

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 20. COMPLAINTS AND ENFORCEMENT

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions [NEW]
5:20-1-1 through 5:20-1-5 [NEW]
Subchapter 3. Complaint Investigation Procedures [NEW]
5:20-3-1 through 5:20-3-2 [NEW]
Subchapter 5. Formal Complaint Procedures [NEW]
5:20-5-1 through 5:30-5-9 [NEW]

AUTHORITY:

Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"

DATES:

Adoption:

March 6, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

None.

INCORPORATIONS BY REFERENCE:

None.

FINDING OF EMERGENCY:

Imminent peril exists to the preservation of the public health, safety, or welfare and a compelling public interest requires these emergency rules to be adopted, for the reason that these rules provide for procedures to be established to supplement and complete the Oklahoma Abstractors Act. Without such emergency rules, the Board cannot effectively and efficiently embark upon the regulation, licensure, and administration of those holders of Certificates of Authority, applicants for Permits and Licensees, including the filing of complaints, conducting investigations, and enforcing the Oklahoma Abstractors Act.

ANALYSIS:

The proposed rules provide for key definition of terms covered under the statute. It further sets forth the general procedures for the filing of a complaint, the investigation of a complaint, resolution of complaints, instituting a formal complaint, and the hearings process, including due process. These emergency rules are necessary to establish the procedures for the public and other licensees to file a complaint, and the process for prosecution of same. These are necessary to establish the basic investigation, administrative hearing and resolution procedures.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. §253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

5:20-1-1. Administrative Procedures Act

The procedure for complaints, notice, hearing procedures, and regulation of matters covered by the rules of this Chapter shall be governed by the Administrative Procedures Act, and any conflict between the provisions of this Chapter and the Act, the Act shall govern.

5:20-1-2. Filing complaints

(a) Any person having a complaint, which alleges violation or noncompliance with the Oklahoma Abstractors Act or the rules of the Board implementing that act, may address the complaint to the Board at its principle office.

(b) The complaint shall be in writing and signed by the complainant. It shall contain a clear and concise statement of the facts, including the names, addresses significant to the complaint, and sufficient information to reveal the alleged violations and the facts on which the alleged violations are based.

(c) When a complaint is the result of information contained in a published source, an original copy of the publication with date published and full name of the publishing entity shall be filed with the Board.

(d) In the event a complaint is received by an individual member of the Board or any member of the Board staff, the information shall be forwarded to the Board office for referral to the Enforcement Committee in accordance with the procedures adopted by the Board for processing other complaints received.

(e) The individual against whom the complaint has been filed shall be notified of the complaint under investigation and may file a response to the complaint within fifteen (15) business days of receipt of notice of the filing of the complaint.

(f) The Enforcement Committee shall provide a quarterly report to the Board regarding the status of each pending complaint.

(g) Any individual who has filed a complaint may request to be notified of the final disposition of the matter.

5:20-1-3. Investigators

(a) The Board may appoint one or more individuals to investigate complaints received alleging violations of the Act or the rules of the Board.

(b) An individual appointed as an investigator may be a volunteer who serves without pay or an individual hired to conduct the investigation. Any individual serving as an investigator shall serve at the pleasure of the Board.

(1) Individuals who are holders of a certificate of authority, abstract license, or permit shall be eligible to serve as Investigators. Any such individual shall provide sufficient information to the Board to assure no conflict of interest exists in the conduct of an investigation the individual is conducting.

(2) Other individuals may be appointed as investigators subject to review of their qualifications as they may be significant to the particular type of investigation being conducted.

5:20-1-4. Special prosecutors

(a) The Board may appoint a special prosecutor to work with the Enforcement Committee on each complaint under investigation.

(b) The Board may utilize lawyers licensed to practice law in Oklahoma to serve as special prosecutors in formal proceedings before the Board.

(c) An individual serving as special prosecutor shall not serve as legal counsel to the Board in the same formal proceeding.

5:20-1-5. Cost of investigations

(a) Investigators and Special Prosecutors may be compensated at a rate established by the Board on a case by case basis.

