



## **NYCRR Title 9, Executive**

### **Subtitle T**

#### **New York State Gaming Commission**

##### **Chapter I**

##### **Division of Horse Racing and Pari-Mutuel Wagering**

##### **Subchapter H**

##### **Adjudicatory Proceedings for Racing**

##### **Part**

##### **4550 Adjudicatory Proceedings**

#### **PART 4550**

#### **Adjudicatory Proceedings**

##### Section

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##### **§ 4550.1. Applicability.**

This Part applies to all adjudicatory proceedings held by the commission pursuant to Chapter I of this subtitle.

##### **§ 4550.2. Definitions.**

(a) The term *commission* means the New York State Gaming Commission. The commission is an agency authorized by law to make final determinations in adjudicatory proceedings and is an “agency” within the meaning of Executive Order No. 131 dated December 4, 1989.

(b) The term *adjudicatory proceeding* means any activity in which a determination of legal rights, duties or privileges of named parties thereto is required by law to be made,



only on a record and after an opportunity for a hearing, provided however, that such term shall not apply to a rule making proceeding or an employee disciplinary action or other personnel action.

(c) The term *chair* means the chair of the commission.

(d) The term *hearing officer* means a person designated by the chair as such and assigned by the chair to conduct an adjudicatory proceeding.

(e) The term *hearing officer report* means the findings, conclusions and recommendations, if any, issued by the hearing officer.

### **§ 4550.3. Notice of adjudicatory proceedings.**

(a) An adjudicatory proceeding shall be commenced by service of a notice of hearing or order to show cause. A hearing in any matter as to which the commission is required to hold an adjudicatory hearing or otherwise determines to do so shall be held upon reasonable notice to each party, and shall be conducted at such place as the commission shall determine. Notice of such hearing, may be served on the party or provided by certified mail addressed to the party involved at the party's last known address.

(b) (1) Such notice or order to show cause shall contain:

(i) a statement of the time, place and nature of the hearing;

(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(iii) a reference to the particular section of the statutes and rules involved;

(iv) a short and plain statement of matters asserted;

(v) a statement that interpreter services shall be made available to deaf persons at no charge;

(vi) information concerning circumstances under which an adjournment may be granted;

(vii) the consequence of a failure to appear for a scheduled hearing or proceeding; and

(viii) a statement informing the parties of the right of each party to be represented by counsel, to testify, to produce witnesses, to present documentary evidence, and to examine opposing witnesses and evidence.

(2) Such notice or order to show cause may be amended or superseded:



- (i) prior to the commencement of the hearing; or
- (ii) after commencement of the hearing, as authorized by the hearing officer.

(3) A notice of appearance by any attorney representing the party shall be filed with the counsel to the commission. A written answer to the charges, if demanded in the notice, or at the option of the party notified, shall be filed at least five days before the hearing commences.

#### **§ 4550.4. Disclosure.**

(a) When the hearing seeks the revocation of a license previously granted by the commission, either the commission or any party may, upon written demand and at least seven days prior to the hearing, require disclosure of the evidence that the other party intends to introduce at the hearing, including documentary evidence and identification of witnesses; provided, however, that a party shall not be required to disclose information or material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

(b) If a party fails to disclose evidence sought pursuant to subdivision (a) of this section, the hearing officer may, in the hearing officer's discretion, impose sanctions, which may include preclusion of said evidence from introduction at the hearing.

#### **§ 4550.5. Procedure for adjudicatory hearing.**

(a) *General procedure.* At the hearing, the case may be presented by a party either personally or by an attorney. Each party will be afforded a reasonable opportunity to present evidence, examine, and cross examine witnesses. The hearing officer shall conduct the hearing in a fair and impartial manner. Each witness shall testify under oath or by affirmation. The hearing officer may examine witnesses. The hearing officer shall not be bound by the technical rules of evidence or by formal rules of procedure. The hearing officer may exclude irrelevant or unduly repetitive testimony or evidence from any hearing. Official notice may be taken of all facts of which judicial notice can be taken and of other facts within the specialized knowledge of the commission. When official notice is taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to the decision to dispute the fact or its materiality. Briefs as to the facts and law may be submitted and the hearing officer may order a brief to be submitted in any proceeding and fix the time when briefs may be filed.

(b) *Adjournments.* The hearing may be adjourned at the discretion of the hearing officer for good cause shown upon request of any party or upon consent of all parties. Adjournments on consent of all parties shall be subject to the approval of the hearing



officer. However, adjudicatory proceedings shall be conducted in an expeditious manner, with due regard for the rights of the parties concerned.

**§ 4550.6. Hearing officer.**

(a) The chair shall assign the hearing officer.

(b) All hearings shall be conducted by the hearing officer who shall have the powers and authority of presiding officers or hearing officers as defined by section 303 of the State Administrative Procedure Act (SAPA), any other pertinent statute, and these regulations.

