

CHAPTER 42

HEARINGS

Authority

N.J.S.A. 5:12-63a-c, 63h, 64, 65, 66, 69a, 70d, 70e, 71, 80, 86, 89, 90, 91, 92, 94, 95, 102, 107, 108, 109, 129; and 52:14B-4, 8 and 12.

Source and Effective Date

R.1995 d.495, effective August 14, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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Chapter 42, Hearings, expires on August 14, 2000.

Chapter Historical Note

Chapter 42, Hearings, was adopted as R.1978 d.159, effective May 17, 1978. See: 10 N.J.R. 177(b), 10 N.J.R. 266(b). Subchapter 4, Provisions Applicable Only to Exclusion of Persons Hearings, was amended by R.1982 d.359, effective October 18, 1982. See: 14 N.J.R. 904(a), 14 N.J.R. 1167(a). Pursuant to Executive Order No. 66(1978), Chapter 42 (Subchapters 1 through 9) was readopted as new rules by R.1983 d.180, effective May 17, 1983. See: 15 N.J.R. 534(a), 15 N.J.R. 931(c). Pursuant to Executive Order No. 66(1978), Chapter 42 was readopted as R.1988 d.256, effective May 12, 1988. See: 20 N.J.R. 764(a), 20 N.J.R. 1209(b). Subchapter 10, Administrative Review of Unpaid Fees and Civil Penalties, was adopted as R.1992 d.35, effective January 21, 1992. See: 23 N.J.R. 3249(a), 24 N.J.R. 298(a). Pursuant to Executive Order No. 66(1978), Chapter 42 was readopted as R.1993 d.222, effective April 26, 1993. See: 25 N.J.R. 1082(a), 25 N.J.R. 1999(b).

Pursuant to Executive Order No. 66(1978), Chapter 42 was readopted as R.1995 d.495. See: Source and Effective Date. As a part of R.1995 d.495, Subchapter 3, Rules Concerning Applications Hearings, was repealed and Subchapter 3, Emergency Relief, was adopted as new rules, effective September 5, 1995; Subchapter 5, Rules Concerning Proceedings Against Applicants, Licensees and Registrants, and Subchapter 9, Declaratory Rulings, were repealed, effective September 5, 1995; and Subchapters 6, 7, 8 and 10 were recodified as Subchapters 5, 6, 7 and 8, respectively, effective September 5, 1995. See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

19:42-1.1 Definitions

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

“Exclusion list” is defined at N.J.A.C. 19:48-1.1

“Letter Report” means a written report from the Division of Gaming Enforcement setting forth its position on an initial or renewal 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.

Amended by R.1994 d.31, effective January 18, 1994.
See: 25 N.J.R. 4866(a), 26 N.J.R. 486(a).
Amended by R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

19:42-1.2 Applicability of rules

(a) In addition to the UAPR, the provisions of the Casino Control Act and the rules in this chapter shall apply to the appropriate contested case hearing initiated pursuant to the Casino Control Act.

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

19:42-1.3 Right to a hearing

(a) The Commission shall not deny, refuse to renew 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 hearing in accordance with law and the rules of the Commission.

(b) When the Commission has authority under the Act or the rules of the Commission 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 a hearing in accordance with law and the rules of the Commission.

(c) This section shall not apply where:

1. The Act provides that the Commission is not required to grant a hearing in regard to the refusal to renew a license or registration; or

2. The Commission is required by law to refuse to renew a license or registration without exercising any discretion in the matter on the basis of a judgment of a court of competent jurisdiction.

Amended by R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

SUBCHAPTER 2. CONDUCT OF CONTESTED CASES**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; or

3. A written petition to place a candidate on the exclusion list, which sets forth in ordinary and concise language the grounds for exclusion.

(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.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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; and

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.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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; or
- vi. Other relief that is consistent with the policies of the Act and in the public interest.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

19:42-2.5 Multiple party representation

(a) In any circumstance described in (b) below, an attorney who intends to represent more than one party in the same or a substantially related matter shall file a petition for approval no later than 10 days after filing a pleading or entering an appearance in the matter, whichever is earlier. The petitioner shall file such petition with the Commission, or with the Office of Administrative Law if the matter has been transmitted to it, and one copy with the Division.

