

**Approved Minutes from the July 27, 2009 Meeting of the  
Administrative Procedures, Regulations, and Policy Committee  
Held by teleconference at 9:00 am at NDOW Headquarters, 1100 Valley Road, Reno, NV**

Committee Members on the phone: Commissioners Scott Raine, Tom Cavin, and Grant Wallace

Staff Present: Management Analyst 3 Kim Jolly (staff to the committee), Director Ken Mayer, Game Warden Captain Cameron Waithman, and Deputy Attorney General Nhu Nguyen (by phone).

Public present: Judi Caron, Diane Belding, and Mel Belding

**1. Call To Order**

Tom Cavin joined the conference at 9:00 am, but for lack of a quorum, the committee was not called to order. Scott Raine joined the conference at 9:26 am, constituting a quorum. (Grant did not join until 10:15 am.)

The meeting was called to order by Chair Scott Raine at 9:31 am.

**2. Public Comment Period**

Public Comment period was opened, there was none.

**3. Discussion of and possible action on modified Commission Policy #1.**

There was discussion about the draft Policy 1. Commissioners Cavin and Raine both recommended that on page three second sentence it should be changed to "The Commission will have a minimum of two readings of the proposed policy in public meetings."

Under item seven, it was noted that "grantee" may be the incorrect term; perhaps "grantor" is more appropriate, as that means the donator. There was further discussion about the terminology of gifts, grants, bequests, etc.

Chair Raine asked for any public input.

Public member Judi Caron suggested that under the number seven, the first paragraph in the second sentence, "or Silver State Tag" should be added so as to be statutorily accurate, since NRS changed.

***Donors Being Recognized***

There was discussion about the possibility of allowing donors to remain anonymous, as that had been brought up previously in public meetings. Commissioner Cavin and Raine determined that someone would simply not show up to be recognized if they wanted to remain anonymous.

***Matching Funds***

Chair Raine recommended a CABMW member's recommendation to add the phrase "and any corresponding matching funds" to the end of the third sentence in the in the third paragraph of number seven. There was further discussion with the Committee, staff, and the Director about how federal monies are matched and accounted for, and how donations are accounted for.

***Approved Legislation Summary in the Draft***

It was discussed whether the paragraph of NRS was verbatim or a summary, Management Analyst 3 (MA3) Kim Jolly said a summary. Deputy Attorney General (DAG) Nhu Nguyen researched the new legislation, and reviewed the policy and said the summary was accurate. The group questioned whether the phrase "Commission has guidance" was accurate. DAG Nguyen also reviewed it and said while it was fine, it might be more accurate to say "may provide guidance", but either was ok.

DAG Nguyen further noted that there should be no confusion about who allocates money; that is a decision of the Department.

Commissioner Cavin made the motion to edit Commission Policy 1 to incorporate the draft changes, plus most of the suggested changes discussed, excluding the matching funds statement, and to forward the policy to the Commission. It was seconded. All in favor (Cavin and Raine present for vote).

#### **4. Discussion and possible action on new Commission Policy #3A (Appeals Policy)\***

##### ***Numbering***

There was discussion about the numbering of the new policy 3A, and how our DAG David Newton at the last committee meeting had recommended we use a letter to indicate that this policy was not the same as the repealed Policy 3.

Staff indicated that since Policy 3 and 4 before our time were repealed, the Committee could use number 3 and 4 if they wanted.

Chair Raine preferred to name these 3 and 4 without the A. Commissioner Cavin asked about the other policy numbers available.

Existing numbers for operations policies are 1, 2, 9, and 10. Previously, there were also Commission Policies 3, 4, 5, 6, 7, and 8, but those have been repealed. Since these had been repealed, new policies can use those numbers.

##### ***Review of the Draft***

This policy is short. MA3 Jolly clarified that in current Commission Policy 1 there was never an appeals section, although that is a large part of what the Commission does. This Appeals Policy draft was presented at the Lovelock meeting, developed with ideas from MA3 Kim Jolly and Chief Game Warden Rob Buonamici, and based on what is in Nevada Administrative Code (NAC).

Staff read over the draft policy. There was discussion about changing the “quasi-court” to “quasi-judicial” capacity, and the other specific recommendations by the DAG.

##### ***Suggested Changes***

Staff received suggested changes from Comm. Raine, Comm. Cavin, and Captain Cameron Waithman.

Captain Waithman's changes included some clean-ups, and in the procedures section he took out what he saw as excess verbiage, including the “quasi-judicial capacity”, also removed statements about a “case”, and the part about maintaining “fairness and impartiality”.

He added the phrase “as prescribed in statutes and regulation” to the end of paragraphs, and after the second paragraph “Commissioners would not engage in discussion with the appellant” he added “, department personnel or any other person regarding the facts or circumstances with said appeal.” Captain Waithman said that is because Commissioners also shouldn't talk to Law Enforcement about appeals.

Chair Raine asked what was wrong with the draft language, and asked Captain Waithman to explain further.

##### ***Types of Hearings***

Captain Waithman explained that since this policy was new language, his changes overall were to simplify the new language. He said he took out the quasi-judicial capacity because really there

are 2 types of hearings before the Commission, and only one could be considered quasi-judicial: the type being heard from the beginning, or *de novo*. For example, the Gila monster hearing was quasi-judicial heard from the beginning, where they listen to what the Department and the other party says. The other type of hearing is a demerit hearing and that is not quasi-judicial at all because by regulation, it is simply to review that the Department followed procedure. Capt. Waithman explained that rather than expand on this policy and outline those two types of hearings, it was simpler to state that the Commission would follow statute and regulation.

