NEBRASKA ADMINISTRATIVE CODE

TITLE 442, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 4

TAX EQUALIZATION AND REVIEW COMMISSION

GENERAL RULES OF PRACTICE

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NEBRASKA ADMINISTRATIVE CODE

TITLE 442 — TAX EQUALIZATION AND REVIEW COMMISSION

CHAPTER 4 — GENERAL RULES OF PRACTICE

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CHAPTER 4 GENERAL RULES OF PRACTICE

001 Pleadings.

001.01 Oath or Affirmation on all Appeals or Petitions. Each appeal or petition filed with the Commission shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true and correct to the best of the knowledge and belief of the person signing the appeal or petition.

001.02 Form and Content of Pleadings Other Than the Commission's Appeal Form.

001.02A A pleading shall contain a heading specifying the name of the Commission, the names of the parties, their roles in the appeal, the case number, if assigned, and the title or nature of the pleading.

001.02B The pleading shall state material factual allegations and the action the Commission is requested to take.

001.02C The pleading shall contain the name and address of the party on whose behalf the pleading is filed.

001.02D If the pleading is filed by legal counsel, the pleading shall contain the name, address, telephone number, and Nebraska State Bar Association Number of legal counsel in good standing, licenced to practice in the State of Nebraska and the name, address, and telephone number of any other legal counsel associated with them for the proceeding.

001.02E All pleadings shall be filed on white, letter sized (i.e., 8 ½ x 11 inches) paper, and shall be legibly typewritten, photostatically reproducible, printed, or handwritten. If handwritten, a pleading must be legibly written in blue or black ink. (See, Chapter 2, section 001.40 of these rules for the definition of a

pleading.)

001.03 Service of Pleadings Required. Pleadings filed with the Commission, except the Appeal Form and initial petition, must be served simultaneously upon the opposing party or parties and a certificate of service filed with the Commission. (See, Chapter 2, Section 001.08 of these rules).

001.04 Signature Requirements. Any pleading including the appeal form filed with the Commission must contain original signature(s) of a party, legal counsel for a party, or a person authorized by law or through rules. An unsigned pleading will be removed from the case file unless omission of a signature is corrected promptly after being called to the attention of the filer.

001.05 Construction of Pleadings All pleadings will be construed as to do substantial justice.

001.06 Amendment of Pleadings Including the Appeal Form

001.06A Pleadings, including the appeal form may be amended once as a matter of course ~~before a responsive pleading is filed~~. The name of the person signing the appeal/petition may not be amended nor may a party be substituted by amendment. Other amendments may be made upon leave granted by the Commission or by consent of all adverse parties. Leave to amend shall be freely given.

001.06B Amendments to Conform to the Evidence. When issues not raised by the pleadings are heard by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after entry of an order and decision; but failure so to amend does not affect the result of the hearing of these issues. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, the Commission may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the pleading will be subserved thereby and the

objecting party fails to satisfy the Commission that the admission of such evidence would prejudice the party in maintaining the party's pleading or defense upon the merits. The Commission may grant a continuance to enable the objecting party to respond to such evidence.

002 Authority of the Chairperson and Vice-Chairperson. The Chairperson may:

002.01 Call regular or special meetings of the Commission at such times as its business may require. Neb. Rev. Stat. §77-5011.

002.02 Administer oaths and affirmations and perform all other procedural duties in the name of the Commission.

002.03 Attest all orders, certificates, and process with the official seal of the Commission.

002.04 Sign and issue ~~Notices in Lieu of Summons~~, Notices of Hearings, Orders for Hearing, Orders to Show Cause, Notices of Show Cause Hearings, Consolidation Orders, Orders Allowing Withdrawal of Counsel, Orders granting leave to to Confess Judgment, Certificates, Subpoenas, Orders dismissing an appeal/petition at the request of the appellant/petitioner, together with other procedural orders, notices, or processes. Substantive orders may only be entered by a quorum unless otherwise provided for in these rules .

