

**REVISED PROPOSED REGULATION OF
THE LABOR COMMISSIONER**

LCB File No. R134-03

November 12, 2003

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

AUTHORITY: §§1-17 and 22-57, NRS 233B.050 and 607.160; §§18-20, NRS 233B.120 and 607.160; §21, NRS 233B.100 and 607.160.

Section 1. Chapter 607 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this regulation.

Sec. 2. *“Applicant” means a person who is applying for any right or authority from the Commissioner.*

Sec. 3. *“Commissioner” means the Labor Commissioner or his authorized representative.*

Sec. 4. *“Complainant” means a person who has filed a complaint or a claim for wages with the Commissioner. The term includes the Commissioner if he brings a complaint on his own motion.*

Sec. 5. *“Determination” means a proposed finding by the Commissioner as to whether a violation of any statute or regulation subject to his jurisdiction has occurred.*

Sec. 6. *“Intervener” means a person whose petition to intervene in a proceeding has been granted by the Commissioner pursuant to NAC 607.110.*

Sec. 7. *“Party” means an applicant, petitioner, complainant, respondent or intervener.*

Sec. 8. *“Person” means a natural person, partnership, association, corporation or other public or private entity.*

Sec. 9. *“Petitioner” means a person who has petitioned for affirmative relief, but who is not a complainant or applicant.*

Sec. 10. *“Respondent” means a person:*

- 1. Against whom a complaint has been filed;*
- 2. Against whom a determination has been issued; or*
- 3. Who has filed with the Commissioner an objection to a determination.*

Sec. 11. *1. The Commissioner may inquire into and investigate possible violations of law in all matters relating to his duties.*

2. If, after an inquiry or investigation has been completed, the Commissioner concludes that a violation of any statute or regulation subject to his jurisdiction may have occurred, the Commissioner will issue a determination pursuant to section 12 of this regulation to the employer or other person who is the subject of the inquiry or investigation.

Sec. 12. *1. A determination issued by the Commissioner will contain:*

- (a) A clear and plain statement of each alleged violation;*
- (b) A citation to the statute or regulation alleged to have been violated;*
- (c) The relevant facts;*
- (d) If applicable, any fines, penalties or other relief being proposed by the Commissioner;*
and
- (e) Notice that the employer or other person who was the subject of the inquiry or investigation may object to the determination pursuant to section 13 of this regulation.*

2. The Commissioner will cause a copy of the determination to be served by mail upon each party.

3. The employer or other person to whom a determination is issued may:

(a) If he does not object to the matters set forth in the determination, resolve the matter by forwarding to the Commissioner an amount equal to any fines and penalties, and complying with the conditions of any other relief, proposed by the Commissioner in the determination; or

(b) If he objects to the matters set forth in the determination, file a written objection to the determination with the Commissioner pursuant to section 13 of this regulation.

4. If the employer or other person to whom a determination is issued fails to respond to the determination as provided in subsection 3, the Commissioner may issue an order affirming the determination. If the Commissioner issues such an order, the Commissioner will serve a copy of the determination and order by certified mail on the employer or other person to whom the determination was issued and on each complainant in the matter. An order issued by the Commissioner pursuant to this subsection constitutes the final order of the Commissioner on the matter.

Sec. 13. *1. An employer or other person to whom a determination has been issued may file a written objection to the determination with the Commissioner within 15 days after the date of service of the determination to request a hearing on the matter.*

2. The written objection must be accompanied by a short statement that identifies the specific findings within the determination upon which the objection is based and facts to substantiate the objection.

3. Within 15 days after the last date on which an objection may be filed, the Commissioner will:

(a) Schedule a hearing on the matter if:

(1) The objection is timely filed and the Commissioner determines that the objection is not frivolous or lacking merit; or

(2) The Commissioner determines that a hearing on the matter is merited on other grounds; or

(b) Dismiss the objection and issue an order affirming the findings and proposed penalties set forth in the determination. Such an order constitutes the final order of the Commissioner on the matter.

Sec. 14. *1. Upon the filing with the Commissioner of a claim for wages, the Commissioner will review the claim to determine whether to take jurisdiction of the claim.*

2. If the Commissioner, after reviewing the claim and conducting such further inquiry as he deems necessary, determines that the complainant has the ability to employ private counsel or that the information submitted with the claim is insufficient to substantiate the claim, the Commissioner may decline to take jurisdiction of the claim or may return the claim to the complainant for further information necessary to substantiate the claim.