Chair Raine asked if there were any questions.

### ***Quasi-Judicial language***

Commissioner Cavin said he liked the quasi-judicial language because it defines our duties, and sets the stage for why we're now not allowing public comment. He recognized that there are two kinds of hearings.

Chair Raine said the quasi-judicial language was recommended by 2 previous DAGs, and suggested that they keep that but also incorporate Capt. Waithman's changes as well. There was more discussion about the different types of appeals and asked for attorney comment.

DAG Nhu Nguyen confirmed with MA3 Jolly that DAG Newton had suggested that term. DAG Nguyen verified that quasi-judicial was accurate language for the terminology. These decisions are appealable to the district level, so it's not incorrect to say quasi-judicial.

There was more discussion about the demerit hearings, and the statues and regulations which applied to the Commission.

Commissioner Cavin and Chair Raine went over their suggested changes, respectively.

### ***Not Discussing Appeals***

There was discussion about whether the Commissioners should or should not discuss their decisions about the appeals. DAG Nguyen said that after their decision they should not speak with the public about the appeals so that they could remain unbiased and make their decision based on the evidence presented. Once the decision is made, they can take public statements, but should not comment on them.

DAG Nguyen then clarified that if a member of the public came up to a Commissioner after the hearing and in a private conversation, asked why they made that decision, they should not explain because the Commissioner should not have to further address it, the decision should speak for itself. Commissioners should refrain from further explaining their decision whether in the meeting or any private conversation with the public.

Comm. Cavin said to make it easier, they should just leave the draft to read that they not discuss the appeal at all. DAG Nguyen said that would keep it simple.

Then there was discussion about preferences on order of sentences and wording.

### ***Other Suggestions***

Following that, there was discussion sparked by Captain Waithman that a way to save time on the Commission's part would be to clearly outline what the Commission's abilities are with regard to demerit appeals. Often someone will explain for thirty minutes their story, yet it has nothing to do with that appeal. All that they can appeal is that NDOW didn't follow procedure for verification.

Chair Raine mentioned that it was up to the Commission Chairman's discretion to limit those comments if they were irrelevant.

There was further discussion about adding in language to clarify the Commissioner's powers during hearings, or, to simply rely on the DAG to advise them of their limitations during the hearing.

***At 10:51am Commissioner Grant Wallace joined the conference call.***

Chair Raine reviewed for Comm. Wallace what the Committee had already gone over, and the current discussion on the Appeals Policy.

Comm. Wallace reviewed the various suggestions and said he didn't have any problems with them, but that he would probably abstain from voting on this.

Comm. Cavin made a motion to create it as Policy #3 (instead of Policy 3A) with the initial draft and incorporated the suggested add-in changes, and to forward the policy to the Commission.

There was discussion about the motion, and the policy sounding too strict and trying to soften it. The quasi-judicial language explains the reason for not taking public comment, and sets the tone. Staff read out the suggested changes. Comm. Wallace asked if there was public comment on this section – which was explained to him. Wallace said he didn't feel comfortable not having heard that, so he would abstain.

The motion was seconded. All in favor, (Wallace abstaining).

**5. Discussion and possible action on new Commission Policy #4A (Petition and Regulations Policy)\***

Discussion on the draft policy was opened.

Staff MA3 Jolly reviewed the draft which was originally a small part of Commission Policy 1, and noted that it would be renamed Policy 4 to be consistent with the new format. Staff outlined the differences in this draft and what was originally in P-1.

The Policy and Purpose statements were borrowed from the section on adoption of regulations in original P-1, and slightly changed. Also, a header and new portions were added by the Committee at the Lovelock meeting in June. The new language was framed it into three sections, divided based on what kind of regulation the Commission was hearing. The petition section was new, and outlined responsibilities of each party and decision-making guidelines.

***Suggested Changes***

Comm. Cavin went over his suggested changes for clean-up. Then Chair Raine went over his changes, including addition of the author's name to any input.

In the draft at the Lovelock meeting there was a more detailed listing of the timing and decisions that would have to occur in order for a petition to become a regulation. The Committee noted that the phrase "this is a lengthy process" was a simpler way to let the petitioner know ahead of time this would require homework on their part, and was also dependent on other entities like the LCB.

Another sentence was updated to read, "If accepted by the Commission, the rulemaking process will begin."

Comm. Wallace noted that his suggestions mimicked Comm. Cavin's.

There was no public comment.

Chair Raine asked if staff had any comments.

Staff mentioned that she would like to take off the phrase on the policy, "Petition form attached" as they didn't need to make the petition form part of the policy because then there would need to be a committee meeting anytime the form needed updating. The Department will update the petition form and attach it when distributing it. The committee agreed that made sense.

Then the committee discussed everyone's suggestions. Staff read over the suggested changes.

Comm. Cavin made the motion to accept the draft that was developed at the June meeting, and to add in all the suggestions that staff had just read. To be forwarded to the August Commission meeting, and to forward the policy to the Commission. It was seconded. All in favor (Wallace, Cavin, and Raine voting).

**6. Adjourn\***

The Committee adjourned at 11:29 am.