002.05 Determine the Commission's hearing schedule.

002.06 Adopt an appeal form for use by all persons filing appeals.

002.07 Execute contracts on behalf of the Commission.

002.08 Perform all functions and make all determinations required or allowed by the Nebraska Information System.

002.09 Supervise the day to day operations of the Commission and its staff.

002.10 Submit the Commission's biennial budget and any subsequent requests for modification.

002.11 Delegate any responsibility as he or she may determine.

002.12 Order that a proceeding be conducted by a panel of Commissioners and designate members of the panel.

002.13 Order that a proceeding be conducted by a single Commissioner if authorized by law.

002.14 Designate a primary presiding hearing officer for a proceeding and an alternate.

002.15 Adopt a fee schedule for copying in any format and for other services, but not including the filing fee prescribed by statute .

002.16 Consolidate appeals for hearing.

002.17 Consolidate appeals for refund of the filing fee.

002.18 Give and publish notice of any proceeding of the Commission.

002.19 ~~Vice Chairperson.~~ The Vice Chairperson may discharge any responsibility of the Chairperson in his or her absence or inability to act.

003 Offers to Confess Judgment ~~and Stipulations~~.

003.01 ~~A county board of equalization may, at any time, with the approval of the Commission, offer to confess judgment for all or part of the value claimed or all or part of the causes involved in a perfected appeal to the Commission. Neb. Rev. Stat. §77-1510.01~~ Confessions. A County Board of Equalization, with the consent of the Commission, may offer to confess judgment for part of the value claimed or part of the causes involved in the action. Neb. Rev. Stat. 77-1510.01

003.01A If (1) the appellant is present and refuses to accept such confession of judgment in full satisfaction of his or her demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its amount, and the time of making it, and (2) at the hearing the appellant does not recover more than was offered to be confessed, the appellant shall pay all the costs and fees the board incurred after making the offer. Neb. Rev. Stat. §77-

1510.01. See, Chapter 3 section 004.03 Determination of Costs Procedure

003.01~~A~~B Refusal to Grant Motion for Permission to Offer to Confess Judgment. The Commission may not grant a motion for permission to make an offer to confess judgment affecting taxable or equalized taxable value of a parcel prior to a hearing on the merits, unless the motion is supported by an affidavit issued by or on behalf of the County Assessor attesting that the offer to be made represents taxable or equalized taxable value of the parcel.

~~003.01B Refusal to accept a confession of judgment made by a County Board of Equalization. If a recovery greater than the offer is not obtained after hearing on the appeal, will result in an award of costs to the County. (See Chapter 4, §006 of these rules for allowable costs.)~~

003.0~~2~~1C Nothing in this rule shall prevent any other appellee/respondent other than a County Board of Equalization from offering to confess judgment at any time.

003.0~~3~~1D An offer to confess judgment shall not be deemed to be an admission of the cause of action or relief to which the appellant/petitioner is seeking, and the offer shall not be given in evidence at the hearing.

003.0~~4~~1E An offer to confess judgment ~~unless~~ made prior to a hearing before the Commission ~~is~~ must be made by a pleading.

003.0~~5~~1F Acceptance of an offer to confess judgment prior to a hearing before the Commission ~~is~~ must be made by a pleading.

~~003.06 Stipulations. Parties to any proceeding before the Commission may agree upon any fact or issue involved in the controversy, either by written stipulation entered into the record as an exhibit or by oral agreement stated on the record. The Commission is not bound by a stipulation. See, Ireland v. Stalbaum, 162 Neb. 630. 634, 77 N.W.2d 155,157 (1956).~~

004 Costs

004.01 Mandatory Award of Costs.

004.01A Refusal to accept a confession of judgment made by a County Board of Equalization. If a recovery greater than the offer is not obtained after hearing on the appeal an award of costs to the County it will result. A Motion for Costs is not necessary for costs to be assessed under Neb. Rev. Stat. §77-1510.01 (See Chapter 4, §004.02 of these rules for allowable costs.)

004.01B Court reporter for a formal hearing. Fees and costs of a court reporter in a formal proceeding shall be paid by the party or parties against whom a final decision is rendered, other costs shall be allocated as the Commission may determine. Neb. Rev. Stat. §77-5016(1).

004.01B1 The party requesting a formal hearing is liable for payment of court reporter appearance fees pending a final decision. Neb. Rev. Stat. §77-5016(1).