(b) Investigators and Special Prosecutors may be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

SUBCHAPTER 3. COMPLAINT INVESTIGATION PROCEDURES

5:20-3-1. Enforcement committee procedures

(a) All complaints received by the Board, shall be referred to the Board Enforcement Committee for recommendation for action.

(b) The Enforcement Committee shall be comprised of at least two (2) members of the Board appointed by the Chairman. In the absence of the Chairman of the Board appointing a Chairman of the Enforcement Committee, the members of the Enforcement Committee shall choose their Chairman.

(c) Upon receipt of the complaint and information pertaining to the complaint, the Enforcement Committee may make appropriate inquiry to verify the information received.

(d) The Board may obtain a criminal record check of any applicant from the Oklahoma State Bureau of Investigation or other law enforcement sources.

(e) Upon completion of the preliminary inquiry, the Enforcement Committee shall take one (1) or more of the following actions:

(1) Recommend to the Board that the investigation should be terminated because it appears:

(A) there has been no violation of the law or rules, or

(B) there is insufficient evidence to support any allegation of a violation.

(2) Attempt an informal resolution of the allegations of violations contained in the information received.

(3) Require further investigation.

(4) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.

(5) Recommend a specific action by the Board.

5:20-3-2. Responsibility of investigators

(a) Upon referral from the Enforcement Committee, an investigator shall determine whether there exists sufficient cause to believe that misconduct has occurred which justifies the institution of formal proceedings. Such determination shall be presented to the Enforcement Committee in a report written and signed by the investigator.

(b) Such report shall contain a summary of the evidence, including any material provided by the accused, conclusions of fact, specific reference to applicable laws and rules, and recommendation with respect to institution of formal proceedings.

(c) All investigations shall be conducted in a timely manner.

(d) Upon conclusion of any investigation, the investigators shall promptly report the results to the Enforcement Committee.

SUBCHAPTER 5. FORMAL COMPLAINT PROCEDURES

5:20-5-1. Filing of formal complaint

(a) The Enforcement Committee and the special prosecutor shall determine if a formal complaint should be filed.

(b) In the event the Enforcement Committee and the special prosecutor do not agree on whether a formal complaint should be filed, the Chairman of the Enforcement Committee shall prepare a report for the Board. The Board shall make the final determination regarding further action.

(c) The formal complaint shall be signed by the special prosecutor or the Chairman of the Enforcement Committee. In the event the special prosecutor and the Enforcement Committee do not agree, the Chairman of the committee shall sign the formal complaint.

(d) The formal complaint shall include a concise statement of the allegations and particular sections of the Act or rules of the Board which are involved.

5:20-5-2. Violations by holders of a certificate of authority, abstract license, or permit

(a) In the event the investigation of an allegation against a holder of a certificate of authority, abstract license, or permit concludes that the individual against whom the complaint has been filed is in violation of the Act or the rules of the Board, the Board shall take any authorized action to protect the public from the unauthorized or illegal action of the certificate, license or permit holder.

(b) The Chairman of the Board shall set a time and place for the hearing of the formal complaint. Notice of the hearing shall be sent to the individual against whom the complaint has been filed not less than twenty (20) days from the date of the hearing at the last known address as shown in the official records of the Board.

(c) The person against whom the complaint has been filed shall be provided with any material information including any staff memoranda or data to be relied on by the Board.

(1) At the hearing, the person against whom the formal complaint has been filed shall be afforded an opportunity to contest the reports and other materials referenced.

(2) The experience, technical competence, and specialized knowledge of the members of the Board may be utilized in the evaluation of the evidence.

5:20-5-3. Formal complaint hearing procedures

(a) Hearings will be conducted by one of the following methods, determined by the Board before the hearing begins:

(1) By the Board;

(2) By any member of the Board or a designee of the Board acting as a hearing examiner or Administrative Law Judge; or

(3) By an attorney licensed to practice law in this state appointed by the Board to act as a hearing examiner or Administrative Law Judge.

(b) All oral proceedings shall be electronically recorded.

(1) The record shall be transcribed upon request of any party to the proceeding.

(2) All costs of such transcription shall be paid in advance by the requesting party.

(3) Upon approval of the Chairman of the Board, the accused, may use a licensed court reporter to transcribe the hearing. The cost of such reporter shall be paid by the accused.