3. If the Commissioner takes jurisdiction of the claim, the Commissioner will issue a notice of claim for wages to the employer who is the subject of the claim and cause a copy of the notice of claim for wages to be served upon the employer.

4. A notice of claim for wages will set forth the claim of the employee and include:

(a) The name of the employer;

(b) The name of the employee;

(c) A copy of the claim for wages;

(d) A citation to the statute or regulation alleged to have been violated;

(e) The hourly wage or commission rate claimed by the employee;

(f) The wages alleged to be owed to the employee;

(g) The basis on which the wages alleged to be owed to the employee were calculated;

(h) Any penalties proposed by the Commissioner; and

(i) Notice to the employer that he may object to the notice of claim for wages.

5. Upon receiving a notice of claim for wages pursuant to this section, the employer may:

(a) If he does not object to the claim, settle the claim by forwarding to the Commissioner for disbursement to the employee the amount due the employee, including any penalties, as set forth in the notice of claim for wages; or

(b) If he objects to the claim, provide written notice of his objection to the Commissioner within 15 days after the date of service of the notice of claim for wages. The written notice must provide the specific reasons upon which the employer is objecting to the claim and the facts that substantiate those reasons.

6. If the employer fails to respond to the notice of claim for wages by either settling or objecting to the claim as provided in subsection 5, the Commissioner may issue a determination to the employer based on the facts as set forth in the claim. If the Commissioner issues such a determination, the Commissioner will cause service of the determination to be effected in accordance with the provisions of subsection 2 of section 12 of this regulation.

Sec. 15. *1. Upon receiving written notice from an employer of his objection to a notice of claim for wages, the Commissioner will commence an investigation into the facts and circumstances in dispute to determine whether a violation of chapter 608 of NRS or any regulation adopted pursuant thereto has occurred in the course of an employment relationship.*

2. The Commissioner may request from the parties to the dispute any information that the Commissioner believes is necessary to determine the facts of the dispute. If any party fails to

provide such information as requested, the Commissioner may choose to disregard that information in any future proceeding concerning the claim.

3. Upon completing the investigation, the Commissioner will issue a determination, and cause service thereof to be effected, pursuant to section 12 of this regulation.

Sec. 16. 1. If any party disputes a claim or complaint, the Commissioner may require the parties to appear before him at a prehearing conference at a time and place designated by the Commissioner to establish the issues to be resolved at the hearing and discuss the settlement of the matter.

2. The Commissioner may enter reasonable orders governing the conduct of the prehearing conference and, for good cause, allow a party to appear via telephone.

3. The parties may be represented by counsel at the prehearing conference.

4. The parties shall present all evidence then known to them that substantiates their respective positions during the prehearing conference.

5. A prehearing conference conducted pursuant to this section may not be recorded.

6. Offers of settlement discussed at the prehearing conference may not be used as an admission at any subsequent hearing, and the Commissioner will so inform the parties at the beginning of the prehearing conference.

7. At the prehearing conference, the parties shall make a good faith effort to resolve the matter through settlement or stipulation.

8. If the Commissioner determines that the matter cannot be resolved at the prehearing conference, he may issue a determination in the matter pursuant to section 12 of this regulation.

Sec. 17. *After holding a hearing on a determination issued by the Commissioner, the Commissioner will enter a decision in accordance with NRS 607.215.*

Sec. 18. *The Commissioner will not render an oral advisory opinion to a request for an advisory opinion. An oral response, including, without limitation, a response given over the telephone, by a member of the staff of the Commissioner is not a decision or an official advisory opinion of the Commissioner.*

Sec. 19. *1. Except as otherwise provided in subsection 3, a person may request that the Commissioner issue an advisory opinion concerning the applicability of a statute, regulation or decision of the Commissioner.*

2. A request for an advisory opinion must be in writing and set forth:

(a) The name and address of the person requesting the advisory opinion;

(b) A clear and concise statement of the specific question for which the advisory opinion is being sought; and

(c) A statement of the facts that support the advisory opinion being sought.

3. A person may not request an advisory opinion concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding in which the person is a party.