004.02 Permissive Assessment of Costs. Except as provided in Neb. Rev. Stat. §§ 77-1510.01 and 77-5016(11) the costs of any appeal, including the costs of witnesses, may be taxed by the Commission as it deems just unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county, or if the appellant is the Tax Commissioner or the Property Tax Administrator in which case the costs shall be paid by the state. Neb. Rev. Stat. §§77-1510.01 and 77-5016(11). (See Chapter. 2, §001.16 for definition of costs).

004.02A Guidelines for Permissive Assessment of Costs. Except as provided in Neb. Rev. Stat. §§77-1510.01 and 77-5016(1), the Commission may consider the following guidelines for assessment of costs:

004.02A1 The Commission may assess costs of a non-offending party against a party who willfully or intentionally fails, neglects, or refuses to comply with an Order of the Commission or a Notice of Hearing issued by the Commission.

004.02A2 The Commission may assess costs when a party fails to appear for a duly noticed hearing.

004.02A3 The Commission may assess as costs all or part of the costs incurred by a party when an opposing party takes action, if the Commission finds and determines that the action complained of was solely designed and undertaken in order to harass, annoy, or offend a person or opposing party, or when the action undertaken was frivolous or dilatory.

004.02A4 The Commission may assess as costs all or part of the costs incurred by a party when an opposing party seeks to have a hearing continued within three (3) days of the scheduled hearing. The Commission may assess these costs on its own motion or on the motion of the opposing party if the Commission grants the continuance.

~~006.02~~ ~~A County Board of Equalization, with the consent of the Commission, may offer to confess judgment for part of the value claimed or part of the causes involved in the action. If (1) the appellant is present and refuses to accept such confession of judgment in full satisfaction of his or her demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its amount, and the time of making it, and (2) at the hearing the appellant does not recover more than was offered to be confessed, the appellant shall pay all the costs and fees the board incurred after making the offer. Neb. Rev. Stat. §77-1510.01~~

~~006.02A~~ ~~A Motion for Costs is not necessary for costs to be assessed under Neb. Rev. Stat. §77-1510.01, the procedure set forth in Chapter 4, §003.07 of these rules shall apply~~.

00~~3.07~~4.03 Determination of Costs Procedure. ~~The following procedure shall apply after an offer to confess judgment is made pursuant to Neb. Rev. Stat. §77-1510.01.~~

00~~3.07~~.4.03A Offer to Confess Estimate of Costs. Any county board of equalization which has made an offer to confess judgment for all or part of the value claimed or part of the causes involved in a proceeding may file a written estimate of the costs and fees to be incurred from the time of the making of the offer to confess judgment, with the Commission and all parties to the appeal, within at least five (5) business days prior to the date of the hearing.

00~~3.07~~4.03B Bill of Costs. The Commission may order a party to submit a bill of costs. ~~A county board of equalization that has made an estimate of costs to be awarded to the county board of equalization shall, at the hearing on the merits of the appeal/petition deliver a bill of costs to the Commission and all parties to the appeal/petition~~.

~~003.07B1 Verification of Bill of Costs.~~ A bill of costs, if submitted, shall be verified by attaching a signed statement, made under penalty of perjury, that such items and amounts are correct and have been necessarily incurred in the proceeding ~~and that the services for which fees have been charged were actually and necessarily performed after the date of the offer to confess judgment and may be awarded as costs~~and are eligible for award as costs.

00~~3.07~~4.03C Objection to Motion for Costs or Bill of Costs. Any Party against whom costs may be assessed may make any objections ~~at or before the hearing on the merits of the appeal/petition~~ within 10 days of the date a bill of costs is filed with the Commission.

00~~3.07D4.~~04 Order Awarding Costs and Fees. The Commission may, after receiving the Bill of Costs, and any objection

thereto, award costs and fees as part of the final decision in the proceeding.

00~~3.07E~~4.05 Payment of Costs and Fees. Payment of costs and fees ordered by the Commission shall be submitted and made payable to the Tax Equalization and Review Commission, unless the Commission orders otherwise.

