

# **CHAPTER 69B**

## **HEARINGS**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **13:69B-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Final Action" means a decision or order issued by the Director or hearing examiner which may be appealed to the Commission pursuant to N.J.S.A. 5:12-63(1)b.

"Hearing examiner" is the "judge" as defined by the UAPR and shall include the Director, the designee of the Director, or any other qualified person, including an employee of the Division, designated to hear facts and issues relating to a particular matter.

"Exclusion list" is defined at N.J.A.C. 13:69G-1.1.

"Report" means a written report from the Division of Gaming Enforcement setting forth its position on an initial or resubmission license application.

"OAL" means the Office of Administrative Law.

"Party" means any person or entity directly involved in a contested case, including petitioner, respondent, intervenor, or State agency proceeding in any such capacity.

"UAPR" means the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**13:69B-1.2 Applicability of rules**

(a) This chapter shall govern the procedural aspects pertaining to the conduct of all contested cases including:

1. Initial and retention applications for casino service industry licenses;
2. Complaints against casino service industry licensees, casino employee registrants and labor organization registrants seeking revocation of such license or registration;
3. Complaints against licensees and registrants for violations of the Casino Control Act;
4. Complaints seeking forfeiture of cash winnings or anything of value obtained in a gaming transaction by a person prohibited by law from engaging in such transaction; and
5. Petitions to place a candidate on the exclusion list.

(b) Contested cases shall be governed by the UAPR, in addition to the provisions of the Casino Control Act and the rules in this chapter.

(c) To the extent that the Act and the rules in this chapter are inconsistent with the UAPR, the former shall apply.

**13:69B-1.3 Right to a hearing**

(a) The Division shall not deny, refuse to allow retention of or revoke any license or registration or place a candidate on the exclusion list unless it has first afforded the licensee, registrant or candidate for exclusion an opportunity for a settlement conference, followed by a hearing upon failure to reach a settlement with the Division, in accordance with law and the rules of the Division.

(b) When the Division has authority under the Act or the rules of the Division to suspend a license or registration without first holding a hearing, it shall promptly upon exercising such authority afford the licensee or registrant an opportunity for:

1. A settlement conference with the Division; and
2. Upon failure to reach a settlement with the Division, a hearing in accordance with law and the rules of the Division.

(c) This section shall not apply where:

1. The Act provides that the Division is not required to grant a hearing in regard to the refusal to allow retention of a license or registration; or
2. The Division is required by law to refuse to allow retention of a license or registration without exercising any discretion in the matter on the basis of a judgment of a court of competent jurisdiction.

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

### **13:69B-2.1 Commencement of a contested case**

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

1. A report recommending that an application for initial or resubmission licensure, registration or qualification should not be granted or continued;
2. A written complaint or statement of charge, 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. 13:69G-3.1.

(b) A filed 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 Division.

(c) A contested case shall commence incident to a Notice of Violation pursuant to N.J.A.C. 13:69B-2.9 upon:

1. A request of a licensee, registrant, or applicant after failing to enter into a written agreement with the Division to resolve the violation; or
2. The failure of a licensee, registrant, or applicant to timely respond to the Notice of Violation in accordance with N.J.A.C. 13:69B-2.9(c).

**13:69B-2.2 Notice of right to hearing**

(a) The Division 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. 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. 13:69G-3.1, either personally or by regular mail at the mailing address provided by the prohibited person pursuant to N.J.A.C. 13:69G-3.2(b).

**13:69B-2.3 Request for a hearing**

(a) Any request for a hearing before the Division shall be filed with the Division, with one copy to 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 shall 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;
3. All information regarding rehabilitation, where applicable; or
4. Any legal objection to the allegations contained in the petition, contested application or complaint.

(b) A party's request for hearing shall be filed with the Division's Contested Case

Intake Unit at:

1300 Atlantic Avenue  
4th Floor  
Atlantic City, NJ 08401

**13:69B-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. 13:69B-2.3, or withdraws a request for a hearing, the Division 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 qualification or absence of disqualification for licensure or registration. The Division may take final action including, without limitation:
  - i. Denial of any pending initial or resubmission application;
  - ii. Revocation of a license or registration;
  - 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. 13:69G-3.2; or
  - vii. Other relief that is consistent with the policies of the Act and in the public interest.



