

**NEVADA PERSONNEL COMMISSION
HEARING OFFICER RULES OF PROCEDURE**

1. GENERAL PROVISIONS

1.1. Applicability

- a) These rules shall be known and may be cited as Hearing Officer Rules of Procedure.

- b) Scope: Hearings related to dismissals, suspensions, demotions and involuntary transfers
 - 1. NAC 284.774 to 284.818, inclusive, govern hearings in all cases relating to dismissals, suspensions, demotions, and involuntary transfers before the hearing officer and hearings for a written appeal filed pursuant to NRS 281.641.
 - 2. Except as otherwise provided in this document, the hearing officer shall use the hearings procedures established in NAC 284.774 to 284.818, inclusive and any hearings procedures provided by the Division of Human Resource Management if interested parties have proper notice of any procedural changes or are not prejudiced thereby. A copy of the hearings procedures is available by contacting the Division of Human Resource Management at 100 N. Stewart St., Suite 200, Carson City, Nevada 89701 or on the Division's website at:
<http://hr.nv.gov/uploadedFiles/hrnv.gov/Content/Resources/Publications/Hearing%20Officer%20Rules.pdf>
 - 3. Each hearing officer may adopt supplementary rules governing practice before him or her to the extent they are not inconsistent with these rules, NRS 281 and 284, and NAC 284. The supplementary rules must be made available, in writing, to all parties not less than five business days before a hearing.

- c) Scope: Hearings related to claim of reprisal or retaliatory action for disclosing improper governmental action ("Whistleblower")
 - 1. NAC 281.305 to 281.315 and NAC 284.774 to 284.806, inclusive, NAC 284.818 govern the procedure for conducting a hearing for a written appeal filed pursuant to NRS 281.641.
 - 2. NRS 281.641 (4): The Personnel Commission may adopt rules of procedure for conducting a hearing pursuant to this section that are not inconsistent with the procedures set forth in NRS 284.390 to 284.405, inclusive.

1.2. Organization of Personnel Hearing Officer System

- a) Hearing officers for personnel appeals are appointed by the Personnel Commission pursuant to NRS 284.091.

1.3. Governing Statutes and Regulations

- a) All hearings conducted before the hearing officer shall be held in accordance with the applicable provisions of NRS 281 and 284, NAC 284, and 233B, Nevada Administrative Procedures Act, to the extent referenced in NRS 284.

2. FILING AND SETTING OF CASES

2.1. Filing an Appeal

- a) Within 10 working days after the effective date of the challenged involuntary transfer, suspension, demotion, dismissal, a permanent classified employee may request a hearing before the hearing officer to determine the reasonableness of the action.
- b) Within 10 working days after the date of an alleged reprisal or retaliation, a State officer or employee who claims such action was taken against him or her for disclosing information concerning improper governmental action may request a hearing before the hearing officer.
- c) A request for a hearing before a hearing officer shall be made in writing and addressed to the Administrator of the Division of Human Resource Management, 100 N. Stewart St., Suite 200, Carson City, Nevada 89701. Requests will also be accepted by fax. Appeals must be filed on an Appeal of "Whistleblower" Retaliation Under the Provisions of NRS 281.641 (NPD-53) or Request for Hearing Regarding Dismissal, Suspension, Demotion, or Involuntary Transfer (NPD-54) form and must be signed by the employee. These forms can be found on the Division of Human Resource Management website at <http://hr.nv.gov/Resources/Forms/Hearings/Hearings/>.

2.2. Assignment of Hearing Officers

- a) Method of selection
 1. For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the Senior Appeals Officer of the Hearings Division shall provide to each party to the claim a list of three qualified Hearings Division Appeals Officers (referred to herein as hearing officers).
 2. Each party may strike one name from the list and shall return the list with the remaining names to the Senior Appeals Officer of the Hearings Division not later than seven working days after receipt of the list.
 3. Except as otherwise provided in subsection paragraph 5, each person whose name is struck from the list pursuant to paragraph 2 is ineligible to serve as a hearing officer in that claim.
 4. Except as otherwise provided in paragraph 5, the Senior Appeals Officer of the Hearings Division shall select a hearing officer for the hearing from among the persons whose names were not struck from the list pursuant to paragraph 2.

