

## REGULATION 7

### DISCIPLINARY PROCEEDINGS

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**7.010 Applicability.** Regulation 7 shall apply to disciplinary proceedings governed by NRS 463.312 to 463.3145, NRS 464.080, and NRS 466.100. Unless otherwise ordered by the chairman, this regulation shall apply to all such proceedings that are pending on the effective date of this regulation.

(Adopted: 8/90.)

**7.020 Definitions.** "Chairman" means chairman of the Nevada gaming commission or his designee.

(Adopted: 8/90.)

**7.030 Service of complaint.** The commission shall serve the complaint in the manner prescribed by NRS 463.312(2). The commission may serve the complaint by registered or certified mail, or may utilize the services of the board by referring the complaint to a board agent for personal service. Proof of service may be provided by a certificate or affidavit of service, which shall be signed by the person effecting service and which shall specify the date and manner of service.

(Adopted: 8/90.)

**7.040 Prohibition of ex parte communications.**

1. Unless required for the disposition of ex parte matters authorized by law:

(a) A party or his representative shall not communicate, directly or indirectly, in connection with any issue of fact or law related to a proceeding under this regulation, with any member of the commission, except upon notice and opportunity to all parties to participate; and

(b) A member of the commission shall not communicate, directly or indirectly, in connection with any issue of fact or law related to a proceeding under this regulation, with any party or his representative, except upon notice and opportunity to all parties to participate.

2. This section shall not preclude:

(a) Any member of the commission from consulting with commission counsel or supervisory counsel concerning any matter before the commission; or

(b) A party or his representative from conferring with the chairman or commission counsel concerning procedural matters that do not involve issues of fact or law related to the proceeding.

(Adopted: 8/90.)

**7.050 Delegation to chairman.**

1. Pursuant to Regulation 2.020, the chairman may issue rulings on discovery matters, scheduling matters, protective orders, the admissibility of evidence, and other procedural or prehearing matters that are not dispositive of the case or any portion thereof. The chairman's rulings are subject to consideration by the entire commission upon the request of any commissioner, or upon motion of a party or person affected by the ruling, as provided in Regulation 2.020. The failure of such party or person to move for such consideration, shall not be deemed to be consent to the ruling, nor waiver of any objections previously made regarding the ruling, for the purpose of judicial review.

2. The chairman may alter any of the time periods provided by this regulation, upon his own initiative or upon motion by a party or other person affected, for good cause shown.

(Adopted: 8/90.)

**7.060 Appearance through counsel.**

1. Parties to proceedings governed by this regulation may appear personally or through an attorney, except that the parties must personally attend any hearing on the merits unless such attendance has been waived pursuant to Regulation 2.

2. When a party has appeared through an attorney, service of all notices, motions, orders, decisions, and other papers shall thereafter be made upon the attorney.

3. When a party is represented by an attorney, the attorney shall sign all motions, oppositions, notices, requests, and other papers on behalf of the party, including requests for subpoenas.

(Adopted: 8/90.)

**7.070 Prehearing conferences; scheduling; management.**

1. After the respondent files an answer to the complaint, the chairman may direct the parties to participate in a conference or conferences before the hearing on the merits, for such purposes as expediting the disposition of the action, resolving discovery issues, and facilitating the settlement of the case.

2. The participants at any prehearing conference under this section shall be prepared to consider and take action with respect to any or all of the following, as determined by the chairman:

(a) The formulation and simplification of the issues;

(b) The necessity or desirability of amendments to the complaint or answer;

(c) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the chairman on the admissibility of evidence;

(d) The avoidance of unnecessary proof and of cumulative evidence;

(e) The identification of witnesses and documents, the need and schedule for filing and exchanging prehearing briefs, and the date or dates for further conferences and for the hearing on the merits;

(f) The possibility of settlement;

(g) The disposition of pending motions;

(h) The possibility that all evidence can be submitted by affidavits, transcripts, and other documents; and

(i) Such other matters as may aid in the disposition of the action.

3. After any conference held pursuant to this regulation, the parties shall set forth in a written stipulation, to be filed with the commission, any matters no longer in dispute. As to those matters for which no agreement has been reached, but which require a ruling from the commission, the commission shall enter an order reciting the ruling.

4. At any time considered appropriate by the commission, or at the request of a party, the commission may enter a scheduling order that sets the date for the hearing on the merits and other hearings deemed necessary or appropriate by the commission and that limits the time within which the parties may:

(a) Amend the complaint or answer without leave of the commission;

(b) File prehearing motions;

(c) Complete discovery;

(d) File prehearing briefs.

