

ARTICLE 8. HEARINGS

5:12-107 Conduct of hearings; rules of evidence; punishment of contempts; rehearing

a. At all hearings of the commission in contested cases, as defined in section 2 of P.L.1968, c. 410 (C. 52:14B-2):

(1) Unless the commission hears the matter directly, the chairman shall refer the matter to the Office of Administrative Law in accordance with P.L.1978, c. 67 (C. 52:14F-1 et seq.); provided, however, that the chairman may, in his discretion, designate a member of the commission, or other qualified person other than an employee of the commission, to serve as hearing examiner in a particular matter;

(2) The proceedings at the hearing shall be recorded or transcribed;

(3) Oral evidence shall be taken only upon oath or affirmation;

(4) Each party to a hearing shall have the right to call and examine witnesses; to 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; to cross-examine opposing witnesses in any matters relevant to the issue of the case; to impeach any witness, regardless of which party called him to testify; and to offer rebuttal evidence;

(5) If an applicant, licensee, registrant or person who shall be qualified pursuant to this 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;

(6) The hearing shall not be conducted according to rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over

objection in a civil action; and

(7) The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, although such evidence may be otherwise subject to objection.

b. The commission may 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. The parties shall be informed of any information, matters or facts so noticed and shall be given a reasonable opportunity, on request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the commission. The commission may, in its discretion, before rendering its decision, permit the filing of amended or supplemental pleadings and shall notify all parties thereof and provide a reasonable opportunity for objections thereto.

c. If any person in proceedings before the commission disobeys or resists any lawful order, refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct at the hearing or so near the place thereof as to obstruct the proceeding, the person may be punished for contempt in accordance with the Rules of Court if the commission certifies the facts underlying the contumacious behavior to the Superior Court. Thereafter, the courts shall have jurisdiction in the matter, and the same proceeding shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed contempt in the trial of a civil action before the Superior Court.

d. (1) The commission may, upon motion therefor made within 10 days after the service of the decision and order, order a rehearing before the commission upon such terms and conditions as it may deem just and proper when the commission finds cause to believe that the decision and order should be reconsidered in view of the legal, policy or factual matters advanced by the

moving party or raised by the commission on its own motion.

(2) Upon motion made within a reasonable time, but in no event later than one year from the service of the decision and order, the commission may relieve a party from the decision and order upon a showing that there is additional evidence which is material and necessary and which would be reasonably likely to change the decision of the commission, and that sufficient reason existed for failure to present such evidence at the hearing of the commission or on a motion under paragraph (1) of this subsection. The motion shall be supported by an affidavit of the moving party or his counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not presented at the hearing or on a motion under paragraph (1) of this subsection. Upon rehearing, rebuttal evidence to the additional evidence shall be admitted. After rehearing, the commission may modify its decision and order as the additional evidence may warrant.

(3) A motion for relief from a decision and order which is based on any ground other than the presentation of newly discovered evidence shall be governed as to both timeliness and sufficiency by the regulations of the commission which shall be modeled, to the extent practical, upon the rules then governing similar motions before the courts of this State.

L.1977, c. 110, § 107, eff. June 2, 1977.

Amended by:

L.1979, c. 282, § 36, eff. Jan. 9, 1980.

L.1987, c. 354, § 19, eff. Jan. 4, 1988.

L.1993, c. 292, § 25, eff. Dec. 21, 1993.

5:12-108 Proceedings against licensees

a. Any proceeding against a licensee or registrant shall be brought on by written complaint, which shall include a statement setting forth in ordinary and concise language the charges and the acts or omissions supporting such charges.

b. Upon filing of the complaint the commission shall serve a copy upon the licensee or registrant either personally or by certified mail to his address on file with the commission.

c. Within 15 days after service upon him of the complaint, the licensee or registrant may file with the commission a notice of defense, in which he may:

- (1) Request a hearing;
- (2) Admit the accusation in whole or in part;
- (3) Present new matters or explanations by way of defense; or
- (4) State any legal objections to the complaint.

