

CHAPTER 90
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GENERAL PROVISIONS

90.010 "Administrator" defined.

As used in this chapter, unless the context otherwise requires, "administrator" means the secretary of state, as designated in subsection 1 of NRS 90.160.

[Sec'y of State, Practice Rules § 2.3, eff. 7-1-65; A and renumbered as § 1.1, 4-23-76]

REGISTRATION OF BROKER-DEALERS AND AGENTS, BULLION DEALERS, INVESTMENT ADVISERS AND TRANSFER AGENTS

90.050 Surety bond required.

The registrant shall provide a surety bond which must be no less than \$25,000 and no more than \$150,000 as established by the administrator.

[Sec'y of State, Bond Requirement Reg., eff. 11-6-75]

90.060 Cash deposit in lieu of surety bond.

1. In lieu of a surety bond, the applicant may make a cash deposit of no less than \$25,000 and no more than \$150,000 as established by the administrator, which can be, but is not limited to, securities, government securities, savings and loan passbook or time certificate of deposit.

2. For the purposes of this section, "securities" means those which are publicly traded on listed exchanges or over the counter. These must be placed with the state treasurer for safekeeping and must be accompanied by a stock power.

3. A continuing evaluation will be made by the administrator and if any deficiency arises, the administrator will request the applicant to deposit additional securities or money immediately. Failure to furnish such additional securities or money will result in suspension of the registration.

[Sec'y of State, Bond Requirement Reg., eff. 11-6-75]

90.070 Blanket or combination bond in lieu of surety bond.

1. In lieu of individual surety bonds, a blanket bond or combination bond may be submitted.

2. The requirements are as follows:

Broker with one to five agents.....	\$40,000
Broker with six to ten agents.....	50,000
Broker with eleven to fifteen agents.....	60,000
Broker with sixteen to twenty agents.....	70,000
Broker with twenty-one to thirty agents.....	80,000
Broker with over thirty agents	100,000

[Sec'y of State, Bond Requirement Reg., eff. 11-6-75]

RULES OF PRACTICE

90.100 Scope and construction.

NAC 90.100 to 90.290, inclusive:

1. Govern all practice and procedure before the administrator in:

(a) Any contested case involving the denial by the administrator of the approval of the statement of any security or commodity option or the registration of a broker-dealer, bullion dealer, issuer, agent, investment adviser or transfer agent;

(b) The prohibition or suspension by the administrator of the sale of any security or commodity option;

(c) The prohibition or suspension by the administrator of any person from acting as a broker-dealer, bullion dealer, issuer, agent, investment adviser or transfer agent; or

(d) The imposition of civil penalties.

2. Must be liberally construed to secure just, speedy and economical determination of all issues presented to the administrator and to effectuate the purposes of chapters 90 and 233B of NRS.

3. Must not be construed as conflicting with any provisions of NRS as they pertain to the powers and duties of the administrator, but rather must be construed as being in harmony with them.

[Sec'y of State, Practice Rules §§ 1.1, 1.2 & 1.4, eff. 7-1-65; A and renumbered as §§ 1.3, 1.4 & 1.6, 4-23-76]

90.110 Relief from regulations.

In special cases, where good cause appears, not contrary to law, the administrator may permit deviation from NAC 90.100 to 90.290, inclusive, where compliance is found to be impractical or unnecessary.

[Sec'y of State, Practice Rules § 1.3, eff. 7-1-65; A and renumbered as § 1.5, 4-23-76]

90.120 Severability.

If any provision of NAC 90.100 to 90.290, inclusive, or the application thereof to any person, thing or circumstance is held invalid, such invalidity does not affect the provisions or application of those sections which can be given effect without the invalid provision or application, and to this end the provisions of NAC 90.100 to 90.290, inclusive, are declared to be severable.

[Sec'y of State, Practice Rules § 1.5, eff. 7-1-65]

90.130 Communications with administrator.

1. All written communications and documents should be addressed to the secretary of state, securities division, and will be deemed to be officially received only when delivered at the principal office of the administrator.