(c) A hearing officer is authorized to:

(1) administer oaths or affirmations;

(2) issue subpoenas in the name of the commission, at the request of any party or the direction of the commission, requiring attendance and testimony by witnesses and/or the production of books, papers, documents and other evidence. Subpoenas shall be regulated by the Civil Practice Law and Rules. Nothing herein contained shall affect the authority of an attorney for a party to issue subpoenas under the provisions of the Civil Practice Law and Rules;

(3) regulate the course of the hearings, set the time and place for continued hearings and determine the time for filing of briefs and other documents;

(4) direct the parties to appear and confer to consider the simplification or settlement of the issues by consent of the parties; and

(5) examine and call witnesses.

(d) If so directed in the assignment of the chair, the hearing officer shall prepare findings of fact and make recommendations to the commission.

(e) The report of the hearing officer shall be based upon the testimony, briefs and exhibits received at the hearing. The report shall be in the form of a written recommendation to the commission and shall be filed with the secretary to the commission together with the record of the proceeding.

(f) Unless otherwise authorized by law and except as provided in subdivision (g) of this section, a hearing officer shall not communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the hearing officer with any person except upon notice and opportunity for all parties to participate.

(g) A hearing officer may consult on questions of law with supervisors, agency attorneys or other hearing officers, provided that such supervisors, hearing officers or attorneys



have not been engaged in investigative or prosecuting functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding. Hearing officers may also consult with supervisors, other hearing officers, support staff or court reporters on ministerial matters such as scheduling or the location of a hearing. The chair shall strictly enforce the prohibition set forth herein and in subdivision (f) of this section.

#### **§ 4550.7. Disqualification of hearing officer.**

(a) A party may request the removal of a hearing officer by filing an affidavit of personal bias or disqualification with the commission. The affidavit shall state the specific reasons why the hearing officer should no longer preside over the case under consideration. The commission shall determine the matter as part of the record of such case, and the hearing may continue during the time that the commission considers the request for removal of the hearing officer. A party must file said motion within 48 hours of the date when the party knew or should have known of the basis for disqualification.

(b) Whenever a hearing officer is disqualified or it becomes impracticable for the hearing officer to continue the hearing, another hearing officer may be designated to continue with the case unless it is shown that substantial prejudice to the party will result.

#### **§ 4550.8. Determination of the commission.**

(a) All orders, decisions and determinations of the commission shall be in writing or stated in the record and shall include such findings of fact, conclusions of law, reasons for the decision or determination, as may be made by the commission, and when appropriate, such direction of specific action as may be ordered by the commission. Orders, decisions and determinations shall be issued over the signature of the Secretary to the commission, the chair of the commission, or the chair's designee.

(b) After determination of the commission, a copy of the final decision or determination of the commission together with any report of the hearing officer shall be made available to the parties to the hearing or proceeding and shall be delivered or mailed forthwith to each party and to each party's representative of record.

(c) The commission may not order or otherwise direct a hearing officer to make any specific findings of fact, to reach any specific conclusions of law, or to make or recommend any specific disposition of a charge, allegation, question or issue, except by remand, reversal, or other decision on the record of the proceeding. The commission may confirm, modify, or reject any recommendation of the hearing officer. If the commission issues a decision that includes findings of fact or conclusions of law that conflict with any findings of fact, conclusions, or recommended decision of the hearing officer, the commission shall set forth in writing the reasons why the commission reached a conflicting decision.



**§ 4550.9. Record.**

(a) The commission shall cause to be made a complete record of all adjudicatory proceedings. Any party to the adjudicatory proceeding may inspect the record. Upon request, the commission shall furnish a copy of the record including exhibits and transcripts or any part thereof to any party, and the commission may charge that party not more than the commission's cost for the preparation and furnishing of such record or transcript or any part thereof, or in the alternative, the commission may charge the rate specified in the commission's contracts with a private hearing stenographer. A party also shall be entitled to obtain at such party's own cost a copy of the transcript directly from the hearing stenographer.

(b) The commission shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the commission in adjudicatory proceedings. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying.

**§ 4550.10. Application to reopen.**

(a) The hearing officer may reopen an adjudicatory proceeding upon the hearing officer's own initiative or upon written application made by a party prior to the commission's determination.

(b) The commission may reopen an adjudicatory proceeding, on its own initiative or upon written application made by a party, subsequent to the commission's determination.

(c) Such applications shall be determined in accordance with the following:

(1) Where a party other than the commission failed to appear at the hearing, the party making the application to reopen must establish that there were valid reasons for having failed to appear and that there is a meritorious defense on behalf of such party.

(2) Where a party has appeared at the hearing, the party must establish that there is newly discovered evidence that, despite due diligence by the party, was not available at the time of the hearing or establish other compelling reasons for reopening. This paragraph shall also apply to counsel to the commission.

**§ 4550.11. Penalties.**

All penalties imposed by the commission, and all license suspensions, fines, exclusions and other sanctions imposed by the commission upon any person charged shall continue in full force and effect until the determination of the commission is rendered, unless otherwise directed in writing by the commission. In this regard, the commission may reduce, increase, modify, or substitute any penalty, license suspension, fine,



exclusion, or other sanction after review of the record of the administrative proceeding. In addition, the commission may assess an additional penalty, upon notice and opportunity to be heard at a hearing, if the commission finds that any appeal taken from a ruling was frivolous. A frivolous appeal is one commenced in bad faith or for purposes of delay or is one that is unreasonable and without substance or merit.