

**PROPOSED REGULATION OF
THE STATE CONTROLLER**

LCB File No. R117-02

August 15, 2002

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

AUTHORITY: §§1-27, NRS 353C.190.

Section 1. Chapter 353C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.

Sec. 2. 1. *An agency may submit to the state controller a request to offset any amount due the agency from a debtor against any amount due that debtor from any agency.*

2. The request must be submitted in the format provided by the state controller.

3. The agency shall verify and certify the accuracy of the name and address of the debtor and the amount of the debt, and shall immediately notify the state controller if the agency discovers that any of the information is incorrect.

Sec. 3. *Except as otherwise provided in section 6 of this regulation, not later than 3 working days after receiving a request to offset from an agency pursuant to section 2 of this regulation, the state controller will:*

1. Send written notice to the debtor that the agency has requested the offset and that the debtor has 10 days after the date of the notice in which to request a hearing before the state controller to contest the offset. The notice will:

(a) Be sent by United States mail to the address of the debtor provided by the agency;

(b) Inform the debtor of the method by which he can request the hearing; and

(c) Inform the debtor that the authority for the offset is set forth in NRS 353C.190 and sections 2 to 6, inclusive, of this regulation, and that the hearing will be held in accordance with the provisions of sections 7 to 27, inclusive, of this regulation.

2. Suspend any payment due the debtor from any agency.

3. Notify the requesting agency and each agency processing a payment to the debtor that the payment has been intercepted and is being held for potential offset.

Sec. 4. *If the debtor fails to request a hearing within 10 days after the date of the notice sent pursuant to section 3 of this regulation, the state controller will:*

1. Process the offset; and

2. Except as otherwise provided in section 6 of this regulation, transfer an amount equal to the amount due the debtor from an agency from the appropriate account of that agency to the appropriate account of the agency that requested the offset.

Sec. 5. *If two or more agencies submit requests for an offset with regard to the same debtor, the amount transferred to each agency pursuant to section 4 of this regulation will be prorated based on:*

1. The amount of the original debt due from the debtor to each agency; and

2. Any additional interest and penalties due from the debtor to each agency.

Sec. 6. *1. The state controller will not offset:*

(a) Any amount due a debtor pursuant to a program of public assistance or any other program for which the welfare division of the department of human resources is responsible;

or

(b) Any amount due a debtor who is in bankruptcy.

2. As used in this section, “public assistance” has the meaning ascribed to it in NRS 422.050.

Sec. 7. As used in sections 7 to 27, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 8, 9 and 10 of this regulation have the meanings ascribed to them in those sections.

Sec. 8. “Hearing” means a hearing before the state controller concerning a requested offset pursuant to sections 2 to 6, inclusive, of this regulation.

Sec. 9. “Petitioner” means a person who requests a hearing.

Sec. 10. “Staff” means the staff of the office of the state controller.

Sec. 11. 1. Sections 7 to 27, inclusive, of this regulation:

(a) Govern the practice and procedure in a hearing.

(b) Will be liberally construed to secure the just, speedy and economical determination of all issues presented in a hearing.

2. The state controller may permit deviation from the rules set forth in sections 7 to 27, inclusive, of this regulation in specific cases if:

(a) Good cause appears for the deviation;

(b) The deviation is not contrary to a specific statute; and

(c) The deviation is stipulated to by all parties of record.

Sec. 12. The scope of a hearing excludes review of the final determination of the amount due an agency from the petitioner.

Sec. 13. All pleadings, including, without limitation, complaints, petitions, answers, briefs, motions, affidavits and applications, must be addressed to the state controller. All

pleadings shall be deemed to be officially received by the state controller when a true copy of the paper or document, properly addressed and stamped, is deposited in the United States mail.

Sec. 14. *Oral evidence will be taken only upon oath or affirmation administered by the state controller. Before testifying, a person must swear or affirm that the testimony he is about to give will be the truth, the whole truth and nothing but the truth.*

Sec. 15. *With all documents required to be served, an acknowledgment of service or a certificate in substantially the following form must be included:*

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by mailing a copy thereof, properly addressed, with postage prepaid, to)

Dated at, this(day) of(month) of(year)

FLUSH

Signature

Sec. 16. *If the petitioner wishes to have a transcript of the hearing, he must furnish the reporter, pay for the transcript and deliver a copy of the transcript to the state controller within 20 days after requesting a rehearing or filing a petition for judicial review of the matter pursuant to chapter 233B of NRS.*