1. The Division may, within 10 days from the date that the petition is filed, file a written response to the petition with the Commission, or with the Office of Administrative Law if the matter has been transmitted to it.

(b) No attorney shall represent the following parties respondent, unless a petition pursuant to (a) above is granted:

1. A casino licensee or applicant and any person who at the time of the alleged violation was an employee of said licensee or applicant;
2. A casino service industry enterprise licensee or applicant and any person who at the time of the alleged violation was employed by said licensee or applicant;
3. Two persons who at the time of the alleged violation were employed by the same casino licensee or applicant where one such employee had supervisory responsibility over the other employee; or
4. Two persons who at the time of the alleged violation were employed by the same casino service industry enterprise licensee or applicant where one such employee had supervisory responsibility over the other employee.

(c) Any petition filed pursuant to (a) above shall be in writing and shall include:

1. The nature of the petition and the reasons therefor;
2. The name and docket number of the matter involved;
3. The name and address of the parties represented;
4. A concise statement of the nature of the allegations raised in the complaint and the reasons why no conflict of interest is presented;
5. The certification of the attorney/petitioner detailing the basis of his or her belief that the representation will not adversely affect his or her relationship with each party respondent; and
6. The certification of each respondent acknowledging full disclosure of the potential conflict of interest and consenting to his or her representation by the attorney/petitioner.

(d) Upon receipt of a petition pursuant to (a) and (c) above:

1. If the matter will be heard by the Commission, the matter shall be forwarded to the Chair or to such other Commission member as the Chair may designate. Thereafter, with the advice and recommendation of the General Counsel of the Commission, the petition shall be evaluated on the papers submitted and in conformity with the Rules of Professional Conduct governing conflict of interest, R.P.C. 1.7 through 1.10, and any applicable statutory provisions, judicial decisions, rules of court, or determinations of the Supreme Court's Advisory Committee on Professional Ethics or other appropriate authority.

2. If the matter has been transmitted to the Office of Administrative Law for hearing, the petition shall be forwarded to the Office of Administrative Law for determination by an administrative law judge.

(e) All interested parties shall be advised of the decision of the Chair or the Chair's designee either orally or in writing no later than 15 days from the date that the petition is filed. If the decision is communicated orally, it shall be reduced to writing and mailed to the petitioner within five days.

(f) Any time limitations imposed by (a) and (e) above may be extended by the Chair or the Chair's designee for good cause, upon notice to all parties.

(g) Any party may appeal from the determination of the Chair or the Chair's designee to the full Commission upon written notice filed within five days. If the petition is determined by an administrative law judge, appeal shall be to the Director of the Office of Administrative Law pursuant to N.J.A.C. 1:1-14.10.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3363(a).

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.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

19:42-2.7 Rules concerning all contested cases

(a) Whether a contested case hearing is conducted by the Commission, by a hearing commissioner or the OAL, and in addition to any authority granted in the UAPR, the chairman, the hearing commissioner or the administrative law judge, as the case may be, shall have the authority to:

1. Administer oaths and to require testimony under oath, pursuant to N.J.S.A. 5:12-65;
2. Serve process or notices in a manner provided for the service of process and notice in civil actions in accordance with the rules of court, pursuant to N.J.S.A. 5:12-65;
3. Issue subpoenas and compel the attendance of witnesses at any place within this State, pursuant to N.J.S.A. 5:12-65 and 5:12-108(f);
4. Propound written interrogatories, pursuant to N.J.S.A. 5:12-65;
5. Take official notice of any generally accepted information or technical or scientific matter in the field of gaming and of any other fact which may be judicially noticed by the courts of this State, pursuant to N.J.S.A. 5:12-107(b); and
6. Permit the filing of amended or supplemental pleadings, pursuant to N.J.S.A. 5:12-107(b).