2. The principal office of the administrator is: Office of the Secretary of State, Securities Division, The Capitol, Carson City, Nevada 89710. The Las Vegas branch office of the administrator is: Office of the Secretary of State, Securities Division, 2501 East Sahara Avenue, Las Vegas, Nevada 89104.

3. The offices of the administrator will be open from 8:00 a.m. to 5:00 p.m. each day except Saturday, Sunday and legal holidays.

[Sec'y of State, Practice Rules §§ 2.1 & 2.2, eff. 4-23-76]

90.140 Parties.

1. The staff of the administrator shall bring proceedings before the administrator.

2. Parties against whom proceedings are brought shall be styled respondents.

3. The administrator's staff may appear at any hearing and have all rights of participation as a party to the proceeding. If counsel is desired, the attorney general will represent the staff.

[Sec'y of State, Practice Rules §§ 2.1, 2.2, 2.4 & 2.5, eff. 7-1-65; A and renumbered as §§ 3.1 & 3.2, 4-23-76]

90.150 Pleadings.

1. Pleadings before the administrator must be entitled complaint and answer.

2. The administrator may, in his discretion, allow any pleading to be amended or corrected for any omissions to be supplied.

3. All pleadings must be liberally construed with a view to effect justice between the parties, and the administrator will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.

4. Upon the initiative of the staff of the administrator, a complaint may be made alleging one or more causes of action based upon NRS 90.115, 90.133, 90.135 or 90.175.

5. The facts constituting acts or omissions must be stated with such particularity as to enable the respondent to prepare a defense to the complaint. All applicable citations, statutes, rules, regulations or orders of the administrator should be stated, and the dates on which the acts or omissions occurred. If more than one cause of action is alleged, each cause of action should be stated and numbered separately.

6. Complaints will be set for hearing at the earliest convenience of the administrator, unless notice of satisfaction of the complaint, by answer or otherwise, is received by the administrator.

7. Within 20 days of service of the complaint upon a respondent, he shall file with the administrator an answer to the complaint. Matters alleged by way of affirmative defense must be separately stated and numbered. In case a party fails to answer within the time prescribed, he shall be deemed to be in default and the administrator may then take any appropriate action against the respondent as is authorized by law. The administrator may set aside a default for good cause shown.

[Sec'y of State, Practice Rules §§ 5.1-5.5, eff. 4-23-76]

90.160 Filing and service.

1. An original and two legible copies of all pleadings, motions or other papers must be filed with the administrator.

2. All notices, opinions, decisions, orders and documents required to be

served by the administrator, and all documents filed by any party may be served personally or by registered or certified mail, and, in the case of service by mail, service is complete when a true copy of the paper or document, properly addressed and stamped, is deposited in the United States mail.

3. All documents served by any party must contain an acknowledgment or certificate of service.

4. Answers to complaints must be filed with the administrator within 20 days after service of the complaint, unless for good cause the administrator extends the time in which answer may be made.

5. Any motion directed toward a complaint must be filed before the answer is due, otherwise an objection must be raised in the answer. If a motion is directed toward an answer, it must be filed within 10 days of the service of the answer. Other motions must be timely filed. A responding party shall file and serve upon all parties within 10 days after the service of a motion, an opposition to the motion. The moving party may serve and file a reply to the opposition within 5 days after service of the opposition to the motion.

[Sec'y of State, Practice Rules § 3.11, eff. 7-1-65; A and renumbered as §§ 7.1-7.5, 4-23-76]

90.170 Motions.

1. All motions, unless made during a hearing, must be in writing.

2. All written motions must contain a memorandum describing with particularity the grounds of the motion, and describing the relief or order sought. Supporting affidavits may be included.

3. An opposing party may serve and file an answering memorandum and counter-affidavit.

4. The moving party must serve and file a reply memorandum only if an opposition to the motion has been served and filed.

