

## REVISED PROPOSED RULE CHANGES

### CHAPTER 70. OBJECTIONS AND PROTESTS; HEARINGS AND APPEALS

#### 325:70-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"**Authorized Agent**" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor in whose behalf the Agent will act, and limited to the actions as specified on the affidavit. Said affidavit must be on file with the Commission.

"**Business Day**" means any day Monday through Friday exclusive of official holidays.

"**Commissioner**" means a member of the Oklahoma Horse Racing Commission.

"**Conditions of a race**" means the qualifications which determine the eligibility of a horse to be entered in a race.

"**Day**" means a 24-hour period ending at midnight.

"**Entry**" means:

(A) A horse made eligible to run in a race.

(B) Two (2) or more horses entered in the same race which have common ties of Ownership, lease, or training.

"**Foul**" means an action by any horse or Jockey that hinders or interferes with another horse or Jockey during the running of a race.

"**Horse**" means:

(A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) an entire equine male five years of age and older.

"**Inquiry**" means:

(A) an investigation by the Stewards of potential interference in a contest prior to declaring the result of said contest official; or

(B) the Stewards or Commission investigation of a matter alleged to be related to the provisions of the Act or the rules of the Commission.

"**Jockey**" means a rider licensed to race.

"**Jockey Agent**" means a licensed, authorized representative of a Jockey.

"**Month**" means a calendar month.

"**Objection**" means:

(A) A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered.

(B) A verbal claim of foul in a race lodged by the horse's Jockey, Trainer, Owner, or the Owner's licensed Authorized Agent before the race is declared official.

"**Occupation license**" means a state requirement for any person acting in any

capacity pursuant to the provisions of the Act.

**"Organization license"** means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

**"Owner"** means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

**"Post time"** means the advertised time set for the arrival of the horses at the starting gate for the race.

**"Prima Facie evidence"** means evidence that, until its effect is overcome by another evidence, will suffice as proof of fact in issue.

**"Protest"** means a written complaint, signed by the protester, made to the Stewards within forty-eight (48) hours after the running of the race, alleging that a horse was ineligible to race, except as provided in 325:70-1-10 of these rules.

**"Race day"** means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

**"Race"** means a contest between two horses.

**"Rules"** means the rules adopted by the Commission to implement the provisions of the Act.

**"Scratch"** means the act of withdrawing an entered horse from a race after the closing of overnight entries.

**"Safety Steward"** means a duly appointed Racing Official with powers and duties specified by statutes or rules.

**"Steward"** means a duly appointed Racing Official with powers and duties specified by statutes or rules.

**"Substantial evidence"** means evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

**"Trainer"** means a person qualified and licensed by the Commission as a Trainer.

**"Week"** means a period of seven (7) days ~~beginning at 12:01 a.m. Monday during which races are conducted.~~

**"Year"** means a calendar year.

### **325:70-1-13.1. Entry of Appearance of Attorney, Withdrawal of Counsel, Address of Record, Change of Address**

(a) In any proceeding before the Commission or the Board of Stewards, any attorney appearing for a party shall file with the **Stewards Clerk** an entry of appearance no later than the first filing of any pleading or other paper in the case by that counsel or the first appearance before the **Executive Director** or Board of Stewards. In the event a party adds or substitutes counsel, new counsel shall immediately file an entry of appearance. The entry of appearance shall include the name and signature of counsel, mailing address, telephone number, email address, fax number, Bar Association number, and name of the law firm. Copies shall be served on all other parties of record.

(b) A motion to withdraw may be filed at any time. All motions to withdraw shall be accompanied by a proposed order. No counsel may withdraw from a pending case without leave of the **Executive Director** or **Board of Stewards**. The counsel filing the

motion to withdraw shall serve a copy of the motion on the client and all attorneys of record. All motions shall be signed by the party on whose behalf counsel has previously appeared or contain a certificate that:

(1) the client has knowledge of counsels' intent to withdraw, or

(2) counsel has made a good faith effort to notify the client and the client cannot be located. Where there is no successor counsel the withdrawing attorney must clearly state in the body of the order the name and current address of the party. If no entry of appearance is filed within thirty (30) days from the date of the order permitting withdrawal, then the unrepresented party is deemed to be pro se. In all cases, counsel seeking to withdraw shall advise the [Executive Director](#) or Board of Stewards if the case is currently set for hearing.

(c) The address of record for any attorney or party appearing in a case pending the Commission or the Board of Stewards shall be the latest address provided to the [Stewards Clerk](#) in the entry appearance, License Application or change of address. The attorney or unrepresented party must, in all cases pending before the Commission or the Board of Stewards, file with the [Stewards Clerk](#) and serve upon all counsel and unrepresented parties a notice of a change of address. The attorney or unrepresented party has the duty of maintaining a current address with the Commission and Board of Stewards. Service of notice to the last known address of record of counsel or an unrepresented party, shall be considered valid service for all purposes.

