



ADVISORY NOTICE

APPROVED REGULATIONS REGARDING: APPLICATION WITHDRAWALS AND ABANDONMENTS, AND HEARING PROCEDURES

(CGCC-GCA-2014-02-R)

On November 25, 2014, the Office of Administrative Law (OAL) approved regulations which update the California Gambling Control Commission's (Commission) procedures for considering applications. The approved regulations were filed with the Secretary of State on November 25, 2014, and will become effective January 1, 2015.

In general, these regulations formalize the Commission's existing procedures for considering all applications. The regulations establish uniform, transparent procedures for the Commission to consider applications, including: (1) the processes for withdrawals and abandonments of applications, and (2) the methods for reviewing applications at non-evidentiary hearing meetings (regular Commission meetings) and at evidentiary hearings (Gambling Control Act hearings or Administrative Procedure Act hearings). The regulations also provide clarification on *ex parte* communication limitations.

Approved Regulations

This regulatory action has made changes in Chapter 1 of Division 18 of Title 4 of the California Code of Regulations. Those changes are as follows:

Section 12002. General Definitions.

This section provides definitions. Nine new terms were added and five existing terms were modified.

The term "Administrative Procedure Act Hearing" or "APA hearing" is defined to mean an evidentiary hearing which occurs pursuant to Business and Professions Code sections 19825 and 19930 and which proceeds pursuant to the APA and Section 1000 et seq. of Title 1 of the California Code of Regulations.

The term "Advisor of the Commission" is defined to mean Commission staff not designated as advocates to the Commission.

The term "Advocate of the Commission" is defined to mean Commission staff assigned to present the facts of a case during a hearing.

The term "Bureau" is defined to mean the Bureau of Gambling Control (Bureau).

The term “Bureau report” means a final determination by the Bureau and an issuance of its final action regarding the recommendation to the Commission.

The definition of “Conviction” is modified to conform to current Penal Code section 1000.1

The definition of “Deadly Weapon” is modified to conform with amendments to the Penal Code which changed the pertinent code section from 12020 to 16430.

The term “Employee of the Commission” is defined to differentiate between employees of the Commission and “Members of the Commission” for purposes of prohibitions on *ex parte* communications.

The abbreviation “GCA” is defined to mean Gambling Control Act.

The term “GCA hearing” is defined as the default evidentiary hearing available to an applicant under the Act.

The term “Interim License” is defined to mean any license issued by the Commission for some interim period.

The term “Member of the Commission” is defined as an individual appointed to the Commission by the Governor pursuant to sections 19811 and 19812.

The term “Temporary License” is defined as a license that the Commission may issue prior to the consideration of an application.

Section 12006. Service of Notices, Orders and Communications.

This section describes how the Commission will communicate with applicants and is the default manner for all notices proposed in this action. When this section is cited, notices will be sent to an applicant, a licensee or a designated agent by certified mail at their mailing address. A notice is effective upon the mailing of the communication.

Section 12012. Ex Parte Communication.

This section addresses and defines *ex parte* communications. Any communication upon the merits of an application by a party with the Commission without first providing notice to all parties (so that there will be opportunity to participate in the communication) is an *ex parte* communication or *ex parte*. The *ex parte* limitations of section 19872, subdivisions (a) and (b), apply as soon as an application is filed with the Bureau until the Bureau report is issued, and when the Bureau report is issued until a decision is final pursuant to Section 12066.

This section further specifies the type of communications which do not qualify as *ex parte* communications.

This section provides that the *ex parte* limitations of Government Code sections 11430.10 through 11430.80 apply when an evidentiary hearing has been selected either by the Commission or the Executive Director, until the decision is final or when the Bureau has filed an accusatory pleading under Section 12554.

This section also specifies what must happen if an applicant communicates on an *ex parte* basis, and provides operational guidance to Commissioners concerning what happens if a member of the Commission participates in an *ex parte* communication. The Commission and its advisors are also subject to *ex parte* rules in their communications upon the merits of the application with the applicant, the Bureau or an advocate of the Commission.

Section 12015. Withdrawal of Applications.

This section renumbers Section 12047 as Section 12015. This renumbered section continues the current application withdrawal procedures and expands upon them. The time during which an applicant may seek to withdraw his or her application and for the review by the Commission is specified, and the Commission may grant a request either with or without prejudice, at its discretion, based upon the relevant facts of the application and request.

Any unused portion of a background investigation deposit shall be returned by the Bureau if the request to withdraw is granted. If a request for withdrawal is granted with prejudice, the applicant is not eligible to re-apply for licensure until after one year from the date the requested is granted. The Bureau shall continue and conclude its investigation of an applicant in the event a request to withdraw an application is denied, as allowed by section 19869.

An applicant who withdraws their application shall not have a right to an evidentiary hearing on the Commission's decision.

