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*This rule details due process and disciplinary actions. The purpose of the proposed amendment is to clarify how disciplinary investigations and proceedings can be commenced on licensees. The purpose of the proposed amendment is to refine the rights of a licensee to ensure attorneys adhere and maintain professionalism of the laws of New Mexico while representing a licensee. The purpose of the proposed amendment is to accentuate and to reciprocate with other recognized regulatory organizations' rulings. Lastly, minor housekeeping of the proposed amendment to remove a process that is outdated.*

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#### 15.2.1.9 DUE PROCESS AND DISCIPLINARY ACTION:

##### A. Proceedings before the stewards:

(1) Rights of the licensee. ~~[A person who is the subject of the disciplinary hearing conducted by the stewards is entitled to: proper notice of all charges; confront the evidence presented including: the right to counsel at the person's expense; the right to examine all evidence to be presented against them; the right to present a defense; the right to call witnesses; the right to cross-examine witnesses; and waive any of the above rights.]~~ A person who is subject of a disciplinary hearing conducted by the stewards is entitled to proper notice of all charges; the right to confront and examine all the evidence presented against them; the right to present a defense; the right to call witnesses; the right to cross-examine witnesses; the right to counsel, at the persons's expense; and the right to waive any of the above-listed rights.

(a) All attorneys representing a licensee must be licensed to practice law in New Mexico and shall submit an entry of appearance no later than five days prior to the scheduled hearing.

(b) Any attorney not licensed to practice law in New Mexico, shall request permission from the commission, show proof they are associated with an attorney licensed to practice law in New Mexico and adhere to the State of New Mexico's pro hac vice process prior to representing a licensee.

(2) ~~[Complaints-]~~ Initiation of Disciplinary Action

(a) On their own ~~[motion or on]~~ initiative or upon receipt of a complaint from a racing commission state investigator or an association official or ~~[other person]~~ another licensee regarding the alleged actions of ~~[a]~~ another licensee, the stewards may conduct an inquiry and disciplinary hearing regarding the licensee's alleged actions.

~~(b) — A complaint made by someone other than a racing official must be in writing and filed with the stewards not later than 72 hours after the action that is the subject of the complaint.~~

~~(c) — In case of a notice from the state of New Mexico human services department that a licensee is in non-compliance with the Parental Responsibility Act, the licensee shall be notified by the board of stewards. Thereafter the licensee shall have 30 days to provide documentation of compliance to the board of stewards and failure to do so will result in the suspension of the licensee's license.]~~

(3) Summary suspension.

(a) If the stewards determine that a licensee's actions constitute an immediate danger to the public health, safety, integrity, or welfare of the horseracing industry, the stewards may summarily suspend the license pending a hearing.

(b) A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the 10th day after the license was summarily suspended. The licensee may waive their right to a hearing on the summary suspension within the 10-day limit.

(c) At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

(4) Notice.

(a) Except as provided by these rules regarding summary suspension, jockey riding infractions and trial races, the stewards or a racing commission designee shall provide written notice, at least 10 days before the hearing, to a person who is the subject of a disciplinary hearing. The person may waive their right to 10 days notice by executing a written waiver.

(b) Notice given under this section must include: a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a

reference to the particular sections of the statutes or rules involved; a short, plain description of the alleged conduct that has given rise to the disciplinary hearing; the possible penalties that may be imposed.

(c) The stewards or the racing commission designee shall send the written notice of the disciplinary hearing to the person who is the subject of the hearing either by hand delivery, certified or regular mail to the licensee's last provided address or by email. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the stewards or a racing commission designee shall provide notice of the hearing to the owner of the horse in the manner provided by this subsection.

(d) Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the stewards. The stewards may suspend the license of a person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent, in compliance with this subsection.

(5) Continuances.

(a) Upon receipt of a notice, a person may request a continuance of the hearing.

(b) The stewards may grant a continuance of any hearing for good cause shown.