5. This section shall not be interpreted to give any party or other person a right to a prehearing conference with the chairman. The chairman may direct the parties to participate in a prehearing conference

without the chairman's presence. The chairman may at any time enter an order on any matter delegated to the chairman, without consulting with the parties and without granting oral argument.

(Adopted: 8/90.)

**7.080 Discovery: mandatory exchanges.**

1. Within 20 calendar days after the service of the answer by the first answering respondent, and thereafter as each respondent answers the complaint, the parties shall confer for the purpose of complying with subsection 2 of this section.

2. At each conference the parties shall:

(a) Exchange copies of all documents then reasonably available to a party which are then intended to be offered as evidence in support of the party's case in chief;

(b) Identify, describe, or produce all tangible things, other than documents, then reasonably available to a party which are then intended to be offered as evidence in support of the party's case in chief, and upon request, arrange for the opposing parties to inspect, copy, test, or sample the same under the supervision of the parties; and

(c) Exchange written lists of persons each party then intends to call as a material witness in support of that party's case in chief. Each witness shall be identified by name, if known, position, business address, and a brief description of the purpose for which the witness will be called. If no business address is available, the party shall provide a home address for the witness, or shall make the witness available for service of process. For the purpose of this paragraph, a "material witness" is a person whose testimony relates to a genuine issue in dispute which might affect the outcome of the proceeding.

3. In addition to the documents required to be produced by the board pursuant to subsection 2 of this section, the board shall provide to a respondent who requests the same, a copy of any formal statement given to the board or its agents by that respondent, during the board's investigation of the matters contained in the complaint, in accordance with this subsection.

(a) Where the respondent is a corporation, partnership, or other association, the board shall provide to the requesting respondent, a copy of any formal statement made by officers or directors of the corporation, general partners of the partnership, or managing agents of the association, unless any such statement was given in confidence.

(b) If any statement governed by this subsection is embodied or included in a report, summary, or other document which is not otherwise required to be produced by this regulation, the board may produce only an excerpt of such report, summary, or document which contains the statement.

(c) For the purpose of this subsection, a "formal statement" is a statement given to a member or agent of the board by a person knowing he is speaking to a government official or agent, and which is either signed by the person giving the statement, or given under oath or affirmation such as in an investigative hearing. The term does not include discussion, conversations, or other statements obtained surreptitiously; or memoranda, notes, or other internal documents made by an attorney for the board, or a member or agent of the board.

4. In addition to the other materials required to be produced by the board, the board shall make arrangements with a respondent who requests the same for the respondent to inspect, copy, test, or sample any other documents or tangible things the board seized from or which belong to that respondent. Such inspection, copying, testing, or sampling shall be conducted under the supervision of a representative of the board.

5. The inspection, copying, sampling, or testing of any evidence or other matter pursuant to subsections 2 and 4 of this section, shall be accomplished without the alteration or destruction of the evidence or evidentiary value of the matter, either in whole or in part, except as otherwise ordered by the commission upon a finding that extraordinary circumstances exist. Such destruction or alteration shall not be permitted if it would prejudice any party to the action or any other law enforcement or administrative agency.

6. It shall be a continuing obligation of the parties to produce documents, witness lists, and other matters governed by this section as such become identified by and available to the parties. A party may amend its responses to the requirements of this section by informing the adverse party that documents previously produced or witnesses previously listed, will not be introduced in that party's case in chief.

7. The chairman may order the parties to submit to the commission, periodic reports regarding the parties' compliance with this section and section 7.090.

(Adopted: 8/90.)

### **7.090 Confidential and privileged materials.**

1. If any document or other material required to be produced by the board pursuant to section 7.080 is the subject of a government privilege or is confidential pursuant to law, including sections 463.120(4) or 463.335 of the Nevada Revised Statutes, the board shall stamp any such document "confidential" before producing the same, except as provided by subsection 3. If the material is not a document, the board shall inform the commission and the commission will consider an appropriate order to protect the material.

2. A respondent shall not further disseminate confidential or privileged materials except to counsel of record in the action and necessary staff persons employed by counsel. Upon the conclusion of the action, the respondent shall return all such materials and any copies to the board.

