

## **Article 114.-RULES OF HEARING**

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**112-114-1. Definitions.** The following terms as used in these regulations shall have the meanings specified in this regulation, unless the context clearly indicates otherwise:

(a) “Disciplinary review board” means a board established by the executive director. The board members shall be appointed by the executive director to review certain applications and licensee or certificate holder conduct and to ensure compliance by applicants, licensees, and certificate holders with these regulations, the act, and other laws.

(b) “Hearing body” means the commission, disciplinary review board, or executive director, when each of these is conducting a hearing. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-2. Report of an alleged violation.** (a) Any person may file a report of an alleged violation with any commission office.

(b) Each person reporting an alleged violation shall complete the commission-approved report form available online and in commission offices. Substantially incomplete forms shall not be accepted by commission personnel. (Authorized by and implementing K.S.A. 2008 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-3. Notice of alleged violation and hearing.** (a) If disposition of the allegation raised in a report could result in suspension or revocation, the respondent shall be provided by the commission with reasonable notice of the alleged violation and hearing.

(b) The notice of alleged violation and hearing shall include the following information:

- (1) The time and location of the hearing;
- (2) the identity of the hearing body;
- (3) the case number and the name of the proceeding;
- (4) a statement of the legal authority and a general description of the allegation, including the time of occurrence;
- (5) a statement that a respondent who fails to attend the hearing may be subject to the entry of an order that is justified by the evidence presented at the hearing; and
- (6) a statement that a respondent has the right to appear at the hearing with counsel, the right to produce any evidence and witness on the respondent's behalf, the right to cross-examine any witness who may testify against the respondent, and the right to examine any evidence that may be produced against the respondent.

(Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-4. Waiver.** Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by these regulations.

(Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-5. Informal settlements.** Nothing in these regulations shall preclude the informal settlement of matters that could make a hearing unnecessary. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-6. Participation by and representation of respondents.** (a) Whether or not participating in person, any respondent who is a natural person may be represented by an attorney licensed to practice law in the state of Kansas in any evidentiary hearing conducted before the commission or its designated presiding officer or officers. The attorney shall represent the respondent at the respondent's own expense.

(b) Each for-profit or not-for-profit corporation, unincorporated association, or other respondent who is a non-natural person shall be represented by an attorney licensed to practice law in the state of Kansas in any evidentiary hearing conducted before the commission or its designated presiding officer or officers. The attorney shall represent the respondent at the respondent's own expense. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-7. Reserved.**

**112-114-8. Presiding officer.** (a) The presiding officer shall be either of the following:

(1) The executive director or the chairperson of the commission; or

(2) a person designated by the commission.

(b) For disciplinary review board hearings, if a substitute is required for a presiding officer or other member of the hearing body who is unavailable for any reason, a substitute shall be appointed by the executive director. Each action taken by the duly appointed substitute shall be as effective as if the action had been taken by the unavailable member. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-9. Hearing procedure.** (a) The presiding officer at each hearing shall regulate the course of the proceedings.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(c) Upon the request of the respondent, the presiding officer may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(d) The presiding officer shall cause the hearing to be recorded at the commission's expense. The commission shall not be required to prepare a transcript at its expense. Subject to any reasonable conditions that the presiding officer may establish, any party may cause a person other than the commission to prepare a transcript of the proceedings.

(e) Each hearing shall be open to public observation, except for deliberations and parts that the presiding officer states are to be closed pursuant to a provision of law expressly authorizing closure. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-10. Evidence.** (a) A presiding officer shall not be bound by technical rules of evidence but shall give the parties reasonable opportunity to be heard and to present evidence. The presiding officer shall act without partiality. The presiding officer shall apply any rules of privilege that are recognized by law. Evidence shall not be required to be excluded solely because the evidence is hearsay.

(b) All testimony of parties and witnesses shall be made under oath or affirmation, and the presiding officer or the presiding officer's designee who is legally authorized to administer an oath or affirmation shall have the power to administer an oath or affirmation for that purpose.

(c) Documentary evidence may be received in the form of a copy or excerpt, including electronically stored information. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(d) Official notice may be taken of the following:

(1) Any matter that could be judicially noticed in the courts of this state; and

(2) the record of other proceedings before the disciplinary review board or the commission. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-11. Orders.** (a) Within 30 days after the hearing, the hearing body shall enter a written order.

(b) Each order shall include a brief statement of the findings of the hearing body and any penalty prescribed. The findings shall be based exclusively upon the evidence of record and on matters officially noticed in the hearing.

(c) For disciplinary review board hearings, the order shall also include a statement that the order is subject to appeal to the commission and the available procedures and time limits for seeking an appeal. The order shall further include a statement that any suspension imposed by the order may be stayed, pending appeal.

(d) For disciplinary review board hearings, the hearing body may impose any penalty authorized by law and may refer the matter to the commission with findings and recommendations for imposition of greater penalties.

(e) Each order shall be effective when rendered.

(f) The presiding officer shall cause copies of the order to be served upon each party to the proceedings. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-12. Service of order.** (a) Service of an order shall be made upon the party and the party's attorney of record, if any.

(b) Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service.

(c) Service by mail shall be complete upon mailing.

(d) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of an order is made by mail, three days shall be added to the prescribed period. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-13. Reserved.**

**112-114-14. Appeals of disciplinary review board hearings.** (a) Each order entered by the disciplinary review board that imposes suspension or revocation, or any other sanction shall be subject to appeal to the commission.

(b) Each party who wishes to appeal a disciplinary review board order shall file a notice of appeal and brief on forms provided by the commission during regular office hours within 11 days after service of the order from which the party is appealing. If an order is served by mail, the party shall have 14 days within which to file a notice of appeal and brief.

(c) Each notice of appeal and brief shall be completed by the appealing party upon the form available in the commission's licensing office at the gaming facility. Each notice of appeal and brief shall fully state the basis for appeal and identify the issues upon which the party seeks administrative review. Incomplete forms shall not be accepted by commission personnel.

(d) A notice of appeal and brief shall constitute the appealing party's written brief. An opposing party shall be afforded an opportunity to file a brief in response to the appealing party's brief within 14 days following the filing of the appealing party's brief.

(e) Each notice of appeal form shall include a statement that, in reviewing any disciplinary review board's order, the following provisions shall apply:

(1) De novo review may be exercised by the commission, one or more commissioners designated by the commission, or a presiding officer designated by the commission.

(2) The disciplinary review board's order may be affirmed, reversed, remanded for further hearing, or modified by the commission, one or more commissioners designated by the commission, or a presiding officer designated by the commission. A new hearing may also be conducted by the commission, one or more commissioners designated by the commission, or a presiding officer designated by the commission. An occupation license may be suspended or revoked for each violation of the act or these regulations, or both.

(f) Any respondent may be deemed to have timely filed a notice of appeal pursuant to subsection (b) if, after service of the disciplinary review board's order, the respondent performs the following:

(1) Within the appeal time described in subsection (b) of this regulation, files a writing that states an intention to appeal the order and that includes substantially the same information requested in the appeal form available in the commission's licensing office at the gaming facility; and

(2) within a period of time authorized by the disciplinary review board, fully executes and files in the commission's licensing office at the gaming facility the appeal form available in that office. (Authorized by and implementing K.S.A. 2008 Supp. 74-8751 and 74-8772; effective May 1, 2009.)