(c) The stewards may at any time order a continuance on their own motion.

(6) Evidence.

(a) Each witness at a disciplinary hearing conducted by the stewards must be sworn by the presiding steward.

(b) The stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. The stewards may admit hearsay evidence if the stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the stewards. Hearsay evidence alone is insufficient basis for a ruling.

(c) The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence that the licensee has violated or is responsible for a violation of the act or a commission rule.

(d) The stewards may record a disciplinary or summary suspension hearing and make a copy of the recording available on request, at the expense of the requesting person.

(7) Ruling.

(a) The issues at a disciplinary hearing shall be decided by a majority vote of the stewards. If the vote is not unanimous, the dissenting steward shall include with the record of the hearing a written statement of the reasons for the dissent.

(b) A ruling by the stewards must be on a form prescribed by the commission and include: the full name, license type, license number, and applicant ID number of the person who is the subject of the hearing; a statement of the charges against the person, including a reference to the specific section of the Racing Act or rules of the commission that the licensee is found to have violated; the date of the hearing and the date the ruling was issued; the penalty imposed; any changes in the order of finish or purse distribution; other information required by the commission.

(c) A ruling must be signed by a majority of the stewards.

(d) The stewards or their designee shall send the ruling to the person who is the subject of the ruling either by hand delivery, certified or regular mail to the licensee's last provided address or by email.

(e) At the time the stewards inform a person who is the subject of the proceeding of the ruling, the stewards shall inform the person of the person's right to appeal the ruling to the commission and apply for a stay.

(f) All fines imposed by the stewards shall be paid to the commission within 14 days after the ruling is issued, unless otherwise ordered.

(8) Effect of rulings.

(a) Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

(b) The transfer of a horse to a different owner or trainer to avoid application of a commission or other recognized regulatory organization's rule or ruling is prohibited unless permitted by the stewards.

(c) The stewards shall honor the rulings issued by other pari-mutuel racing commissions or other recognized regulatory organizations.

(9) Appeals.

(a) A person who has been aggrieved by a ruling of the stewards may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) An appeal under this section must be filed not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday or legal holiday. The appeal must be received by noon, at the main commission offices or with the stewards who issued the ruling and must be accompanied by a fee in the amount of \$400. The fee must be in the form of a money order, cashier's check or a corporate check.

(c) The commission may fine a license holder in the amount up to \$2,500 after considering an appeal if based on the evidence the appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious. Failure of an appealing party to appear at a noticed hearing or withdraw their appeal without providing five business days notice prior to the hearing date may result in the non appearing appealing party being fined up to \$1,000.

(d) An appeal must be in writing on a form prescribed by the commission. The appeal must include the name, address, telephone number and signature of the person making the appeal; and a statement of the basis for the appeal.

(e) On notification by the commission that an appeal has been filed, the stewards shall forward to the commission the record of the proceeding on which the appeal is based, and a statement of the reasons for their rulings.

(f) If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the person shall pay the fine in accordance with these rules.

**(10) Stay.**

(a) A person who has been disciplined by a ruling of the stewards may apply to the agency director for a stay of the ruling not later than 10 days after the date of the ruling. If the deadline falls on a Saturday, Sunday or legal holiday, the period is extended to the next business day. A request for a stay must be received by noon at the main commission offices.

(b) An application for a stay must be filed with the agency director not later than the deadline for filing an appeal.

(c) An application for a stay must be in writing and include the name, address and telephone number and signature of the person requesting the stay; a statement of the justification for the stay.

(d) On a finding of good cause, the agency director may grant the stay. The agency director shall notify the person in writing of the agency director's decision on the stay application. On a finding of changed circumstances or upon appellant's request for a continuance, the agency director may rescind a stay granted under this subsection. No such stay shall be rescinded with less than a 72 hours notice.

(e) The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.

