

BASIS AND PURPOSE FOR RULE 20

The Statutory authority for the promulgation and amendment of these rules is sections 12-47.1-302, 522, 523, 527 C.R.S. (1997).

The Commission conducts hearings in a quasi-judicial capacity when determining whether to deny, condition, or issue licensure and other approvals. These rules will define standards of conduct and the manner of proceeding before the Commission in those hearings, and in pre-hearing practice. These procedures will provide for a consistent set of standards to be followed and to remove uncertainty about how to practice before the Commission.

licensees and license applicants are under a continuing statutory duty to provide any and all information requested by the Division. These discovery policies and practices address party requests of information from the Division, and party requests of information from others.

Gaming is an industry not imbued with rights and privileges inherent in more traditional occupations. Public confidence and trust in the secure regulation of the gaming industry is extremely sensitive to appearances of impropriety pertaining to the suitability of those associated with the industry. Accordingly, the Commission is adopting standards of consideration for evidence of reputation and character.

RULE 20 COMMISSION HEARINGS AND PRACTICE

47.1-2001 Prehearing procedures.

Unless the hearing officer provides otherwise, C.R.C.P. 16 shall not apply to hearings before the Commission and these rules shall govern all prehearing practice.

(1) Motions .

- (a) Any motion or motion response shall incorporate legal authority, or be filed simultaneously with a brief containing legal authority. The motion shall advise the Commission of the necessity for expeditious ruling, certification or referral to the Commission, or other urgency, if any. Failure to incorporate or recite legal authority may be grounds for denial of the motion, without prejudice.
- (b) A responding party shall have 10 days in which to file a response to a motion. The failure to respond may be deemed a confession of the motion, and the Commission may enter any order related thereto, including sanction or award of other relief.
- (c) A reply will be permitted only upon motion to Commission within five days after the filing of the response. The reply must accompany the motion.
- (d) Oral argument shall be allowed only upon order of the Commission. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance the Commission may proceed to hear and rule on the motion.

(2) Prehearing Statement .

- (a) When ordered by the Commission, each party shall file with the Commission and serve on each other party a prehearing statement in substantial compliance with the form as outlined in Appendix A to this rule.
 - (1) Prehearing statements shall be filed and served no later than 14 days prior to the date set for hearing.

- (2) Parties shall exchange exhibits by the date on which prehearing statements are to be filed and served. Parties shall label exhibits in a manner consistent with the identification of exhibits in the prehearing statement. Exhibits need not be filed with the Commission.
- (b) The authenticity of exhibits, statutes, ordinances, regulations, or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the Commission and served on other parties no later than 7 days prior to the hearing.
- (c) The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing.

APPENDIX A OUTLINE FOR PREHEARING STATEMENT

The following shall be included in each party's Prehearing Statement:

- I. PENDING MOTIONS. List all outstanding motions that have not been ruled upon by the Commission.
- II. STATEMENT OF CLAIMS AND DEFENSES. Provide a concise statement of all claims or defenses asserted by all parties, together with all matters in mitigation or aggravation. This statement may incorporate, by reference, previously published charges, counts, and grounds.
- III. UNDISPUTED FACTS. Provide a concise statement of all facts which the party contends are or should be undisputed.
- IV. DISPUTED ISSUES OF FACT. Provide a concise statement of the material facts which the party claims or concedes to be in dispute.
- V. POINTS OF LAW. Include a concise statement of all points of law which are to be relied upon or which may be in controversy, citing pertinent statutes, regulations, cases and other authority. Extended legal argument is neither required nor desired, but is more appropriately placed in a brief on the matter. This statement may incorporate, by reference, previously published charges, counts, and grounds.
- VI. WITNESSES. Include the name, address, and telephone number of any witness or party whom the party may call at hearing, together with a statement of the content of such person's testimony.
- VII. EXPERTS. Include the name, address, and a brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement as to each expert which sets forth in detail the opinions to which the expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.
- VIII. EXHIBITS. Provide a description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: If there is only one party in opposition to the Division, the Division shall employ numbers, and the other party shall use letters. If there is more than one party in opposition to the Division, each party shall employ assigned letters with numbers, e.g. A-#, B-#, C-#, etc.
- IX. STIPULATIONS. Provide a listing of all stipulations of fact or law reached, as well as a listing of any additional stipulations requested or offered to facilitate disposition of the case.