(b) Whether a contested case hearing is conducted by the Commission, a hearing commissioner or the OAL, and in addition to any rights granted in the UAPR, the parties shall have the right to:

1. Call and examine witnesses, pursuant to N.J.S.A. 5:12-107(a)4;
2. Introduce exhibits relevant to the issues of the case, including the transcript of testimony at any investigative hearing conducted by or on behalf of the commission, pursuant to N.J.S.A. 5:12-107(a)4;

3. Cross examine opposing witnesses in any matters relevant to the issue of the case, pursuant to N.J.S.A. 5:12-107(a)4;

4. Impeach any witness, regardless of which party called him to testify, pursuant to N.J.S.A. 5:12-107(a)4;

5. Offer rebuttal evidence, pursuant to N.J.S.A. 5:12-107(a)4; and

6. Stipulate and agree that certain specified evidence may be admitted, although such evidence may be otherwise subject to objection, pursuant to N.J.S.A. 5:12-107(a)7).

(c) In any contested case, the Commission shall have the authority to:

1. Grant testimonial immunity, pursuant to N.J.S.A. 5:12-67;
2. Order a rehearing, pursuant to N.J.S.A. 5:12-107(d); and
3. Certify contempt for punishment by the Superior Court, pursuant to N.J.S.A. 5:12-107(c).

Recodified from 19:42-2.1 and amended by R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

19:42-2.9 Special evidence rules

(a) In any case held before the Commission, a hearing commissioner or the OAL, the following special rules of evidence shall apply:

1. Any relevant evidence, not subject to a claim of privilege, may be admitted regardless of any rule of evidence which would bar such evidence in judicial matters, pursuant to N.J.S.A. 5:12-70d and 107a(6); and
2. Evidence admitted pursuant to (a)1 above shall be sufficient in itself to support a finding, pursuant to N.J.S.A. 5:12-70d and 107a(6), if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.
3. If an applicant, licensee, registrant or person who shall be qualified pursuant to the Casino Control Act is a party and if such party shall not testify in his own behalf, he may be called and examined as if under cross-examination, pursuant to N.J.S.A. 5:12-107a(5).

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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).

(c) Unless otherwise provided by the Act or Commission rules, orders and notices related to a contested case including, without limitation, notices concerning the scheduling of conferences, hearings, deferrals, reinstatement after deferrals and postponements shall be served upon all parties by ordinary mail, except that hearing notices in proceedings against a licensee or registrant shall be served personally or by certified mail. All hearing notices shall be served at least 10 days prior to the hearing.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

19:42-2.11 Effect of settlement

(a) If the parties agree to settle a contested case prior to commencement of a hearing, 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.

New Rule, R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

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 interest 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.

New Rule, R.1993 d.572, effective November 15, 1993.
See: 25 N.J.R. 3685(b), 25 N.J.R. 5360(a).
Recodified from 19:42-2.2 by R.1995 d.495, effective September 5, 1995.
See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

SUBCHAPTER 3. EMERGENCY RELIEF

19:42-3.1 Emergency relief; suspension limitation or conditioning of license or registration

(a) Pursuant to N.J.S.A. 5:12-104, 108 and 129, the Commission may, upon application by the Division, issue an emergency order for the suspension, limitation or conditioning of any registration or license, other than a casino license, pending a final decision in a contested case.

(b) Applications for emergency relief shall be served by the Commission on all parties pursuant to N.J.A.C. 19:42-4.1 and, if the termination of existing agreements between a party and a casino licensee or applicant is requested, on all casino licensees and applicants.

(c) Applications for emergency relief may be granted without a plenary hearing upon a finding by the Commission that there is a reasonable possibility that the licensee or registrant will be found disqualified pursuant to N.J.S.A. 5:12-86 or that such action is necessary to:

1. Prevent a violation of the Act or the criminal laws of this State;
2. Preserve the public peace, health, safety, morals, good order and general welfare; or
3. Preserve the public policies of the Act.

(d) A person on whom an emergency order has been served shall thereafter be entitled to a plenary hearing.

19:42-3.2 Orders granting emergency relief; form; service

(a) An order suspending a casino employee license or registration shall be effective from the date of Commission action or within such additional time as the Commission 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 Commission action unless the Commission extends the time period for good cause shown.