4. The Commissioner will review a request for an advisory opinion and issue a response within 30 days after receiving the request.

5. An advisory opinion issued by the Commissioner will be limited to the facts and circumstances set forth in the request.

Sec. 20. *1. Except as otherwise provided in subsection 3, a person may file a petition with the Commissioner requesting that he issue a declaratory order concerning the applicability of a statute, regulation or decision of the Commissioner.*

2. A petition for a declaratory order must include:

(a) The name and address of the petitioner;

(b) The reason for requesting the declaratory order;

(c) A statement of the facts that support the petition for a declaratory order; and

(d) A clear and concise statement of the question or matter to be decided by the Commissioner.

3. A person may not file a petition for a declaratory order concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding in which the person is a party.

4. The Commissioner may refuse to review a petition that requests the issuance of a declaratory order if the original petition is not accompanied by two copies of the petition as required by NAC 607.150 or the petition does not contain the information required by subsection 2.

5. The Commissioner may:

(a) Conduct a hearing to determine issues of fact or to hear arguments relating to a petition for a declaratory order and may enter reasonable orders that govern the conduct of the hearing.

(b) Request that the petitioner provide additional information or arguments relating to the petition.

(c) Issue a declaratory order based on the contents of the petition and any material submitted with the petition.

(d) Consider relevant decisions that have been issued by the Commissioner or any other entity which apply or interpret the statute, regulation or decision in question.

(e) Consider any other information he determines is relevant to the question or matter to be decided by the Commissioner.

(f) Enter any reasonable order to assist his review of the petition.

6. The Commissioner will maintain a record of the declaratory order that is indexed by subject matter and will mail a copy of the declaratory order to the petitioner within 60 days after:

(a) The petition is filed;

(b) A hearing is conducted concerning the petition; or

(c) Any additional information or written argument is received by the Commissioner,

↪ whichever occurs later.

Sec. 21. *1. Any person who wishes to petition for the adoption, filing, amendment or repeal of a regulation of the Commissioner must file with the Commissioner the original and two copies of the petition as required by NAC 607.150.*

2. A petition for the adoption, filing, amendment or repeal of a regulation must include:

(a) The name and address of the petitioner;

(b) A clear and concise statement, including, if applicable, the proposed language, of the regulation to be adopted, filed, amended or repealed;

(c) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation; and

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The Commissioner may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if:

(a) The original petition is not accompanied by two copies of the petition; or

(b) The petition does not contain the information required by subsection 2.

4. The Commissioner will notify the petitioner in writing of his decision with regard to the petition within 30 days after the petition is filed.

Sec. 22. The representation of a party in any proceeding before the Commissioner is subject to the following:

1. A party may represent himself or designate one of his employees to represent him.

2. An attorney representing a party must be either a member in good standing of the State Bar of Nevada or associated with such a member of the State Bar of Nevada.

3. Upon the request of a party and a showing of good cause, the Commissioner may permit any other person the party designates to represent the party.

4. A representative wishing to withdraw from a proceeding before the Commissioner must:

(a) Provide to the Commissioner and to each party to the proceeding written notice of the intent of the representative to withdraw; and

(b) Provide to the Commissioner the current address and telephone number of the party from whose representation the representative wishes to withdraw.

Sec. 23. If it appears to the Commissioner that a complainant can afford to employ private counsel, the Commissioner may inquire into the financial condition of the complainant to determine whether to take jurisdiction of the matter.

Sec. 24. 1. *Except as otherwise provided in subsection 2, if it appears to the Commissioner that a complainant has relief under the terms of a collective bargaining agreement, the Commissioner may decline to take the matter under consideration until all remedies under the collective bargaining agreement have been exhausted.*

2. *If the complainant clearly demonstrates that the relief provided under the collective bargaining is inadequate or unavailable, the Commissioner will take jurisdiction of the matter.*

Sec. 25. *Except as otherwise provided by specific statute, the Commissioner will not accept any claim or complaint based on an act or omission that occurred more than 24 months before the date on which the claim or complaint is filed with the Commissioner.*

Sec. 26. NAC 607.010 is hereby amended to read as follows:

607.010 ~~[1.—This regulation governs]~~ *The provisions of this chapter govern* all practice and procedure before the ~~[Labor]~~ Commissioner, *including, without limitation*, whenever he is ~~[acting to adopt]~~ *adopting* regulations, *issuing declaratory orders, conducting inquiries and investigations* or ~~[to determine]~~ *determining* contested cases.