(c) The hearing record of any formal proceeding shall be open to the public.

5:20-5-4. Standards for making decision

(a) The Board may take notice of:

(1) Judicially cognizable facts, and

(2) Generally recognized technical or scientific facts within the specialized knowledge of one or more members of the Board.

(b) The standard of proof in all hearings shall be clear and convincing evidence.

(c) The Board shall consider past disciplinary action taken against any accused found guilty in any present proceeding. Such past conduct shall not be evidence of guilt in the present proceeding but will be considered only in determining appropriate sanctions to be imposed by the Board in the present proceeding.

(d) Unless precluded by law, the accused may waive any right granted in the law and proceed by stipulation, agreed settlement, consent order, or default. No provision of this section shall be construed as prohibiting the Board from suspending, or holding in abeyance, any formal proceeding pending the outcome of informal negotiation or informally agreed upon terms.

(e) All orders shall be in writing and state findings of fact, conclusions of law, and actions to be taken. Final orders shall state their effective date.

5:20-5-5. Subpoena of witness, documents, or things

(a) In all cases the Board may issue subpoena or subpoena *duces tecum* where a party desires to compel the attendance of witnesses after a complaint has been filed.

(b) When the party, or his attorney, desires to have witnesses subpoenaed to appear before the hearing examiner, a request in writing shall be made by such party or his attorney, giving the name and correct address of any such witness.

(c) The requesting party shall pay the cost of service.

5:20-5-6. Discipline for violations by applicants

(a) An applicant for an abstract license who is alleged to have violated the Act, the rules of the Board, or who subverts or attempts to subvert the examination process shall be subject to

disciplinary action by the Board.

(b) Failure of any applicant to cooperate with an investigation conducted by the Board shall result in denial of the application.

(c) Upon the determination that the applicant is guilty of the allegations, the Board may impose one (1) or more of the following disciplinary measures on the applicant:

(1) Withhold the grades on the examination;

(2) Declare the scores on the examination invalid;

(3) Disqualification the from holding a certificate of authority, or license permanently or for a specified period of time; or

(4) Impose other authorized penalties.

5:20-5-7. Violations by individuals who do not hold a certificate of authority, license or permit

(a) In the event the investigation of an allegation against an individual who is not a holder of a certificate or abstract license concludes that the accused is in violation of the Act or rules of the Board and that action should be taken to stop the violation, the Board may designate a member of the Board, staff member, or other individual acting for the Board to:

(1) Send written notice of the accusation, supporting documentation and a copy of the Complaint and Notice of Hearing, to be held not later than sixty (60) days following such notice, to the accused by certified mail, restricted delivery, return receipt requested. Notice may also be given by personal service upon the person of the accused in a manner authorized by the statutes of the State of Oklahoma for service of process in a civil proceeding;

(2) Provide the accused with a copy of the Act and rules of the Board along with its notification of the accusation and Complaint and Notice of Hearing.

(b) The Board, at a full and formal hearing, shall make a final determination of the accusations against the accused and issue such permanent cease and desist order, fine, penalty or other action as authorized by the Act and the rules of the Board.

5:20-5-8. Final orders

(a) A final order shall be in writing and shall include separate statements of the findings of fact and conclusions of law.

(b) Findings of fact shall be accompanied by a concise and explicit statement of the evidence supporting the findings. The order shall include a ruling on proposed findings of fact submitted by a party to the proceeding.

(c) A copy of the final order shall be delivered or mailed forthwith to each party or to their attorney of record as soon as practicable.

5:20-5-9. Rehearings

(a) An application for rehearing may be made in writing within ten (10) days of the date of the final order. The petitioner shall set forth one (1) or more of the following as grounds in the rehearing request:

(1) newly-discovered or newly-available evidence, relevant to the issues;

(2) need for additional evidence to adequately develop the facts essential to a proper

decision;

(3) probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the order;

(4) need for further consideration of the issues and the evidence in the public interest;

or

(5) showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(b) Nothing in this Subchapter shall prohibit the Board from rehearing, reopening or reconsidering a matter at any time, on the grounds of fraud practiced by the prevailing party, procurement of perjured testimony, or fictitious evidence, and in accordance with other statutory provisions applicable to the Board.