Section 12017. Abandonment of Applications.

This section renumbers Section 12048 as Section 12017. This renumbered section continues the practice of allowing the abandonment of applications under limited specified circumstances. The Chief of the Bureau may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process or when an applicant has provided notice that the application is no longer being pursued. The Executive Director, after the Bureau has issued its report and has not recommended denial, may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process or when an applicant has provided notice that the application is no longer being pursued. The Commission, after the Bureau has issued its report, may deem an application abandoned based on certain criteria, including when an applicant is essentially no longer cooperating in the application process or when an applicant has provided notice that the application is no longer being pursued.

Any unused portion of a background investigation deposit shall be returned by the Bureau if the application is deemed abandoned.

An applicant whose application has been abandoned shall not have a right to an evidentiary hearing on the abandonment decision.

Section 12035. Issuance of Interim Renewal Licenses.

This section adds a new interim renewal license category which extends a current license approval to allow for an evidentiary hearing to occur without an applicant becoming unlicensed prior to Commission action. An interim renewal license shall be issued after the Commission or Executive Director has elected to hold an evidentiary hearing upon a renewal application or where an accusation has been filed. The specifics and nature of the interim renewal licenses; including, any restrictions or limitations, the fees required and how the licensee interacts with any ongoing procedures of the Commission are also specified.

Section 12050. Bureau Recommendation and Information.

This section is amended to detail the manner in which any Bureau recommendation shall be provided to the applicant and how the information may be considered by the Commission. The Bureau is to provide the applicant with the Bureau's report, any recommendation, and any other documents or information at the same time it is provided to the Commission. The authority to make a decision on the suitability of an applicant ultimately rests with the Commission and neither the Commission nor an Administrative Law Judge (ALJ) is bound by the Bureau's recommendation.

Section 12052. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting.

This section provides general procedures regarding the hearing process, clarifies the Commission's authority and specifies that this article does not apply to disciplinary proceedings.

This section specifies the notices that applicants are to receive in advance of a meeting and what those notices are to contain. In addition, this subsection incorporates a Notice of Defense Form (CGCC-ND-002). By using this form, the applicant may accept any proposed conditions, waive their participation in the evidentiary hearing or may indicate their interest in continuing and participating in an evidentiary hearing.

The Executive Director may reschedule matters before a meeting and the Commissioners may reschedule matters at a meeting.

Section 12054. Consideration at Regular Commission Meeting.

This section provides procedural guidance by laying out some of the various decisions the Commission may make at a non-evidentiary meeting in regards to an application. The actions Commissioners may take at a non-evidentiary hearing meeting include: approval of an application; sending a matter to an evidentiary hearing; extending a license as necessary;

tabling or continuing an item; approving the withdrawal of an application; deeming a license abandoned; and, granting an interim renewal license. Evidentiary hearings are not available to an applicant when the Commission approves or denies a withdrawal request or makes a finding of abandonment.

Section 12056. Evidentiary Hearings.

This section defines the manner by which the Commission or Executive Director determines between an APA and GCA evidentiary hearing format once the Commission has elected to hold an evidentiary hearing. A GCA hearing, as described in sections 19870 and 19871, is the default evidentiary hearing path. It will also be determined if the Bureau or designated Commission staff will act as the complainant.

This section also provides that certain elements of a Bureau report remain confidential, as specified in the Act, and that under an APA or a GCA hearing, each side bears their own costs.

Section 12058. APA Hearing.

This section provides procedural guidance for when the Commission or Executive Director elects to hold the evidentiary hearing through the processes of the APA. The Commission will determine whether an APA hearing will be held before an ALJ sitting on behalf of the Commission or before the Commission itself with an ALJ presiding. Notice of the hearing will be provided pursuant to the APA.

This section also provides that:

- The burden is on the applicant to prove his or her qualifications under the Act.
- The complainant will prepare and file a Statement of Issues according to Government Code section 11504, whether they made a recommendation or not.
- At the conclusion of the evidentiary hearing, when the Commission is hearing the matter, the Commission may discuss the matter in a closed session meeting, may leave the administrative record open in order to receive additional evidence as specified by the Commission, and may schedule future closed session meetings for deliberation.
- Only the Executive Director or the Commission can delay or cancel any scheduled hearing date.

Section 12060. GCA Hearings.

This section implements the evidentiary hearing process pursuant to sections 19870 and 19871, and provides a path for the Executive Director to schedule an application for a GCA hearing without an initial Bagley-Keene Act compliant public meeting. The Commission still retains the discretion to send a matter that has been scheduled for a GCA hearing to an APA hearing.