**B. Proceedings by the commission:**

**(1) Party designations.**

(a) A person who is the subject of a disciplinary hearing, who filed an appeal from a stewards' ruling or who otherwise seeks relief from the commission is a party to that proceeding.

(b) A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.

(c) A party summoned to appear at a hearing ~~[must]~~shall appear unless the party is excused by the commission presiding officer. Parties may appear with counsel or ~~[other representatives]~~ an industry representative of their choice. ~~[Counsel must be an attorney licensed to practice law in this state or with the permission of the commission is associated with an attorney licensed to practice law in this state and must submit an entry of appearance no later than 10 days prior to the hearing date.]~~

(d) All attorneys representing a licensee must be licensed to practice law in New Mexico and shall submit an entry of appearance no later than 10 days prior to the scheduled hearing.

(e) Any attorney not licensed to practice law in New Mexico, shall request permission from the commission, show proof they are associated with an attorney licensed to practice law in New Mexico and adhere to the State of New Mexico's pro hac vice process prior to representing a licensee.

(f) A non-party to a proceeding who wishes to appear in a contested case pending before the commission must prove that they have an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

**(2) Notice.**

(a) Not less than 20 days before the date set for a hearing, the agency director, or acting agency director, shall serve written notice on each party of record to the proceeding. The person may waive their right to said notice by executing a written waiver.

(b) The agency director shall mail the notice to the person's last known address, as found in the commission's licensing files, by regular mail. If a party is being represented by an attorney or other representative, notice will be provided to the attorney or representative instead of on the party and is deemed properly served.

(c) A notice of the hearing must include: statement of time, place and nature of hearing; statement of the legal authority and jurisdiction under which the hearing is to be held; reference to the particular section of the statutes and rules involved; short, plain statement of the matters asserted; and any other statement required by law.

(d) If the commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued, the commission shall issue a revised notice. The party who has caused the change or error requiring revised notice shall bear the expense of giving revised notice.

(e) A party to a proceeding may move to postpone the proceeding. The motion must be in writing, set forth the specific grounds on which it is sought and be filed with the commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the commission shall cause new notice to be issued.

(f) After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

**(3) Subpoenas and depositions.**

(a) A member of the commission, the agency director, the stewards, the presiding officer of a commission proceeding or other person authorized to perform duties under the act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.

(b) A member of the commission, the agency director, a presiding officer of a commission proceeding or other person authorized by the commission may administer an oath or affirmation to a witness appearing before the commission or a person authorized by the commission.

(c) Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by this jurisdiction's civil procedures statute.

(d) On written request by a party, the presiding officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

(e) The Administrative Procedures Act, Civil Statutes, Article 8, Section 12-8-15 governs the taking and the use of depositions. Rule 1-036 of the New Mexico Rules of Civil Procedure governs admissions of fact and genuineness of documents.

**(4) Pleadings.**

(a) Pleadings filed with the commission include appeals, applications, answers, complaints, exceptions, replies and motions. Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

(c) A pleading or brief filed with the commission must be typewritten or printed on 8 1/2 inch by 11 inch white paper with one-inch margins. Exhibits, unless prepared according to other commission rules pertaining to maps, plats, or similar documents, must be folded to the same size. Unless printed, the impression must be on one side of the paper only. The documentation must be double-spaced, except for footnotes and lengthy quotations, which may be single-spaced. Reproductions are acceptable, provided all copies are clear and permanently legible. The original copy of each pleading must be signed in ink by the pleader or the pleader's representative.

(d) If the commission staff prepares a form for a pleading, the commission staff shall furnish the form on request. A pleading for which an official form has been developed must conform

substantially to the form. A pleading for which the commission staff has not prepared an official form must contain: the name of the pleader; the telephone number and street address of the pleader's residence or business and the telephone number and street address of the pleader's representative, if any; a concise statement of the facts relied on by the pleader; a request stating the type of commission action desired by the pleader; the name and address of each person who the pleader knows or believes will be affected if the request is granted; any other matter required by statute or commission rule; a certificate of service.