**13:69B-2.5     Scheduling of settlement conference; purpose of settlement conference;  
multiple settlement conferences**

(a)     Upon a party's request for a hearing, the Division shall schedule a settlement conference at the Division's offices.

(b)     The purposes of the settlement conference are to:

1.       Afford the Division and the applicant or respondent an opportunity to amicably resolve all outstanding issues raised in the Division's letter report, revocation or violation complaint or exclusion or forfeiture petition;
2.       Identify all unresolved issues to be addressed at a hearing; and
3.       Resolve any discovery issues in advance of the hearing.

(c)     In the interests of the efficient administration of a contested case, the Division may schedule additional conferences to achieve either of the purposes in (b) above, but absent extraordinary circumstances, no more than three conferences shall be scheduled.

(d)     All requests to reschedule a settlement conference shall be directed to the Division's Contested Case Intake Unit.

(e)     If an applicant fails to appear for a settlement conference and fails to show good cause within five days of the scheduled date of the settlement conference for his or her failure to appear, the applicant's request for hearing may be deemed withdrawn and the Division may take final action, including, without limitation:

1.       Denial of any pending initial or resubmission application;
2.       Revocation of a license or registration;

3. Prohibition of direct or indirect business with casino licensees or applicants;
4. Imposition of a monetary penalty;
5. Placement on the exclusion list;
6. Order forfeiture of any winnings or things of value obtained by a prohibited person and seized pursuant to N.J.A.C. 13:69G-3.2; or
7. Other relief that is consistent with the policies of the Act and in the public interest.

**13:69B-2.6     Transmission to the OAL or designation of a hearing examiner**

(a)     Upon the failure of the parties to enter into a stipulation of settlement, the matter shall be a contested case and be transmitted to the Director for further proceedings.

(b)     Unless the Director hears a contested case directly, the Director may refer the matter to the OAL or designate a staff member of the Division or other qualified person other than an employee of the Division to serve as hearing examiner.

(c)     A hearing examiner appointed by the Director shall be an Assistant Attorney General or a Deputy Attorney General who is not assigned to the bureau of the Division from which the contested case arises and who shall have had no prior involvement with the contested case.

(d)     If a hearing examiner becomes unavailable at anytime after the commencement of a hearing but prior to the filing of the initial decision, the Director may in his or her discretion hear the matter directly, appoint another hearing examiner or transfer the contested case to the OAL. The Director or the new hearing examiner may either continue the hearing and render a decision upon the entire record or begin the hearing anew.

### **13:69B-2.7 Contested case hearings**

(a) The Director or hearing examiner appointed by the Director shall identify all legal issues unresolved through the settlement conference.

(b) All requests to reschedule a contested case hearing in a case scheduled before the Director or a hearing examiner shall be directed to the Division's Contested Case Intake Unit.

(c) If an applicant fails to appear for a contested case, the applicant's request for hearing may be deemed withdrawn and the Division may take final action, including, without limitation:

1. Denial of any pending initial or resubmission application;
2. Revocation of a license or registration;
3. Prohibition of direct or indirect business with casino licensees or applicants;
4. Imposition of a monetary penalty;
5. Placement on the exclusion list;
6. Order forfeiture of any winnings or things of value obtained by a prohibited person and seized pursuant to N.J.A.C. 13:69G-3.2; or
7. Other relief that is consistent with the policies of the Act and in the public interest.

(d) The Director or a hearing examiner appointed by the Director or an administrative law judge shall have the power and authority to order any person to answer a question or questions or produce evidence of any kind and confer immunity as provided in N.J.S.A. 5:12-107g, in any contested case hearing.

(e) If the applicant or respondent chooses not to testify on his or her own behalf, the Division shall have the right to call the applicant or respondent to testify, and he or she may be questioned as if under cross-examination.