19:42-3.3 Emergency orders; hearings; complaint

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

SUBCHAPTER 4. PRELIMINARY EXCLUSION HEARINGS

19:42-4.1 Preliminary placement on the exclusion list; commencement; notice; service; postponement

(a) In accordance with the provisions of N.J.A.C. 19:48-1.5A, the Division may file a motion to place a candidate on the exclusion list pending completion of the plenary hearing on the petition for exclusion. Timely notice of a preliminary exclusion hearing shall be served upon the candidate for exclusion by regular mail at his or her last known address. The notice shall include:

1. A statement advising the candidate of his or her right to appear before the Commission at the preliminary exclusion hearing; and
2. The time, place and nature of the preliminary exclusion hearing.

(b) The preliminary exclusion hearing shall be scheduled no earlier than 15 days from the mailing of notice of the hearing.

(c) Unless otherwise approved by the Commission for good cause shown, a preliminary exclusion hearing scheduled in accordance with this subchapter shall not be postponed at the request of any party.

(d) If a candidate is placed on the exclusion list as a result of a motion for preliminary placement, unless otherwise agreed by the Commission, a plenary hearing on the petition for 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.

Amended by R.1988 d.526, effective November 7, 1988.

See: 20 N.J.R. 2250(a), 20 N.J.R. 2801(a).

Recodified from section 4.4 and substantially amended.

Recodified from 19:42-4.6 and amended by R.1995 d.495, effective September 5, 1995.

See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

19:42-4.2 Preliminary exclusion hearing; nature of hearing; burden of proof; service of order

(a) A preliminary exclusion hearing shall be a limited pre-exclusion proceeding. The purpose of the preliminary exclusion hearing 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. 19:48.

(b) A preliminary exclusion hearing shall be decided on the basis of the reliable documentary or other supporting evidence of the Division and the oral arguments of the parties.

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

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

Amended by R.1988 d.526, effective November 7, 1988.

See: 20 N.J.R. 2250(a), 20 N.J.R. 2801(a).

Recodified from section 4.5 and substantially amended.

Recodified from 19:42-4.7 and amended by R.1995 d.495, effective September 5, 1995.

See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

SUBCHAPTER 5. HEARINGS ON COMPLAINTS AGAINST THE DIVISION

19:42-5.1 Hearings on complaints against the Division

(a) In its sole discretion, the Commission may conduct hearings on complaints against the Division which have been initiated pursuant to N.J.S.A. 5:12-63(g).

1. Such hearings shall be held in accordance with the provisions of the UAPR as modified and supplemented by the Casino Control Act and N.J.A.C. 19:42-2.

19:42-5.2 Presumption of need to inspect and investigate

The need of the Division to inspect and investigate, and conduct continuing reviews of casino operations through on-site observation and other reasonable means to assure compliance with the act and the regulations promulgated hereunder shall be presumed at all times.

19:42-5.3 Burden of proof

(a) The casino licensee shall have the affirmative responsibility of establishing by clear and convincing evidence that:

1. The procedures of the Division had no reasonable law enforcement purpose; and
2. The procedures of the Division were so disruptive as to inhibit reasonable casino operations; and
3. The procedures of the Division in fact disrupted the licensee's casino operations.

SUBCHAPTER 6. INVESTIGATIVE HEARINGS

19:42-6.1 Investigative hearings

Pursuant to N.J.S.A. 5:12-63, 64, 66, 72 and 133(b), the Commission may conduct investigative hearings concerning

the conduct of gaming and gaming operations, the development and well-being of the industries controlled by the Act, the operation and administration of casino control laws in this and in other jurisdictions, and any other matters within the scope of powers, duties and responsibilities of the Commission.

SUBCHAPTER 7. HEARINGS ON REGULATIONS

19:42-7.1 Hearings on regulations

(a) Pursuant to section 69 of the Act, the Commission shall adopt, amend and repeal regulations in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

(b) Consistent with the requirements of the Casino Control Act and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Commission may, in its discretion, conduct hearings concerning the adoption, amendment or repeal of its regulations.

(c) Any public hearing held in connection with a proposed regulation shall be conducted in accordance with N.J.S.A. 52:14B-4(g).

(d) The Commission shall provide at least 15 days notice of any public hearing conducted in connection with a proposed regulation. Such notice shall be published in the New Jersey Register or provided in a manner reasonably calculated to reach the interested public in accordance with N.J.A.C. 1:30- 3.3A(b).

