

Pari-Mutuel Commission

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Chapter 3: Appeals, Protests, and Hearings

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CHAPTER 3

APPEALS, PROTESTS, AND HEARING RULES

Section 1. **Definitions.**

(a) PETITIONER shall mean the person, group, or entity initiating action for a hearing.

(b) RESPONDENT shall mean the Commission.

Section 2. **Appeals to the Commission.**

(a) When a person or persons are fined or suspended under these Rules, a request may be made for a hearing before the Commission.

(i) Such request must be filed in writing at the office of the Commission within five (5) days of the date of notice of the penalty or imposition of discipline.

(ii) The request shall be signed by the person making it and must set forth his reason for believing he is entitled to a hearing.

(iii) Any petitioner for a hearing will be heard in person or by counsel or he may submit his case in writing.

(iv) All complaints and requests to the Commission must be in writing, and all papers filed with the Commission shall become the property of the Commission.

(v) An appeal from a decision of a racing official or roping official to the Commission shall not affect such decision until the appeal has been acted upon by the Commission unless otherwise ordered by a Court of competent jurisdiction.

(vi) A decision by the stewards regarding a disqualification for interference during the running of a race is final and may not be appealed to the commission.

Section 3. **Protests.**

(a) A protest, except a protest involving fraud, may be filed only by the owner or his authorized agent, trainer or jockey of a horse engaged in the race in which the protest is made or by a racing official of the meeting.

(b) A protest involving fraud may be made by any person.

(c) A protest, except a claim growing out of the happening in the running

of the race, must be made in writing, signed by the complainant and filed with the Stewards before post time of the race in question.

(d) Any protest over the status of an alleged maiden must be made in writing, signed by the complainant, and filed with the Stewards before the programmed post time for the race in which the protested maiden is scheduled to run.

(e) A protest against a horse engaged in a race and filed with the Stewards not less than sixty (60) minutes before post time, shall receive immediate consideration; and if the eligibility of the horse cannot be verified within thirty (30) minutes of post time the horse may be disqualified from starting.

(f) A protest against the programmed distance of a race must be made at least thirty (30) minutes before post time for that race, but nothing in this rule shall affect the rule for races run at a wrong distance as compared with the official program.

(g) A protest against a horse based on a happening in a race must be made to the Stewards before the placing of the horses for that race has been officially confirmed.

(h) If a jockey wishes to protest a happening in a race, he must notify the clerk of the scales immediately upon his arrival at the scales for weighing in.

(i) A person or persons lodging a protest must pay all costs and expenses incurred in determining the objection unless his objection is upheld, in which case the cost shall be paid by the offender.

(j) Pending the determination of a protest any money or prize won by a protested horse, or any other money affected by the outcome of the protest shall be paid to and held by the horsemen's bookkeeper until the protest is determined.

(k) A protest may not be withdrawn without permission of the Stewards.

(l) The Stewards shall keep a record of all protests and complaints and of any action taken and shall report both daily to the Commission.

Section 4. **Informal Steward's Hearing.**

(a) The Board of Stewards may hold an informal hearing in order to discuss an alleged or apparent violation of the Statutes or the Rules by a licensee. Oral notice is sufficient to commence an informal hearing. After the hearing no sanction or penalty may be imposed by the Stewards unless all affected parties agree to it.

Section 5. **Formal Steward's Hearing.**

(a) The Stewards hearing procedure includes written reasonable notice to the licensee, delivered prior to the hearing, informing the licensee of:

(i) The charges against him, the possible penalties which may be imposed, and the time, date and place the hearing will be held;

(ii) The right to have counsel present, the right to present a defense, including witnesses for that purpose, and the right to cross-examine the Steward's witnesses if any.

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

(c) Failure of the licensee to appear at the time and place of the Formal Stewards' hearing will be deemed a default. Such default will be noted in the record and taken as a waiver of the licensee's due process rights. The Stewards may then impose penalties or make license discipline rulings against the licensee to the extent authorized by these Rules.