(f) The parties shall complete discovery and supply all discovery materials to be used at the hearing no later than 14 calendar days before the first scheduled date for a hearing. If a party fails to supply complete discovery 14 calendar days before the first scheduled hearing date, the Director or hearing examiner may bar the use at the hearing of any material not provided in a timely manner, including, without limitation:

1. Expert or other testimony;
2. Any documentation; or
3. Any other evidence of any kind.

### **13:69B-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. 13:69G-1.3. In a hearing pursuant to N.J.A.C. 13:69G-1.8, the excluded person shall have the affirmative obligation to show cause why he or she should be removed from the list.

(c) Matters pertaining to candidates for preliminary exclusion shall be handled in accordance with N.J.S.A. 5:12-71, N.J.A.C. 13:69G-1.5A and N.J.A.C. 13:69B-4.1 and 4.2.

(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. 5:12-91d.

(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 N.J.A.C. 13:69G-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.

### **13:69B-2.9 Notice of Violation**

(a) The Division may notify a licensee, registrant, or applicant of a regulatory violation by serving a Notice of Violation, which writing shall state, in ordinary and concise language, the nature of the violation and the acts or omissions supporting such violation.

(b) The Notice of Violation may include a proposed civil monetary penalty authorized pursuant to N.J.S.A. 5:12-129(5), in an amount not to exceed \$ 2,000, and/or any other penalty or requirement allowed by N.J.S.A. 5:12-129.

(c) Upon receipt of a Notice of Violation that includes a proposed penalty, a licensee, registrant, or applicant shall within 30 days respond to the Division in writing and either:

1. Acknowledge the violation and agree to the proposed penalty; or
2. Deny the allegation and request that the matter proceed as a contested case.

(d) The failure of a licensee, registrant, or applicant to notify the Division as required in (c) above, shall cause the matter to proceed as a contested case under N.J.A.C. 13:69B-2.4.

(e) If the licensee, registrant, or applicant acknowledges the violation and agrees to the proposed penalty, the parties shall, within 30 days of the date of acknowledgement referenced in (c)1 above, enter into an agreement, which shall include remedial action to be undertaken by the licensee, registrant, or applicant. Failure to enter into an agreement within the required time shall cause the matter to proceed as a contested case under N.J.A.C. 13:69B-2.4.



### **13:69B-2.10 Decision of Director**

(a) Within 45 days from the close of the record, the Director shall issue a written decision to the parties resolving all aspects of a contested case. Any extension of this time period shall be granted by the Director for good cause and shall be limited to an additional period of 45 days; however, additional numbers of extensions may be granted. The parties shall be notified of any extension.

(b) After reviewing the complete record in the case, the Director may:

1. Approve the decision for publication by signing the draft opinion of the hearing examiner and publishing it to the parties as a Final Action of the Division;
2. Require the hearing examiner to reopen the proceedings and adduce additional evidence on one or more matters; or
3. Modify the decision, and sign and publish it to the parties as a Final Action of the Division.

**13:69B-2.11 (Reserved)**

**13:69B-2.11A Wage executions**

(a) The Division may condition the granting or retention of a license or registration or the granting of a petition pursuant to N.J.A.C. 13:69A-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 or secured, directly or indirectly, to this State or any subdivision thereof or other governmental entity.

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

1. Submit a copy of the Division 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 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 Division at the address specified in N.J.A.C. 13:69B-2.3.

**13:69B-2.12 Motions for reconsideration; motions to reopen the record; motions for relief; dispositive motions; protective orders**

(a) Any party may, within 10 days after the service of a final Division 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 Division may grant such motion, under such terms and conditions as the Division may deem appropriate, when the Division finds just cause for reconsideration of the order based upon legal, policy or factual argument advanced by the movant or raised by the Division on its own motion.

(b) Any party may, within one year after the service of a final Division 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 Division 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 Division. Upon reconsideration, the Division 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 Division 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 Division 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 Division order unless otherwise specified by order of the Division.

