

## **SUBCHAPTER 2. CONDUCT OF CONTESTED CASES**

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### **19:42-2.1 Commencement of a contested case**

(a) A contested case shall be commenced at the direction of the Commission or by the filing of one of the following by the Division:

1. A letter report recommending that an application for initial or renewal licensure, registration or qualification should not be granted;
2. A written complaint, which sets forth in ordinary and concise language the charges against a licensee, registrant or applicant and the acts or omissions supporting such charges;
3. A written petition to place a candidate on the exclusion list, which sets forth in ordinary and concise language the grounds for exclusion; or

4. A written complaint seeking forfeiture of winnings or things of value obtained in a gaming transaction by a prohibited person as defined in N.J.A.C. 19:48-3.1.

(b) A filed letter report recommending that an application be granted, or taking no position on an application, will not commence a contested case unless otherwise directed by the Commission.

As amended, effective: 09/05/95

As amended, effective: 10/05/09

### **19:42-2.2 Notice of right to hearing**

(a) When the Commission has been provided with all information necessary for action upon a contested application, complaint or petition for exclusion, the Commission shall serve upon the applicant or respondent a copy of the pleading and a written notice of the right to a hearing and the responsibility to request a hearing, as follows:

1. Complaints shall be served upon a licensee, applicant or registrant either personally or by certified mail;

2. Letter reports regarding a contested application shall be served upon an applicant by ordinary mail;

3. Petitions for exclusion shall be served on the candidate for exclusion personally, by certified mail at the last known address of the candidate for exclusion or by publication daily for one week in a newspaper of general circulation in Atlantic City, New Jersey; and

4. A forfeiture complaint shall be served upon the prohibited person, as defined in N.J.A.C. 19:48-3.1, either personally or by regular mail at the mailing address provided by the prohibited person pursuant to N.J.A.C. 19:48-3.2(b).

As amended, effective: 09/05/95

As amended, effective: 10/05/09

### **19:42-2.3 Request for a hearing**

(a) Any request for a hearing shall be filed with the Commission, with one copy to the Division and each other party, within 30 days of receipt of notice of a petition for exclusion, or within 15 days of receipt of notice of a contested application or complaint. Such request may include a notice of defense which sets forth:

1. Admission or denial of the allegations in whole or in part;
2. Affirmative defenses, new matters or explanations by way of defense; or
3. Any legal objection.

As amended, effective: 09/05/95

### **19:42-2.4 Failure to request a hearing; withdrawal of a request; final action**

(a) If a party fails to timely file a request for a hearing pursuant to N.J.A.C. 19:42-2.3, or withdraws a request for a hearing, the Commission may:

1. Order a hearing on its own motion; or
2. Determine that such action constitutes a waiver of the right to a hearing and admission of all material allegations of fact in the complaint or petition for exclusion or failure to affirmatively demonstrate qualifications for licensure. The Commission may take final action including, without limitation:
  - i. Denial of any pending initial or renewal application;
  - ii. Revocation of a license;
  - iii. Prohibition of direct or indirect business with casino licensees or applicants;
  - iv. Imposition of a monetary penalty;
  - v. Placement on the exclusion list;

vi. Order forfeiture of any winnings or things of value obtained by a prohibited person and seized pursuant to N.J.A.C. 19:48-3.2; or

vii. Other relief that is consistent with the policies of the Act and in the public interest.

As amended, effective: 09/05/95

As amended, effective: 10/05/09

**19:42-2.5 (Reserved)**

As amended, effective: 09/05/95

Repealed, effective: 08/05/96

**19:42-2.6 Transmission to the OAL or designation of a hearing examiner**

(a) Pursuant to N.J.S.A. 5:12-107a, unless the Commission hears a contested case directly, the Chair may refer the matter to the OAL or designate a member of the Commission or other qualified person other than an employee of the Commission to serve as hearing examiner.

(b) If a hearing examiner becomes unavailable at anytime after the commencement of a hearing but prior to the filing of the initial decision, the Chair may appoint another hearing examiner or transfer the contested case to the OAL or the Commission. The Commission or the new hearing examiner may either continue the hearing and render a decision upon the entire record or begin the hearing anew.

As amended, effective: 09/05/95

**19:42-2.7 (Reserved)**

Originally codified as 19:42-2.1

As amended, effective: 09/05/95

Repealed, effective: 08/05/96

### **19:42-2.8 Burden of proof**

(a) The Division shall have the affirmative obligation to establish by a preponderance of the evidence violations of the Act or disqualification pursuant to N.J.S.A. 5:12-86.

(b) The Division shall have the affirmative obligation to establish by a preponderance of the evidence that a candidate for exclusion satisfies the criteria for exclusion set forth in N.J.S.A. 5:12-71 and N.J.A.C. 19:48. In a hearing pursuant to N.J.A.C. 19:48-1.8, the excluded person shall have the affirmative obligation to show cause why he or she should be removed from the list.

(c) The Division shall have the affirmative obligation to establish a reasonable possibility that a candidate for preliminary exclusion satisfies the criteria for exclusion set forth in N.J.S.A. 5:12-71 and N.J.A.C. 19:48.

(d) An applicant or respondent shall have the affirmative obligation to establish by clear and convincing evidence affirmative qualification for licensure.