(e) A party filing a pleading shall mail or deliver a copy of the pleading to each party of record. If a party is being represented by an attorney or other representative, service must be made on the attorney or representative instead of on the party.

(f) An objection to a defect, omission, or fault in the form or content of a pleading must be specifically stated in a motion or an exception presented not later than the prehearing conference if one is held and not later than 15 days before the date of the hearing if a prehearing conference is not held. A party who fails to timely file an objection under this subsection waives the objection.

(g) Except as otherwise provided by this subsection, a pleader may amend or supplement a pleading at any time before the 21st day after the date the pleading was filed, but not later than five days before the date of the hearing. A pleader may amend or supplement a pleading at any time: on written consent of each party of record; or, as permitted by the presiding officer for the proceeding, when justice requires the amendment or supplementation and when the amendment or supplementation will not unfairly surprise another party.

(h) A pleading may adopt or incorporate by specific reference any part of a document in the official files and records of the commission. This subsection does not relieve the pleader of the duty to allege in detail all facts necessary to sustain the pleader's burden of proof.

(5) Filing pleadings.

(a) Except as otherwise provided by this section, an original of each pleading must be filed with the commission. An original of each pleading relating to discovery must be filed with the commission. A pleading is considered filed only when actually received by the commission. Each pleading must include a certification that a copy has been mailed or delivered on each party of record, stating the name of each party served and the date and manner of service.

(b) If a pleading is sent to the commission by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail one day or more before the last day for filing the pleading, the pleading is considered received and filed in time if the pleading is actually received not more than 10 days after the deadline. A legible postmark affixed by the United States postal service is prima facie evidence of the date of mailing. For purposes of responsive pleadings for which the deadline for filing is set by the filing of another pleading, the pleading to be filed first is considered filed when actually received by the commission.

(c) Unless otherwise provided by statute, the presiding officer for a proceeding may extend the time for filing a pleading on a motion made by a party before the filing deadline if the presiding officer determines that there is good cause for the extension and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of a motion made under this section must be served on all parties of record contemporaneously with the filing of the motion.

~~[(d) — A pleading may be filed by facsimile, provided an original and the required number of copies are received in the commission's office not later than 5:00 p.m. of the third day after the date the document was filed by facsimile. The inability to transmit a document due to equipment malfunction or any other cause does not relieve the person attempting to file the document of the filing deadline.]~~

~~(e)~~(d) If the deadline for filing a pleading falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

~~(f)~~(e) The failure to file a pleading in accordance with this section may result in the pleading being struck.

(6) Place and nature of hearings.

(a) A hearing in a commission proceeding is open to the public.

(b) A hearing shall be held in Albuquerque unless: for good cause stated, the commission designates another place for the hearing; or, the act require otherwise.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes, but is not limited to, disposition by stipulation, agreed settlement, consent order, dismissal, and default.

(7) Presiding officers.

**(a)** One or more members of the commission, an administrative law judge, or a duly designated hearing officer may serve as the presiding officer for a commission proceeding. Objections to the presiding officer must be made in writing to the agency director at least 20 calendar days prior to the hearing. If in any case a combination of objections to a presiding officer(s) would result in the matter not being heard, the removal of the hearing officer shall not be effective.

**(b)** The presiding officer may: authorize the taking of depositions; issue subpoenas to compel the attendance of witnesses and the production of papers and documents; administer oaths; receive evidence; rule on the admissibility of evidence and amendments to pleadings; examine witnesses; set reasonable times within which a party may present evidence and within which a witness may testify; permit and limit oral argument; issue interim orders; recess a hearing from day to day and place to place; request briefs before or after the presiding officer files a report or proposal for decision; propose findings of fact and conclusions of law; propose orders and decisions; perform other duties necessary to a fair and proper hearing.

**(c)** An administrative law judge designated as the presiding officer must be an attorney licensed to practice in this state.

