

## CHAPTER 42A

### HEARINGS AND APPEALS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 19:42A-1.1 Definitions

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

“Act” shall mean the Casino Control Act, N.J.S.A. 5:12-1 et seq.

“Appeal” means a review by the Commission of any final action of the Director, or his or her designee, as set forth in N.J.S.A. 5:12-63(1)(b).

“Appeal hearing” means the formal proceeding during which the Commission receives written and/or oral arguments related to an appeal.

“Appellant” means the party who files with the Commission a written request to appeal from a final action.

“Case Information Statement” means a form that provides the Commission with a brief summary of the underlying matter being appealed.

“Commission” shall mean the Casino Control Commission.

“Director” means the Director of the Division of Gaming Enforcement.

“Division” shall mean the Division of Gaming Enforcement, within the Department of Law and Public Safety.

“Exclusion list” means a list of persons who, pursuant to N.J.S.A. 5:12-71, and as defined at N.J.A.C. 13:69G-1.1, are required to be excluded or ejected from casino hotel facilities.

“Final action” means a decision or order issued by the Director, which may be appealed to the Commission pursuant to N.J.S.A. 5:12-63(1)(b).

“Hearing examiner” is the “judge” as defined in the UAPR, and shall also include the Commission, the Chair, a member of the Commission, or any other qualified person, other than an employee of the Commission, designated to hear facts and issues pertaining to a particular matter.

“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.

“Report” means a written report from the Division setting forth its position on an initial or resubmission casino key employee license application.

“UAPR” means the Uniform Administrative Procedure Rules, as set forth at N.J.A.C. 1:1.

#### 19:42A-1.2 Applicability of rules

(a) Any contested case or appeal hearing before the Commission initiated pursuant to the Casino Control Act shall be conducted pursuant to the UAPR, the special hearing rules, N.J.A.C. 1:19, the provisions of the Act, and this chapter.

(b) To the extent that the Casino Control Act and the rules contained in this chapter, which implement the Casino Control Act, are inconsistent with the UAPR, this chapter shall apply.

## SUBCHAPTER 2. COMMENCEMENT OF CONTESTED CASE HEARING

### 19:42A-2.1 Right to a hearing

(a) The Commission shall not deny, suspend, or revoke any license or take action to disqualify any person required to establish individual qualification, unless it has first afforded the applicant, licensee, or qualifier an opportunity for a hearing in accordance with law and the rules of the Commission.

(b) This section shall not apply where the Commission is required by law to deny an application or revoke a license or qualification without exercising any discretion in the matter on the basis of a judgment of a court of competent jurisdiction.

### 19:42A-2.2 Commencement of a contested case hearing

(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 report recommending that an application for a casino license, a casino key employee license, or individual qualification in connection with a casino license should not be granted;

2. A report recommending that a casino license, a casino key employee license, or an individual qualification in connection with a casino license should be revoked;

3. A written complaint requesting that the Commission suspend a casino license, casino key employee license, or individual qualification in connection with a casino license;

4. At the request of the Director upon issuance of a report and recommendation in accordance with N.J.S.A. 5:12-87.1; or

5. A report requesting a conference for an application for a casino license, a casino key employee license, or individual qualification in connection with a casino license.

(b) The Division shall file an original and four copies of any such report or complaint concerning an applicant for or holder of a casino license, casino key employee license, or individual qualification in connection with a casino license by hand-delivery, electronic mail, or first class mail to the Commission at the address specified in N.J.A.C. 19:42A-2.4(a) or at an electronic mail address provided by the Commission.

(c) A filed 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.

#### 19:42A-2.3 Notice of right to a hearing

(a) When the Commission has been provided with a copy of the appropriate document set forth in N.J.A.C. 19:42A-2.2(a), the Commission shall serve upon the applicant, licensee, or qualifier a copy of the Division report or complaint and a written notice of the right to a hearing and the responsibility to request a hearing, with a copy of same to the Division, as follows:

1. Reports regarding a contested application shall be served upon an applicant by certified and ordinary mail; and

2. Complaints shall be served upon an applicant, licensee, or qualifier either personally or by certified mail.

(b) All written notices advising of the right to a hearing and the responsibility to request a hearing shall be sent to the most recent known address provided to the Commission by the Division.

