

## **Rule 11 HEARINGS BEFORE BOARD-NOTICE-PROCEDURE-REVIEW**

### **11.1 INVESTIGATIONS**

(a)(1) All investigations of possible violations of the Act, Code of Professional Conduct, or the Rules of the Board shall be investigated by the Board investigator under the supervision of the Board's Compliance Committee or CPE Compliance Committee.

(2) The Compliance Committee shall be comprised of one member of the Board, appointed by the President, and the Board's Executive Director.

(3) The CPE Compliance Committee shall be comprised of one member of the Board, appointed by the President, and the Board's Executive Director.

(b) Some possible minor violations may be expected to be of such nature that they can be disposed of informally by correspondence between the designee of the Board acting under the Board's instructions and the person or persons involved.

(c) The Board may conduct any investigation by a staff person and/or may designate investigating officer(s) to conduct investigations who shall be competent by reason of training or experience.

(d) No person or entity being investigated has a right to be present or to be heard during the investigation, but before any finding is recommended, such person or entity being investigated shall be advised of the nature of the conduct which is being investigated and shall be given an opportunity to make a statement personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct, which shall be considered by the Compliance Committee in making any finding and recommendation to the Board as to the disposition of the investigation.

(e) Upon completion of an investigation, the chair of the Compliance Committee shall present a summary of the result of the investigation and recommendation as to whether the Board should make a finding of probable cause to order a hearing or other action on alleged violations of the Act, Code of Professional Conduct, or these Rules.

### **11.2 COMPLIANCE COMMITTEE RECOMMENDATION**

(a) The Board shall consider the recommendation by the Compliance Committee and may find:

(1) probable cause;

(2) no probable cause; or

(3) instruct the investigating officer(s) to further investigate the matter.

(b) A finding of no probable cause by the Board shall be final, and after such finding no further proceedings shall be had in the matter by the Board unless new or additional evidence not available or made known to the Board at the time of the finding is thereafter brought to the attention of the Board. The Board shall promptly notify the person or entity being investigated and any complaining party of the Board's finding of no probable cause.

(c) If the Board finds probable cause it may direct:

(1) that disciplinary proceedings against a licensee be initiated under these rules by the filing of a hearing notice, setting forth the particular act or acts of conduct for which the person may be disciplined;

(2) that an action be instituted pursuant to A.C.A § 17-12-104 or § 17-12-

105; or  
(3) that other appropriate action be taken.

(d) When a hearing notice is filed, it shall be given a docket number, and any motions or other papers thereafter filed in the case shall refer to such docket number.

(1) At the time the hearing notice is filed, a copy thereof shall be mailed, under the direction of the Board, by registered mail or certified mail, return receipt requested, to the respondent at the respondent's address as shown upon the records of the Board, notifying the respondent that a hearing thereon will be held at a time and place to be specified, not less than thirty days after the mailing of such notice. The notice of hearing shall state the legal authority and jurisdiction under which the hearing is to be held.

(2) All pleadings, motions and orders filed in the case, except applications for witness subpoenas, shall be served on each party. Service shall be made by delivery of a copy of the document to be served to the party or the party's attorney or by mailing or emailing it to the party at the party's last known address or email address. Delivery of a copy within this rule shall mean: handing it to the attorney or to the party, or leaving it at the attorney or the party's office with the attorney or the party's secretary or other person in charge of the office, or, if there is no one in charge, leaving it in a conspicuous place therein.

If the office is closed or the attorney or party to be served has no office, leaving it at the attorney or party's usual place of abode with some person of the attorney or party's family above fifteen (15) years of age and informing such person of the contents thereof. Service by mail shall be deemed complete upon mailing. When an attorney makes the service, a certificate of service conforming to that required by the Arkansas Rules of Civil Procedure shall be taken as prima facie proof of such service in compliance with these rules.

(e) Upon the failure of a respondent to appear at a scheduled hearing, the Board may proceed to hear evidence against the respondent and may enter such order as shall be justified by the evidence, provided, however, that within thirty days from the date of any order, upon a showing of good cause for failure to respond, the Board may reopen said proceedings.

(f) The respondent has a right to information pursuant to A.C.A. § 25-15-208(a)(3).

(g) Hearings upon motions may be deferred until the final hearing, and rulings thereon may be reserved until the conclusion of the final hearing.

### **11.3 COMPUTATION OF TIME**

(a) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither Saturday, Sunday nor legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) When a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper

upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

#### **11.4 SUBPOENAS**

(a) Subpoenas for the attendance of the witnesses at hearings and for the production of documents shall be issued by the Board upon its own initiative or upon the written application of any party. The application shall state the name and address of the witness for whom the subpoena is to be issued, the party on whose behalf the witness is expected to testify, the time and place for the witness to appear, and the designated books, papers, documents, or tangible things, if any, to be produced.

(b) Subpoenas shall be served as required by Rule 45 of the Arkansas Rules of Civil Procedure, and the party at whose instance the subpoena is issued shall be responsible for obtaining service of the subpoena.

(c) Witness fees, expenses, and mileage, if requested by the witness, shall be paid by the party at whose instance the witness is summoned and shall be the same as prescribed by Rule 45 of the Arkansas Rules of Civil Procedure.

#### **11.5 HEARINGS BEFORE THE BOARD**

(a) If a hearing is to be conducted by the Board, its presiding officer or any designated hearing officer shall have the authority to:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence;
- (3) Regulate the course of the hearing;
- (4) Hold conferences for the settlement or simplification of issues by consent of the parties; and
- (5) Dispose of procedural requests or similar matters.