~~[2.—This regulation applies to the State Apprenticeship Council whenever it acts to adopt regulations or hold hearings regarding alleged violations of an apprenticeship agreement.]~~

Sec. 27. NAC 607.020 is hereby amended to read as follows:

607.020 As used in ~~[NAC 607.010 to 607.630, inclusive,]~~ *this chapter*, unless the context otherwise requires, the words and terms defined in ~~[this section]~~ *sections 2 to 10, inclusive, of this regulation* have the meanings ascribed to them in ~~[this section]~~.

~~—1.—“Applicant” means a person who is applying for any right or authority from the Commissioner or Council.~~

~~—2.—“Commissioner” means the Labor Commissioner.~~

~~—3. “Complainant” means a person who has complained to the Commissioner or Council of any act or person, and includes the Commissioner or Council if either of them brings the complaint on its own motion.~~

~~—4. “Council” means the State Apprenticeship Council.~~

~~—5. “Interested party” means a person who may be affected by the order or decision in a proceeding, but who does not seek to participate in the proceeding.~~

~~—6. “Person” means a natural person, partnership, association, corporation or other entity, public or private.~~

~~—7. “Petitioner” means a person who has petitioned for affirmative relief, but who is not a complainant.~~

~~—8. “Regulation” means NAC 607.010 to 607.630, inclusive.~~

~~—9. “Respondent” means a person against whom a complaint has been filed or of whom an investigation is being conducted.]~~ *those sections.*

Sec. 28. NAC 607.030 is hereby amended to read as follows:

607.030 ~~[This regulation]~~ *The provisions of this chapter* will be liberally construed to secure *the* just, speedy and economical determination of all issues presented to the Commissioner . ~~[or the Council.]~~

Sec. 29. NAC 607.040 is hereby amended to read as follows:

607.040 ~~[In]~~ *Notwithstanding any provision of this chapter to the contrary, in* special cases, upon a showing of good cause ~~[.]~~ *or the Commissioner’s own motion,* the Commissioner ~~[or Council will]~~ *may* permit deviation from ~~[these rules if compliance]~~ *the provisions of this chapter with regard to a matter if:*

1. The Commissioner determines that:

(a) *Compliance with those provisions* is impractical or unnecessary ~~[-];~~ or

(b) *Deviation from those provisions would not adversely affect the substantial interests of the parties to the matter; and*

2. *Except when the requested deviation from those provisions is based upon the motion of the Commissioner, the person requesting the deviation provides to the Commissioner a specific reference to each provision of this chapter from which he is requesting deviation.*

Sec. 30. NAC 607.050 is hereby amended to read as follows:

607.050 Formal written communications and documents must be addressed to the ~~[-Labor Commissioner or the State Apprenticeship Council-]~~ *Commissioner* and will be deemed to be officially received only when delivered to the office of the Commissioner . ~~[-for the Council-]~~

Sec. 31. NAC 607.110 is hereby amended to read as follows:

607.110 1. *A person who demonstrates a substantial, but not necessarily a direct, interest in the outcome of a proceeding may petition the Commissioner to intervene in the proceeding.*

2. *A petition to intervene must include:*

(a) *The nature and extent of the interest of the petitioner in the outcome of the proceeding;*

(b) *The potential effect that a decision in the proceeding may have on the interest of the petitioner;*

(c) *Whether any other means are available by which the interest of the petitioner may be protected;*

(d) *The extent to which the interest of the petitioner may be represented by the other parties to the proceeding;*

- (e) The extent to which the participation of the petitioner would assist in the development of a full and complete record;*
- (f) The extent to which the participation of the petitioner would broaden the issues or delay the proceeding;*
- (g) The extent to which the interest of the petitioner differs from the interest of the general public;*
- (h) The extent to which the intervention of the petitioner would serve the public interest;*
- (i) If the petitioner is seeking affirmative relief, the type of and basis for that relief;*
- (j) Whether the petitioner intends to present evidence in the proceeding; and*
- (k) The name and address of the petitioner.*

3. The granting of a petition to intervene is subject solely to the discretion of the Commissioner.

4. At any hearing, all parties ~~[except interested parties]~~, *including, without limitation, interveners*, may enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the proceeding.