(d) Appeals from the decision of the Stewards shall be governed by Chapter III, Section 6 of these Rules.

Section 6. **Commission Hearing Rules.**

(a) Definitions.

(i) PETITIONER shall mean the person, group, or entity initiating action for a hearing.

(ii) RESPONDENT shall mean the Commission.

(b) Notice of Hearing. The Commission shall cause written notice of any hearing held under these rules to be served upon each contestant at least ten (10) days prior to the date set for the hearing. Such notice shall include a statement of:

(i) The time, place, and nature of the hearing.

(ii) The legal authority and jurisdiction under which the hearing is to be held.

(iii) Such other matters as may be required by the Wyoming Administrative Procedures Act.

(c) Service of Notice. Service may be made either personally or by certified or registered mail as follows:

(i) Personally: Service, if made by sheriff, or other person, shall be made in the manner prescribed by the Wyoming Rules of Civil Procedure. Service may be made by any person, not an officer, who is of lawful age, and not a party in interest. The return of service shall be made by the certification of the officer who made the service, or if made by a person other than an officer, by his affidavit. Return of service must be filed with the Commission prior to the commencement of the hearing.

(ii) By certified or registered mail to the last known address of a petitioner.

(d) Motions. The Commission may at any time after three (3) days notice to all parties, hear orally or otherwise, any motion filed in connection with hearings under these rules.

(e) Order of Procedure at Hearing. As nearly as may be, hearings shall be conducted in accordance with the following order of procedure:

(i) The chairman; shall announce that the Commission is open to transact business and call by docket number and title the case to be heard.

(ii) The petitioner will be allowed an opening statement to briefly explain its position to the Commission and outline the evidence it proposes to offer, together with the purpose.

(iii) The respondent will be allowed an opening statement.

(iv) Any additional parties will be allowed an opening statement.

(v) The petitioner's evidence will be heard and offered. Witnesses may be cross-examined by the respondent and by members of the Commission and legal counsel for the Commission. The petitioner's exhibits will be marked by letters of the alphabet, beginning with "A".

(vi) The respondent's evidence will be heard and offered. Witnesses may be cross-examined by the petitioner or his attorney and by members of the Commission and legal counsel for the Commission. The respondent's exhibits will be marked by letters of the alphabet, beginning with "AA".

(vii) The chairman may introduce any evidence necessary on behalf of the Commission, and exhibits of the Commission will be marked with numbers, beginning with "I". Members of the Commission may examine witnesses. Witnesses may be cross-examined by the contestant and the attorney for the Commission.

(viii) The Commission may in its discretion allow evidence to be

offered out of order.

(ix) Closing statements will be made in the following sequence:

(A) Petitioner.

(B) Respondent.

(x) Petitioner's rebuttal if the Commission feels it is necessary. The time for oral argument may be limited by the chairman.

(xi) The chairman may recess the hearing as required.

(xii) After all interested parties have been offered an opportunity to be heard, the chairman shall declare the evidence closed and excuse all witnesses. The evidence of the case may be reopened at a later date, for good cause shown, by order of the Commission upon motion of any party to the proceeding, the chairman, or the Commission itself.

(xiii) Parties may tender briefs, or the Commission may call for such briefs as may be desirable.

(xiv) The chairman may declare that the matter is taken under advisement and that the decision and order of the Commission will be announced at a later date.

(f) Witnesses at Hearings to be Sworn. All persons testifying at any hearing before the Commission shall stand and be administered the following oath or affirmation by a member of the Commission, or other qualified person:

"Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in the matter now before the Commission, so help you, God?"

No testimony will be received from a witness except under such oath or affirmation.

(g) Applicable Rules of Civil Procedure. The rules of practice and procedure contained in the Rules of Civil Procedure of the State of Wyoming, insofar as the same may be applicable and not inconsistent with the laws of the State of Wyoming, shall apply in all hearings before the Commission. For the application of such rules the secretary is designated to be in the same relationship to the Commission as a clerk of court to a court.