3. The board shall not produce documents whose dissemination is prohibited by state law, including chapter 179A of the Nevada Revised Statutes, or by any federal law. If the board intends to introduce any such document in its case in chief, the board shall inform the commission and the commission shall make appropriate orders regarding dissemination of such documents. The commission may prohibit the admission of the evidence, or may order alternative means of providing the information to the respondent.

(Adopted: 8/90.)

### **7.100 Discovery: depositions.**

1. A party may take the oral testimony of any material witness whose name appears on the witness list of an adverse party, and other persons as provided by subsection 2, in the manner set forth by this section. Unless waived by the party who listed the witness, the scope of the deposition testimony shall be limited to the subject matter of the witness' expected testimony at the hearing, as set forth by the party pursuant to section 7.080(2)(c) of this regulation.

2. A party may depose other material witnesses, as defined by section 7.080, upon order of the commission, as provided in this subsection.

(a) The requesting party must file a motion for authorization to conduct the deposition, which motion must be supported by affidavit demonstrating that the witness is likely to be unavailable to appear and testify at the hearing on the merits.

(b) For the purpose of this subsection, a person is "unavailable" if the person's attendance at the hearing on the merits cannot be compelled by subpoena, or the person will be unable to attend because of age, illness, infirmity, or imprisonment.

(c) A person deposed under this subsection may be examined and cross-examined in the same manner as if the person were called as a witness at the hearing.

3. The deposition of a party may be compelled by directing a notice of deposition to that party. The notice must contain the title and number of the proceeding, the name and address of the person to be deposed, the date, time, and place of the deposition, and the name and signature of the requesting party or his attorney. The notice must be served on all parties to the proceeding.

4. The deposition of a nonparty witness may be compelled by subpoena in accordance with section 7.110 of this regulation.

5. Depositions shall be taken before an officer authorized to administer oaths. A deposition shall not be taken before a person who is a relative, employee, attorney, or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is interested in the proceeding.

6. Testimony shall be taken upon oath or solemn affirmation. Unless the commission orders otherwise, the testimony shall be recorded by stenographic means. The cost of transcription shall be borne by the party requesting the deposition. Such party shall provide a copy of the transcript to all other parties in the proceeding.

7. Unless the parties and the witness agree otherwise, a deposition shall take place on no less than 15 calendar days notice.

8. A deposition may be used in a proceeding governed by this regulation for the same or similar purposes as depositions may be used in a court of law, or for any other purpose allowed by the commission.

9. Objection may be made at the hearing on the merits to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. If a deposition is received in evidence, any party may rebut any relevant evidence contained in the deposition.

(Adopted: 8/90.)

#### **7.110 Subpoenas.**

1. The executive secretary shall issue subpoenas, including subpoenas duces tecum, upon the request of a party, in accordance with this section.

2. Subpoenas may be issued only for the following purposes:

(a) To compel a nonparty witness to appear and give oral testimony at a deposition as provided by section 7.100; and

(b) To compel any person to appear at the hearing on the merits of the case, to give oral testimony alone, or to produce documents or other tangible things.

3. Subpoenas shall be submitted to the executive secretary for issuance on a form approved by the chairman. Concurrently with the submission of the subpoena to the executive secretary, the requesting party shall serve a copy on all other parties to the proceeding, and shall file proof of such service with the commission.

4. Subpoenas will not be issued in blank. A subpoena submitted for issuance must contain the title and number of the case, the name of the person to whom it will be directed, the date, time, and place of the hearing or deposition, and the name and signature of the requesting party or his attorney. A subpoena duces tecum must in addition contain a complete description of specific documents or other tangible things that the witness will be required to produce at the hearing.

5. Unless the witness agrees otherwise, a subpoena issued for the purpose provided by subsection 2(b) must be served by the requesting party at least 10 calendar days prior to the hearing. A subpoena will be issued during the hearing or upon less than 10 days notice only upon order of the commission for reasonable cause shown by the requesting party.

(Adopted: 8/90.)

**7.120 Protective orders.** Upon motion by a party or by a person to whom a subpoena is directed, or from whom discovery or testimony is sought, the commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

1. That a subpoena be quashed or modified;

2. That the discovery not be had, or that it be had only on specified terms and conditions, including a designation of the time or place;

3. That certain matters not be inquired into or produced, or that testimony or production be limited to certain matters;

4. That a deposition be conducted with no one present except persons designated by the commission, or that a deposition transcript be sealed; or

5. That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(Adopted: 8/90.)

**7.130 Discovery disputes.** The parties shall make every effort to resolve disputes regarding discovery. Disputes that are unresolved may be brought to the commission for resolution by way of a motion to compel discovery, motion for protective order, or other appropriate motion. The disputed discovery is not stayed during the pendency of such motion, unless the commission so orders. The filing of such motion shall not extend the time to complete discovery, nor provide cause for a continuance of the hearing on the merits, unless the commission otherwise orders.