5. If a strike list is not returned from either party within seven working days the Senior Appeals Officer of the Hearings Division may assign a hearing officer based on the information available.

6. If for any reason all of the hearing officers whose names were not struck from the list pursuant to paragraph 2 are unqualified or otherwise unavailable to serve as a hearing officer for the hearing, the Senior Appeals Officer of the Hearings Division will provide a new list of hearing officers to the parties in the manner provided in this section.

- a) The Senior Appeals Officer of the Hearings Division will notify the selected hearing officer and provide case materials as soon as the determination of assignment is made.
- b) If a hearing officer finds it necessary to recuse himself or herself from hearing an appeal, the basis for said recusal shall be documented in writing and addressed to the Senior Appeals Officer of the Hearings Division, who will then provide a new list of hearing officers to the parties in accordance with the provisions of 2.2(a).

2.3. Setting of cases

- a) Pursuant to NRS 284.390, the hearing officer shall schedule an employee's hearing within 20 working days after receipt of the employee's written request by the Division of Human Resource Management unless this time period is waived in writing by the employee or there is a conflict with the hearing calendar of the hearing officer. The hearing must be scheduled for the earliest possible date.
- b) Hearings may be scheduled by telephone and thereafter shall be confirmed in writing.
- c) In the interest of convenient, expeditious and complete determination of matters, the Senior Appeals Officer of the Hearings Division may consolidate hearing proceedings involving any number of issues.

3. COMMUNICATION WITH THE HEARING OFFICER

3.1 Communication with the Hearing Officer

- a) Any communication with the hearing officer or the clerk to the hearing officer that is by email, letter or facsimile must demonstrate that all concerned parties have been copied on the communication.
- b) When responding to an email from counsel or the hearing officer, use the "Reply to All" feature, so that all parties, counsel and the hearing officer know that everyone has received the communication.

3.2 Filing of Documents

- a) Filing of a document occurs when the original is received by and is in the actual physical custody of the hearing officer.
- b) A document over five pages in length may not be filed by facsimile unless so ordered or approved in advance by the Hearings Division. If a document which is five pages or less in length is received by facsimile, the document will be accepted and the date of receipt stamped on the document. If a document is received by facsimile and the original of the document is received within 3 business days after it is received by facsimile, the original will be stamped with the date it is received, but shall be deemed filed on the date the facsimile was received.
- c) A document may be filed by electronic mail upon prior written approval of the Hearings Division. A document filed by electronic mail must be:
 - i. Accompanied by an acknowledgment of receipt.
 - ii. Sent to the clerk for the hearing officer and to each party to the proceeding.

4. SUBPOENAS, PLEADINGS AND DOCUMENTS, DISCOVERY

4.1 Subpoenas

- a) The hearing officer, upon application of any party to a hearing, may issue subpoenas requiring the attendance and testimony of witnesses at the proceeding. Subpoenas must be served a minimum of five days prior to the hearing date.
- b) A request for subpoena shall be either in writing or on the record identifying the witness and stating how the witness' testimony is material and necessary to the proceedings before the hearing officer.
- c) Per diem and travel expenses must be paid by the party at whose request the witness is subpoenaed. The hearing officer may award as costs the amount of all such expenses to the prevailing party.

4.2. Pleadings and documents

- a) All pleadings, written motions and documents prepared for submission to the hearing officer shall be:
 - 1. In legible type on clean, white paper, 8 ½ by 11 inches in size, and lined and numbered in the left margin.
 - 2. Free of any personal indentifying information or such information redacted, in particular any Social Security Numbers. All documents must be reviewed and signed certification required by NRS 239B.030 must be submitted. Evidence packets or documents containing personal identifying information may be rejected by the hearing officer.

3. Two-hole punched at the top and if the submission is over 25 pages, it must be secured with “ACCO”-type fasteners.

b) Evidence packets:

i. Must contain a comprehensive index and separately numbered pages.

ii. Must not contain any double-sided documents.

b) Parties to an action shall furnish copies of any pleadings, documents or written motions to one another.

c) The hearing officer shall refuse to file any document or pleading which is not properly signed by all persons, or which does not comply with these rules.

d) A document or piece of physical evidence sought to be introduced during the hearing must first be identified for the record and the hearing officer may request the production of such records and the appearance of such persons as he or she requires.