006.064.06 Discovery. Costs may be awarded pursuant to Chapter 12 of these Rules.

00~~6.07~~4.07 Enforcement. An order awarding costs may be enforced in the District Courts. Neb. Rev. Stat. §77-5011.

005 Stipulations. Parties to any proceeding before the Commission may agree upon any fact or issue involved in the controversy, either by written stipulation entered into the record as an exhibit, or by oral agreement stated on the record. The Commission is not bound by a stipulation. See, *Ireland v. Stalbaum*, 162 Neb. 630, 77 N.W.2d 155, (1956).

RENUMBER
00~~4~~6 Decision and Order

00~~4~~6.01 A copy of any decision and order of the Commission shall be served on all parties of record either in person or by regular United States mail, postage prepaid. The Chairperson may also cause any decision and order to be served on the parties by certified mail, and may request a return receipt on the certified mail.

00~~4~~6.02 Within seven days of issuing a decision and order, the Commission shall electronically publish such decision and order on a web site maintained by the Commission that is accessible to the general public. The full text of final decisions and orders entered after a hearing by the Commission or a panel of commissioners shall be published on the web site. Final decisions and orders that are entered (a) on a dismissal by the appellant or petitioner, (b) on a default order

when the appellant or petitioner failed to appear, or (c) by agreement of the parties may be published in a summary manner identifying the parties, the case number, and the basis for the final decision and order.

00~~4~~6.~~02~~ 03 A copy of the decision and order shall be certified to the county treasurer and to the officer charged with preparing the tax list, when such decision and order becomes final, and such officers shall correct their records accordingly. Neb. Rev. Stat. §77-5018.

00~~5~~7 Cross-Appeals. If an appeal of a decision, action, order or determination has been perfected to the Commission, any subsequent appeal of that decision, action, order or determination by another party will be deemed a cross appeal. An appeal deemed to be a cross-appeal is subject to all of the provisions of these rules pertaining to an appeal and must be perfected in accordance with these rules and Neb. Rev. Stat. §77-5013.

~~006 Costs.~~

~~006.01 Except as provided in Neb. Rev. Stat. §§ 77-1510.01 and77-5016(1) the costs of any appeal, including the costs of witnesses, may be taxed by the Commission as it deems just unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county. Neb. Rev. Stat. §§77-1510.01 and 77-5016(1). (See Chapter. 2, §001.16 for definition of costs).~~

006.05 Guidelines for Permissive Assessment of Costs. Except as provided in Neb. Rev. Stat. §§77-1510.01 and 77-5016(1), the Commission may consider the following guidelines for assessment of costs:

006.05A The Commission may assess costs of a non-offending party against a party who willfully or intentionally fails, neglects or refuses to comply with an Order of the

Commission or a Notice of Hearing issued by the Commission.

006.05B The Commission may assess costs of each opposing party when a party fails to appear for a duly noticed hearing.

~~006.05C The Commission may assess as costs all or part of the costs incurred by a party when an opposing party takes action, if the Commission finds and determines that the action complained of was solely designed and undertaken in order to harass, annoy, or offend a person or opposing party, or when the action undertaken was frivolous or dilatory.~~

~~006.05D The Commission may assess as costs all or part of the costs incurred by a party when an opposing party seeks to have a hearing continued within three (3) days of the scheduled hearing. The Commission may assess these costs on its own motion or on the motion of the opposing party if the Commission grants the continuance.~~

~~006.02 A County Board of Equalization, with the consent of the Commission, may offer to confess judgment for part of the value claimed or part of the causes involved in the action. If (1) the appellant is present and refuses to accept such confession of judgment in full satisfaction of his or her demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its amount, and the time of making it, and (2) at the hearing the appellant does not recover more than was offered to be confessed, the appellant shall pay all the costs and fees the board incurred after making the offer. Neb. Rev. Stat. §77-1510.01~~

~~006.02A A Motion for Costs is not necessary for costs to be assessed under Neb. Rev. Stat. §77-1510.01, the procedure set forth in Chapter 4, §003.07 of these rules shall apply.~~

~~006.03 Fees and costs of a court reporter in a formal proceeding shall be paid by the party or parties against whom a final decision is rendered other costs shall be allocated as the Commission may determine. Neb. Rev. Stat. §77-5016(1).~~

~~006.04 The party requesting a formal hearing is liable for payment of court reporter appearance fees pending a final decision. Neb. Rev. Stat. §77-5016(1).~~

006.05 Guidelines for Permissive Assessment of Costs. Except as provided in Neb. Rev. Stat. §§77-1510.01 and 77-5016(1), the Commission may consider the following guidelines for assessment of costs:

006.05A The Commission may assess costs of a non-offending party against a party who willfully or intentionally fails, neglects or refuses to comply with an Order of the Commission or a Notice of Hearing issued by the Commission.