~~[2.—Interested parties who may be directly and substantially affected by the proceeding may enter appearances, introduce evidence and, subject to the discretion of the Commissioner or Council, otherwise participate in the proceeding.]~~

Sec. 32. NAC 607.130 is hereby amended to read as follows:

607.130 Every pleading before the Commissioner ~~[or Council]~~ must be designated as an application, petition, complaint ~~[or answer-]~~, *answer, determination or objection to a determination.*

Sec. 33. NAC 607.140 is hereby amended to read as follows:

607.140 Every pleading, except a complaint brought by or on behalf of the Commissioner ,
~~{or Council,}~~ must be signed *and dated* by the party submitting it.

Sec. 34. NAC 607.150 is hereby amended to read as follows:

607.150 1. ~~{An original and eight legible copies of every pleading must be filed with the
Council in all matters before it.~~

~~—2.}~~ An original and two legible copies of every pleading , *other than a complaint brought
by the Commissioner,* must be filed with the Commissioner in all matters before him.

~~{3.—The Council or}~~

2. The Commissioner may direct that the party who filed a pleading make copies of it
available to any other person who has requested copies, if the ~~{Council or}~~ Commissioner first
determines that the person making the request may be affected by the proceeding.

Sec. 35. NAC 607.160 is hereby amended to read as follows:

607.160 ~~{Notices,}~~ *Except as otherwise provided by a specific regulation, notices,
determinations,* findings of fact, opinions and orders of the ~~{Council or}~~ Commissioner, and any
document filed by a party, may be *personally served upon a party or* served by mail. ~~{Service
will}~~ *If served by mail, service shall* be deemed to be complete when a true copy of the
document, properly addressed and with postage paid, is deposited in the United States mail.

Sec. 36. NAC 607.170 is hereby amended to read as follows:

607.170 Each document ~~{which}~~ *that* is required to be served must contain an
acknowledgment of service or certificate of mailing.

Sec. 37. NAC 607.180 is hereby amended to read as follows:

607.180 The Commissioner ~~[or Council]~~ may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed , and defects which do not affect a substantial right of a party will be disregarded.

Sec. 38. NAC 607.200 is hereby amended to read as follows:

607.200 1. Upon ~~[his own initiative or upon]~~ the *filing with the Commissioner of an administrative* complaint ~~[of any interested]~~ *by any* person, the Commissioner may investigate *and conduct hearings concerning* possible violations of law in all matters relating to his duties.

2. *The complaint must include:*

- (a) The full name and address of the complainant;*
- (b) The full name and address of the respondent;*
- (c) A clear and concise statement of facts sufficient to establish that an alleged violation of law occurred, including, without limitation, the date, time and place of the alleged violation and the name of each person involved;*
- (d) A citation to the statute or regulation alleged to have been violated; and*
- (e) The relief requested by the complainant.*

3. The complaint must be in writing and signed ~~[and verified]~~ by the person making it. Two copies of the complaint must be filed with the Commissioner ~~[within 24 months after the last act complained of, unless a shorter period is required by law.~~
~~—3.]~~ *as required by NAC 607.150.*

4. *The complaint must include a certification that the facts stated in the complaint are true to the best knowledge and belief of the complainant.*

5. *The complainant shall serve a copy of the complaint on the respondent and every other party identified in the complaint.*

6. If, from the complaint, ~~[or from other official records of the Commissioner,]~~ it appears *to the Commissioner* that the charges may be well founded, the Commissioner will send written notice to the ~~[person charged]~~ *respondent* at least ~~[14]~~ *15* days before the date fixed for the hearing. The notice must itemize the charges and set forth the date of the hearing.