4.3. Discovery

a) The extent to which discovery is allowed, if at all, is at the discretion of the hearing officer who must make every effort to ensure that the discovery, if any, is neither costly nor burdensome.

b) Discovery methods allowed by the hearing officer shall be utilized to assist parties in preparing to meet their responsibilities and protect their rights without unduly delaying, burdening or complicating the hearing process and with due regard to the rights and responsibilities of other parties and persons affected.

c) If a party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party’s case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. Discovery motions shall include certification by moving counsel that after consultation with opposing counsel they have been unable to resolve the matter.

5. MOTIONS: POINTS AND AUTHORITIES AND DECISIONS, EXTENSION OF TIME

5.1. Motions: Points and authorities and decisions

- a) All motions shall be accompanied by points and authorities and any exhibits or affidavits relied upon.
- b) The responding party shall file and serve upon all parties, within 10 days after service of a motion, answering points and authorities and counter-affidavits.
- c) The moving party may serve and file reply points and authorities within five days after service of the answering points and authorities.
- d) The hearing officer may hold a telephone conference with parties on any motion.
- e) The hearing officer shall render a decision on the motion within 10 days of the moving party's final reply. Notice of the decision shall be provided to all parties at least five days prior to the scheduled hearing.

5.2. Motions: Extension of time

- a) A request to extend the deadline for filing any motion shall be made at least five days prior to the deadline, with notice to all counsel and the hearing officer.
- b) No ex parte application for extension of time will be granted unless a satisfactory showing is made to the hearing officer that a good faith effort has been made to notify opposing counsel of the motion. If the hearing officer finds good cause therefore, he or she may order a temporary extension pending a determination of the motion.

6. PREHEARING CONFERENCES

6.1. The hearing officer may require a prehearing conference upon his or her own motion or upon motion of a party at which both parties and their counsel shall meet with the hearing officer to consider:

- a) Simplification of the issues;
- b) Necessity or desirability of amending documents for the purposes of clarification, simplification or limitation;
- c) Stipulations as to undisputed facts or contents and authenticity of documents;
- d) Limitation of the number of witnesses;
- e) Such other matters as may tend to expedite the disposition of the proceedings and to ensure a just conclusion.

6.2. Statements of counsel made at a prehearing conference are not admissible in evidence unless so provided by a prehearing order.

7. HEARING STATEMENTS

7.1. Five calendar days before the hearing, each party may serve and file a hearing statement which shall set forth the following matters in the following order:

- a) A concise statement of the claimed facts supporting the party's claims or defenses.
- b) A statement of admitted or undisputed facts.
- c) A statement of issues of law supported by a memorandum of authorities.
- d) Summaries or schedules referring to exhibits, and reasons which clearly reflect the claims, defenses, or evidence of the party, together with references to the records or other sources upon which such summaries or schedules are based.
- e) The names and addresses of all witnesses, except impeaching witnesses.
- f) Any other appropriate comment, suggestion, or information for the assistance of the hearing officer in the hearing of the case.
- g) Certification by counsel that discovery has been completed, unless late discovery has been allowed by order of the hearing officer.

8. CONTINUANCES

8.1. No continuance of a hearing shall be granted except for good cause shown. Continuances shall be denied or granted as determined by the hearing officer and the hearing officer shall put in the file a record of continuances by party. Request for continuance shall be made in the following manner:

- a) A party may request a continuance not later than five business days before the date of the scheduled hearing by filing a written motion or stipulation with the hearing officer. Notice of the motion or stipulation and a copy of the motion or stipulation must be sent to each party to the hearing and to the clerk to the hearing officer.
- b) A party may contest a request for continuance submitted by another party by filing a written motion with the hearing officer not later than two business days after receiving the notice of the request for a continuance. Notice of the motion and a copy of the motion must be sent to each party to the hearing and to the clerk to the hearing officer.

- c) The hearing officer shall not grant a continuance requested on the day of a scheduled hearing unless 1) the hearing officer, any party, the legal counsel for a party or a primary witness cannot attend because of an emergency; 2) the hearing exceeds the time allotted for the day; or 3) the hearing officer recesses the hearing until a future date.
- d) If the hearing officer recesses a hearing pursuant to a request for a continuance which is filed on the day of the scheduled hearing, the hearing must be held not later than 20 business days after the date of request for a continuance, unless there is a conflict with the schedule of the hearing officer.