(h) Attorneys. The filing of a pleading or other appearance by an attorney constitutes his appearance for the party for whom made. The Commission must be notified in writing of his withdrawal from any matter. Any person appearing before

the Commission at a hearing in a representative capacity shall be precluded from examining or cross-examining any witness, unless such person shall be an attorney licensed to practice law in the State of Wyoming, or a nonresident attorney associated with a Wyoming attorney. This rule shall not be construed to prohibit any person from representing himself before the Commission.

(i) Appearances.

(i) At any hearing held or any investigation conducted by the Commission, all parties named in paragraph (f) who are directly affected by the proceeding shall be entitled to enter an appearance, to introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceeding.

(ii) Appearances and representation of parties shall be made as follows:

(A) An individual may appear and be heard in his own behalf.

(B) A partnership may appear and be represented by a partner.

(C) A corporation may appear and be represented by a corporate officer or a full-time employee of the corporation.

(D) A municipal corporation or its Board of Public Utilities may appear and be represented by a municipal officer, a member of the board, or a full-time employee of the municipality or board.

(E) An unincorporated association may appear and be represented by any bona fide general officer or full-time employee of the association.

(F) Any party to a proceeding may appear and be represented by an attorney. No attorney from any other State shall be entitled to enter his appearance in, prosecute or defend any action or proceeding pending before the Commission unless he is associated with a Wyoming attorney.

(iii) Any person appearing in a proceeding before the Commission shall conform to the recognized standards of ethical conduct.

(j) Intervention. Any person interested in obtaining relief sought by a complaint or otherwise interested in the determination of a proceeding pending before the Commission, may petition for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause

shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and, if affirmative relief is sought, the same should conform to the requirement for a formal complaint. Leave will not be granted except on allegations reasonably pertinent to the issues already presented and which do not unduly broaden them.

If leave is granted, the petitioner becomes an intervenor and a party to the proceeding with the right to have notice of, and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.

(k) General Hearing Rules.

(i) Every party shall be afforded the right to appear and testify in person or by counsel or other duly qualified representative. If testifying in behalf of another person or several persons, such party shall present to the hearing officer evidence he is a qualified representative.

(ii) Every person testifying shall, at the Commission's discretion be qualified prior to testifying. Qualification will include ascertaining the residency, occupation, background, education and expertise of the person.

(iii) All parties shall have the right to respond and present evidence and argument on all issues involved.

(iv) No person shall be required to report, inspect, or perform any investigative act except as authorized by law.

(v) All persons required to submit data or evidence shall be either entitled to retain the data or evidence or upon payment of a reasonable cost may procure a copy.

(vi) All irrelevant, immaterial, or unduly repetitious evidence may be excluded. Hearsay evidence may be admissible.

(vii) Effect to the rules of privilege shall be given as recognized by law. Documentary evidence may be received in the form of copies of excerpts, if the original is not available. All copies are subject to being compared with the original.

(viii) The Commission may sit in part or in total for hearings. A hearing officer may be appointed by the Commission.

(A) At the discretion of the Commission the Executive Director may sit as hearing officer and preside over appeals before the Commission.

(B) The Hearing Officer will accept evidence and forward all

testimony given at the hearing to the Commissioners. The Commission shall render a decision based on the evidence submitted or schedule a hearing for the licensee to appear before the Commission.

(C) The Hearing Officer, with the consent of the Commission shall determine whether good cause has been shown for a supersedeas (stay) of the Stewards' order or ruling. The Hearing Officer may require, as a condition of granting supersedeas, that the licensee appealing agree to a hearing upon short notice and specifically waive his right to ten (10) days notice of hearing.

(ix) The presiding officer shall:

(A) Administer oaths and affirmations.

(B) Issue subpoenas.