(e) When a hearing is held in connection with a proposed regulation, all interested parties shall be afforded the opportunity to attend and to appear before the Commission to submit oral argument in support of or in opposition to the proposed regulation. Such participation does not include the right to present evidence or to cross-examine witnesses, which may be permitted solely in the discretion of the Commission.

1. The Commission may require notice in advance of the date of the proceedings of any individual's intent to participate.

2. This section shall not be construed to establish a right of any individual to appear before the Commission in the event that the Commission may act at a subsequent date to adopt the proposed regulation.

Amended by R.1989 d.495, effective September 18, 1989.

See: 21 N.J.R. 1975(b), 21 N.J.R. 3022(b).

Deleted reference to means by which individual may petition for rulemaking and added rules concerning conduct of public hearings regarding rulemaking.

Recodified from 19:42-8.1 and amended by R.1995 d.495, effective September 5, 1995.

See: 27 N.J.R. 2567(a), 27 N.J.R. 3393(a).

Case Notes

Hearings ordered to determine reasonable work permit fees. Atlantic City Casino Hotel Assn. v. Casino Control Commission, 203 N.J. Super. 230 (App.Div.1985), certiorari denied 102 N.J. 326 (1985).

SUBCHAPTER 8. ADMINISTRATIVE REVIEW OF UNPAID FEES AND CIVIL PENALTIES

19:42-8.1 Commencement

(a) The Commission may, on its motion, administratively review the issuance or renewal of any license, the registration of any person, the acceptance of any application or the failure to pay any civil penalty where cause exists to question whether all required fees or civil penalties have been paid.

(b) The Commission shall initiate the administrative review by notifying any person who apparently has failed to pay a required fee or civil penalty that all applications, licenses or registrations held or submitted by such person will be dismissed or suspended, as applicable, unless the person attends an administrative review conference conducted by the Commission.

(c) The notice scheduling an administrative review conference shall be served either by regular and certified mail, return receipt requested, or, in the case of an individual employed at a casino hotel, by personal service through a Commission inspector. 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 Commission shall consider dismissing the application or suspending the license or registration unless the matter has been resolved to the satisfaction of the Commission prior thereto.

(d) The Division shall be given notice of the administrative review conference; however, the Division's attendance is not required nor necessary unless it objects to the proposed Commission action.

19:42-8.2 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 Commission 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 reinstated; 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 Commission is satisfied that the person has fully complied with the terms of the repayment agreement.

19:42-8.3 Administrative review conference

(a) The administrative review conference is an informal proceeding designed to facilitate a fair, expeditious and orderly disposition of the Commission'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, and the failure to attend such a conference shall constitute cause to dismiss immediately all applications, or suspend all licenses or registrations, held or submitted by the person served with notice pursuant to N.J.A.C. 19:42-10.1.

(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.

19:42-8.4 Disposition of fee matters and civil penalties

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

(b) If the matter remains open after an administrative review conference, the Commission shall so advise the person attending the conference, and the matter shall proceed to a hearing before the Commission on the date specified in the notice served pursuant to N.J.A.C. 19:42-10.1(c), unless, prior to the Commission hearing the matter, the person served with such notice pays the debt in full or agrees to a repayment plan that is acceptable to the Commission.

(c) At the hearing, the Commission may dismiss all applications, and may suspend all licenses or registrations, of any person who has failed to pay all required fees or civil penalties owed by that person.

Administrative Correction to 10.4(c).
See: 24 N.J.R. 1516(b).

19:42-8.5 Restoration upon payment

(a) Any license or registration that has been administratively suspended shall be reinstated upon payment of all outstanding amounts. Any application that has been administratively dismissed shall be reactivated if, within 45 days of the dismissal, all outstanding amounts are paid.

(b) An administrative suspension of any license in accordance with this subchapter shall not affect the term of such license, which shall expire on its stated expiration date.

(c) The Commission shall notify each casino licensee of any action that it has taken to administratively dismiss or reactivate any application, or to administratively suspend or reinstate any registration or any license other than a casino

license, and each casino licensee, upon receiving such notice, shall comply with any Commission directions concerning any such application, license or registration.