(d) All attorneys and unrepresented parties shall give immediate notice to the Commission and Board of Stewards of a change of address by filing notice with the [Stewards Clerk](#). The notice of change of address shall contain the same information required by the entry of appearance. The notice of change of address shall be served on all parties, and a copy provided to the Board of Stewards if the case is before the Board. If an attorney or unrepresented party files an entry of appearance, the Commission will assume the correctness of the last address of record, until a notice of change of address is received. Attorneys of record who change firms shall notify the [Executive Director and](#) the Board of Stewards of the status of the representation of their clients, and shall immediately withdraw, when appropriate.

(e) [A party may terminate their relationship with attorney of record and must notify the Executive Director or Board of Stewards in writing of such change and effective date.](#)

### **325:70-1-14. Testimony and Evidence at Hearing**

(a) Every person called to a hearing before the Stewards concerning an alleged rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law [3A:204 and 3A:204.3].

(b) Each witness at a disciplinary hearing conducted by the Stewards must be sworn by the presiding steward.

(c) The Stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the Stewards may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Stewards shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The Stewards may admit hearsay evidence if the Stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules

of privilege recognized by Oklahoma law apply in hearings before the Stewards.

### **325:70-1-20. Summary Suspension of Occupation Licensee**

(a) If the Stewards or the Commission find that the public health, safety, or welfare requires emergency action and incorporates such finding to that effect in any Order, summary suspension may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in the Administrative Procedures Act, 75 O.S., §§ 301 through 326. [3A:204 and 3A:204.3]

(b) The Stewards may enter an Order of Summary Suspension in any matter concerning any of the following classes of violations which are an imminent peril to the public health, safety and welfare:

(1) any rule regarding the running of a race;

(2) any violation of medication laws and rules;

(3) any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission;

(4) any assault or other destructive acts within Commission-licensed premises;

(5) any violation of prohibited devices, laws and rules; or

(6) any filing of false information. [75:205.4(B)(13)]

(c) A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the Seventh (7<sup>th</sup>) business day after the license was summarily suspended. The licensee may waive his/her right to a hearing on the summary suspension within the 7-day limit.

(d) The Stewards shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling with the burden on the licensee to show good cause why the suspension should be set aside.

### **325:70-1-31. Evidence**

(a) Each witness at a disciplinary hearing conducted by the Stewards must be sworn by the presiding steward.

(b) The Stewards shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the Stewards may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Stewards shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The Stewards may admit hearsay evidence if the Stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Oklahoma law apply in hearings before the Stewards.

### **325:70-1-32. Pleadings**

(a) Pleadings shall be filed with the Commission and include appeals, applications, answers, complaints, exceptions, replies and motions. Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is

filed.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

(c) A pleading for which the Commission staff has not prepared an official form must contain:

(1) the name of the pleader;

(2) the telephone number and street address of the pleader's residence and business and the telephone number and street address of the pleader's representative, if any;

(3) the jurisdiction of the Commission over the subject matter;

(4) a concise statement of the facts relied on by the pleader;

(5) a request stating the type of Commission action desired by the pleader;

(6) the name and address of each person who the pleader knows or believes will be affected if the request is granted;

(7) a proposed order, containing proposed findings of fact and conclusions of law;

(8) any other matter required by statute or Commission rule; and

(9) a certificate of service.

(d) A party filing a pleading shall mail, email or hand deliver a copy of the pleading to each party of record. If a party is being represented by an attorney or other representative, service must be made on the attorney or representative instead of on the party. The knowing failure of a party to make service in accordance with this subsection is grounds for the Commission to strike the pleading from the record.

(e) An objection to a defect, omission or fault in the form or content of a pleading must be specifically stated in a motion or an exception presented not later than the prehearing conference if one is held and not later than 7 days before the date of the hearing if a prehearing conference is not held. A party who fails to timely file an objection under this subsection waives the objection.

(f) Except as otherwise provided by this subsection, a pleader may amend or supplement a pleading at any time before the 7<sup>th</sup> day after the date the pleading was filed, but not later than 7 days before the date of the hearing. A pleader may amend or supplement a pleading at any time:

(1) on written consent of each party of record; or

(2) as permitted by the Chief Steward for the proceeding, when justice requires the amendment or supplementation and when the amendment or supplementation will not unfairly surprise another party.

(g) A pleading may adopt or incorporate by specific reference any part of a document in the official files and records of the Commission. This subsection does not relieve the pleader of the duty to allege in detail all facts necessary to sustain the pleader's burden of proof.

### **325:70-1-32. Discovery**

Discovery shall be in accordance with the Oklahoma Administrative Procedures Act and these rules.