(C) Rule upon offers of proof and receive relevant evidence.

(D) Take or cause to be taken depositions.

(E) Preside over the hearing and regulate its proceedings.

(F) Dispose of procedural requests. The presiding officer shall be assisted by a representative of the Attorney General's office, when such assistance is deemed necessary.

(G) The presiding officer shall officially open and officially close the hearing.

(x) All parties planning to offer testimony shall register with the hearing clerk. All efforts will be made to accommodate the request of individuals as to time of appearance.

(xi) All parties desiring to testify shall be given an opportunity to testify at least once. An opportunity to present testimony a second time will be allowed only after all interested parties have first had the opportunity to testify.

(l) Subpoenas.

(i) Subpoenas, requiring the attendance of witnesses from any place in the State of Wyoming at any designated place of hearing, or for the production of books, papers, or other documents, may be issued by the Commission upon application of any party to the proceedings or upon motion of the Commission. The chairman or secretary of the Commission, upon written application of any party or his attorney, shall issue a subpoena requiring the appearance of witnesses for the purpose of taking evidence or requiring the production of any books, papers, or other documents relevant or material to the inquiry, all subject to the provisions of

the Wyoming Administrative Procedure Act.

(ii) Subpoenas for the production of books, papers, or other documents, unless directed by the Commission upon its own motion will issue only upon application in writing, and such application shall set forth the books, papers, or other documents sought, with a showing that they will be of service in the determination of the proceeding.

(iii) All subpoenas shall be served by delivering a copy personally, or by certified mail, requiring return receipt, to the party to be served.

(iv) Costs of service of subpoenas shall be paid by the parties requesting service.

(m) Depositions. The testimony of any witness may be taken by deposition at the insistence of a party in any proceeding or investigation at any time after it is at issue, by the consent of the Commission. The Commission may, of its own motion, order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of the proceeding or investigation. The deposition shall be taken in the manner prescribed by the laws of Wyoming for taking depositions in civil actions in the District Courts of this State.

(n) Witness Fees.

(i) Witnesses who are summoned before the Commission are entitled to the same fees as are paid for like service in the District Courts of the State of Wyoming.

(ii) Witnesses whose depositions are taken and the officer taking it shall be entitled severally to the same fees as are paid for like service in the District Courts of the State.

(iii) All such fees shall be paid by the party at whose insistence the testimony is taken.

(o) Attorney for the Commission. In all hearings before the Commission, the chairman may request the assistance of the Attorney General's office to assist and advise the Commission.

(p) Taking of Testimony -- Reporter. In all hearings, the proceedings, including all testimony, shall be reported verbatim, stenographically or by any other appropriate means determined by the Commission or the officer presiding at the hearing.

(q) Transcripts. Oral proceedings or any part of the proceedings shall be transcribed on request of any party upon payment of the cost. In case of an appeal to the District Court, the party appealing shall secure and file a transcript of the testimony and other evidence offered at the hearing with the Commission, which

transcript shall be verified by the oath of the reporter or transcribed as a true and correct transcript of the testimony and other evidence in the hearing. The cost of making the transcript shall be paid by the party prosecuting the appeal. The complete record on appeal, including the transcript of testimony, shall be verified by the secretary.

(r) Decision, Findings of Fact and Conclusions of Law and Order. The Commission shall, following the full and complete hearing, make and enter a written decision and order containing Findings of Fact and Conclusions of Law. The decision and order shall be filed with the Commission and will, without further action, become the decision and order as a result of the hearing. Upon entry and filing, the Commission shall send a copy by prepaid mail to each of the parties, or their attorneys of record.

(s) Appeals to District Court. Appeals to the District Court from decisions of the Commission are governed by W.S. 16-3-114 and the Rules of Civil Procedure promulgated by the Supreme Court of the State of Wyoming.