19:42A-2.4 Request for a hearing

(a) Any request for a hearing before the Commission shall be filed with the Commission in writing by hand-delivering or mailing the request for a hearing to:

New Jersey Casino Control Commission

Document Control Unit

ATTN: Hearings and Appeals Unit

Tennessee Avenue and the Boardwalk

Atlantic City, New Jersey 08401

One copy of a request for a hearing shall simultaneously be submitted to the Division and each other party, if applicable, within 20 calendar days of the Commission's notification to the applicant or respondent of their right to a hearing. Such request shall 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 to the findings and determinations contained in the Division's report or complaint including, but not limited to, constitutional issues, statutory authority, and/or regulatory authority.

19:42A-2.5 Failure to request a hearing; withdrawal of a request; final action

(a) If a party fails to timely file a request for a hearing before the Commission pursuant to N.J.A.C. 19:42A-2.4, 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 an admission of all material allegations concerning the failure of the applicant or respondent to qualify or maintain his or her qualifications. Upon such a determination, the Commission may take final action including, without limitation:

- i. Denial of any pending application;
- ii. Revocation of a license or qualification;
- iii. Other relief that is consistent with the policies of the Act and in the public interest.

#### 19:42A-2.6 Transmission to the OAL or designation of a hearing examiner

(a) Pursuant to N.J.S.A. 5:12-107(a), 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 a hearing examiner.

(b) If a hearing examiner becomes unavailable at any time 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.

### SUBCHAPTER 3. CONDUCT OF CONTESTED CASE HEARING

#### 19:42A-3.1 Burden of proof

(a) An applicant or respondent shall have the affirmative obligation to establish by clear and convincing evidence satisfaction of the applicable affirmative standards set forth in the Act and rules of the Commission for licensure or individual qualification.

(b) The Division shall have the affirmative obligation to establish by a preponderance of the evidence the disqualification, pursuant to N.J.S.A. 5:12-86, of an applicant, licensee, or individual qualifier requested in accordance with N.J.A.C. 19:42A-2.2(a)1 or 2.

(c) The Division shall have the affirmative obligation to establish by a preponderance of the evidence the grounds for suspension of an applicant, licensee, or individual qualifier requested in accordance with N.J.A.C. 19:42A-2.2(a)3.

#### 19:42A-3.2 Settlement prior to transmission

(a) If the parties agree to a settlement prior to transmission of the case to the Commission or its designated hearing examiner or the OAL, a written stipulation signed by all parties, and their representatives, 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) Settlements reached at a prehearing conference scheduled pursuant to N.J.A.C. 1:19-13.1 shall be submitted to the Commission for disposition pursuant to (a) above.

#### 19:42A-3.3 Wage executions

(a) The Commission may condition the granting or retention of a casino key employee license or the granting of a petition pursuant to N.J.A.C. 13:69A-8.9 or 8.10 upon compliance with a court order or a consent agreement with the Division pursuant to which a portion of the applicant's, licensee's, or petitioner's wages will be withheld as an installment payment against a financial obligation owed or secured, directly or indirectly, to the State of New Jersey or any subdivision thereof or other governmental entity.

(b) Any individual who is subject to a Commission order pursuant to (a) above shall:

1. Submit a copy of the Commission order and the relevant court order or consent agreement to his or her current casino employer and to any future casino employer until the obligation is paid in full; and

2. Notify the Commission and the Division when the terms of the court order or consent agreement have been satisfied, including evidence that the obligation has been paid in full. Such notice shall be directed to the Commission's Document Control Unit at the address specified in N.J.A.C. 19:42A-2.4 and to the Division at the address specified in the rules of the Division.



## SUBCHAPTER 4. COMMENCEMENT OF APPEAL HEARING

### 19:42A-4.1 Right to appeal; notice of right to appeal

(a) Any licensee, applicant for a license, or registrant who is aggrieved by a final action of the Division shall have the right to appeal to the Commission. Pursuant to N.J.S.A. 5:12-63(b) and 107(h), an appeal may be taken from the following Division actions:

1. A notice of violation and penalty assessment issued upon any applicant, qualifier, licensee, or registrant;
2. A ruling on an application for a casino service industry enterprise license pursuant to N.J.S.A. 5:12-92;
3. A ruling on an application for any other license or qualification under the Act;
4. Revocation of a license or registration;
5. A ruling by the Director regarding a request for a statement of compliance pursuant to N.J.S.A. 5:12-81(a); and
6. Placement on an exclusion list.