5. A decision will be rendered without oral argument unless oral argument is requested by the administrator, in which event the administrator will set a date and time for hearing.

[Sec'y of State, Practice Rules §§ 6.1-6.5, eff. 4-23-76]

90.180 Depositions.

1. The testimony of any material witness residing within or without the state may be taken by deposition in the manner provided by the Nevada Rules of Civil Procedure.

2. The provisions of subsections (d), (e) and (f) of Rule 26 of the Nevada of Rules of Civil Procedure, where appropriate, apply to the use of such depositions, objections to their admissibility and the effect of taking or using depositions.

[Sec'y of State, Practice Rules § 3.9, eff. 7-1-65]

90.190 Briefs.

The administrator may order briefs to be filed within such time as may be allowed by the administrator and the brief must be accompanied by proof of service in accordance with subsection 3 of NAC 90.160.

[Sec'y of State, Practice Rules § 8.12, eff. 4-23-76]

90.200 Subpenas.

1. For the purposes of the hearing, the administrator shall issue subpenas and subpenas duces tecum at the request of a party thereto. Parties shall prepare and present their requests to the administrator for issue and shall bear all costs in connection therewith.

2. Fees are allowed to witnesses summoned by subpena as provided in Rule 45(c) of the Nevada Rules of Civil Procedure. Fees must be paid by the party at whose request the witness is subpenaed.

[Sec'y of State, Practice Rules § 3.8, eff. 7-1-65; A and renumbered as § 8.15, 4-23-76]

90.210 Consolidation of hearings.

The administrator may consolidate two or more proceedings into one hearing whenever it appears that the issues are substantially the same and the interest of the parties will not be prejudiced by such consolidation. At any consolidated hearing, the administrator will determine the order of procedure.

[Sec'y of State, Practice Rules § 3.5, eff. 7-1-65; A and renumbered as § 8.7, 4-23-76]

90.220 Notice of hearing; failure to appear.

1. Hearings will be held before the administrator.

2. Notice of the hearing will be served at least 10 days before the time set for them.

3. Hearings will be held at such times and places in the state as may be designated by the administrator in the notice of hearing.

4. If a party fails to appear at a hearing scheduled by the administrator and no continuance has been requested or granted, the administrator may hear the evidence of such witnesses as may have appeared and the administrator may proceed to consider the matter and dispose of it on the basis of the evidence before him in the manner required by NAC 90.100 to 90.290, inclusive. Where, because of accident, sickness or other reasonable cause, a person fails to appear for a hearing scheduled by the administrator or fails to request a continuance, the person may, within a reasonable period of time, not to exceed 15 days, apply to the administrator to reopen the proceedings, and the administrator upon finding such cause sufficient and reasonable will immediately fix a time and place for hearing and give the person notice of the hearing. Witnesses who have previously testified are not required to appear at the second hearing unless so directed by the administrator.

[Sec'y Of State, Practice Rules § 3.2, eff. 7-1-65; A and renumbered as §§ 8.1 & 8.2, 4-23-76]

90.230 Appearance at hearing.

1. At any hearing, all parties named in NAC 90.140 are entitled to enter an appearance, to introduce evidence, examine and cross-examine witnesses, make arguments and participate in the conduct of the proceeding.

2. Parties shall enter their appearance at the beginning of a hearing or at

any time as may be designated by the administrator by giving their names and addresses and stating their position or interest to the administrator. Their appearance must be recorded in the transcript of the hearing.

3. Appearances and representation of parties must be made as follows:

(a) A party is entitled to be heard in person or by his attorney.

(b) An attorney appearing as counsel in any proceeding must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the supreme court of Nevada, an attorney so admitted and entitled to practice must be associated.

4. Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders thereafter served must be served upon the attorney and service is considered valid service for all purposes upon the party represented.