(Adopted: 8/90.)

**7.140 Sanctions.** If any party or his attorney fails reasonably to comply with any provision of this regulation, the Gaming Control Act, or any order entered, regarding any matter, including discovery, the commission, upon motion or upon its own initiative, may impose upon such party or attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

1. An order prohibiting the use of any witness, document or tangible thing which should have been disclosed, produced, exhibited or exchanged pursuant to this regulation or order of the chairman or commission;

2. An order that designated facts shall be taken to be established;

3. An order that the disobedient party may not support or oppose designated claims or defenses;

4. An order striking out pleadings or parts thereof, or staying further proceedings or dismissing the proceeding or any part thereof, or entering a judgment by default against the disobedient party;
5. The initiation of contempt proceedings as provided by NRS 463.314.  
(Adopted: 8/90.)

**7.150 Conduct of hearings.** In addition to the procedures prescribed by statute, the following procedures will apply when appropriate:

1. The respondent will be allowed to present and argue any legal objections to the complaint set forth in the answer; the board may thereupon present its answering argument; and thereafter the respondent may present rebuttal argument. The matter will then be submitted to the commission for decision. The commission may rule upon such objections immediately or take the matter under advisement and proceed with the hearing.
2. The board will present its opening statement on the merits. The respondent will then be permitted to make an opening statement of the defense, or he may reserve the same until commencement of the presentation of the defense.
3. The board will then present its case in chief in support of the complaint.
4. Upon conclusion of the board's case in chief, the respondent may move for dismissal of the complaint. The commission may hear arguments on the motion, or may grant, deny, or reserve decision thereon, with or without argument.
5. If no motion to dismiss is made, or if such motion is denied or decision reserved thereon, the respondent shall thereupon present the case for the defense.
6. Upon conclusion of the respondent's case, the board may present its case in rebuttal.
7. Upon conclusion of the board's case in rebuttal, the board shall present its closing argument, the respondent may present answering argument, and thereafter the board may present rebuttal argument. Thereupon the matter will stand submitted for decision.
8. Any member of the commission may ask questions of witnesses, and may request or allow additional evidence at any time, including additional rebuttal evidence.

(Adopted: 8/90.)

**7.160 Evidence: admissibility.**

1. For the purpose of this section, evidence is reliable if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
2. In hearings governed by this regulation, the technical rules relating to evidence and witnesses shall not apply. Any relevant evidence may be admitted, and such evidence shall be sufficient in itself to support a finding if it is reliable, 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.
3. By way of illustration only, those matters that would be admissible in a court of law are hereby deemed to be reliable, in addition to those matters that satisfy the standards set forth in subsections 1 and 2 of this section.
4. Irrelevant or unduly repetitious evidence shall be excluded upon request of a party or the commission's own initiative.

(Adopted: 8/90.)

**7.170 Evidence: authentication and identification.**

1. Documentary and other physical evidence may be authenticated or identified by any reasonable means, by evidence or other showing that the matter in question is what its proponent claims it to be.
2. By way of illustration only, those matters that would be accepted as authentic in a court of law, are hereby deemed to be authentic, in addition to matters that satisfy the standard set forth in subsection 1 of this section.

(Adopted: 8/90.)

**7.180 Failure or refusal to testify.**

1. If a respondent fails to testify in his own behalf or asserts a claim of privilege with respect to any question propounded to him, the commission may infer therefrom that such testimony or answer would have been adverse to his case.

2. If any person controlling, controlled by, or under common control with, or employed by, or an agent of, a respondent fails to respond to a subpoena, or asserts a claim of privilege with respect to any question propounded to him, the commission may, taking into account all of the circumstances, infer that such testimony would have been adverse to the respondent.

3. If, on a ground other than the properly invoked privilege against self-incrimination, a respondent fails to respond to a subpoena, or fails or refuses to answer a material question propounded to him, the commission may deem such failure or refusal to be independent grounds for granting the relief requested by the board in the complaint with respect to that respondent.

(Adopted: 8/90.)