**(d)** A person may not serve as the presiding officer of a proceeding in which the person has an economic interest. A person is considered to have an economic interest in a proceeding if the person, a member of the person's immediate family, or a dependent, business partner, or client of the person has an economic interest in the proceeding.

**(8) Conferences.**

**(a)** On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following: simplifying issues; amending the pleadings; making admissions of fact or stipulations to avoid the unnecessary introduction of proof; designating setting the order of procedure at a hearing; identifying and limiting the number of witnesses; resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute.

**(b)** The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate order concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.

**(c)** During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action taken at the conference and the statement must be signed by each party and made a part of the record.

**(9) Discovery.**

**(a)** On written request by a party, the presiding officer or the agency director may issue a subpoena to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding.

**(b)** A motion for a subpoena to compel the production of books, records, papers, or other objects shall be addressed to the appropriate person, shall be sworn to and shall specify the books, records, papers, or other objects desired and the relevant and material facts to be proved by them.

**(c)** Discovery on behalf of commission shall only be provided to the licensee or to counsel who has submitted an entry of appearance.

**(10) Order of hearing.**

**(a)** The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.

**(b)** When a hearing has begun a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.

**(c)** Each appearance by a party, a party's representative, or a person who may testify must be entered on the record.

**(d)** The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.

**(e)** Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the commission or if several proceedings are heard on a consolidated record.

(f) After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross-examine each witness.

(g) After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross-examination.

(h) The presiding officer may allow nonparty participants to cross examine a witness if the presiding officer determines that the cross examination may lead to significantly fuller disclosure of the facts without unduly delaying the hearing or burdening the record.

(i) At the conclusion of all evidence and cross-examination, the presiding officer shall allow closing statements.

(j) Before writing a report or proposal for decision if required by law, the presiding officer may call on a party for further relevant and material evidence on an issue. The presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.

**(11) Behavior.**

(a) Each party, witness, attorney, or other representative shall behave in all commission proceedings with dignity, courtesy and respect for the commission, the presiding officer and all other parties and participants. Attorneys ~~[shall observe and practice the standards of ethical behavior prescribed for the profession by the code of professional responsibility]~~ appearing in this jurisdiction must comply with the rules of professional conduct as established by the New Mexico Supreme Court. If the attorney does not abide by the rules of professional conduct as established by the New Mexico Supreme Court, the attorney may be suspended or banned from practicing in front of the commission or may be reported to that practicing attorney's State Bar.

(b) ~~[An]~~Any individual who violates this section may be excluded from a hearing by the presiding officer for a period and on conditions that are just, or may be subject to other just, reasonable and lawful disciplinary action prescribed by the presiding officer.

**(12) Evidence.**

(a) All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(b) The presiding officer may, unless precluded by statute, admit evidence of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law in this jurisdiction apply in commission proceedings.

(c) A party may object to offered evidence and the objection shall be noted in the record. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary. A party, at the time a ruling is made or sought, shall make known to the presiding officer the action the party desires.

(d) When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination is preserved without making an offer of proof.

(e) The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the commission's specialized knowledge. The commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.

(f) The special skills and knowledge of the commission and the commission staff may be used in evaluating the evidence.

(g) The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to examine the documents from which the abstracts are made.

(h) The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn

testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writings as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.

(i) Documentary exhibits must be of a size, which will not unduly encumber the record. Whenever practicable, exhibits must conform to the size requirements in these rules for pleadings. The first sheet of the exhibit must briefly state what the exhibit purports to show and the pages of the exhibit must be numbered consecutively. Exhibits may include only facts material and relevant to the issues of the proceedings. Maps or drawings must be rolled or folded so as not to encumber the record. Exhibits not conforming to this subsection may be excluded.

(j) The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded, and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.

(k) The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.