However, the Board shall determine any issue that would dispose of the matter without a determination on the substance of the matters at issue.

(b) The Board, at the conclusion of the final hearing, or within a reasonable time thereafter, shall make findings of fact and conclusions of law as to each item of misconduct with which the respondent is charged and shall enter an order stating the effective date and providing for the appropriate disciplinary action, if any, and recovery of the costs of the proceedings and investigations pursuant to A.C.A. § 17-12-602 when the Board deems such recovery appropriate.

(c) The Board shall promptly notify the respondent and any complaining party of its findings and order.

#### **11.6 HEARINGS BEFORE A HEARING EXAMINER OR MEMBER OF THE BOARD**

(a) In the alternative, the Board may appoint a hearing examiner or member of the Board, who may conduct hearings in the absence of the Board. Such member or hearing examiner shall have the authority to:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence;
- (3) Regulate the course of the hearing;
- (4) Hold conferences for the settlement or simplification of issues by consent of the parties;
- (5) Dispose of procedural requests or similar matters.

(b) In the event that the respondent challenges the sufficiency of the proffered charges or the jurisdiction of the Board, any recommended ruling in favor of the respondent shall be referred to the Board for decision. Any recommended finding against the respondent shall be included in the Board member or hearing examiner's report.

(c) Within thirty (30) days after the conclusion of the final hearing before the hearing examiner or member of the Board, or within such extended period of time as may be allowed by the Board for good cause shown, the hearing examiner or member of the Board shall make a report to the Board. The report shall include:

- (1) Recommended findings of fact and conclusions of law as to each item of misconduct with which the respondent is charged;
- (2) Recommendations as to whether or not the respondent should be found guilty of misconduct justifying disciplinary measures;
- (3) Recommendations as to the disciplinary measures to be applied, if any; and
- (4) A recommended form of order.

(d) A copy of the hearing examiner's or member of the Board's report shall be served upon the respondent.

#### **11.7 REVIEW OF HEARING EXAMINER'S OR MEMBER OF THE BOARD'S REPORT**

(a) Within ten (10) days after the hearing examiner or member of the Board files his or her report with the Board, or within such extended time as may be allowed by the Board, the record of the proceedings, including the transcript of all the testimony and exhibits, shall be filed with the Board.

(b) Within thirty (30) days after the hearing examiner or member of the Board files his or her report, or within such extended time as may be allowed by the Board for good cause shown, the respondent may file with the Board exceptions to the hearing examiner's or member of the Board's report and may file a brief in support of such exceptions. If the respondent files a brief, the Executive Director may, within twenty (20) days after the respondent's brief is filed with the Board, or within such extended time as may be allowed by the Board for good cause shown, file a brief in response. The parties shall also serve a copy of any such filings upon the opposing party or that party's counsel.

(c) The Board shall notify the respondent of the time and place of its meeting, at least ten (10) days in advance thereof, at which the Board will review the hearing examiner's or member of the Board's report. The respondent or the respondent's counsel may attend and present oral argument in support of any exceptions filed under Rule 11.7(b). If the respondent or the respondent's counsel presents such oral argument, the Executive Director may, through counsel, present oral argument in response. Each side will be allowed a stated amount of time, designated by the Board for argument.

(d) The Board, after review of the record and the hearing examiner's report, and considering the briefs and oral argument, if any, shall, within a reasonable time, make findings of fact as to each item of misconduct with which the respondent is charged, make conclusions of law, and enter an order stating the effective date and the disciplinary action pursuant to A.C.A. §17-12-602 or otherwise exonerating the respondent.

#### **11.8 DISPOSITION OF PROCEDURAL REQUESTS**

In the event the hearing is to be conducted pursuant to Rule 11.6, or if no decision has been made by the Board to appoint a hearing examiner or member of the

Board to hear the a disciplinary matter, the Board may appoint one of its members or a designated hearing officer to rule upon procedural requests or similar matters. Such rulings shall be reviewed by the Board at its hearing on the matter or at the time it reviews the report of the hearing examiner or member of the Board.

**11.9 EVIDENCE**

The admission of evidence shall be governed by A.C.A. § 25-15-213(4).

**11.10 RECORD OF PROCEEDINGS**

(a) An accurate record of the testimony, evidence, and all proceedings made before a hearing examiner, a member of the Board, or before the Board shall be reported, transcribed, indexed and bound by a court reporter supplied by the Board. Any party may contract with the court reporter for a transcript of the proceedings.

(b) In the event that judicial review is sought of any Board action taken pursuant to these rules, the Board shall prepare or have prepared a certified transcript of record pursuant to A.C.A. § 25-15-212 and submit the same to the reviewing court.

(c) The party or parties seeking judicial review of an order rendered by the Board may apply to the Board for a stay of that order. The stay may be granted upon such conditions as shall be reasonable, and any order granting a stay shall specify the conditions upon which the stay is granted.

**11.11 PUBLICATION OF DISCIPLINARY SANCTIONS**

The Board may cause to be published in the Board's and NASBA's official publications (printed and electronic), and may publish in newspapers of general circulation in the state, the name of any certificate or registration holder who is the subject of any disciplinary action. Such publication shall not occur until a final Board order has been issued. The publication may contain a narrative factual summary of the actions and violations which were the basis for the disciplinary action.

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