- X. DISCOVERY STATUS. Present an identification of the status of discovery, and identify any additional discovery issues which remain unresolved.
- XI. TRIAL EFFICIENCIES. List an estimate of the amount of time required to present the case, and special needs for accommodation of exhibits, witnesses, testimony, or any other matters which have not been addressed.

47.1-2002 Prehearing Discovery.

- (1) Administrative hearings are informal, expedited matters; accordingly, traditional discovery practice common before the District Courts of the state is inappropriate. Accordingly, discovery practice in matters before the Commission is limited. Parties must undertake to request information from the other parties or the Division in a manner consistent with the following guidelines.
- (2) Confidential materials . Pursuant to section 12-47.1-527, C.R.S., the files and records pertaining to the Division's investigations are confidential, and protected from scrutiny from any person, including the person in interest, unless the Commission makes specific allowance therefor.
- (3) Discretionary disclosure of confidential materials. Notwithstanding the confidentiality of information, the Commission has determined to disclose certain documents under the following circumstances:
 - (a) License condition or denial actions . In contested actions concerning the denial or condition of a license or other approval, the Division shall allow the applicant to inspect only so much of the Division's investigative files and work product as the Commission deems appropriate. The Division may refuse to provide copies of any document so inspected. (Approved 12/18/98 Effective 3/2/99)
 - (i) The Division must allow the applicant to inspect any document, or any part thereof, and its relevant context, if any, in the Division's possession which the Division intends to use as evidence in the hearing, and provide the applicant with a copy of same, unless the Division cannot accomplish duplication of the document with the Division's own equipment, an applicant must pay for the duplication of all other documents or items, and the Division may impose reasonable restrictions upon the duplication process, including requiring that the duplication be performed in the presence of an agent of the Division, that the duplication be performed under an agreement of confidentiality, that the duplication take place at the Division's offices, that the applicant provide the transfer medium for the duplication, or any other condition related to the security or integrity of the record keeping process.
 - (ii) The Division must provide the applicant with a copy of only:
 - (A) Those meaningful portions of transcripts of statements of witnesses in the Division's possession or control; and
 - (B) portions of transcripts, in context, which the Division intends to use as evidence in the hearing.
 - (iii) The Division must provide the applicant with access to any evidence which the Division intends to introduce in the hearing.
 - (iv) The presence of intervenors in a denial action shall constitute grounds for modification of these standards on a case by case basis. Generally, applicants

and intervenors will have similar access to materials insofar as is relevant to each party's individual interest in the matter. Provided that the access is consistent with C.R.S. 12-47.1-527. (Approved 12/18/98 Effective 3/2/99)

- (b) Sanction actions . The Division shall allow the respondent to inspect the Division's internal written report of its investigation of the circumstances under scrutiny, and provide the respondent with a copy of same.
 - (i) The Division must allow the respondent to inspect any document, or any part thereof, and its relevant context, if any, in the Division's possession which the Division intends to use as evidence in the hearing, and provide the respondent with a copy of same, unless the Division cannot accomplish duplication of the document with the Division's own equipment. An applicant must pay for the duplication of all other documents or items, and the Division may impose reasonable restrictions upon the duplication process, including requiring that the duplication be performed in the presence of an agent of the Division, that the duplication be performed under an agreement of confidentiality, that the duplication take place at the Division's offices, that the applicant provide the transfer medium for the duplication, or any other condition related to the security or integrity of the record keeping process.
 - (ii) The Division must provide the respondent with a copy of only:
 - (A) Those meaningful portions of transcripts of statements of witnesses in the Division's possession or control; and
 - (B) portions of transcripts, in context, which the Division intends to use as evidence in the hearing.
 - (iii) The Division must provide the respondent with access to any evidence which the Division intends to introduce in the hearing.
 - (iv) The presence of intervenors in a sanction action shall constitute grounds for modification of these standards on a case by case basis. Generally, respondents and intervenors will have similar access to materials insofar as is relevant to each party's individual interest in the matter.
- (c) Any party may petition the Commission for greater access to or copies from the Division's or the Commission's files. The Division may petition the Commission for a protective order restricting disclosure or use of any document.
- (d) All copies of any confidential document provided any party pursuant to this rule shall remain confidential and protected for all purposes, and are subject to the following Protective Order:
 - (i) While a party may share such information with that party's counsel and essential witnesses, no party or counsel shall disclose the contents, substance, or fact of existence of any protected document to any other person or party, nor may any party use any protected document for any purpose except as evidence in a hearing before the Commission. A party may disclose the information only as may reasonably be necessary for the preparation or presentation of evidence in the matter.
 - (ii) Unless the Commission provides otherwise, once a confidential document has been accepted into evidence in any hearing, it loses its protected status.

