

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

61D-3.001 Hearings Before Stewards/Judges.

(1) ~~Each jai alai permitholder shall establish a panel of judges consisting of a division representative, players' manager, and the fronton general manager. Jai Alai Game game~~ infractions shall be decided by the court judges.

(2) Each horseracing, ~~harness racing, and greyhound racing~~ permitholder shall establish a board of three stewards/~~judges~~, at least one of whom shall be the state/division steward/~~judge~~ selected and hired by the division.

(3) Violations of Section 550, Florida Statutes, or Chapter 61D, Florida Administrative Code, in greyhound racing shall be heard by a division judge.

~~(4) (3) All stewards' and judges' hearings on violations set forth in Section 120.80(4)(a), Florida Statutes, which are to be heard by the stewards or division judge, judges or panel of judges must be conducted pursuant to the following procedures set forth in subsections (5)-(17) below when the purpose of the hearing is to impose a fine or suspend a license. For purposes of review of a decision of the division judge judges or stewards or panel of judges as provided in subsection 61D-3.002(6), Florida Administrative Code, the Division is hereby designated a proper party.~~

~~(5) (4) All proceedings involving violations other than those described in Section 120.633, Florida Statutes, which are to be heard by the stewards or division judge, judges or panels of judges shall be conducted in accordance with the applicable provisions of Chapter 120, Florida Statutes.~~

~~(6) (5) Initiation of Proceedings.~~

(a) Proceedings before stewards and ~~the division judge judges~~ shall be made by written document entitled "Notice of Violation and Hearing."

(b) Each Notice of Violation and Hearing shall contain the name and address of the respondent, a statement of the statute(s) and/or rule(s) alleged to have been violated and a brief statement of the underlying facts and the date, time and place of the hearing on the charges.

(c) In the event the stewards or division judge issue a Notice of Violation and Hearing for a possible violation of of Section 550.2415, Florida Statutes, or if the stewards or track judges order a special urine of blood sample to be taken from a racing animal for testing any purse money in question which has not been disbursed shall be placed on account with the permitholder's comptroller. In the event that any purse money has been distributed, all individuals to whom the purse money has been directly distributed shall place monies equal to the amount received from the purse in a segregated interest bearing account in a recognized financial institution, and shall notify the division of the location of the account. The monies shall remain in the account until final disposition of the case, at which time control of the monies shall be returned to the original individuals; or if a violation is proved, the monies shall be transmitted to the permitholder for redistribution if ordered by the stewards or division judge.

~~(7) (6) Prior to a hearing for an alleged medication or drug violation, where redistribution of the purse may be involved, the stewards or division judge judges shall give at least five (5) days timely notice to each owner who may be adversely affected by the purse redistribution of the date, time, and location of the hearing.~~

~~(8) (7) Documents. Upon request to the stewards or division judge judges, any respondent shall be entitled to obtain copies of all audio and video recordings tapes, witness statements, and laboratory analysis. A respondent requesting production shall pay the actual cost of production of such material. A respondent shall also be entitled to the names and addresses of all witnesses and investigators with information relevant to the matter(s) to be heard by the stewards or division judge judges.~~

~~(9) (8) Subpoenas.~~

(a) Subpoenas to compel the attendance of witnesses at hearing shall be issued by the division upon the request of a party, the stewards or ~~division judge judges~~. All requests for the issuance of subpoenas shall be directed to the stewards and ~~division judge judges~~ and such requests shall be forwarded to the division for issuance. The respondent requesting the subpoena shall pay all costs for the services of each subpoena.

(b) A subpoena may be served by any person authorized by law to serve process or by any person who is not a respondent and who is of majority age. Service shall be made by delivering a copy thereof to the person named in the subpoena. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so. The cost of service shall be paid by the respondent requesting the subpoena.