Guidelines are established for when the Commission elects to hold an evidentiary hearing pursuant to Section 12054. This timeline provides for an evidentiary hearing to be conducted and for the notice to be sent no later than 60 calendar days in advance of the GCA hearing. The Commission designates a presiding officer who may be either a member of the Commission's legal staff or an ALJ. The applicant or the complainant may request, in writing to the Executive Director, a continuation of the GCA hearing. The complainant and applicant exchange certain information and documents in advance of the GCA hearing. The complainant is required to exchange at least 45 days prior to the GCA hearing, while the applicant is required to exchange at least 30 days prior to the GCA hearing.

The presiding officer rules on the admissibility of evidence. This includes whether relevant evidence will be admitted and there are no applicable technical rules which would bar evidence from being admitted so long as reasonable persons would rely on it. This also includes when and how pre-hearing conferences may occur as well as what issues may be discussed during the conferences. The Commission may prohibit the admission of certain evidence upon a showing of prejudice.

The complainant commences the GCA hearing by presenting the facts and information in the Bureau's report, the background investigation, and the basis for any recommendation. The burden remains with the applicant to prove their suitability under the Act. Applicants may represent themselves or retain an attorney or lay representative. The complainant or applicant has certain rights during a GCA hearing, including calling witnesses, introducing documentary evidence, cross-examining witnesses, and impeaching witnesses. The applicant may also be called to testify. Oral evidence shall be taken upon oath or affirmation, administered by the Executive Director, a member of the Commission, or an ALJ.

At the conclusion of the evidentiary hearing, the members of the Commission shall take the matter under submission, may discuss the matter in a closed session meeting, and may schedule future closed session meetings for deliberation.

Section 12062. Issuance of GCA Hearing Decisions.

This section describes the procedural method and requirements by which the Commission proposes its decision following a GCA evidentiary hearing.

A member of the Commission's legal staff shall prepare and submit to the Commission a proposed decision with a detailed statement of reasons within 30 days of the conclusion of the hearing. The Commission must issue its decision within 45 days of the issuance of the proposed decision. All decisions must specify an effective date and may include directions as to any stay provisions or orders to divest.

Voting on the decision is restricted to only members of the Commission who heard the evidence presented in the hearing, unless such restriction would prevent the existence of a quorum. In such case, another member may be allowed to vote after a review of the record and any additional briefing or hearing deemed necessary.

Section 12064. Requests for Reconsideration.

This section defines the procedure by which an applicant can request reconsideration from the Commission after an evidentiary hearing but before any decision becomes final. An applicant may request reconsideration of an issued decision within 30 days of service of that decision. An applicant may request reconsideration, based upon either newly discovered evidence or legal authorities that could not reasonably have been presented at the hearing or before the Commission's issuance of a decision; or, other good cause for which the Commission may decide, in its sole discretion, merits reconsideration. The Executive Director initially determines whether a request for reconsideration is complete and should be placed on the Commission's agenda for consideration. The applicant will be notified of the Commission's decision on the request within 10 days following the meeting. A decision will be stayed while the request is under review by the Commission. The granting or denying of a reconsideration request shall be at the sole discretion of the Commission.

Section 12066. Final Decisions; Judicial Review.

This section provides procedural guidance to applicants related to when a decision of the Commission becomes final and what judicial remedy may be available. A decision to approve a request to withdraw an application or a finding of abandonment of an application is final, upon either a decision by the Commission or 30 days after a notice of abandonment is issued by either the Executive Director or the Bureau. The decision of the Commission following a GCA or APA hearing shall become final: 30 days after service of the decision, if reconsideration has not been granted; or immediately after the Commission affirms its decision or issues a reconsidered decision, if reconsideration has been granted. The decisions of the Commission are subject to judicial review under Code of Civil Procedures section 1085 and the right to petition for judicial review and the time for filing are not affected by a failure to request reconsideration.

Section 12068. Decisions Requiring Resignation or Divestiture.

This proposed action relocates much of subsection (c) from former Section 12050 to this section. It remains in substantially the same form. A provision is added that provides instruction for how an officer, director, manager, member, employee, agent, representative, or independent contractor of a limited liability company must act following a decision of the Commission that denies a license, or approves the issuance of a license with the imposition of conditions, limitations or restrictions.

Section 12218.5. Withdrawal of Request to Convert Registration to License.

Section 12015 now applies to all application withdrawal requests and Section 12218.5 has been repealed.

Section 12234. Withdrawal of Request to Convert Registration to License.

Section 12015 now applies to all application withdrawal requests and Section 12234 has been repealed.

Regulation Text

A copy of the recently approved regulations is attached. That document is also available on the Commission's Web site under "Regulations/Recently Approved Regulations" at www.cgcc.ca.gov.

Questions, Concerns, Suggestions

For any questions, concerns, or suggestions regarding the adoption of this regulation, please contact James Allen, Regulatory Actions Manager, at (916) 263-4024.

For information regarding the hearing process, please contact the Commission's Legal Division at (916) 263-0700.