(e) An applicant or respondent shall have the affirmative obligation to establish by clear and convincing evidence rehabilitation in accordance with N.J.S.A. 5:12-90h and 91d.

(f) The Division, in a hearing seeking forfeiture, shall have the affirmative obligation to establish by a preponderance of the evidence that the respondent is a prohibited person as defined in NJAC 19:48-3.1 and was engaged in a gaming transaction. Any winnings or other things of value resulting from a gaming transaction that are not claimed within six months of the date of the transaction shall be presumed to have been won by a prohibited person who has waived his or her right to a hearing. There shall be a rebuttable presumption that the winnings or things of value seized from the respondent were obtained from engaging in a gaming transaction and therefore subject to forfeiture. In order for the respondent to rebut this presumption the

respondent shall have the affirmative obligation to prove by a preponderance of the evidence that the winnings or things of value, or any portion thereof, were not obtained from engaging in a gaming transaction.

As amended, effective: 09/05/95

As amended, effective: 10/05/09

#### **19:42-2.9 (Reserved)**

As amended, effective: 09/05/95

Repealed, effective: 08/05/96

#### **19:42-2.10 Filings; notices**

(a) An original and five copies of a complaint or petition for exclusion shall be hand-delivered or mailed to the Commission's Division of Licensing, Legal Advisory Unit at the address specified in N.J.A.C. 19:40-3.1(a).

(b) An original and four copies of a letter report shall be hand-delivered or mailed to the Commission's Casino Employee License Information Unit at the address specified in N.J.A.C. 19:40-3.1(a).

As amended, effective: 09/05/95

As amended, effective: 08/05/96

#### **19:42-2.11 Effect of settlement**

(a) If the parties agree to a settlement prior to transmission of the case to a hearing commissioner or the OAL, a written stipulation signed by all parties shall be submitted to the Commission. The settlement shall be scheduled for disposition by the Commission at a public meeting at which the Commission shall:

1. Approve the settlement;
2. Approve the settlement as modified by the Commission with the consent of the parties;

3. Reject the settlement and remand the contested case to be scheduled for further proceedings; or

4. Take such action as the Commission deems appropriate.

(b) No settlement shall be approved by the Commission unless the settlement agreement is voluntary, consistent with the law and fully dispositive of all issues in controversy.

(c) An executed stipulation of settlement shall, upon approval by the Commission, be considered a withdrawal of any hearing request and evidence of informed consent to such final Commission action as described therein.

As amended, effective: 09/05/95

As amended, effective: 08/05/96

#### **19:42-2.11A Wage executions**

(a) The Commission may condition the granting or retention of an employee license or casino service employee registration or the granting of a petition pursuant to N.J.A.C. 19:41-8.9 or 8.10 upon compliance with a court order or a consent agreement with the Division pursuant to which a portion of an applicant's, licensee's, registrant's or petitioner's wages will be withheld as an installment payment against a financial obligation owed to this State or any subdivision thereof.

(b) Any individual who is subject to a Commission order pursuant to (a) above shall:

1. Submit a copy of the Commission order and the relevant court order or consent agreement to his or her current employer and to any future casino employer until the obligation is paid in full; and

2. Notify the Commission and Division when the terms of the court order or consent agreement have been satisfied, including evidence that the obligation has been paid in full. Such notice shall be directed to the Commission's Division of Licensing, Legal Advisory Unit at the address

specified in N.J.A.C. 19:40-3.1(a) and to the Division at the address specified in N.J.A.C. 19:40-3.1(d)1.

As adopted, effective: 10/07/96

**19:42-2.12 Motions for reconsideration; motions to reopen the record; motions for relief**

(a) Any party may, within 10 days after the service of a final Commission order, file a motion for reconsideration which motion may seek to reopen the record. The motion shall be in writing and shall state the grounds upon which relief is sought. The Commission may grant such motion, under such terms and conditions as the Commission may deem appropriate, when the Commission finds just cause for reconsideration of the order based upon legal, policy or factual argument advanced by the movant or raised by the Commission on its own motion.

(b) Any party may, within one year after the service of a final Commission order, file a motion to reopen the record based upon newly discovered evidence. The motion shall be supported by an affidavit of the moving party or counsel showing with particularity the materiality and necessity of the additional evidence and the reason why such evidence was not presented at the original hearing or on a motion for reconsideration pursuant to (a) above. The Commission may grant such motion upon a showing that the newly discovered evidence is material and necessary, that sufficient reason existed for failure to present such evidence and that the evidence is reasonably likely to change the final decision of the Commission. Upon reconsideration, the Commission may modify its decision and order as the additional evidence may warrant.

(c) Any party may, within one year of the service of a final Commission order, file a motion for relief from such an order. The motion shall be in writing and shall state the grounds upon which relief is sought. The Commission may

grant such motion and vacate or modify the order, reopen the record, or grant a hearing pursuant to N.J.S.A. 5:12-107, upon a showing of the following:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Fraud, misrepresentation or other misconduct of an adverse party; or
3. Any other reason consistent with the public policy of the Act and in the interests of justice.

(d) No motion filed pursuant to this section, and no order granting such motion, shall suspend the operation of any final Commission order unless otherwise specified by order of the Commission.

As adopted, effective: 11/15/93

Originally codified as 19:42-2.2

Recodified, effective: 09/05/95