006.05B The Commission may assess costs of each opposing party when a party fails to appear for a duly noticed hearing.

006.05C The Commission may assess as costs all or part of the costs incurred by a party when an opposing party takes action, if the Commission finds and determines that the action complained of was solely designed and undertaken in order to harass, annoy, or offend a person or opposing party, or when the action undertaken was frivolous or dilatory.

006.05D The Commission may assess as costs all or part of the costs incurred by a party when an opposing party seeks to have a hearing continued within three (3) days of the scheduled hearing. The Commission may assess these costs on its own

motion or on the motion of the opposing party if the Commission grants the continuance.

006.06 Costs may be awarded pursuant to Chapter 12 of these Rules.

~~006.07 An order awarding costs may be enforced in the District Courts. Neb. Rev. Stat. §77-5011.~~

00~~7~~9 Disqualification of Hearing Officer.

00~~7~~9.01 Any party may, by motion filed with the Commission, request the disqualification of any presiding hearing officer, hearing officer, special master, or referee.

00~~7~~9.02 Unless the presiding hearing officer, hearing officer, special master, or referee voluntarily disqualifies himself or herself, a hearing shall be held on the motion.

00~~7~~9.03 Disqualification shall only be ordered where there is an actual conflict of interest (as that term is defined in these Rules) on the part of the presiding hearing officer, hearing officer, special master, or referee, or when the moving party demonstrates by clear and convincing evidence that a reasonable person who knew the circumstances of the case would question the presiding hearing officer, hearing officer, special master or referee's impartiality under an objective standard of reasonableness. *State v. Pattno*, 254 Neb. 733, 579 N. W. 2d 503 (1998).

00~~8~~10 Subpoenas.

00~~8~~10.01 The Commission may issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. Neb. Rev. Stat. §77-5016(2).

00~~8~~10.02 Subpoenas may be enforced in the district courts. Neb. Rev. Stat. §77-5011.

00~~8~~10.03 Failure of a witness to comply with the terms of a subpoena is a criminal offense. Neb. Rev. Stat. §77-5016.08.

00~~8~~10.04 The Chairperson of the Commission may, on application of any person having a cause or any matter pending before the Commission, issue a subpoena for witnesses under the seal of the Commission inserting all the names required by the applicant in one subpoena.

00~~8~~10.05 The subpoena of the Commission shall be directed to the person named therein, requiring him or her to attend at a particular time and place, to testify as a witness. The subpoena may contain a clause directing a witness to bring with him or her any book, writing, or other thing under his or her control, which he or she is bound by law to produce as evidence.

00~~8~~10.06 When the attendance of a witness before any officer authorized to take depositions (i.e., a notary public) is required, then the subpoena shall be issued by such officer.

00~~8~~10.07 The subpoena shall be served in the manner requested by the applicant; by either (1) personally serving a copy, or (2) by restricted or certified mail, return receipt requested, not less than six (6) days before the hearing or deposition which said witness is required to attend. The person making such service shall make a return thereof showing the manner of service. A subpoena may be served by any person not interested in the matter or by the sheriff. When served by any person other than a sheriff, proof of service shall be shown by affidavit, but no costs of serving shall be allowed, except when served by a sheriff.

00~~8~~10.08 Witnesses cannot be compelled to attend a hearing out of the state where they are served or at a distance of more than one hundred miles from the place of their residence or from the place where they

are served with a subpoena, unless within the same county. Witnesses shall not be obliged to attend a deposition outside the county of their residence or outside the county where the subpoena is served.