(e) Dispositive motions may be filed by a party to the hearing in accordance with N.J.A.C. 1:1-12.1. Dispositive motions shall be supported by briefs and, when appropriate, certifications in support of factual claims relating to the motion; or

(f) The following concern protective orders:

1. Upon motion filed with the Director and for good cause shown, the Director may at any time order that the name, address or any other identifying facts about a witness be denied or restricted.
2. Upon motion filed with the Director and for good cause shown, the Director may order the identity of a witness while testifying at a contested case hearing be concealed from the parties and the public.
3. In determining the motion, the Director may consider the following factors: protection of witnesses and others from physical harm, bribes, economic reprisals and other intimidation; protection of confidential relationships and privileges recognized by law; and any other relevant considerations.

**13:69B-2.13 Appeal from Division decision**

Within 20 days from the issuance of a Division decision by the Director or a hearing examiner appointed by the Director, a party may appeal the decision, upon notice to the Division, to the Casino Control Commission which may review and decide any appeal of a final Division decision pursuant to N.J.S.A. 5:12-63b.

## **SUBCHAPTER 3. EMERGENCY RELIEF**

### **13:69B-3.1 (Reserved)**

### **13:69B-3.2 Orders granting emergency relief; form; service**

(a) An order suspending a license or registration shall be effective from the date of Division action or within such additional time as the Division may, upon a showing of good cause, permit.

(b) An order temporarily prohibiting business between a casino service industry or vendor registrant and casino licensees or applicants, or any agent or employee thereof, shall become effective 15 days from the date of Division action unless the Division extends the time period for good cause shown.

**13:69B-3.3     Emergency orders; hearings; complaints**

Within five days after issuance of an emergency order pursuant to section 109 of the Act, the Division shall cause a complaint to be filed and served upon the person involved in accordance with the provisions of the Act and the rules of the Division. Thereafter, the person against whom the emergency order has been issued and served shall be entitled to request a hearing before the Division.

## **SUBCHAPTER 4. PRELIMINARY EXCLUSION HEARINGS**

### **13:69B-4.1 Preliminary placement on the exclusion list**

(a) In accordance with the provisions of N.J.A.C. 13:69G-1.5A, the Division may preliminarily place a candidate on the exclusion list pending completion of the plenary hearing for exclusion.

(b) Unless otherwise ordered by the Division, a plenary hearing on the exclusion shall be initiated within 30 days after the receipt of a request for a plenary hearing or the date of the preliminary placement on the list, whichever is later.



**13:69B-4.2 Preliminary exclusion; burden of proof; service of order**

- (a) An action for preliminary exclusion shall be a limited pre-exclusion proceeding.

The purpose of such action is to determine if there is a reasonable possibility that a candidate satisfies the criteria for exclusion established by section 71 of the Act and N.J.A.C. 13:69G-1.3.

- (b) Preliminary exclusion shall be decided on the basis of the reliable documentary or other supporting evidence.

- (c) A preliminary order of the Division designating a candidate as an excluded person shall, within five days of its entry, be served upon the candidate and all casino licensees.

- (d) A Division order denying an application for preliminary placement of a candidate on the list shall be served upon the candidate.

## **SUBCHAPTER 5. (RESERVED)**

## **SUBCHAPTER 6. INVESTIGATIVE HEARINGS**

### **13:69B-6.1 Investigative hearings**

Pursuant to N.J.S.A. 5:12-66 and 76, the Division may conduct investigative hearings concerning the conduct of gaming and gaming operations, the operation and administration of casino control laws in this and in other jurisdictions, and any other matters within the scope of the powers, duties and responsibilities of the Division.

## **SUBCHAPTER 7. (RESERVED)**

## **SUBCHAPTER 8. ADMINISTRATIVE REVIEW OF UNPAID FEES AND CIVIL PENALTIES**

### **13:69B-8.1 Commencement**

(a) The Division may, on its motion, administratively review the failure to pay any civil penalty where cause exists to question whether all required fees or civil penalties have been paid.

(b) The Division shall initiate the administrative review by notifying any person who apparently has failed to pay a required fee or civil penalty that the Division may impose the sanctions set forth in N.J.A.C. 13:69A-9.3(f) unless the person requests that an administrative review conference be scheduled by the Division.