**(13) Reporters and transcripts.**

(a) If necessary, the commission shall engage a court reporter to make a stenographic record of a hearing. The commission may allocate the cost of the reporter and transcript among the parties.

(b) If a person requests a transcript of the stenographic record, the commission may assess the cost of preparing the transcript to the person.

(c) A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the 15th day after the date the corrections were filed with the commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

**(14) Findings of fact and conclusions of law.**

(a) The presiding officer may direct a party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision that includes proposed findings of fact and conclusions of law. The presiding officer may limit the request for proposed findings to a particular issue of fact.

(b) Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.

**(15) Proposal for decision.**

(a) Where a hearing officer conducts a hearing, the hearing officer shall complete a report containing his or her findings of fact, conclusions of law and recommendations for commission action.

(b) Any commissioner who did not hear the case may not participate in a decision in which the commission rejects, modifies, adds to, or makes substitutions for the findings of fact in a hearing officer's report unless the commission has reviewed all portions of the record that pertain to such findings of fact.

(c) Where the commission itself is the hearing body, the commission shall complete a report containing findings of fact and conclusions of law. No commissioner may participate who has not either heard the case or reviewed the entire record.

(d) The person preparing a proposal for decision under this section shall initiate service of a copy of the hearing officer's report or commission's report on each party of record no later than 31 calendar days after the close of the hearing.

**(e)** A party of record may, not later than 10 business days after the date of service of a hearing officer's report or commission's report, file exceptions to the report. A reply to an exception filed under this subsection must be filed no later than five business days after the last day for filing the exceptions. A copy of each exception and reply must be served on all parties of record.

**(f)** After the expiration of time for filing exceptions and replies, the commission shall consider the proposal for decision in open meeting. The commission may: adopt the proposal for decision, in whole or in part; decline to adopt the proposal for decision, in whole or in part; remand the proceeding for further examination by the same or a different presiding officer; or direct the presiding officer to give further consideration to the proceeding with or without reopening the hearing.

**(g)** If on remand additional evidence is received which results in a substantial revision of the proposal for decision, a new proposal for decision shall be prepared, unless a majority of the commission, on remand, has heard the case or read the record. A new proposal for decision must be clearly labeled as such and all parties of record are entitled to file exceptions, replies and briefs.

**(16)** Dismissal. On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including: failure to timely pay all required fees to the commission; unnecessary duplication of proceedings; withdrawal; moot questions or obsolete petitions; and lack of jurisdiction.

**(17)** Orders.

**(a)** Except as otherwise provided by these rules, the commission shall issue its final order not later than 30 days after the date the commission votes on the ultimate issues in the proceeding. A final order of the commission must be in writing and be signed by at least one member of the members of the commission who voted in favor of the action taken by the commission. A final order must include findings of facts and conclusions of law, separately stated.

**(b)** The commission staff shall mail or deliver a copy of the order to each party or the party's representative.

**(c)** A final order of the commission takes effect on the date the order is issued, unless otherwise stated in the order.

**(d)** If the commission finds that an imminent peril to the public health, safety, or welfare requires an immediate final order in a proceeding, the commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.

**(18)** Rehearing.

**(a)** Within 10 days following issuance of a final commission order, a party adversely affected by the order may file a petition for a rehearing stating the reasons for requesting a rehearing. The commission shall grant a rehearing only in cases of newly discovered material evidence, which the party could not reasonably have discovered at an earlier time, or other good cause.

**(b)** An order granting a motion for rehearing vacates the preceding final order. The order granting a motion for rehearing may direct that the hearing be reopened or may incorporate a new final decision. Except as otherwise provided by these rules, if the commission renders a new decision, a motion for rehearing directed to the new decision is a prerequisite to appeal.

**(19)** Ex parte communications. No party to a proceeding before the commission shall, at any time prior to the issuance of a final commission decision, discuss or otherwise communicate with a hearing officer assigned to hear the case or with any commission member who will or may participate in the commission's decision in the case, regarding any issue in the case, without at the same time making the same communication to all other parties, including the commission's administrative prosecutor. This rule shall not apply to communications limited to such items as ascertaining the time or place of a hearing or the procedures to be followed at a hearing.