00~~8~~10.09 Witness Fees. The Chairperson of the Commission may, upon deposit with the Commission of sufficient money to pay the legal fees and mileage and reasonable expenses for hotel and meals of a witness who attends at points so far removed from his or her residence as to make it reasonably necessary that such expenses be incurred, order a subpoena to issue requiring attendance at a hearing, but excluding a deposition appearance, of the witness from a greater distance within the state than that set forth in these Rules. Witness fees shall be determined in accordance with Neb. Rev. Stat. §33-139. Mileage shall be computed at the rate provided for state employees by Nebraska State Law. The subpoena shall show that it was issued under the provisions of this rule. After the appearance of the witness in response to any such subpoena, the Chairperson of the Commission shall enter an order directing the payment to the witness from the deposit of legal fees, mileage, and the actual expenses for hotel and meals incurred by the witness. If the deposit is not adequate for such purpose, the Commission or hearing officer shall direct the party procuring the issuance of the subpoena to pay the deficiency to the witness. Costs may be recovered as provided for in these Rules. Legal fees, as that term is used in this subsection, do not include attorney fees.

00~~8~~10.10 Employees of the State of Nebraska or its political subdivisions are prohibited from receiving witness fees when the employee is called as a witness in connection with his or her officially assigned duties. Neb. Rev. Stat. §33-139.01.

00~~8~~10.11 When a subpoena is issued at the request of any agency of state government, the witness shall not be entitled to demand his or her traveling fees and fee for one day's attendance but shall be required to obey the subpoena if, at the time of service upon him or her, he or

she is furnished a statement prepared by the agency advising him or her of the rate of travel fees allowable, the fee for each day's attendance pursuant to the subpoena, and that he or she will be paid at such rates following his or her attendance.

00~~8~~10.12 Except as provided above a witness may demand his or her traveling fees and fee for one day's attendance when the subpoena is served upon him or her, and if the same is not paid the witness shall not be obliged to obey the subpoena. The fact of such demand and nonpayment shall be stated on the return.

00~~8~~10.13 At the commencement of each day, after the first day, a witness may demand his or her fees for that day's attendance in obedience to a subpoena, and if the same is not paid he or she shall not be required to remain

00~~9~~11 Attendance at Hearing. An appellant or petitioner must be present at any hearing on the merits of an appeal or petition with or without legal counsel, to avoid dismissal or relief by default unless their presence is waived by the Commission ~~for good cause~~. Individuals required to be present by this rule are:

00~~9~~11.01 Natural Person. If an appellant or petitioner is a natural person, that person or their "guardian" or "conservator" or "next friend" as those terms are defined in Nebraska State Law and Nebraska Supreme Court decisions.

00~~9~~11.02 Legal Entity. If an appellant or petitioner is a corporation, partnership, limited partnership, limited liability company or other legal entity, an officer, partner, general partner, member, manager, or other person holding similar authority or a full-time salaried employee of the entity.

00~~9~~11.03 Trustee. If an appellant or petitioner is a trustee, that trustee.

00~~9~~11.04 Union, Association, or Other Organization. If an appellant or petitioner is a union, association, or any other organization, a director,

officer, or full-time salaried employee of the union, association, or other organization.

00~~9~~11.05 More Than One Property Owner. If property is owned by more than one person, one of the property owners as provided in this rule.

00~~9~~11.06 Government. If an appellant or petitioner is an elected or appointed official, officer, director, manager, that person, or if the appellant or petitioner is a political subdivision or state agency, a director, officer or full time employee of the political subdivision or state agency.

00~~9~~11.07 Other Persons. If an appellant or petitioner is any other person including but not limited to a successor in interest, lessee, ~~licencee~~licensee, any bankruptcy trustee, receiver, personal representative, or any other person appointed by a Nebraska Court or a Court of the United States, that person.

00~~9~~11.08 Failure to Appear. If an appellant/petitioner is not present at any hearing before the Commission within fifteen (15) minutes of a time for hearing, for which notice has been provided to the appellant/petitioner, the Commission may enter an order dismissing the appeal/petition or order relief by default.

00~~9~~11.9 Legal Counsel. Legal counsel may appear on behalf of a party.