- (iii) All confidential documents, and all copies thereof, must be returned to the Division upon the conclusion of any matter for which the confidential document was provided. Failure to return any such confidential document is grounds for sanction of the license or other approval, or any other appropriate sanction.
 - (e) Requests for production of documents from the division shall be made by motion for disclosure to the Commission.
- (4) Interviews and depositions.
 - (a) The Commission may permit depositions, only in cases of necessity, exigency, a witness' failure to cooperate, witness unavailability for hearing, the inadequacy of an interview, or other similar good cause shown and the information is not available by other reasonable means.
 - (b) Depositions shall be conducted under such limitations, terms and conditions as specified in the order authorizing them.
 - (c) In order to promote a free discussion of facts and opinions, the Division shall make relevant staff available for unrecorded interviews by any party. The Division shall cooperate in good faith with reasonable requests of any party, but the Division is not obligated to disclose confidential or protected information. The Commission may require an interview be conducted before authorizing a deposition.
- (5) Interrogatories.
 - (a) Absent good cause shown, each party may serve up to ten written interrogatories upon each adverse party, each of which shall consist of a single, particularized question without subparts and without multiple subjects or objectives.
 - (b) The responses to the interrogatories shall be provided to all parties within 20 days of service of the interrogatories
 - (c) The answering party may reasonably object to any interrogatory, and thereby avoid answering until directed to do so upon resolution of the objection by the Commission.
- (6) The Commission may impose appropriate sanctions if any party fails to comply with the provisions of this rule, any action governed by it, or any order entered pursuant thereto.
- (7) Discovery shall be completed no later than 20 days in advance of the hearing date.
- (8) Upon good cause shown, the Commission may allow additional discovery, may further limit discovery, or may modify the time limits set forth in this rule.
- (9) Parties are under a continuing obligation to update, correct, supplement, or amend any information previously provided in a timely manner until the conclusion of the hearing.
- (10) Witnesses are encouraged, but not obligated, to freely share information with all parties. a party shall have unrestricted ability to contact other non-party witnesses for these purposes.

47.1-2003 Contested Hearing Procedure.

- (1) Except as pertains to the summary suspension of a license or other approval, and then only insofar as these procedures are not inconsistent with the procedures contained within the administrative procedures act, sections 24-4-104 and 105, C.R.S., or with the Commission's

procedures for summary suspension, the following procedures shall govern non-rulemaking hearing practice before the Commission, unless otherwise directed by the Commission.

