BASIS AND PURPOSE FOR RULE 5

The purpose of Rule 5 is to establish procedures and articulate grounds for disciplinary actions and informal resolution of allegations of violations of the provisions of article 47.1 of title 12 C.R.S. or any rules and regulations promulgated pursuant to such article, to provide procedures to impose sanctions for violations, and to provide for certain conditions to be met for reissuance of licenses to persons who formerly held a license. The statutory basis for Rule 5 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., 12-47.1-524, C.R.S., 12-47.1-525, C.R.S., and 24-4-104, C.R.S.

RULE 5 GROUNDS AND PROCEDURES FOR DISCIPLINARY ACTIONS

47.1-501 Grounds for disciplinary action.

The Commission may levy a monetary penalty or may suspend for up to six months, or revoke, any license issued by it or the Director for any violations by the person holding the license, or such licensee's employees or agents, of any of the provisions of article 47.1 of title 12, C.R.S., or any of the rules and regulations promulgated thereunder. Acceptance of a state gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all the regulations of the Commission as the same now are or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep the licensee's self informed of the content of all such regulations, and ignorance thereof will not excuse violations.

47.1-502 Initiation of disciplinary proceedings.

(1) Upon its own motion, upon motion of the Director, or upon written complaint signed and sworn to by the complainant, the Commission may determine to initiate disciplinary proceedings against any person licensed pursuant to article 47.1 of title 12, C.R.S. Disciplinary proceedings, as used herein, shall mean those procedures undertaken by the Commission to suspend or revoke any license issued by it or the Director, to levy a monetary penalty against any licensee, or to otherwise sanction violations of gaming laws and rules.

(2) The Commission may initiate disciplinary proceedings against a license where it determines that there is probable cause to believe: that the licensee, the licensee's employees, or agents have violated any of the provisions of article 47.1 of title 12, C.R.S., or the rules and regulations thereunder; that the licensee or persons associated with the licensee are of unsatisfactory moral character; or that violations by the licensee, the licensee's employees, or agents, of laws other than the limited gaming laws make the licensee no longer suitable for licensing by the Commission or Director.

(3) Disciplinary proceedings shall be initiated by the Commission, or the Director, sending to the licensee by first class mail at the last known mailing address of the licensee, a list of the grounds for the proposed disciplinary action and a notice containing at least the time and place for any hearing before the Commission concerning the proposed disciplinary action. Said list and notice shall be mailed to the licensee at least 30 days prior to the hearing.

47.1-503 Citizen Complaints authorized — Procedure following filing.

Any person claiming that a licensee has engaged or is engaging in conduct constituting grounds for disciplinary action may file with the Director a sworn written complaint stating the name and address of the licensee complained against. The complaint must fully detail the conduct upon which the complaint is made. If the Director determines the complaint has merit, the Director must immediately serve by first class mail on the licensee complained against and any other affected parties a copy of the complaint. The licensee complained against has 20 days to answer after service of the complaint on the licensee. The Director may reject a complaint if it does not meet the requirements of this section. If the licensee

answers the complaint, the licensee must serve an original and seven copies on the Commission. The Director may reject the answer for failure to serve the required number of copies.

47.1-504 Dismissal of citizen complaint.

After receipt of the answer to the complaint, after the time has expired to answer, or after having determined that no answer is necessary, the Director must examine the complaint, any answer, and other supporting documents to determine whether the complaint has merit or is frivolous or whether it charges conduct constituting grounds for disciplinary action. If the Director determines that the complaint is without merit or is frivolous or that it does not charge conduct constituting grounds for disciplinary action, the Director must dismiss the complaint and notify in writing the complainant, the licensee complained against, and other affected parties, stating the reasons for dismissal. The Director may investigate the complaint and use extrinsic evidence to determine if the complaint has merit.

47.1-505 Informal consultation.

If the Director considers the citizen complaint, or any other allegations, to be grounds for disciplinary action, the Director may consult with the licensee and the parties affected in an effort to resolve the matter satisfactorily without a formal hearing. The Director must notify in writing the complainant, the licensee complained against, and affected parties of the results of the informal consultation. The informal consultation does not prevent the Commission from conducting a formal hearing.

47.1-506 Assurance of voluntary compliance.

The Director may accept an assurance of voluntary compliance regarding any act or practice alleged to violate article 47.1 of title 12, C.R.S., or the rules and regulations thereunder, from a person who has engaged in, is engaging in, or is about to engage in such acts or practices. The assurance must be in writing and may include a stipulation for the voluntary payment of the costs of the investigation and an amount necessary to restore to a person money or property which may have been acquired by the alleged violator because of the acts or practices. An assurance of voluntary compliance may not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of article 47.1 of title 12, C.R.S., or the rules and regulation thereunder. The Commission may approve or review an assurance of voluntary compliance.

47.1-507 Decision to initiate disciplinary action.

At any time during the review and investigation of a citizen complaint, the Director or the Commission may decide to initiate formal disciplinary proceedings where grounds exist to sustain their initiation.

47.1-508 Criminal convictions as grounds for revocation or suspension.