(t) Transcript in Case of Appeal. In case of an appeal to the District Court the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the reporter who took the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the reporter for making the transcript of the testimony and all other costs involved in the appeal shall be borne by the party prosecuting the appeal.

(u) Complaints.

(i) Informal complaints may be made in person, by letter or other writing. Matters thus presented will be, if their nature so warrants, taken up by correspondence or otherwise with the party complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

(ii) In the event of failure to bring about satisfaction of the complaint in this manner, the complaining party may file a formal complaint, whereupon the informal proceeding will be discontinued.

(iii) No form of informal complaint is prescribed but in substance, it must contain a clear and concise statement of all the facts involved, the name and address of the complaining party, the name of the party against which complaint is made, and a request for the relief sought.

(v) Pre-Hearing Conference. At a time on or before the day of the hearing, the Commission may direct the parties to appear before the Commission to consider:

(i) The simplification of the issues.

- (ii) The necessity or desirability of amending the pleading.
- (iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.
- (iv) Such other matters as may aid in the disposition of the case.

Pre-hearing conferences shall be conducted informally. A memorandum will be prepared which recites the actions taken at the conference, amendments allowed, agreements of the parties and limitation of the issues to those not resolved of by admissions or agreements of counsel and the parties. The pre-hearing memorandum will control the course of the hearing unless modified by the Commission to prevent manifest injustice.

(w) Acknowledgments. All formal complaints, answers, and applications filed with the Commission must be duly verified or acknowledged before a notary public or other officer empowered to take acknowledgments.

(x) Amendments. The Commission may, in its discretion, allow any pleading to be amended or corrected or any omission to be supplied.

(y) Continuance and Extension of Time. For good cause shown, continuances and extensions of time will be granted or denied in the discretion of the Commission.

(z) Computation of Time. When the time prescribed by these rules or by any order of the Commission for doing any act expires on a Sunday or legal holiday the time shall extend to and include the next succeeding business day.

(aa) Settlements. Unless precluded by law, informal disposition may be made of any hearing by stipulation, agreed settlement, consent, order or default.

(bb) Deviation from Rules. The Commission may permit deviations from these rules as it may find compliance to be impossible or impractical.

(cc) Prescribed Forms. The following forms are prescribed by the Commission and should be used in all cases to which they are applicable:

Form No. 1

FORMAL COMPLAINT

BEFORE THE WYOMING PARI-MUTUEL COMMISSION

_____,)	
	Petitioner,)
)	
-vs-)	Docket No.
)	
)	
_____,)	
	Respondent.)

COMPLAINT

COMES NOW, the above-mentioned Petitioner, whose (state post office address) and whose (state occupation or business) and respectfully shows unto the Commission:

(a) That the above-named Respondent is a (individual, corporation, or business entity) engaged in the business of (state business of the Respondent) in the State of Wyoming.

(b) That (here, state fully and clearly the act or thing done or omitted to be done which the Petitioner claims constitutes his cause of complaint, with reference, where practicable, to the law, order, or rule, and the section or sections thereof, of which a violation is alleged).

WHEREFORE, the Petitioner prays that (state specifically the relief sought).

Dated this ____ day of _____, 19

Signed:
Petitioner

Attorney

Address
(Verification)

Form No. 2

ANSWER TO COMPLAINT

BEFORE THE WYOMING PARI-MUTUEL COMMISSION

_____,)	
	Petitioner,)	
)	
-vs-)	Docket No.
)	
)	
_____,)	
	Respondent.)	

ANSWER

The above-named Respondent, in answer to the Petitioner in this proceeding, says:

(a) That (state allegations of fact by way of admission, avoidance, or denial of the allegations of fact contained in the complaint, designating each paragraph, (a), (b), etc.

WHEREFORE, the said Respondent prays that the complaint in this proceeding be dismissed or prays for such affirmative relief as the facts alleged may justify).

Dated this ___ day of _____, 19__.

Signed: _____
Respondent

Attorney

Address
(Verification)