Within the time specified, the licensee or registrant may file one or more notices of defense upon any or all of the above grounds.

d. The licensee or registrant shall be entitled to a hearing on the merits if he files the required notice of defense within the time allowed by subsection c. of this section, and any such notice shall be deemed a specific denial of all parts of the complaint not expressly admitted. Failure to timely file the required notice of defense or to appear at the hearing shall constitute an admission of all matters and facts contained in the complaint and a waiver of the licensee's or registrant's rights to a hearing, but the commission, in its discretion, may nevertheless order a hearing. All affirmative defenses shall be specifically stated, and unless objection is taken as provided in paragraph (4) of subsection c. of this section, all objections to the form of the complaint shall be deemed waived.

e. The commission shall determine the time and place of the hearing as soon as is reasonably practical after receiving the licensee's or registrant's notice of defense. The commission shall deliver or send by certified mail a notice to all parties at least 10 days prior to the hearing. Unless the licensee or registrant consents, the hearing shall not be held prior to the expiration time within which the licensee or registrant is entitled to file the notice of defense.

f. Prior to a hearing before the commission, and during a hearing upon

reasonable cause shown, the commission shall issue subpoenas and subpoenas duces tecum at the request of a licensee, a registrant, or the division.

L.1977, c. 110, § 108, eff. June 2, 1977.

Amended by:

L.1979, c. 282, § 37, eff. Jan. 9, 1980.

L.1981, c. 503, § 17, eff. Feb. 15, 1982.

5:12-109 Emergency orders

Notwithstanding any provisions of this article, the commission may issue an emergency order for the suspension, limitation or conditioning of any operation certificate or any license, other than a casino license, or any registration, or may issue an emergency order requiring the licensed casino to keep an individual from the premises of such licensed casino or not to pay such individual any remuneration for services or any profits, income or accruals on his investment in such casino, in the following manner:

a. An emergency order shall be issued only when the commission finds that:

(1) There has been charged a violation of any of the criminal laws of this State by a licensee or registrant, or

(2) Such action is necessary to prevent a violation of any such provision, or

(3) Such action is necessary immediately for the preservation of the public peace, health, safety, morals, good order and general welfare or to preserve the public policies declared by this act.

b. An emergency order shall set forth the grounds upon which it is issued, including the statement of facts constituting the alleged emergency necessitating such action.

c. The emergency order shall be effective immediately upon issuance and service upon the licensee, registrant, or resident agent of the licensee. The

emergency order may suspend, limit, condition or take other action in relation to the approval of one or more individuals who were required to be approved in any operation, without necessarily affecting any other individuals or the licensed casino establishment. The emergency order shall remain effective until further order of the commission or final disposition of the case.

d. Within 5 days after issuance of an emergency order, the commission shall cause a complaint to be filed and served upon the person or entity involved in accordance with the provisions of this act.

e. Thereafter, the person or entity against whom the emergency order has been issued and served shall be entitled to a hearing before the commission in accordance with the provisions of this act.

L.1977, c. 110, § 109, eff. June 2, 1977.

Amended by:

L.1981, c. 503, § 18, eff. Feb. 15, 1982.

5:12-110 Judicial review

a. The division or any person aggrieved by a final decision or order of the commission made after hearing or rehearing by the commission, whether or not a petition for hearing was filed, may obtain judicial review thereof by appeal to the Superior Court in accordance with the Rules of Court.

b. Filing of an appeal shall not stay enforcement of the decision or order of the commission unless the stay is obtained from the court upon application in accordance with the Rules of Court or from the commission upon such terms and conditions as it deems proper.

c. The reviewing court may affirm the decision and order of the commission, may remand the case for further proceedings, or may reverse the decision if the substantive rights of the petitioner have been prejudiced because the decision is:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority and jurisdiction of the

commission; or

(3) Arbitrary or capricious or otherwise not in accordance with law.

d. In order to protect the public interest and the regulatory authority of the commission, any action by the commission taken pursuant to the provisions of sections 64, 69 d. or 71 of this act shall not be subject to the injunctive authority of the Superior Court prior to the exhaustion of the administrative procedures herein specified, unless it shall appear evident to the court, by clear and convincing evidence, that a manifest denial of justice would be effectuated by the refusal to enjoin the contemplated action of the commission.

L.1977, c. 110, § 110, eff. June 2, 1977.