

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)(c)(3) (29 **Del.C.** §4815(b)(3)(c)(3))
3 **DE Admin. Code** 1001

FINAL

ORDER

1001 Thoroughbred Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10108(c) and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order amending Section 19.3.1.1 of the Commission's Rules to reflect current practices and fees charged from third parties.

Summary of the Evidence

1. During the Commission's meeting, held April 14, 2009, the Commission discussed removing language specific to fees charged from third parties, specifically removing the text "\$150.00" for court reporter fees charged by Wilcox & Fetzer.
2. Wilcox & Fetzer presently charges \$175.00 for court reporter fees.

Findings of Fact and Conclusions

1. The Commission concludes that the language specific to fees, i.e. \$150.00, should be removed.
2. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2009.

IT IS SO ORDERED this 15th day of April 2009.

Bernard J. Daney, Chairman

W. Duncan Patterson, Secretary/Commissioner

Debbie Killeen, Commissioner

Edward Stegemeier, Commissioner

Henry James Decker, Commissioner

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

19.0 Hearings, Reviews and Appeals

19.1 Procedure Before Stewards:

19.1.1 Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

19.1.2 The notice required by the preceding subsection shall include:

19.1.2.1 Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

- 19.1.2.2 The time and place of hearing.
- 19.1.2.3 The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.
- 19.1.3 All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.
- 19.1.4 The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

7 DE Reg. 316 (9/1/03)

- 19.1.5 All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.
- 19.1.6 If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.
- 19.2 Review and Appeal:
 - 19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.
- 19.3 Application for Review:
 - 19.3.1 An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:
 - 19.3.1.1 Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee in the amount of \$250 plus an additional fee of ~~\$150~~ to cover the cost of administrative expenses including court reporter costs. The Commission, for just cause, may refund the \$250 portion of the filing fee. In no event shall the advance payment of the court reporter's fee be refunded.
 - 19.3.1.2 Contain the signature of the applicant and the address to which notices may be mailed to applicant;
 - 19.3.1.3 Set forth the order or ruling requested to be reviewed and the date thereof;
 - 19.3.1.4 Succinctly set forth the reasons for making such application;
 - 19.3.1.5 Request a hearing;
 - 19.3.1.6 Briefly set forth the relief sought; and
 - 19.3.1.7 Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and
 - 19.3.1.8 Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.
- 19.4 Disposition of Review Application:
 - 19.4.1 After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.
- 19.5 Commission Hearing:
 - 19.5.1 If the Commission grants any such application for review, before holding any hearing thereon, it shall:

- 19.5.1.1 Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:
 - 19.5.1.1.1 Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.
 - 19.5.1.1.2 Except to applicant, a copy of the application for review.
- 19.5.2 The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.
- 19.5.3 The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.
- 19.5.4 The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.
- 19.5.5 The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.
- 19.5.6 If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.
- 19.5.7 Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.
- 19.5.8 False swearing on the part of any witness shall be deemed perjury and shall be punished as such.
- 19.5.9 All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.
- 19.5.10 The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.
- 19.5.11 All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.
- 19.5.12 The Commission may take official notice of technical facts or customs or procedures common to racing.
- 19.5.13 The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.
- 19.5.14 Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.
- 19.5.15 The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.6 Continuances:

- 19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefore and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.
- 19.6.2 When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.
- 19.6.3 An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.
- 19.6.4 If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

3 DE Reg. 1541 (5/1/00)

8 DE Reg. 1289 (3/1/05)

8 DE Reg. 1699 (6/1/05)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at: <http://regulations.delaware.gov/AdminCode/title3/1000/index.shtml#TopOfPage>**

12 DE Reg. 1408 (05/01/09) (Final)