**(20)** Administrative penalties.

**(a)** If the commission determines that a person regulated under the act has violated the act or a rule or order adopted under the act in a manner that constitutes a ground for disciplinary action under the act, the commission may assess an administrative penalty against that person as provided by this section.

**(b)** The commission delegates to the agency director the authority to prepare and issue preliminary reports pursuant to the act. If, after examination of a possible violation and the facts relating to that possible violation, the agency director determines that a violation has occurred, the agency director shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed and the amount to be assessed. The amount of the penalty may not exceed \$1,000 for each violation.

Each day/occurrence that a violation continues may be considered a separate violation. In determining the amount of the penalty, the agency director shall consider the seriousness of the violation.

(c) If the commission finds based on the evidence that an appeal is frivolous, unreasonable or unnecessary or determined to be an abuse of process or malicious, the license holder may be fined in the amount up to \$2,500.

(d) Not later than the 10th day after the date on which the agency director issues the preliminary report, the agency director shall provide a copy of the report to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty. If possible, the agency director shall hand deliver the preliminary report. If hand delivery is not possible, the agency director shall mail the preliminary report to the person's last known address, as found in the commission's files, by regular mail and by certified mail, return receipt requested.

(e) Not later than the 20th day after the date on which the agency director delivers or sends the preliminary report, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission.

(f) If it is determined after the hearing that the person has committed the alleged violation, the commission shall give written notice to the person of the findings established by the hearing and the amount of the penalty and shall enter an order requiring the person to pay the penalty.

(g) Not later than the 30th day after the date on which the above notice is received, the person charged shall pay the administrative penalty in full or exercise the right to appeal to the appropriate court either the amount of the penalty or the fact of the violation. If a person exercises a right of appeal either as to the amount of the penalty or the fact of the violation, the amount of the penalty is not required to be paid until the 30th day after the date on which all appeals have been exhausted and the commission's decision has been upheld.

**(21) Exclusion.**

(a) The steward, agency director, or commission may order an individual ejected or excluded from all or part of any premises under the regulatory jurisdiction of the commission if the stewards, agency director, or commission determine that the individual's presence on association grounds is inconsistent with maintaining the honesty and integrity of racing.

(b) An exclusion may be ordered separately or in conjunction with other disciplinary action taken by the stewards or commission. If exclusion is ordered separately, the excluded individual is entitled to a hearing before the stewards or commission. A hearing on exclusion shall be conducted in the same manner as other hearings conducted by the stewards or commission.

(c) If an individual is excluded under this section, a race animal owned or trained by or under the care or supervision of the individual is ineligible to be entered or to start in a race in this jurisdiction.

**(22) ~~[Rulings in other jurisdictions](Reciprocity).~~**

(a) ~~[Reciprocity.]~~ The stewards shall honor rulings from recognized regulatory organizations or other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.

~~[(b) — Appeals of reciprocal rulings. Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the commission to show cause why such ruling should not be enforced in this jurisdiction. Any request for such hearing must clearly set forth in writing the reasons for the appeal.]~~

[15.2.1.9 NMAC - Rp, 15 NMAC 2.1.9, 3/15/2001; A, 3/31/2003; A, 5/30/2003; A, 6/15/2004; A, 6/30/2009; A, 9/15/2009; A, 12/1/2010; A, 5/1/2013; A, 1/1/2014; A, 3/16/2015; A, 5/1/2015; A, 9/16/2015; A, 3/15/2016; A/E, 6/28/2016; A, 9/16/2016; A, 12/16/2016; A, 7/1/2017; A, 3/14/2018; A, 9/26/2018; A, 4/9/2019; A, 5/24/2022; A, 4/9/2024]