

disciplinary proceedings ([NAC 656.450](#)-.460, inclusive) the regulations may be applied retroactively.

However, the CCRB's regulations do more than create or affect a new remedy or procedure. They create new obligations on court reporting firms to register with the CCRB and comply with NRS and NAC chapter 656 or be disciplined. [NAC 656.330](#) also affects vested rights by prohibiting a court reporter from entering into a contract to provide ongoing services as a court reporter for any action not currently pending. Regulations affecting substantive or vested rights will be construed prospectively only. See *Madera*, [114 Nev. 253](#), 956 P.2d at 120; *County of Clark v. Roosevelt Title Ins.*, [80 Nev. 530](#), 396 P.2d 844 (1964).

CONCLUSION TO QUESTION THREE

Regulations which pertain to or affect a procedure may be applied retroactively, whereas regulations affecting substantive or vested rights may not. Therefore, [NAC 656.010](#)-.240, inclusive; [656.300](#)-.320, inclusive; and [656.340](#)-.460, inclusive, may be applied retroactively and [NAC 656.250](#)-.280, inclusive, and [656.330](#) may not be applied retroactively.

QUESTION FOUR

Does [NRS chapter 89](#) apply to [NRS chapter 656](#)?

ANALYSIS

[NRS chapter 89](#) generally regulates corporations or associations organized to perform a professional service. [NRS chapter 656](#) specifically applies to the regulation of court reporting. Where a general and specific statute are in conflict and cannot be read together, the specific statute controls. *Laird v. State of Nev. Pub. Emp. Ret. Bd.*, [98 Nev. 42](#), 45, 639 P.2d 1171, 1173 (1982). Since [NRS chapter 656](#) does not apply to firms, corporations, or other entities and the statute does not contain any limitations on ownership or operation of a court reporting business, there is no basis to require a court reporting firm to be organized as a professional corporation under [NRS chapter 89](#). If a court reporting firm elects to organize as a professional corporation or association, then the provisions of [NRS chapter 89](#) apply. However, the CCRB's regulations cannot create such a requirement that is clearly not contemplated by the statute. See *Cashman Photo v. Nevada Gaming Comm'n*, [91 Nev. 424](#), 538 P.2d 158 (1975).

CONCLUSION TO QUESTION FOUR

[NRS chapter 656](#) does not require a court reporting firm to be organized as a professional corporation.

FRANKIE SUE DEL PAPA
Attorney General

By: NANCY L. WENZEL
Deputy Attorney General

AGO 99-19 CANDIDATES, ELECTIONS, SECRETARY OF STATE: If the last day for candidate filing is a Friday, the last day to withdraw is the next Tuesday. A city candidate may submit a written withdrawal through a third party under certain circumstances.

Carson City, May 25, 1999

Larry G. Bettis, Deputy City Attorney, City of Las Vegas, 400 East Stewart Avenue, Las Vegas, Nevada 89101

Dear Mr. Bettis:

You have requested an opinion from this office regarding the withdrawal of candidacy by a candidate for city office.

QUESTION ONE

When is the last day for a candidate for city office to withdraw his or her candidacy if the last day for filing of candidacy is a Friday?

ANALYSIS

[NRS 293C.195](#) states, “A withdrawal of candidacy for a city office must be in writing and presented to the city clerk by the candidate in person within 2 days after the last day for filing a declaration of candidacy or an acceptance of candidacy.” Your question deals with the situation where the last day for filing a declaration of candidacy is a Friday and whether Saturday and Sunday are counted in computing which day is the second day after the last day for filing. If Saturday and Sunday are counted, the second day would be Sunday, and [NRS 293.1275](#) states, “If the last day limited for filing any paper mentioned in the Title falls on a Saturday, Sunday, legal holiday or any holiday proclaimed by the governor, the period so limited must expire on the following business day at 5 p.m.” Therefore, the time to file a withdrawal of candidacy ends on Monday.

However, [NRS 293.127](#) directs a liberal construction of election laws and states:

This Title [24] shall be liberally construed to the end that all electors shall have an opportunity to participate in elections and that the real will of the electors may not be defeated by any informality or by failure substantially to comply with the provisions of this Title with respect to the giving of any notice or the conducting of an election or certifying the result thereof.

Nevada Rule of Civil Procedure (NRCP) 6(a), which deals with computing periods of time allowed by a statutes, states in part, “When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and non-judicial days shall be excluded in the computation.” The Nevada Supreme Court in several cases has applied the time computation provisions of NRCP 6(a) or its predecessor, NCL 9029, to statutes governing elections. *Rogers v. State*, [85 Nev. 361](#), 364, 455 P.2d 172, 173 (1969); *Watson v. Koontz*, [74 Nev. 254](#), 328 P.2d 173 (1958); *McCulloch v. Bianchini*, [53 Nev. 101](#), 109-10, 292 P. 617, 619 (1930).