#### **7.190 Amended or supplemental pleadings.**

1. Upon motion of a party made before submission of the case for decision, the commission may permit the filing of an amended or supplemental complaint or answer, including amended or supplemental pleadings that conform to the evidence presented at the hearing.

2. If such motion is granted, all parties shall be permitted to introduce additional evidence with respect to any new matter contained in such amended or supplemental pleadings.

(Adopted: 8/90.)

#### **7.200 Motions.**

1. All motions shall be in writing, unless made during a hearing.

2. A motion shall state with particularity the grounds therefore, shall be supported by a memorandum of points and authorities, and shall set forth the relief or order sought.

3. Every written motion other than one which may be considered ex parte shall be filed with the commission and served by the moving party upon the adverse party or as the chairman directs.

4. An opposing party shall have 10 calendar days after service of the motion within which to file and serve a memorandum of points and authorities in opposition to the motion.

5. The moving party shall have 5 calendar days after service of the opposing memorandum to serve and file a reply memorandum of points and authorities if he so desires.

6. If a motion or opposition is served by mail, 3 calendar days shall be added to the time periods specified herein for response.

7. The failure of a moving party to file a memorandum of points and authorities in support of a motion shall constitute consent to the denial of the motion. The failure of an opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion.

(Adopted: 8/90.)

**7.210 Continuances.** Continuances will not be granted except for good cause shown. A motion to continue a hearing must be made at least 10 calendar days prior to the hearing date.

(Adopted: 8/90.)

**7.220 Defaults.** Failure of a respondent to file an answer to the complaint or to request a hearing, or to appear personally at a hearing on the merits without having obtained a waiver of appearance, shall constitute an admission of all matters and facts contained in the complaint filed with respect to such respondent, and shall be deemed a waiver of the right to an evidentiary hearing. In such cases the commission may take action based upon such admission or upon any other evidence, including affidavits, and without any further notices whatever to respondent.

(Adopted: 8/90.)

#### **7.230 Decision of the commission.**

1. Findings of fact made pursuant to NRS 463.3145 shall be based upon a preponderance of the evidence standard.

2. The "preponderance of the evidence" standard is such evidence as when considered and compared with that opposed to it, has more convincing force, and produces in the minds of the members of the commission a belief that what is sought to be proved is more likely true than not true.

(Adopted: 8/90.)

**7.240 Guidelines for imposing penalties in disciplinary actions.** Without in any manner limiting the authority granted pursuant to NRS 463.1405(3) or 463.310(4) to impose the level and type of discipline it may deem appropriate, the commission finds that the following factors, among others, may be taken into consideration when determining the action to be taken pursuant to NRS 463.310(4):

1. Whether the respondent knew or reasonably should have known that the action complained of was a violation of any law, regulation, or condition on the respondent's license.
2. Whether the respondent has previously been disciplined by the commission.
3. Whether the respondent has previously been the subject of an Order to Show Cause or any other written notice of whatever type or nature issued by the board, concerning the violation of any law, regulation, or condition of the respondent's license.
4. Whether the respondent reasonably relied upon professional advice from a lawyer, doctor, accountant, or other recognized professional, which was relevant to the action resulting in the violation.
5. Whether the respondent had a reasonably constituted and functioning compliance program.
6. Whether the imposition of a condition requiring the respondent to establish and implement a written self enforcement and compliance program would assist in ensuring the respondent's future compliance with all statutes, regulations, and conditions to their license.
7. Whether the respondent realized a pecuniary gain from the violation.
8. Whether the amount of any fine and/or other penalty imposed would result in disgorgement of any gains unlawfully realized by the respondent.
9. If the violation was caused by an officer or employee of the respondent, the level of authority of the individual who caused the violation.
10. Whether the individual who caused the violation acted within the scope of his authority as granted by the respondent.
11. The adequacy of any training programs offered by the respondent which were relevant to the activity which resulted in the violation.
12. Whether the respondent's action substantially deviated from industry standards and customs.
13. The extent to which the respondent cooperated with the board during the investigation of the violation.
14. Whether the respondent has initiated remedial measures to prevent similar violations.
15. The magnitude of penalties imposed on other licensees for similar violations.
16. The proportionality of the penalty in relation to the misconduct.
17. The extent to which the amount of any fine imposed would punish the respondent for the conduct and deter future violations.
18. Any mitigating factors offered by the respondent.
19. Any other factors the commission in its sole and absolute discretion may deem relevant.

(Adopted and Effective: 12/17/98.)

## **End – Regulation 7**