Sec. 39. NAC 607.210 is hereby amended to read as follows:

607.210 1. A respondent ~~[has 10]~~, *within 15* days after being served *with a copy of* a complaint ~~[in which to]~~, *shall* file his answer *to the complaint* with the Commissioner ~~[or Council,]~~ *and serve a copy of the answer on the complainant and every other person who is a party to the proceeding.*

2. Matters *that are* alleged ~~[by way of]~~ *as an* affirmative defense must be separately stated and numbered.

3. If the respondent fails to answer within ~~[10 days, he will be deemed to have denied generally the allegations of the complaint, and except with the consent of all opposing parties and the Commissioner or Council, he may not raise any affirmative defense at the hearing.~~

~~—4. If no answer is filed, the hearing will proceed solely upon the issues set forth in the Complaint, unless the hearing is continued to a future date by order of the Commissioner or Council.]~~ *15 days, the Commissioner may determine that the respondent is in default and issue a decision and order based solely on the facts as presented in the complaint. A decision issued by the Commissioner pursuant to this subsection constitutes the final order of the commissioner on the matter.*

Sec. 40. NAC 607.310 is hereby amended to read as follows:

607.310 1. Hearings of a matter before the Commissioner will be held before the Commissioner or his ~~[duly appointed]~~ *authorized* representative.

2. ~~[Hearings of a matter before the Council will be held before three or more members of the Council.]~~

~~—3.]~~ Notice of the place, date and hour of a hearing must be served at least ~~[20]~~ 15 days before the date set for the hearing.

~~[4.]~~ 3. A hearing ~~[which]~~ *that* has previously been continued may be reset on at least 10 days' notice.

~~[5.]~~ 4. Every hearing will be held at a place in ~~[the State]~~ *this state* designated by the Commissioner ~~[or Council]~~ in the notice of hearing.

Sec. 41. NAC 607.320 is hereby amended to read as follows:

607.320 1. Upon proper application, the Commissioner will issue subpoenas for the attendance of witnesses or the production of documents, books or other records at a hearing conducted by him . ~~[or by the Council.]~~

2. Applications for subpoenas must be made to the Commissioner in writing.

3. Applications for subpoenas for the production of documents, books or other records must be made in writing specifying as clearly as possible the documents, books and records desired.

4. *A party that submits an application for a subpoena must submit a copy of the requested subpoena in a form that is suitable for execution by the Commissioner.*

5. The Commissioner may:

(a) Deny or revoke an unreasonable or oppressive subpoena; or

(b) Grant a subpoena for the production of documents, books or other records upon the condition that the party making the application deposit with the Commissioner enough money to cover the reasonable cost of producing the materials, upon a motion by the respondent to the subpoena at or before the time specified in the subpoena for compliance.

6. If the Commissioner issues a subpoena, the party who requested the subpoena is responsible for the proper service of the subpoena.

Sec. 42. NAC 607.330 is hereby amended to read as follows:

607.330 1. If the complainant or respondent fails to appear at a scheduled hearing and no continuance has been requested or granted, the Commissioner ~~for Council may hear~~ *may:*

(a) Hear the evidence of *the* witnesses who have appeared ; and ~~may proceed to consider the matter and dispose of it on the basis of~~

(b) Consider the evidence before ~~it.~~ *him on the matter.*

2. Any person who failed to appear for a scheduled hearing or to request a continuance because of accident, sickness or other reasonable cause may, within 15 days after the failure, apply to the Commissioner ~~for Council~~ to reopen the proceedings.

3. The Commissioner , ~~for Council,~~ upon finding the cause sufficient and reasonable, will immediately fix a time and place for the hearing and give notice thereof.

4. At the time and place fixed, a hearing will be held at which the person may testify in his own behalf or present other evidence beneficial to his cause.

5. Witnesses who have previously testified need not appear at ~~a second~~ *any subsequent* hearing on the same matter *to have their testimony considered* unless so directed by the Commissioner . ~~for Council.~~

6. The Commissioner may enter reasonable orders governing the conduct of hearings before him.

Sec. 43. NAC 607.340 is hereby amended to read as follows:

607.340 1. *Any person appearing in a proceeding shall conform to recognized standards of ethical and courteous conduct required before the courts of this state.* Every party to a

hearing, his ~~[counsel]~~ *representative* and all spectators shall conduct themselves in a respectful manner.

2. ~~[No person may smoke at a hearing in session unless permitted by the presiding officer.]~~

Contumacious conduct by any person at a hearing before the Commissioner is a ground for the exclusion of the person from the hearing and for the summary exclusion of the person from further participation in the proceedings. The Commissioner will bar any person excluded pursuant to this subsection from attending any further proceedings of the Commissioner unless the Commissioner grants a petition to rescind the exclusion pursuant to subsection 3.