[Sec'y of State, Practice Rules §§ 4.1-4.4, eff. 4-23-76]

90.240 Withdrawal of attorney.

Any attorney of record wishing to withdraw from a proceeding before the administrator shall in writing, immediately notify the administrator and the party he represented.

[Sec'y of State, Practice Rules § 4.5, eff. 4-23-76]

90.250 Conduct at hearings.

1. A person appearing in a proceeding shall conform to the recognized standards of ethical and courteous conduct. All parties to hearings, their counsel and spectators will conduct themselves in a respectful manner.

2. Smoking is not permitted at hearings of the administrator while in session.

[Sec'y of State, Practice Rules §§ 4.6 + 8.4, eff. 4-23-76]

90.260 Hearings: Preliminary procedure; evidence.

1. The administrator will call the proceeding to order and proceed to take the appearances and act upon any pending motions. The parties may then make opening statements if they desire.

2. All testimony to be considered by the administrator in any hearing, except matters noticed officially or entered by stipulation, must be sworn testimony. Before taking the witness stand, each person shall swear or affirm that the testimony he is about to give in hearing before the administrator is the truth, the whole truth and nothing but the truth.

3. Evidence will ordinarily be received in the following order:

(a) Staff.

(b) Respondent.

(c) Rebuttal by staff.

This procedure may be modified by the administrator. Closing statements by the parties may be allowed by the administrator.

4. With the approval of the administrator, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral statement shown upon the record. Any such stipulation is binding upon all parties to the stipulation, and it may be treated

as evidence at the hearing. The administrator may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

5. Parties are not bound by the technical rules of evidence and no informality in any proceeding or in the manner of taking of testimony may invalidate any order, decision or regulation made, approved or confirmed by the administrator, so long as it is not contrary to NRS 233B.123. Rules of evidence before the courts of Nevada may be followed but may be relaxed in the discretion of the administrator if deviation from the technical rules of evidence will aid in ascertaining the facts. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling by the administrator. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. Formal exceptions to rulings are unnecessary and need not be taken.

6. The administrator may take official notice of judicially cognizable facts and of recognized technical facts within the administrator's specialized knowledge, including the following matters:

(a) Rules, regulations, official reports, decisions and orders of the administrator and any regulatory agency of the State of Nevada.

(b) Contents of decisions, orders, standards or records of the administrator.

(c) Matters of common knowledge and technical facts of established character.

(d) Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference. The proper and definite reference to such documents must be made by the party offering them and the documents must be published and generally circulated so an opportunity is given to all the parties to the hearing to examine them and present rebuttal evidence.

[Sec'y of State, Practice Rules §§ 3.3, 3.6, & 3.7, eff. 7-1-65; A and renumbered as §§ 8.5, 8.8 & 8.9, 4-23-76; + §§ 8.3 & 8.6, eff. 4-23-76]

90.270 Continuances.

The administrator may prior to a hearing or during a hearing, and upon proper showing, grant continuances for submission of further or additional proof of any subject matter.

[Sec'y of State, Practice Rules § 8.11, eff. 4-23-76]

90.280 Decisions and orders.

1. A decision or order which is adverse to a party in any hearing must be in writing or stated in the record, and must include findings of fact and conclusions of law, separately stated.

2. Orders or decisions will be rendered within 30 days of the completion of the hearing.

3. A proceeding stands submitted for decision by the administrator after the taking of evidence or the filing of briefs or the presentation of such oral argument as may have been permitted by the administrator.

4. Decisions and orders of the administrator will be served by sending a copy thereof by registered or certified mail to the parties of record or their

representatives or by personal service thereof. Additional copies of orders may be obtained upon written request.

[Sec'y of State, Practice Rules §§ 9.1-9.4, eff. 4-23-76]

90.290 Transcripts of hearings.

The administrator will cause a record to be made of all hearings, in accordance with NRS 233B.121. Parties desiring copies of transcripts may obtain them from the administrator upon payment of fees for the cost of producing them.

[Sec'y of State, Practice Rules § 8.14, eff. 4-23-76]