- (2) Hearings shall be conducted by the Commission, sitting *en banc* , or by a designated or duly appointed administrative law judge.
 - (a) The Commission may also designate a member Commissioner or Administrative Law Judge to preside as a Hearing Officer to address and resolve non-dispositive pre-hearing motions, requests, and other matters pertaining to the preparation, conduct, presentation, and orderly progression of the matter before the Commission.
 - (b) Any party may petition the Commission to review or reconsider any action of the Hearing Officer; the Commission may grant or deny oral argument on the matter, and rule on the matter accordingly. The pre-hearing determinations of the Hearing Officer shall govern the hearing unless and until the Commission shall enter an order modifying or changing the pre-hearing determination. The Hearing Officer may also refer any matter to the Commission for its determination, with or without recommendation.
 - (c) The Commission shall resolve all dispositive matters raised in any hearing. The Hearing Officer shall refer any dispositive matters to the Commission for its determination, with or without recommendation.
- (3) Evidentiary procedure.
 - (a) The Commission shall not be bound by the technical rules of evidence, and informality in any proceeding or in the manner of taking testimony shall not invalidate any Commission order, decision, or regulation.
 - (b) Although the Commission is not bound by the technical rules of evidence, to promote uniformity in the consideration of evidence, the Commission shall use as a guide the Colorado Rules of Evidence applicable in civil non-jury cases in the district courts of Colorado.
 - (c) When necessary to ascertain facts affecting substantial rights of the parties to a proceeding, the Commission may receive and consider evidence not admissible under the Colorado Rules of Evidence, if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
 - (d) In any inquiry by the Commission into a person's suitability, evidence of reputation or of character is relevant, when viewed in context of the public interest, and bears probative weight when it relates to the following matters:
 - (1) Criminal justice;
 - (2) Fraud, thievery, or dishonesty;
 - (3) Probity, integrity or honesty;
 - (4) Association;
 - (5) Financial affairs; and
 - (6) Any other licensing criterion.

- (e) Any two or more parties may stipulate to offer into evidence as an exhibit or other evidence any fact or matter in issue of substance or procedure. The Commission shall enter an order approving or disapproving any stipulation offered into evidence, or may recommend modification as a condition for approval.
 - (f) Before the commencement of the case, each party sponsoring an exhibit should furnish a copy to each other party, to the Hearing Officer, to the record secretary, and to each Commissioner present at the hearing.
 - (1) The Commission may limit the number of copies to be furnished where reproduction is burdensome.
 - (2) The Commission shall disregard exhibits provided but not admitted into the record; in like fashion, they shall not be included in the record unless specific request therefor is made.
 - (3) Rebuttal exhibits and evidence need not be provided in advance of the use of the evidence.
 - (g) Except in matters of exigency, no witness may testify by electronic means without prior approval of the Commission, upon motion timely made and good cause shown.
- (4) Burden of Proof.
- (a) Unless the Commission directs otherwise, hearings ordinarily proceed with the presentation of evidence in the following order:
 - (1) Proponent of the order;
 - (2) Intervenor, if any;
 - (3) Answer in opposition;
 - (4) Rebuttal by the proponent of the order.
 - (5) Upon motion, and for good cause shown, the Commission may permit surrebuttal by any party, and variance from this order of presentation.
 - (b) The proponent of an order, or other affirmative action, shall have the burden of proof.
 - (1) Applicants for licensure, for renewed licensure which is denied, or for other approvals granted by the Commission are proponents for the issuance of the license or any other approvals granted by the Commission. The Division shall be the proponent in matters pertaining to Orders to Show Cause or Summary Suspension for the proposed sanction of a license, and in matters pertaining to the limitation on renewed licensure.
 - (2) Notwithstanding the burden of proof, any applicant may request the Division to make an initial evidentiary presentation on all matters alleged in any denial, after which the applicant may present its case, with the Division to conclude by presenting a rebuttal, if any, and the applicant may be allowed a surrebuttal.
 - (3) In other proceedings where the burden of proof is not otherwise provided, the burden of proof and the burden of going forward shall be determined by the Commission.

(5) Subpoena issuance.

- (1) Only the Commission, any commissioner, any Hearing Officer, or the Director of the Division, upon proper and timely request, may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness or the production of documentary evidence, or both, at a hearing. A subpoena shall issue within three business days of the request therefor.
- (2) Other parties, and their counsel, may not issue any subpoena, but are responsible for effecting service of all subpoenas issued to them in the manner described in Rule 45(c), Colorado Rules of Civil Procedure.
- (3) Each party is responsible to ensure the validity of any subpoena issued at its request which commands the performance of an obligation by any person outside the jurisdiction of the Commission.
- (4) On prompt motion, the Commission may quash or modify any subpoena if compliance thereof would be unreasonable or oppressive. The Commission may also direct an *in camera* review of subpoenaed documents prior to making them available to inspection by any party or the public. The Commission may order the sealing of any document from public scrutiny.