



STATE OF DELAWARE  
DEPARTMENT OF AGRICULTURE  
**DELAWARE HARNESS RACING COMMISSION**  
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### Minutes of the Rules Committee Meeting Held February 17, 2009

The Delaware Harness Racing Commission met for a meeting at  
the Delaware Department of Agriculture in Dover, Delaware at 10:15 a.m.

#### Committee Members Present

Beth Steele, Chairman	George P. Staats, Commissioner
Salvatore DiMario, Executive Director, DSOA	Kenneth Williamson, Commissioner
Mary Ann Lambertson, Commissioner	John Hensley, Sr. Dir., Horse Racing, D. Downs
Judy Davis-Wilson, Executive Dir., DSBF	Karen Craft, Facilities Manager, HRI
Andrew Kerber, Deputy Attorney General	Hugh J. Gallagher, Administrator of Racing
Jo-Ann Price, Paralegal	Charles Lockhart, VP, Horse Racing, D. Downs

#### Others Present

Dr. Paul Hannebutt	Scott Egger, Presiding Judge
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<b>Call to Order/Welcome</b>	Chairman Steele called the public session of the meeting to order at 10:23 a.m. and welcomed those in attendance.
<b>Approval of Minutes</b>	Mr. DiMario made a Motion to approve the November 5, 2008 Minutes as written, Mr. Hensley seconded, and the Motion passed unanimously.
<b>Old Business</b>	None offered.
<b>New Business - Rule 10 10.2.2</b>	Mr. DiMario's suggestions for Rule 10 were discussed: <ul style="list-style-type: none"> <li>• <i>Judge's Hearing:</i> Mr. DiMario suggested they are more complicated and should be tape. Mr. Gallagher suggested asking International Sound if we could use their services.</li> <li>• <i>Charging Notice:</i> Mr. DiMario offered that language which clearly states there is a right to a hearing should be included. Mr. Egger said this is the slip the Paddock Judge hands them. There is only one form – instituted in 2008 at HRI. A copy of the current form will be submitted for review.</li> </ul>
10.2.2.2	No changes
10.2.3.1	Mr. Gallagher was uncomfortable with the Commission Investigator language; only fines, suspensions should be initiated at judge's level. Strike all Commission Investigator.
10.2.3.3	Should the underlying charge be noted? Mr. Egger said these are usually dealt with on the same day. Ok as is.
10.2.4.3	OK as is.

10.2. 4.4	Mr. DiMario felt this should be clearer; Mr. Egger has never penalized anyone for non appearance. It was suggested to make a subsection for the next section, but the paralegal explained that the numbering style is determined by the Office of the Registrar, we cannot modify.
10.2.6.2	Mr. DiMario asked if the Delaware rules of privilege should be spelled out, if they are current and if the judges aware of them. It is Mr. Kerber's responsibility to advise the judges; nothing need be noted in the rules. Mr. Kerber will send a memo to the judges and the Commission's Hearing Officer.
10.2.6.4	Mr. DiMario stated the quality of the tape recording is poor. Mr. Egger has never received a request for a copy. Mr. Gallagher offered to look into buying a better quality recorder, but Mr. Kerber questioned the necessity, since appeals are <i>de novo</i> .
10.2.7.1	Majority vote of judges: Mr. Egger said hearings have been done with two judges when only two were available. There are usually three, Include "majority vote" language.
10.2.7.2.1	On any public posting, only the name, year of birth, and license type will be used. Delete social, LKA and license number.
10.2.7.3	Mr. Gallagher said if two judges do not sign, there is no ruling. See markup. Mr. Lockhart felt all the judges should sign. Mr. Gallagher explained the New Jersey case in which a judge was fired because he would not agree with the decision of the other two judges. It went through their court system and he prevailed. Mr. Kerber agreed that you should not compel someone to sign when they don't agree. Change to read a ruling must be signed by the PJ on behalf of the Board of Judges.
10.2.7.4	Delete "certified mail return receipt requested."
10.2.7.5	Mr. DiMario suggested a written instruction of the right to appeal should be on a form which is given to the horsemen.
10.2.9.1	What about non-decisions? Mr. Gallagher said if there was an inquiry and the owner of the horse appealed and we had a hearing, they would be shown all three different angles, so they could see it. He would also encourage the Commission to look at them. Mr. Lockhart commented that you can't hear it if no objection was made to the placing.
10.2.9.4	Current procedures were discussed. No changes were suggested.
10.3.2.1	Accept changes as proposed.
10.3.5.1	Change to include costs be allocated among "multiple" parties.
10.3.6.1	Mr. DiMario asked if the term <i>de novo</i> be explained. Mr. Kerber will write a definition for inclusion in Rule 1.

10.3.8.10	Mr. Kerber explained how the Hearing Officer would allow the other party the opportunity to inspect or rebut the evidence – fairness. No changes were suggested.
10.4.1	Should the language say “shall” or “may”? Mr. Lockhart suggested not diluting the DHRC’s authority. Mr. Kerber clarified “may” would mean the DHRC would have to hear every appeal. Keep it “shall.”
10.5	Mr. Kerber explained there have been issues with both DHRC and DTRC from attorneys who are out of state trying to represent horsemen and/or jockeys. He has written propose language which was developed by looking at <i>pro hac vice</i> provisions from a number of other states. For example, some attorneys believe they are not practicing if they do not appear in front of commissioners in the same room. Also, he spoke to the head of the bar of disciplinary counsel who said they would not take any action unless we had a rule. The suggested language was accepted as proposed.
10.5.3	Add “absent good cause shown” at the beginning of the sentence beginning “The Commission has determined...”
Misc. Discussion Conflict of Interest Rule	Mr. Gallagher’s conflict of Interest chart will be saved for the next DHRC meeting. Mr. Lockhart mentioned that the conflict of interest rule needs some work, possibly to eliminate it, as there are now eight incidences of trainers driving horses that are owned together. It has gone from being a one or two person situation to one that permeates the whole program. It’ so incestuous that it should be reconsidered.
EHV Vaccinations	Mr. Lockhart added the DHRC should consider adopting a rule about vaccinations. The Rules Committee should discuss the state/track discrepancies – each track might have some different policies. Mr. DiMario felt the proper person to make those recommendations is the State Vet. The horsemen vaccinate based on their belief of how to best take care of their horses. Chairman Steele added that some of these vaccinations are only good for 90 days. Dr. Hirst will be invited to attend the next meeting.
Upcoming Events <i>DHRC Regular Meeting</i> <i>Rules Committee</i>	03/10/09 – 10:15 am, Dover Downs; Silver Lake Room 04/07/09 – 10:15 am, DDA, Secretary’s Conference Room
Adjournment	At 12:30 p.m., having no further business, Ms. Craft moved to adjourn; Ms. Davis-Wilson seconded; and the Motion passed unanimously.



