

PART Ac 204 COMPLAINTS, INVESTIGATIONS AND HEARINGS

Ac 204.01 Initiation of Disciplinary Proceedings. The board shall undertake investigations and disciplinary hearings, in response to a written complaint filed in accordance with Ac 204.02 for which probable cause is found by the board or in response to other information that comes to the board's attention for which probable cause is found by the board.

Ac 204.02 Complaints of Misconduct.

(a) Complaints alleging misconduct by licensees for violations of RSA 309-B:10 or the board's rules shall be in writing and filed at the board's offices in Concord, New Hampshire.

(b) A complaint shall contain the following information:

- (1) The name, address, home and work telephone number, cellular telephone number, and electronic mail address as applicable of the complainant;
- (2) The name address, home and work telephone number, cellular telephone number, and electronic mail address as applicable of the licensee against whom the complaint is directed;
- (3) Date, time, place and summary of alleged violation(s);
- (4) Name, address, home and work telephone number, cellular telephone number, and electronic mail address as applicable of those having knowledge of the alleged violations;
- (5) Specific provision of statute or rule on which the complaint is based; and
- (6) Other data pertinent to the complaint.

(c) A complaint that alleges acts of misconduct that occurred more than 4 years before the filing date shall not be accepted unless it also alleges that these acts could not have reasonably been discovered during all or some substantial part of the intervening 4 year period.

(d) A complaint shall be treated as a petition to the board for the commencement of a disciplinary hearing that shall be conducted pursuant to Ac 209.

(e) The licensee shall respond in writing to stated misconduct allegations by addressing each allegation. The licensee shall, within 15 days so respond or submit a written request for more time to respond. Failure to respond or request more time shall result in an order of default, and the board shall then commence and conduct a disciplinary hearing.

(f) The board shall automatically grant one written request for more time to respond to allegations of misconduct pursuant to (e) above. Such extension shall be for the amount of time requested, but shall not exceed 30 days from the date the response was due.

Ac 204.03 Processing of Complaints and Complainant Participation.

(a) Upon receipt of a complaint, the board shall commence an investigation pursuant to Ac 204.04.

(b) The board shall dismiss a complaint at any time for failure to allege misconduct, failure to respond to a request for information, or failure to participate in any investigation or hearing ordered by the board. However, the board shall independently pursue allegations of misconduct alleged against a licensee under its jurisdiction upon receipt of information alleging such misconduct. Such complaint shall also comply with Ac 204.02.

(c) After receiving the investigator's report, the board shall, with the consent of the licensee and subject to (d) below, enter a settlement agreement that imposes discipline upon the licensee and terminates further disciplinary action in whole or part.

(d) Action under (c) above shall not be taken unless:

- (1) The complainant receives notice and an opportunity to submit written comments concerning the proposed settlement or consent decree; and
- (2) There are no material facts in dispute between the licensee, the complainant, and intervenor and the proposed discipline would not be greater than foreseen discipline imposed by the board after notice and opportunity for hearing pursuant to Ac 200.

(e) Unless previously settled, a complaint that alleges misconduct, and for which the board finds probable cause, shall be incorporated into a notice of hearing that commences a disciplinary hearing pursuant to Ac 209.02.

(f) When a complaint is the subject of a disciplinary hearing, the notice of hearing shall provide the complainant the opportunity to intervene in the proceeding. A complainant shall have no rights to participate in a disciplinary hearing unless an affirmative election to intervene is made in writing to the board.

Ac 204.04 Investigations.

(a) The board shall conduct such investigations as are necessary to examine allegations of misconduct that come to its attention through complaints or other means.

(b) The board, through its chairperson, shall, pursuant to RSA 309-B:11, I, issue subpoenas in investigations whenever it determines that the investigator needs access to documents, persons, or things that would not otherwise be made available to it in the absence of a subpoena.

(c) The board shall appoint a member of its staff, or one or more of its members, or other knowledgeable person to conduct the investigation. Each board member who participates in an investigation shall not participate in any further actions of the board concerning the subject matter of that investigation.

(d) The type, form, and extent of an investigation shall be determined based upon the following:

- (1) The statutory or regulatory authority for the investigation;
- (2) Any statutes or rules believed to have been, or about to be, violated;
- (3) The identity of the persons, or class of persons, that are subject of the investigation;
- (4) The general nature of the conduct being investigated; and
- (5) The date by which the investigating officer shall report his or her findings and recommendations to the board.

(e) Investigations shall not commence a disciplinary hearing and shall not constitute a finding of probable cause regarding the alleged misconduct.

(f) When an investigation occurs, an investigator designated by the board shall contact such persons and examine such records and other documents as are reasonably necessary to make a recommendation to the board as to whether there is probable cause to support the allegation(s) of misconduct and commence and conduct disciplinary proceedings.

(g) Investigations, including those based upon allegations in a complaint, shall be conducted on an *ex parte* basis.

(h) Following the investigation, the investigator shall, pursuant to RSA 309-B:11, II, make a report to the board. Based upon that report the board shall find either probable cause or a lack of probable cause or shall return the report to the investigator for further investigation. If the board finds probable cause, it shall commence and conduct disciplinary proceedings based upon such allegations of misconduct. If the board finds a lack of probable cause, it shall dismiss the complaint.

(j) Investigatory reports and all information gathered by an investigator shall be confidential, provided that:

- (1) The investigator's report shall be made available to the parties in any adjudicative proceeding resulting therefrom; and,
- (2) The board shall provide information gathered in disciplinary investigations to:
 - a. Law enforcement agencies;
 - b. The accountancy licensing boards or agencies of other jurisdictions;
 - c. Board investigators or prosecutors;
 - d. Expert witnesses or assistants retained by board prosecutor or investigators in the same or related disciplinary matters; and
 - e. Persons to whom the licensee has given a release.

(k) Information gathered during investigations shall not be released to the public until an evidentiary hearing is held or a final settlement or other disposition of such a proceeding is reached, and only to the extent that it is not exempted by any provision of RSA 91-A or is otherwise privileged under law.