3. *A person excluded from proceedings by the Commissioner pursuant to subsection 2 may petition the Commissioner to rescind the exclusion. The Commissioner will grant the petition if he finds sufficient evidence that the contumacious conduct that led to the exclusion of the person will not reoccur.*

Sec. 44. NAC 607.350 is hereby amended to read as follows:

607.350 The Commissioner ~~[;]~~ *or* his *authorized* representative ~~[or the presiding member of the Council]~~ will call the proceeding to order , ~~[and]~~ take the appearances *of the parties, hear and rule upon showings of direct and substantial interests from interested parties* and make any introductory remarks. ~~[The parties may then make opening statements.]~~

Sec. 45. NAC 607.360 is hereby amended to read as follows:

607.360 ~~[Matters]~~ *Following a statement of the case and consideration of any preliminary matters by the Commissioner, testimony and argument* will be heard at a hearing in the following order ~~[;]~~

~~—1. Opening statements for complainant and respondent.] unless otherwise set forth in the notice of hearing or the Commissioner determines at the time of the hearing that a more expeditious order is warranted:~~

1. *Presentation of any determination made by the Commissioner in the proceeding.*
2. *Examination of the person presenting the determination of the Commissioner.*
3. *Cross-examination of the person presenting the determination of the Commissioner.*
4. Presentation of ~~[complainant's case, followed by cross-examination.~~

~~—3.] the case of the applicant, petitioner or complainant.~~

5. *Examination of the witnesses of the applicant, petitioner or complainant by the Commissioner.*

6. *Cross-examination of the witnesses of the applicant, petitioner or complainant.*

7. Presentation of ~~[respondent's case, if any, followed by cross-examination.~~

~~—4.] the case of the respondent, if any.~~

8. *Examination of the witnesses of the respondent by the Commissioner.*

9. *Cross-examination of the witnesses of the respondent.*

10. Rebuttal testimony by *the* complainant, if any.

~~[5.]~~ 11. Rebuttal testimony by *the* respondent, if any.

~~[6.]~~ 12. Closing arguments ~~[:]~~ *as follows:*

- (a) Argument for *the* complainant.
- (b) Argument for *the* respondent.
- (c) Rebuttal argument for *the* complainant.

Sec. 46. NAC 607.370 is hereby amended to read as follows:

607.370 All testimony to be considered in hearings will be taken under oath. Before taking the witness stand, each person shall swear before the Commissioner ~~for Council~~ to the truthfulness of the testimony ~~he~~ *the person* is about to give in the hearing.

Sec. 47. NAC 607.380 is hereby amended to read as follows:

607.380 1. The Commissioner ~~for the presiding member of the Council~~ may consolidate two or more proceedings into one hearing whenever it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by consolidation.

2. The Commissioner ~~for the presiding member of the Council~~ will determine the order of procedure in a consolidated hearing.

Sec. 48. NAC 607.410 is hereby amended to read as follows:

607.410 1. In conducting an investigation, inquiry or hearing, the Commissioner ~~and Council are~~ *is* not bound by the technical rules of evidence and no informality in any proceeding or in the manner *or order* of taking of testimony invalidates any order, decision or regulation adopted, approved or confirmed by the Commissioner . ~~for Council.~~

2. Rules of evidence used in the courts of this state ~~may~~ *will* be generally followed, but may be relaxed in the discretion of the Commissioner ~~for Council~~ if deviation from the technical rules of evidence will aid in ascertaining the facts.

3. *Evidence admitted at a hearing must be material and relevant to the issues.*

4. If an objection is made to the admissibility of evidence, the evidence may be received but it is subject to any subsequent ruling of the Commissioner . ~~for Council.~~

~~—4.]~~ 5. The Commissioner ~~for Council~~ may, with or without objection, exclude inadmissible, incompetent, cumulative or irrelevant evidence.

~~[5-]~~ 6. A party objecting to the introduction of evidence shall briefly state the grounds of objection at the time the evidence is offered.

~~[6.—Evidence admitted at hearings must be material and relevant to the issues.]~~

Sec. 49. NAC 607.420 is hereby amended to read as follows:

607.420 1. With the approval of the Commissioner , ~~[or the presiding member of the Council,]~~ the parties may stipulate to any fact at issue by written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record.