~~(10) (9) Witnesses. All witnesses shall be sworn and subject to examination and cross-examination.~~

~~(11) (10) Conduct of Hearing/Evidence.~~

(a) Oral testimony shall be taken only on oath or affirmation. Stewards and ~~division judge judges~~ shall administer oaths and

examine witnesses.

(b) Each party shall have the right to present evidence relevant to the issues; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence presented against it.

(c) Any relevant evidence shall be admitted if it is the sort of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Irrelevant and unduly repetitious evidence shall be excluded.

(12) (11) Recordation. The stewards and division judge judges shall assure that a record of the proceedings is preserved. Proceedings shall be recorded ~~by audio tape~~. Any respondent to a hearing may, at his/her own expense, provide a certified court reporter. Any respondent who wishes to make a written transcript of the taped testimony shall request a copy of the recorded-taped testimony and transcribe the same at his/her own expense.

(13) (12) Representation. A respondent in any proceeding conducted before stewards and the division judge judges may be represented by an attorney admitted to practice law in Florida or by any qualified representative as defined in Rule 28-5.1055, Florida Administrative Code, who agrees to comply with the requirements of Rule 28-5.1056, Florida Administrative Code. After written notice of appearance that a respondent is being represented by an attorney or qualified representative, all communications to a respondent concerning the case shall also be made to the respondent's attorney or representative, and the respondent's attorney or representative shall be entitled to exercise the rights granted to the respondent under these rules.

(14) (13) Service of Notices of Violation and Hearing.

(a) The stewards and division judge judges shall set the time and place for all hearings and written notice thereof shall be served on all respondents, counsel or other qualified representatives by personal service, or by Certified Mail, return receipt requested, to the respondent's last known address or by written notice prominently posted at the respondent's principal workplace if such is at a pari-mutuel facility. At least five (5) days notice shall be given for the hearing unless otherwise agreed by the respondent.

(b) Any respondent who is served with a Notice of Violation and Hearing and does not appear at a hearing before the stewards or division judge, judges or panel of judges requested by the party waives the right to the hearing.

(15) (14) Service of Papers. Unless the stewards or division judge judges otherwise order, every paper filed in a proceeding, except Notices of Violation and Hearing (as provided for in subsection (13) above) and requests for witness subpoenas, shall be served on each respondent. Service shall be made upon the respondent or his representative by delivering a copy or by mailing it to the last known address.

(16) (15) Continuances. The stewards or division judge judges shall grant a continuance of a hearing for good cause shown. In deciding whether good cause is shown, the division judge judges and stewards must consider whether the reason given by the licensee for requesting a continuance is an event out of the licensee's control, such as the death of an immediate family member. Requests for continuance shall be made in writing.

(17) (16) Computation of Time. In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act from which the designated period of time begins to run shall not be included. Five days shall be added to prescribed time limits when service is made by mail.

(18) (17) Disqualification. Unless good cause is shown, all motions for disqualification of stewards or the division judge judges shall be made to the division in writing at least five days prior to the date scheduled for hearing. In deciding whether good cause is shown, the division must consider whether the reason given by the licensee for not meeting the five-day limitation is an event out of the licensee's control, such as the death of an immediate family member.

(19) (18) Orders. An order shall be entered by the stewards or division judge judges within fourteen (14) days after the hearing. The order shall include a caption, time and place of the hearing, findings of facts, statement of rules or statutes violated and a ruling.

(20) Conflict of Interest. The permitholder shall not employ a steward in any other capacity or assign duties of other employees to a steward.

(21) No person other than a party in a noticed proceeding shall attempt to influence the decision of the stewards or a state judge regarding any case pending before them under this rule. This rule shall not prohibit the stewards or a division judge from consulting with counsel regarding a matter pending before them.

Specific Authority 120.80(4)(a), 550.0251, 550.1155 FS. Law Implemented 120.80(4)(a), 550.0251, 550.1155 FS. History—New 10-20-96, Amended 12-15-97, 4-12-06.