8.2. Any and all cases shall have a disposition within a six month period from the date the appeal is filed unless good cause exists.

9. CONDUCT OF HEARINGS

9.1. Authority of Hearing Officer

A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair and impartial hearing, including the following:

- a) To administer oaths and affirmations;
- b) To rule upon offers of proof and receive relevant evidence;
- c) To regulate the course of the hearing and the conduct of the parties and their counsel;
- d) To consider and rule upon procedural requests;
- e) To examine witnesses and direct witnesses to testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify;
- f) To conclude the hearing at such time as all relevant testimony has been presented; and
- g) To issue findings and recommendations and render decisions.

9.2. Sanctions for Noncompliance

If a party or attorney/representative fails or refuses to comply with the rules, the hearing officer may make such orders and impose such sanctions as are just, including, but not limited to the following:

- a) Continue any hearing until the disobedient party or attorney/representative has complied with the requirement imposed.

- b) Require the disobedient party to pay the other party his or her expenses, including a reasonable attorney's fee incurred in preparing for and attending such hearing.
- c) Dismiss the case.

9.3. Communications with the Hearing Officer

- a) A party shall not communicate with the hearing officer regarding the merits of a case 1) except in the presence of all parties to the hearing; or 2) unless all parties to the hearing are notified of the communication in advance.
- b) The hearing officer shall not initiate ex parte communications with any interested person or party, directly or indirectly, regarding any matter in connection with a substantive issue.
- c) Nothing shall prevent the hearing officer from communicating about routine matters such as requests for continuances or opportunities to inspect the file, as long as all parties are informed of the substance of the communication. The date and type of communication, the persons involved and the results of such routine communications shall be part of the record.

9.4. Settlement Agreements

- a) When a case is settled prior to the hearing, the parties or their attorney/representative must notify the hearing officer no later than 24 business hours prior to the scheduled hearing; this includes cancellations for hearings scheduled on a Monday.
- b) Unless specifically requested by the parties, the hearing officer may not initiate settlement negotiations on the date scheduled for the hearing.
- c) Unless otherwise agreed upon in writing by all parties, an offer or demand of settlement made by a party must not be disclosed to or proposed by the hearing officer before the issuance of a final decision by the hearing officer.
- d) The hearing officer has no authority to change, amend or modify any settlement agreement of the parties to the proceeding.

9.5. Hearings

- a) All hearings must be open to the public except on motion of either party for good cause shown. On the motion of either party, the hearing officer shall exclude witnesses not at the time under examination from the hearing room, except the parties to the proceeding.

- b) The employee may represent himself or herself at the hearing or be represented by an attorney or other person of the employee's own choosing.
- 9.6. The following shall be the order of proceeding of a hearing related to dismissals, suspensions, demotions and involuntary transfers:
- a) Presentation, argument and disposition of motions preliminary to the hearing.
 - b) Opening statement for the employer.
 - c) Opening statement for the employee, unless reserved.
 - d) Presentation of the employer's case, followed by cross-examination.
 - e) Presentation of the employee's case, followed by cross-examination.
 - f) The parties may respectively offer rebutting testimony only, unless the hearing officer permits additional evidence upon the original cause.
 - g) Argument for the employer.
 - h) Argument for the employee.
 - i) Closing argument for the employer.
- 9.7. The following shall be the order of proceeding of a hearing related to a claim of reprisal or retaliatory action for disclosing information concerning improper governmental action:
- a) Presentation, argument and disposition of motions preliminary to the hearing.
 - b) The opening statement for the State officer or employee.
 - c) The opening statement for the employer, unless reserved.
 - d) Presentation of the State officer's or employee's case, followed by cross-examination. The State officer or employee must establish that:
 - 1. He or she was a State officer or employee on the date of the alleged reprisal or retaliatory action;
 - 2. He or she disclosed information concerning improper governmental action; and
 - 3. The alleged reprisal or retaliatory action was taken against him or her within two years after the date he or she disclosed the information concerning improper governmental action.
 - e) If these facts are established, presentation of the employer's case, followed by cross-examination, to establish that the employer did not engage in reprisal or

retaliatory action or that the action was taken for a legitimate business purpose.