(b) All appeals from final actions of the Division shall be heard by the Commission, or designated hearing examiner, in accordance with the Act, the UAPR, and this chapter.

(c) The Division shall provide any party against whom final action is taken with notice of their right to appeal to the Commission. The Division shall also provide the Commission with notification of an appealable matter by mailing a copy of the final action to the address set forth at N.J.A.C. 19:42A-4.2(a). Upon receipt of the final action from the Division, the Commission shall mail an appeal request form to the party against whom final action was taken.

19:42A-4.2 Commencement of appeal hearing; extension of time to appeal

(a) Any party may appeal a final action of the Division by filing with the Commission a written request to appeal. Such written request shall be filed by hand-delivering or mailing an appeal request form within 20 calendar days of the Commission's notification to the party of the party's right to appeal to:

New Jersey Casino Control Commission

Document Control Unit

ATTN: Hearings and Appeals Unit

Tennessee Avenue and the Boardwalk

Atlantic City, New Jersey 08401

One copy of a request to appeal shall also be simultaneously submitted to the Division and any other party. The appeal will be docketed upon receipt by the Commission and acknowledged in writing.

(b) Any request to extend the time to appeal a final action shall be made in writing to the Commission's Document Control Unit, ATTN: Hearings and Appeals Unit, at the address specified in (a) above. The Commission may, upon a showing of good cause and in the absence of prejudice, or in the interest of public policy, extend the time within which a request to appeal may be filed for an additional 20 days.

(c) Upon receipt of a party's request to appeal, the Commission shall provide the appellant with an opportunity to submit a Case Information Statement.

#### 19:42A-4.3 Record on appeal

(a) The record on appeal shall include all papers and exhibits, including audio and video recordings, on file with the Division, together with all entries as to matters made on the record, the stenographic transcript of the proceedings at the Division, and all papers filed with the Division hearing examiner.

1. Within 20 days of the service upon it of a notice of appeal the Division shall file a statement with the Commission of the items comprising the record on appeal and shall serve a copy thereof on each party to the appeal and shall file a copy of the items comprising the record with the Commission.

(b) A party who questions whether the Division's hearing record is complete shall apply on motion to the Division to settle the record. The Commission or its designated hearing examiner, on a party's motion, may review such determination or, in the Commission or designated hearing examiner's own discretion, direct correction of the record.

(c) If at any time during the pendency of an appeal, it appears that evidence not adduced in the proceedings before the Division may be material to the issues on appeal, the Commission or its designated hearing examiner, on its or his or her own motion, or on the motion of any party, may order, on such terms as the Commission or its designated hearing examiner deems appropriate, that the record on appeal be supplemented by the taking of additional evidence and the making of findings of fact thereon by the Division.

#### 19:42A-4.4 Case Information Statement form

(a) A Case Information Statement shall be in a format prescribed by the Commission and shall require the appellant to provide the following information:

1. Appellant's name;
2. Appellant's current address and telephone number;
3. Names of all parties involved;
4. A brief statement of the facts and procedural history;
5. The proposed issues sought to be raised on appeal;
6. Any legal objection to the decision, including, but not limited to, constitutional issues, statutory authority, and/or regulatory authority; and
7. Whether the appellant wants an opportunity to present oral argument.

#### 19:42A-4.5 Filing and service of Case Information Statements, briefs, and motions

One copy of all Case Information Statements, briefs, and motions filed pursuant to this chapter shall be served on all parties, and proof of such service shall be appended to the original, which shall be filed with the Commission.

#### 19:42A-4.6 Time for filing and service of briefs

- (a) The appellant may serve and file a brief in support of the appeal within 20 days after the hearing record has been deemed established by the Commission or within such time as the Commission orders, whichever is later.
- (b) The respondent may serve and file an answer brief within 20 days after service of the appellant's brief or within such time as the Commission orders, whichever is later.
- (c) The appellant may serve and file a reply brief within 10 days after service of the respondent's brief or within such time as the Commission orders, whichever is later.

19:42A-4.7 Dismissal of appeal; withdrawal; effect of stipulation on appeal

(a) An appellant shall provide any information that is requested by the Commission, and failure to provide such information may result in dismissal of the appeal. The Commission may at any time on its own motion, or on motion of either party, dismiss an appeal if the appellant fails to cooperate or maintain contact with the Commission during the pendency of their appeal or if the Commission determines that the motive for filing an appeal was frivolous or improper.