2. Any stipulation is binding upon all parties to it, and may be treated as evidence at the hearing.

3. The Commissioner ~~[or the presiding member of the Council]~~ may demand proof by requiring evidence of facts stipulated.

Sec. 50. NAC 607.430 is hereby amended to read as follows:

607.430 The Commissioner ~~[, Council]~~ or any party to any proceeding may depose witnesses in the manner prescribed by ~~[law and rule of court for depositions in civil actions.]~~ *the Nevada Rules of Civil Procedure.*

Sec. 51. NAC 607.440 is hereby amended to read as follows:

607.440 The Commissioner ~~[or Council]~~ may, before or during a hearing, and on a proper showing, grant continuances for submission of further proof of any matter, or for any other just cause.

Sec. 52. NAC 607.450 is hereby amended to read as follows:

607.450 1. The Commissioner ~~[or Council]~~ may order briefs to be filed and specify a time limit for their filing.

2. ~~[Eight copies of any requested brief must be filed with the Council in matters before it.]~~

~~—3.]~~ Three copies of any requested brief must be filed with the Commissioner in matters before him.

~~[4.—Each brief must be accompanied by an]~~

3. *An* acknowledgment of service or a certificate of mailing *must accompany each brief* to other parties of record.

~~[5.]~~ 4. Following the filing of briefs and after deciding contested motions, the Commissioner ~~[or Council]~~ may set the matter for oral argument and give reasonable notice to all parties.

Sec. 53. NAC 607.460 is hereby amended to read as follows:

607.460 The Commissioner ~~[or Council]~~ may take official notice of:

1. Rules, regulations, official reports, decisions, and orders of the Commissioner ~~[or Council]~~ and of any regulatory agency of ~~[the State.]~~ *this state;*
2. The contents of decisions, orders, standards or records of the Commissioner ; ~~[or Council.]~~
3. Matters of common knowledge and established technical or scientific facts ~~[.]~~ ; *and*
4. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference if:
 - (a) Proper and definite reference to the documents was made by the party offering them; and
 - (b) The documents are published and generally circulated so that the parties in interest are given an opportunity to examine the documents and present rebuttal evidence.

Sec. 54. NAC 607.510 is hereby amended to read as follows:

607.510 The Commissioner ~~[or Council]~~ will cause a record to be made of all formal hearings. Parties desiring ~~[copies]~~ *a copy* of a transcript may obtain it from the ~~[Labor]~~ Commissioner upon payment of the proper fee.

Sec. 55. NAC 607.520 is hereby amended to read as follows:

607.520 Unless otherwise ordered, a proceeding stands submitted for decision by the Commissioner ~~[or Council]~~ after the taking of evidence, the filing of briefs or the presentation of oral argument required by the Commissioner . ~~[or the presiding member of the Council.]~~

Sec. 56. NAC 607.630 is hereby amended to read as follows:

607.630 Each provision of ~~[NAC 607.010 to 607.620, inclusive,]~~ *this chapter* is hereby declared to be separable and the invalidity of any provision does not affect the validity of any other provision.

Sec. 57. NAC 607.190, 607.530 and 607.610 are hereby repealed.

TEXT OF REPEALED SECTIONS

607.190 Practice rules: Pleadings: Complaints to Council.

1. Upon the complaint of any interested person or upon the motion of any member of the Council, the Council may investigate possible violations of the terms of apprenticeship agreements made under chapter 610 of NRS.

2. A complaint must be stated with sufficient particularity to enable the respondent to prepare a defense.

3. The complaint must be in writing and signed and verified by the person making it, and eight copies must be filed with the Council within 24 months after the last act complained of.

4. If, from the complaint or from other official records of the Council, it appears that the charges may be well founded, the Council will send written notice to the person charged by certified mail at least 14 days before the date set for the hearing. The notice will itemize the charges and set forth the date of the hearing.

607.530 Practice rules: Orders. Orders of the Commissioner or Council will be served by mailing a copy to each party of record or his representative or by personal service. Additional copies of orders may be obtained by making a written request to the Commissioner or Council.

607.610 Practice rules: Judicial review.

1. An order or decision of the Commissioner is a final decision.
2. Any person aggrieved by any determination or action of the Council may appeal to the Commissioner, whose decision on the appeal is a final decision.