00~~9~~11.10 Unauthorized Practice of Law. Only a person authorized to sign a pleading may appear before the Commission as a party or on behalf of a party, except as may be allowed by these rules or decisions of the Nebraska Supreme Court. (See, Chapter 5, Section 001.04).

00~~9~~11.10A Nonresident Legal Counsel. A lawyer admitted in another jurisdiction and not disbarred or suspended from practice in any jurisdiction, may, on motion served on all parties to the appeal/petition, appear on behalf of a party in an appeal/petition before the Commission provided that:

00~~9~~11.10A1 Prior to undertaking any legal representation a written motion is filed with the Commission requesting an order granting nonresident attorney's motion to appear on behalf of a party;

00~~9~~11.10A2 A nonresident attorney shall, if the motion to appear is granted, take the oath required by Neb. Rev. Stat. § 7-104; and,

00~~9~~11.10A3 A written showing is filed with the Commission stating that legal services will be provided on a temporary basis and are (1) undertaken in association with a lawyer who is admitted to practice in Nebraska and who will actively participate in the proceeding; (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer of person the lawyer is assisting is authorized by law or order to appear in such proceedings or reasonably expects to be so authorized; (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Nebraska or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; (4) are not within (2) or (3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. See Rule 5.5(c) of the Nebraska Rules of Professional Conduct as promulgated by the Nebraska Supreme Court.

00~~9~~11.10B A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction, may appear before the Commission if the legal services provided are provided to the lawyer's employer or its organizational affiliates; or are services that the lawyer is authorized to

provide by federal law or the laws of Nebraska. See Rule 5.5(d) of the Nebraska Rules of Professional Conduct as promulgated by the Nebraska Supreme Court.

00~~9~~11.12 Withdrawal of Legal Counsel. Upon timely motion stating good cause shown and an affidavit which recites that legal counsel has served a copy of the motion on his or her client and all parties, legal counsel shall be permitted to ~~withdrawal~~withdraw.

EXPLANATORY STATEMENT

The unauthorized practice of law in Nebraska is prohibited by statute. Neb. Rev. Stat. § 77-101. Rules and decisions of the Nebraska Supreme Court define the term unauthorized practice of law. Legal Counsel and the attorney members of the Commission are required to act in accordance with the statute, and the rules and decisions of the Court.

0~~10~~12 Ex Parte Communication Prohibited. In all contested cases before the Commission the following shall apply to ex parte communication:

0~~10~~12.01 No party to a contested case or other person outside the Commission having an interest in the contested case shall make or knowingly cause to be made any ex parte communication to a Commissioner, Special Master, Referee, or Commission employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

0~~10~~12.02 No Commissioner, Special Master, Referee, or Commission employee who is or may reasonably be expected to be involved in the decision making process of a contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the Commission having an interest in the contested case.

0~~10~~12.03 No Commissioner, Special Master, Referee or Commission employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a Commissioner, Special Master, Referee or Commission employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

0~~10~~12.04 Any Commissioner, Special Master, Referee, or Commission employee who is or may reasonably be expected to be involved in the decision making process of a contested case who receives or knowingly causes to be made an ex parte communication shall file in the record of the contested case (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt of making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

0~~10~~12.05 The prohibitions of this chapter shall apply from the time an initial pleading in a contested case is filed with the Commission or at such time it is reasonably certain that an initial pleading will be filed with the Commission until a final decision in a contested case is issued by the Commission from which no appeal can be taken.

0~~11~~13 Panels of Commissioners.

0~~11~~13.01 Any proceeding commenced with ~~three commissioners present~~ a Commissioner excused is a proceeding undertaken by a panel of commissioners approved by the Commission. The Chairperson or presiding hearing officer may excuse a Commissioner from participation in a proceeding.

0~~11~~13.02 The Chairperson may order that any proceeding be heard by a panel of Commissioners.

0~~11~~13.03 Any Commissioner may notify the Chairperson in writing of his or her desire to serve as a hearing officer in any or all appeals or other matters heard by the Commission.

0~~12~~14 Examination of Records. The case file and other records of the Commission are matters of public record. Public records may be examined during regular business hours of the Commission. Neb. Rev. Stat §84-712 et. seq.