The Commission may revoke or suspend the gaming license of any person who is convicted of a crime, even though the convicted person's post conviction rights and remedies have not been exhausted, if the crime or conviction involves a felony, gambling, or limited gaming or if it discredits or tends to discredit the State of Colorado or the gaming industry.

47.1-509 Facts of criminal charge.

The charge in any jurisdiction of a licensee with a felony or with a misdemeanor involving moral turpitude is grounds for disciplinary action. The Commission may find the licensee guilty of a violation of this article based on the facts of the criminal charge even though the licensee has been acquitted on the criminal charge.

47.1-510 Per diem and mileage.

The Commission may authorize per diem and mileage for complainants, witnesses, and affected parties at informal consultations and for complainants and witnesses at formal hearings. The per diem and the mileage may not exceed the amounts authorized by laws generally applicable to state disciplinary proceedings.

47.1-511 Final action by Commission.

After hearing the evidence and reaching a decision in connection with any disciplinary proceeding, the Commission may find the licensee not guilty of any of the grounds alleged for disciplinary action; in which event the disciplinary proceedings shall be terminated. The Commission may, however, find the licensee guilty by a preponderance of the evidence of some or all of the grounds alleged for disciplinary action; in which event the Commission may revoke the license, may suspend the license for a particular period of time, may impose a monetary penalty as provided in section 12-47.1-525 (1), C.R.S., may issue a public or private letter of reprimand to be placed in the file of the licensee, or may take any combination of these actions. This section does not prevent the Commission from compromising or settling at any time a formal hearing, and the Commission may also allow an assurance of voluntary compliance. Written findings of fact, conclusions of law, and an order must be entered before any decision of the Commission to suspend or revoke a license shall be considered final. The Commission may allow or require briefs of law before making any decision.

47.1-512 Summary Suspension.

(1) Where the Commission has reasonable grounds to believe and finds that any person licensed under article 47.1 of title 12, C.R.S., has been guilty of a deliberate or willful violation of any of the provisions of article 47.1 of title 12, C.R.S., or the rules and regulations thereunder, or that the licensee has been charged with a felony in Colorado or in another state, or that due to other violations of law by the licensee or its patrons, the public health, safety, or welfare imperatively requires emergency action, and where the Commission incorporates such findings in its order, the Commission may summarily suspend the licensee's license pending disciplinary proceedings for suspension or revocation. Any such disciplinary proceedings shall be promptly instituted and determined.

(2) The summary suspension of a license without notice pending a public hearing shall be for a period not to exceed thirty days except that a licensee may waive the thirty day hearing requirement by requesting a continuance in writing no later than five (5) business days prior to the scheduled hearing. In no event, however, shall the requested continuance be granted unless the licensee requesting the continuance has complied with the order of summary suspension by surrendering such licensee's license or license identification badge to a Division office. (amended perm. 03/02/01)

47.1-513 Notice.

The Director must have delivered a notice of summary suspension personally or by mail to the licensee who has been suspended. The notice must state when the suspension will begin and end and must state the reasons for the suspension.

47.1-514 Disciplinary proceeding notice required.

The Director must have served upon the summarily suspended licensee a formal notice initiating disciplinary proceedings and a notice of hearing within 5 days after receipt by the licensee of the notice of summary suspension. The notice initiating disciplinary proceedings and the notice of hearing may be issued by the Director without prior Commission approval. The Commission shall hear the matter on an expedited basis, but in no event later than 30 days after the imposition of the summary suspension unless such licensee has requested a later date pursuant to regulation 47.1-512(2). (amended perm. 03/02/01)

47.1-515 Conditions imposed by Commission for reissuance of license.

The Commission or Director may require a person who formerly held a license to meet certain conditions before reissuing a license to that person, including but not limited to the following:

(1) Restitution of money;

(2) Restitution of property; and

(3) Making periodic reports to the Commission or Director as required.

47.1-516 Costs.

(1) In addition to the sanction, denial, or granting or issuance by the Commission of any license or other affirmative approval, the Commission may direct the payment by the applicant of any reasonable costs incurred by the Commission, by the Division, or by any applicant, party, or witness regarding the application.

    (a) The Commission may enter any such order of its own initiative, or upon timely application and showing by the Division or any other party or witness in the action prior to the expiration of any time for appealing the underlying order.

    (b) The filing of such an application does not stay the effectiveness of the underlying order.

(2) Reimbursable costs shall include, but are not limited to: witness fees and per diem; expert witness fees; duplication costs; court reporter, transcription, and other costs incurred in administering or preserving any record; extraordinary staffing costs of the Division; legal fees; Commissioner per diem pursuant to § 12-47.1-301(1)(f) C.R.S.; expenses incurred in commencing, accommodating, or conducting the hearing; investigative costs; exhibit costs; and any other judicially or statutorily recognized cost, whether incurred prior or subsequent to the conclusion of the investigation of the matter.

(3) The Commission reserves the discretion to deny, in whole or in part, any request for reimbursement of costs.

(4) Unless otherwise ordered, costs must be paid to the ordered recipient on or before the thirtieth day from the date of the order awarding the costs, unless stayed by the Commission or other court of competent jurisdiction. Failure to pay and tender costs as ordered shall constitute grounds for sanction, including fine and revocation of any license or other affirmative approval.