Sec. 17. *A person appearing in a hearing shall conform to the recognized standards of ethical and courteous conduct.*

Sec. 18. *At a hearing, the petitioner and staff may:*

1. Call and examine witnesses.

2. *Introduce relevant exhibits.*
3. *Cross-examine opposing witnesses on any relevant matter, even if that matter was not covered in the direct examination.*
4. *Impeach any witness regardless of which party first called him to testify.*
5. *Offer rebuttal evidence.*
6. *Call any person who, because of his relationship to any other party, may be an adverse witness, and examine him as an adverse witness.*

Sec. 19. 1. *A party may appear at a hearing:*

- (a) *In person;*
- (b) *By an attorney, accountant or other authorized representative; or*
- (c) *As provided in subsection 2.*

2. *If a party is not a natural person, the party may appear at a hearing:*

- (a) *If a partnership, by a partner.*
- (b) *If a corporation, by an officer or a regular employee.*
- (c) *If a municipal corporation, by an officer, agent or employee.*
- (d) *If an unincorporated association, by an officer or employee.*

3. *An attorney who is not a member of the State Bar of Nevada may represent a party at a hearing if the attorney is otherwise authorized to practice law in this state pursuant to the rules of the supreme court.*

Sec. 20. 1. *Except as otherwise provided in subsection 3, notice of the place, date and hour of a hearing will be served at least 15 days before the date set for the hearing.*

2. *A hearing will be held at the office of the state controller in Carson City, Nevada, or at such other place in this state as may be designated in the notice of hearing.*

3. A hearing date may be set with less than 15 days' notice if the petitioner and the staff agree in writing.

Sec. 21. The petitioner and the staff shall each submit a prehearing statement to the state controller at least 5 days before the date of a hearing. The prehearing statement must include a statement of the issues to be presented and a list of witnesses and evidence to be presented at the hearing.

Sec. 22. The state controller retains discretion:

- 1. To grant continuances or recesses, both before and during a hearing; and*
- 2. If a party fails to appear at the time and place set for a hearing, to dismiss the proceeding with or without prejudice, or to recess the hearing for a specified period to enable the party to attend.*

Sec. 23. 1. The petitioner has the burden of proof in a hearing.

2. Unless otherwise ordered by the state controller in a specific case, evidence will be received in the following manner:

- (a) Brief orientation by the staff;*
- (b) Presentation of evidence by the petitioner;*
- (c) Presentation of evidence by the staff; and*
- (d) Presentation of rebuttal evidence by the petitioner.*

Sec. 24. 1. A hearing will not be conducted according to the technical rules of evidence. The state controller may allow the admission of any relevant evidence, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.

2. Hearsay evidence may be admitted for the purpose of supplementing or explaining other evidence, but it is not sufficient to support findings of fact unless it would be admissible over objection in civil actions.

3. Neither irrelevant, cumulative, unduly repetitious nor incompetent evidence, as that term is used in civil trials, is admissible, with the exception of hearsay evidence as provided in subsection 2.

4. The parties may, by written stipulation, agree that certain specified evidence may be admitted, even though the evidence would otherwise be subject to objection.

5. The rules of privilege will be applied as they are applied in civil actions.

6. The state controller or any party to the hearing may cause the depositions of witnesses to be taken in the manner prescribed by the Nevada Rules of Civil Procedure for depositions in civil actions.

7. The affidavit of any person may be admitted in evidence if all the parties stipulate and consent to its admission.

Sec. 25. *The state controller may take official notice of the following matters:*

1. Rules, regulations, official reports, decisions and orders of the state controller and any regulatory agency of this state.

2. Matters of common knowledge and technical or scientific facts of established character.

3. An official document properly introduced into the record of a hearing, if:

(a) The document is pertinent;

(b) Proper and definite reference to the document is made by the party offering it; and

(c) The document is published and generally circulated so that all the parties at the hearing have an opportunity to examine it and present rebuttal evidence.

4. Matters which may be judicially noticed by the courts of this state.

Sec. 26. 1. The state controller may order briefs to be filed in a hearing within a specific period.

2. Briefs must be filed with the state controller and be accompanied by an acknowledgment of or an affidavit showing service on all other parties of record.

Sec. 27. 1. After the conclusion of the evidentiary portion of a hearing, the state controller will prepare findings of fact, conclusions of law and a final decision on the issues presented in the hearing.

2. The state controller will serve a copy of the findings of fact, conclusions of law and decision upon all parties of record.