(b) An appellant may withdraw an appeal at any time prior to the issuance of the Commission's or its designated hearing examiner's decision, whereupon the Commission or its designated hearing examiner shall discontinue all proceedings and notify all parties accordingly.

(c) An appeal may be settled at any time prior to issuance of the Commission or its designated hearing examiner's decision, provided that the parties notify the Commission or its designated hearing examiner of any settlement and file the dispositive stipulation with the Commission or its designated hearing examiner, whereupon the appeal shall be dismissed.

## SUBCHAPTER 5. CONDUCT OF APPEAL HEARING

### 19:42A-5.1 Conduct of appeal hearing

The Commission shall conduct appeal hearings in accordance with N.J.S.A. 5:12-107, the UAPR, the special hearing rules, and this chapter.

### 19:42A-5.2 Oral argument

(a) Any party may request an opportunity to orally present their appellate arguments. Such request must be made in writing at the time the Case Information Statement is filed and submitted to the Commission's Document Control Unit, ATTN: Hearings and Appeals Unit at the address specified in N.J.A.C. 19:42A-4.2(a).

(b) The Commission may grant a request for oral argument for good cause shown.

### 19:42A-5.3 Determination of appeal hearing procedure

(a) Upon timely receipt of a completed Case Information Statement, the Commission or its designated hearing examiner shall notify the parties that their appeal hearing will proceed as follows:

1. Where an opportunity to present oral argument is not requested, the appeal may be considered on the appeal record and any timely and relevant submissions of the parties, unless directed otherwise in accordance with the provisions of this chapter.

2. Where an opportunity to present oral argument is requested and granted, the appeal will be scheduled for oral argument before the hearing examiner, with the oral argument transcribed and made a part of the record on appeal.

3. Where an opportunity to present oral argument is requested and denied, the appeal will be considered on the appeal record and any timely and relevant submissions of the parties.

#### 19:42A-5.4 Evidence; new evidence

(a) The parties may agree by written stipulation that certain specified evidence may be admitted, pursuant to N.J.S.A. 5:12-107, although such evidence shall be otherwise subject to objection.

(b) The record on appeal may only be supplemented with new evidence upon motion of any party and a showing by the party seeking to supplement the record of one or more of the following:

1. Mistake, inadvertence, surprise, or excusable neglect;
2. Fraud, misrepresentation, duress, or other conduct of an adverse party; or
3. Any other reason consistent with the public policy of the Act and in the interests of

justice.

(c) The parties shall be notified by the Commission of the time and place such evidence will be taken.

#### 19:42A-5.5 Standard of review

Appeals of final actions shall be reviewed by the Commission *de novo* without regard to the factual and legal determinations of the Division hearing examiner.

19:42A-5.6 Appeal decision

Any appeal decision shall be considered a final order of the Commission, which shall constitute final agency action for purposes of establishing jurisdiction on appeal in the New Jersey Superior Court.



## SUBCHAPTER 6. HEARINGS ON COMPLAINTS AGAINST THE DIVISION

### 19:42A-6.1 Hearings on complaints against the Division

In its sole discretion, the Commission may conduct hearings on complaints against the Division that have been initiated pursuant to N.J.S.A. 5:12-63(h). Such hearings shall be held in accordance with the provisions of the UAPR, the special hearing rules, the Casino Control Act, and this chapter. To the extent that the Casino Control Act and this chapter are inconsistent with the UAPR, this chapter shall apply.

### 19:42A-6.2 Burden of proof

(a) In order to prevail against the Division in a complaint filed pursuant to this subchapter, 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 unreasonably casino or simulcasting operations.

## SUBCHAPTER 7. HEARINGS ON RULES

### 19:42A-7.1 Hearings on regulations

(a) Pursuant to section 69(a) of the Act, the Commission shall adopt, amend, and repeal its rules 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 Act and the Administrative Procedure Act, the Commission may, in its discretion, conduct hearings concerning the adoption, amendment, or repeal of its rules.

(c) Any public hearing held in connection with a proposed rule 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 rule. 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. 1:30-5.5(b).

(e) When a hearing is held in connection with a proposed rule, 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 rule. 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 rule.