(c) If any person notified pursuant to (b) above that they have failed to pay a required fee or civil penalty fails within 20 days to either pay the outstanding amount due or to request that the Division schedule an administrative review conference, the Division may impose the sanctions set forth in N.J.A.C. 13:69A-9.3(f) without further notice or opportunity to be heard.

(d) If a person notified pursuant to (b) above requests an administrative review conference, the notice scheduling an administrative review conference shall be served by regular or certified mail, return receipt requested. The notice shall specify a date for the conference that is not earlier than 15 days after the date the notice is served and shall schedule a date subsequent to the date of the conference on which the Division shall take further action pursuant to N.J.A.C. 13:69A-9.3(f).

(e) Notwithstanding any other provision of this subchapter, the question of an outstanding fee or civil penalty may be consolidated with a contested case matter and scheduled for a hearing pursuant to N.J.A.C. 13:69B-2.

### **13:69B-8.2     Repayment plans**

If, at any time after the administrative review is initiated, the person admits the debt but reasonably demonstrates that it cannot immediately pay in full, then the Division may structure a repayment schedule consistent with the ability to pay. If the person agrees to the terms of the repayment schedule, further action in the administrative review shall be postponed in order to afford the person the opportunity to satisfy the terms of the repayment agreement. If a default occurs under a repayment agreement, the administrative review shall be reinstituted; provided, however, that no further repayment plan shall be allowed unless the debtor demonstrates that extraordinary circumstances exist. The administrative review shall cease and the matter shall be closed once the Division is satisfied that the person has fully complied with the terms of the repayment agreement.

### **13:69B-8.3     Administrative review conference**

(a)     The administrative review conference is an informal proceeding designed to facilitate a fair, expeditious and orderly disposition of the Division's administrative review of unpaid fees and civil penalties. Any person that is notified to attend such a conference is required to appear and may be represented by counsel. If the person so notified is a corporation, it may appear without counsel provided it does so through one of its principals.

(b)     Attendance at a scheduled administrative review conference is mandatory. The failure to attend such a conference shall constitute cause to dismiss immediately all applications, or suspend all licenses, registrations or permissions held, submitted by or granted to the person served with notice pursuant to N.J.A.C. 13:69B-8.1.

(c)     During the administrative review conference, the person required to attend the conference may present any information that would demonstrate that all required payments have been made.

**13:69B-8.4 Disposition of fee matters and civil penalties**

(a) If, after the administrative review is initiated, the Division determines that no debt is owed, or the debtor pays the debt in full, the matter shall be closed.

(b) Any issues concerning a debt that are not resolved by an administrative review conference shall either proceed to a hearing before the Division on the date specified in a notice served pursuant to N.J.A.C. 13:69B-8.1(c) or be consolidated with a contested case, unless, prior to the Division hearing the matter, the debt is paid in full or a repayment plan is accepted by the Division.

(c) At any hearing held pursuant to this section or pursuant to N.J.A.C. 13:69B-2, the Division may impose the applicable sanctions set forth in N.J.A.C. 13:69A-9.3(f) on any person who has failed to pay all required fees or civil penalties owed by that person.

### **13:69B-8.5 Restoration upon payment**

(a) Upon payment of any outstanding fee or civil penalty, the Division shall reinstate any license, registration or permission administratively suspended by the Division pursuant to N.J.A.C. 13:69A-9.3(f), or rescind any administrative order prohibiting employment or the conduct of business entered pursuant to N.J.A.C. 13:69A-9.3(f).

(b) Any application that has been administratively dismissed shall be reactivated if, within 45 days of the dismissal, all outstanding amounts are paid. If full payment is received after the expiration of this 45-day period, the following application requirements shall apply:

1. If the dismissed application requested the issuance of a license or registration, a new application shall be filed, including the payment of the appropriate fee set forth in N.J.A.C. 13:69A-9; or
2. If the dismissed filing related to a vendor or junket registration filing, business may be conducted with casino licensees and applicants upon the filing of a Vendor Registration Form or a Junket Enterprise Registration, as appropriate, in accordance with N.J.A.C. 13:69C-10.4.