Combining [NRS 293.127](#) and NRCP 6(a), Saturdays, Sundays, and nonjudicial days must be excluded when computing the time period allowed in [NRS 293C.195](#). Consequently, if the last day for filing a declaration of candidacy falls on a Friday, then the last day to file a withdrawal of candidacy is Tuesday. Computing the time period by excluding Saturdays, Sundays, and nonjudicial days also furnishes a candidate with two business days in which to file a withdrawal of candidacy if the candidates so chooses.

The 1999 Session of the Legislature is currently considering an amendment to [NRS 293C.195](#) that would clarify that Saturdays, Sundays, and holidays are to be excluded when computing this two day time frame. Section 26, A. B. 615, First Reprint.

CONCLUSION TO QUESTION ONE

If the last day for filing of candidacy falls on a Friday, the last day a candidate for city office may withdraw his or her candidacy is the following Tuesday.

QUESTION TWO

May a candidate for city office submit a written withdrawal for candidacy through a third party if an exigent circumstance such as illness exists that prevents the candidate from submitting the written withdrawal in person?

ANALYSIS

[NRS 293C.195](#) requires that a written withdrawal of candidacy be presented to the city clerk by the candidate “in person” in order for such withdrawal to be effective. Your question involves a situation in which the candidate is unable to present the written withdrawal in person within the time frame allotted by the statute because of illness. While the statute specifically requires a candidate for office to file withdrawal papers in person in order for such withdrawal to be effective, applying a liberal interpretation of the statutory language would permit an agent’s personal appearance on behalf of a candidate to be sufficient to establish substantial compliance. [NRS 293.127](#) provides that Title 24, the election law, is to be construed liberally so that “the real will of the electors may not be defeated by any informality or by failure substantially to comply with the provisions of this Title”

While a liberal construction of Title 24 is permitted, determining which provisions require strict compliance is difficult. One approach to making this determination is to analyze the purpose and effect of the provision on the election process. For example, the candidate must comply with the statutory time for filing withdrawal papers. This is a reasonable restriction, necessary to promote an effective and orderly election process. The candidate’s personal appearance for filing the withdrawal papers does not implicate the same concern, especially where an agent of the candidate is substituted. The need for restrictions is to secure the integrity of the process. The process is protected so long as an authorized agent appears in person for the candidate within the time frame allotted by statute.

Courts favor liberal construction of election law especially when unusual circumstances prevent a reasonable opportunity to comply. *See Slagle v. Hannah*, 837 S.W.2d 100, 102 (Tex. 1992). (The court ruled the Secretary of State had to accept certificates of replacement nominees for a position on the ballot even though all the statutory deadlines had not been complied with because of the unusual circumstance of having a federal court extend other filing deadlines.) *See also Brunswick v. Hart*, 1988 Del. Ch. LEXIS 122. (The court concluded that the fact the candidate did not take action to remedy his defective filing fee until after the withdrawal date had passed does not disable him from having his name placed on the ballot. Technical noncompliance with election law can be excused if the particular circumstances of a case indicate a candidate acted in good faith.)

In light of the allowance for a liberal construction of Title 24, substituting an agent’s physical presence for the candidate’s presence conforms substantially to the dictates of the statute. Where a candidate’s physical presence is precluded, so long as the statutory deadline for withdrawal has not passed, and no factor which would compromise the integrity of the election process exists, it is reasonable to allow an authorized agent to appear on the candidate’s behalf.

CONCLUSION TO QUESTION TWO

A candidate for city office may submit a written withdrawal for candidacy through a third party, if an exigent circumstance such as illness exists that prevents the candidate from submitting the written withdrawal in person.

FRANKIE SUE DEL PAPA
Attorney General

By: KATERI CAVIN
Deputy Attorney General

AGO 99-20 PAROLE & PROBATION; SEARCH: Parole and Probation officers may use force to gain entry into an offender's residence to conduct a warrant or warrantless search if, after providing notice of their authority and purpose pursuant to [NRS 179.055](#)(1) ("knock and announce" rule), they are refused admittance. Before conducting a warrantless search of the offender's person, residence or vehicle, the officers must have reasonable grounds to believe that a violation of parole or probation occurred. Unless impracticable, a search warrant should be obtained.

Carson City, June 16, 1999

Carlos C. Concha, Chief, Department of Motor Vehicles and Public Safety Division of Parole & Probation, 1445 Hot Springs Road, Suite 104, Carson City, Nevada 89706

Dear Mr. Concha:

Recently, you asked this office the following question.

QUESTION

May officers of the Division of Parole and Probation (P&P) use force to gain entry into the residence of a probationer or parolee (offender) to conduct a search?

ANALYSIS

When a search warrant has been issued under [NRS 179.015](#)—179.115, the officers may do the following:

1. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.
2. The officer may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of his warrant, is detained therein, or when necessary for his own liberation.
3. All reasonable and necessary force may be used to effect an entry into any building or property or part thereof to execute a search warrant. In the execution of the warrant, the person executing it may reasonably detain and search any person in the place at the time in order to protect himself from attack or to prevent destruction, disposal or concealment of any instruments, articles or things particularly described in the warrant.