- f) If the employer establishes a legitimate business purpose for the action, the State officer or employee may introduce evidence, followed by cross-examination, to demonstrate that the stated business purpose is a pretext for the action.
- g) The parties may respectively offer rebutting testimony only, unless the hearing officer permits additional evidence upon the original cause.
- h) The argument for the State officer or employee.
- i) The argument for the employer.
- j) The closing argument for the State officer or employee.

10. TESTIMONY AND EVIDENCE

10.1. All testimony and exhibits offered at the hearing must be relevant and bear upon the matter in contention. Any testimony or exhibits which are considered by the hearing officer as not meeting this criterion may properly be excluded.

10.2. Testimony

- a) All testimony must be under oath administered by the hearing officer, except that the hearing officer may, for good cause shown, accept the sworn affidavit of a witness in lieu of the witness's appearance.
- b) At the beginning of his or her testimony, each witness who has not previously testified in the hearing shall state his or her name, business address and business/department, and job title or position.
- c) Testimony may be presented in the form of a statement or questions and answers.
- d) The hearing officer may allow testimony by telephone or videoconference in consideration of the cost or feasibility of the witness being present at the hearing, the nature and duration of the expected testimony, or whether there is a good reason the witness is unavailable to testify in person.
- e) Testimony is recorded and may be transcribed when necessary.

10.3. Evidence

- a) The hearing officer shall determine the evidence based upon the charges and specifications set forth by the appointing authority in the appropriate

documents. Additional evidence beyond the scope of the charges shall not be considered.

- b) An employer or employee's past performance by way of an act or a failure to act may be shown by competent evidence.
- c) Reports, evaluations, and other written evidence may be considered only upon a showing that the parties were made aware of the contents of the material.
- d) The hearing officer shall consider the objection of either side to the introduction of evidence. Competence and relevance must be the primary test in ruling on objections.
- e) All documents and exhibits offered into evidence at the hearing must be marked before submission in the following manner: employee/petitioner shall use numbers, employer/respondent shall use letters. Each party to the hearing must bring four complete copies of materials to the hearing.
- f) Any item offered into evidence must be properly authenticated and, if received, must be marked by the hearing officer or clerk with a distinguishing number or letter. The representative for the opposing party is entitled to examine the exhibit when it is offered.
- g) Technical rules of evidence do not apply at the hearing.
- h) The hearing officer shall return all documents and materials related to a case to the clerk within seven business days from the date of the decision.

11. FINDINGS AND DECISION

- 11.1. The hearing officer shall make no assumptions of innocence or guilt but shall be guided in his or her decision by the weight of the evidence as it appears to him or her at the hearing.
- 11.2. At the conclusion of the hearing the hearing officer shall take the case under submission and shall render his or her decision in writing, including findings of fact and conclusions of law and opinions.
- 11.3. If the hearing officer determines that the dismissal, demotion or suspension was without just cause as provided in NRS 284.385, the action must be set aside and the employee reinstated with full pay for the period of dismissal, demotion or suspension. The hearing officer may determine the reasonableness of the disciplinary actions and recommend appropriate levels of discipline, but only the appointing authority has the power to prescribe the actual discipline imposed on a permanent classified employee.

- 11.4. In a case regarding alleged reprisal or retaliatory action for reporting improper governmental action if the hearing officer determines that the action taken was a reprisal or retaliatory action, he or she may issue an order directing the proper person to desist and refrain from engaging in such action. The hearing officer shall file a copy of his or her decision with the Governor or any other elected State officer who is responsible for the actions of that person.
- 11.5. The hearing officer shall notify the parties in writing of his or her decision, findings and recommendations within 30 days from the date of the hearing.
- 11.6. The decision of the hearing officer is binding on the parties.
- 11.7. A petition for rehearing or reconsideration must be filed with the hearing officer within 15 days after the date of service of the hearing officer's decision. An order granting or denying the petition must be served on all parties at least five days before the expiration of the time for filing the petition for judicial review. If the petition is granted, the subsequent order shall be deemed the final order for the purpose of judicial review.
- 11.8. Any petition for judicial review of the decision of the hearing officer must be filed in accordance with the provisions of chapter 233B of NRS.