

NAC 284.6955 Hearing before Employee-Management Committee: Procedure. (NRS 284.065, 284.155, 284.384) If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695, the following procedure must be followed:

1. Each party shall submit to the ~~{Chair}~~ *Clerk* of the Committee ~~{or his or her designated representative-10}~~ *12* copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than ~~{12}~~ *15* working days before the scheduled date of the hearing. ~~{The Chair or his or her designated representative}~~ *The Clerk of the Committee* shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing at his or her discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, the grievance must be dismissed with prejudice unless he or she can show in writing to the ~~{Committee's}~~ satisfaction *of the Chair or a member of the Committee designated by the Chair* that the reason for noncompliance was beyond his or her control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as "Exhibit___" indicated by consecutive Arabic numerals, beginning with the number "1."

(b) Documents or materials presented by the employer must be marked at the bottom of the page as "Exhibit___" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the employer offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance.

5. Each person who provides a statement at the hearing shall state his or her name, address, and occupation for the record.

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. ~~{The Committee may request additional witnesses or information as it deems necessary.}~~ *The Chair or a member of the Committee designated by the Chair, may, upon the request of any party to a hearing held pursuant to NAC 284.695, issue a subpoena requiring the attendance and testimony of a witness at the proceeding or the production of documents.*

7. The Chair or a member of the Committee designated by the Chair may issue a subpoena requiring the attendance and testimony of a witness at the proceeding as it deems necessary, or a subpoena requiring the production of documents it deems relevant to the grievance being considered. If information contained in a subpoenaed document is determined to be confidential, such information must be redacted. Two copies of the original document, submitted under seal, and one copy of the redacted document must be submitted to the Committee by the date specified in the subpoena.

↪ For good cause shown, the Committee may take testimony from a person by telephone or video conference from non-meeting locations. A subpoena shall not be served less than 15 days before the scheduled date of the hearing.

~~{7}~~ 8. Upon proper recognition by the ~~{Chair or his or her designated representative,}~~ *member of the Committee designated to Chair any hearing,* any member of the Committee may ask a question of a party or witness at any time during the hearing.

(Added to NAC by Personnel Comm'n, eff. 8-1-91; A by Dep't of Personnel, 11-16-95; A by Personnel Comm'n by R026-11, 12-30-2011, eff. 1-1-2012)

NAC 284.6957 is hereby amended to read as follows:

Explanation of Proposed Change: The amendments to this regulation, proposed by the Division of Human Resource Management, will reduce staff time and expense to the State, and create efficiency in the process related to grievances that have been submitted to the Employee-Management Committee (Committee or EMC) for consideration.

The first change to subsection 1 of this regulation adds language that will allow a grievance to be placed into abeyance. Placing a grievance into abeyance essentially places the grievance on hold when an outside situation is creating or could create a delay in the hearing of the grievance by the Committee. This could be appropriate in a variety of situations. For example, placing a grievance into abeyance would be suitable when an investigation is being conducted and the outcome may impact an employee's grievance. It would also be appropriate in a situation where the grievant will be away from the office for an extended period of time, such as on approved Family and Medical Leave (FMLA), administrative leave or a court proceeding within the court system will be taking place.

The second proposed amendment to subsection 1 of this regulation changes the person to whom a request for a continuance or a request to have a grievance placed into abeyance should be submitted from the Chair of the Committee to the Clerk of the Committee. This change makes it clear that requests of the Committee are to be submitted to the Clerk who, in turn, sends the requests to the Chair or a member of the Committee designated by the Chair, depending on who will act as the Chair of the Committee for that grievance, as well as to the appropriate parties pursuant to NRS 233B.126. This statute allows the communication between either party to a hearing and those assigned to render a decision or make findings of fact and conclusions of law in a contested case, such as the EMC, only when there has been notice provided and an opportunity for all to participate.

The amendment to subsection 2 of this regulation will reduce staff time and related expenses of scheduling and conducting a full hearing of the EMC to determine if a continuance or the

placement of a grievance into abeyance is appropriate. This will allow the Chair or a member of the Committee designated by the Chair to grant continuances or place a grievance into abeyance instead of requiring a decision of the full Committee. This allows decisions to be made more quickly regarding emerging issues.

NAC 284.6957 Hearing before Employee-Management Committee: Continuance; abeyance. (NRS 284.065, 284.155, 284.384)

1. A party may *make a* request *for* a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 *or to have a grievance held in abeyance* by submitting ~~[a request for a continuance]~~ *such request* to the ~~[Chair]~~ *Clerk* of the Committee ~~[or his or her designated representative]~~ at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection 2 of NAC 284.695, in which case he or she may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The ~~[Committee]~~ *Chair or a member of the Committee designated by the Chair* may grant a request for a continuance *or place a grievance into abeyance* if good cause is shown. (Added to NAC by Dep't of Personnel, eff. 3-27-92; A 11-16-95)

NAC 284.697 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will bring NAC 284.697 into alignment with amendments proposed to NAC 284.695 and NAC 284.6955, which are also in the Adjustment of Grievances section of NAC 284.

Changes proposed to NAC 284.695 allow for one management member and one employee member, selected as representatives of the Employee-Management Committee, to determine jurisdiction, which serves as a final decision when it is determined that the grievance is based on a previous decision of the Committee or falls outside the Committee's jurisdiction. Changes proposed in NAC 284.6955 allow the Chair or a member of the Committee designated by the Chair to dismiss a grievance with prejudice if the employee fails to submit supporting materials for a rescheduled hearing.

The changes to this regulation will make the resolution of a grievance binding when the resolution is determined by the Chair or a member of the Committee designated by the Chair, the member of the Committee selected to represent management jointly with the member of the Committee selected to represent employees, as well as when it is determined by the Committee.

NAC 284.697 When resolution of grievance becomes binding. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsection 2, the resolution of a grievance is binding when:

- (a) There is an agreement between the person filing the grievance and the appointing authority or the designated representative of the employing agency; ~~[or]~~
- (b) The Committee renders a final decision ~~[]~~ ;

(c) One member of the Committee who has been selected to serve as a representative of management and one member of the Committee who has been selected as a representative of employees answers the employee's request without a hearing pursuant to NAC 284.695; or

(d) The Chair or a member of the Committee designated by the Chair dismisses a grievance with prejudice as a result of an employee failing to comply with NAC 284.6955.

2. The appointing authority or the designated representative of the employing agency shall submit each proposed resolution of a grievance which has a fiscal effect to the Budget Division for a determination of whether the resolution is feasible on the basis of its fiscal effects. The resolution is binding only if it is so found.

(Added to NAC by Dep't of Personnel, eff. 8-28-85; A by Personnel Comm'n by R030-02, 5-2-2002)