

**PROPOSED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R083-98

June 22, 1998

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

AUTHORITY: §§ 2-15, NRS 501.181.

Section 1. Chapter 501 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *“Commission” means the board of wildlife commissioners.*

Sec. 3. *“Division” means the division of wildlife of the state department of conservation and natural resources.*

Sec. 4. *“Petitioner” means a person who requests a hearing before the commission pursuant to NAC 501.150 and sections 2 to 13, inclusive, of this regulation.*

Sec. 5. *NAC 501.150 and sections 2 to 13, inclusive, of this regulation apply to all hearings before the commission regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters.*

Sec. 6. *1. A petitioner may be represented by an attorney who:*

(a) Is licensed to practice law in this state; and

(b) Signs the statement described in subsection 2.

2. *An attorney shall not represent a petitioner in a hearing before the commission unless the attorney has signed a statement provided by the commission that requires the attorney to:*

(a) Ensure that his conduct complies with the Nevada Rules of Professional Conduct.

(b) Act in a courteous manner that is conducive to the proper functioning of the commission.

(c) Withdraw from representing the petitioner only:

(1) After the attorney has filed a request with the commission to withdraw which specifies his reasons for withdrawal and the commission grants his request to withdraw; or

(2) Upon the order of a court of competent jurisdiction on the application of the attorney or his client.

3. *The commission may report to the State Bar of Nevada any conduct by the attorney for a petitioner that is in violation of the Nevada Rules of Professional Conduct.*

Sec. 7. 1. *A person appearing before the commission shall act in a courteous manner that is conducive to the proper functioning of the commission.*

2. *The commission may take any action that it determines is necessary to maintain order during a hearing, including, without limitation:*

(a) Excluding the petitioner or his attorney from the hearing;

(b) Excluding a witness from the hearing; and

(c) Limiting the taking of testimony and presentation of evidence during the hearing.

Sec. 8. 1. *Except as otherwise provided in subsection 2, a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters*

501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters will be conducted by the commission as a hearing de novo.

2. At a hearing conducted pursuant to NRS 501.1816, the commission will:

(a) Allow to be presented only evidence that is in the record submitted by the parties to be presented; and

(b) Consider only allegations of procedural error committed by the division.

Sec. 9. *1. The commission will limit discovery for a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters to evidence that is relevant and admissible pursuant to section 8 of this regulation.*

2. The petitioner and the division may request, in writing, relevant information from the other party, including, without limitation:

(a) The name and address of each witness;

(b) Copies of all documents that will be offered as evidence at the hearing; and

(c) A description of any testimony and other evidence that will be offered at the hearing.

3. A party shall not request information pursuant to subsection 2 with the intent to harass the other party or to delay the proceedings.

Sec. 10. *1. The date of a hearing may be continued by:*

(a) A written stipulation from the petitioner and the division; or

(b) A ruling by the commission on a motion to continue made by the petitioner or the division.

2. *The commission will not grant a motion to continue a hearing unless the commission determines:*

(a) There is good cause to continue the hearing; and

(b) A continuance will not prejudice the nonmoving party.

Sec. 11. 1. *The failure of a party to appear at a hearing will result in a default judgment in favor of the party who appeared at the hearing.*

2. *The party against whom a default judgment was entered pursuant to this section may file a written request for reconsideration with the commission not later than 10 days after the date of the hearing.*

3. *The written request must set forth the reasons by which the party alleges there is good cause for a new hearing.*

4. *The commission may withdraw its default judgment and schedule a new hearing.*

Sec. 12. 1. *Except as otherwise provided in subsection 2, the commission will use the following procedure, in the order set forth in paragraphs (a) to (j), inclusive, for a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters:*

(a) The hearing will be called to order by the chairman of the commission.

(b) The parties and their attorneys will enter their appearances on the record.

(c) The petition, notice and answer, if any, will be entered into evidence.

(d) The commission will determine if any of the witnesses that a party has requested be excluded from the hearing will be excluded.

(e) The commission will consider any:

(1) Preliminary motions;

(2) Stipulations; and

(3) Proposed orders that the division and the petitioner have agreed to pursuant to a settlement.

(f) The division will present its evidence and then be cross-examined by the petitioner and questioned by the commission.

(g) The petitioner will present its evidence and then be cross-examined by the division and questioned by the commission.

(h) The division and petitioner will present any rebuttal evidence and then be cross-examined by the other party and questioned by the commission on issues limited to the rebuttal evidence.

(i) Closing arguments will be presented by the division and then by the petitioner.

(j) The commission will deliberate and then render orally its order with separately stated findings of fact and conclusions of law.

2. The commission may deviate from the order set forth in subsection 1 and allow or limit questioning to elicit all relevant, nonrepetitive testimony and evidence.

3. The division has the burden of proof in a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters.

Sec. 13. *1. The official record of a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters will serve as the order of the commission, unless otherwise stated by the commission during the hearing.*

2. A party may request a transcription of the official record of the hearing. The transcription must be produced at the expense of the requesting party.

3. A party may request a copy of the order of the commission as transcribed from the official record of the hearing.

Sec. 14. NAC 501.010 is hereby amended to read as follows:

501.010 As used in this chapter, unless the context otherwise requires, [**“division” means the division of wildlife of the state department of conservation and natural resources.**] *the words and terms defined in sections 2, 3 and 4 of this regulation, have the meanings ascribed to them in those sections.*

Sec. 15. NAC 501.150 is hereby amended to read as follows:

501.150 *1. A [licensee] person must request a hearing before the commission within [15] 30 days after he receives a notice from the [commission] division pursuant to subsection 3 of NRS 233B.127 [;] that his license or permit will be denied, revoked or suspended; otherwise , his right to the hearing shall be deemed waived. The date of receipt of the notice from the division that the license or permit will be denied, revoked or suspended shall be deemed to be:*

(a) The date that is indicated on the signed certified mail receipt; or

(b) If the person refuses to accept delivery of the notice, 3 days after the date the certified mail has been refused by the person.

2. The hearing must be requested on a form provided by the division.

3. The division shall mail a notice of hearing that complies with the provisions of NRS 233B.121 not less than 20 days before the date of the hearing. There is a rebuttable presumption that the notice of hearing has been received by a petitioner 10 days after the date the notice was deposited in the United States mail.

4. Any contention that improper notice was given by the division shall be deemed waived unless the contention is raised at the hearing.

5. The division may grant a stay of its decision to deny, revoke or suspend the license or permit pending the hearing before the commission if the division determines that:

(a) There is good cause to stay its decision; and

(b) A stay will not have a detrimental impact on wildlife.