

SUBCHAPTER 37. ENFORCEMENT PROCEDURES

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10:15-37-1. Enforcement committee

(a) When a signed, written complaint or information from a published source comes to the Board, an individual member of the Board, the Executive Director, or to any member of the Board staff concerning alleged violations of the Oklahoma Accountancy Act or the rules of the Oklahoma Accountancy Board, the information shall be forwarded to the Enforcement Committee. The Enforcement Committee is comprised of the Vice Chairman and one (1) other member of the Board who is not an officer of the Board appointed by the Chairman to receive such information. The Vice Chairman of the Board shall serve as Chairman of the Enforcement Committee.

(b) The member(s) of the Board receiving the information may make appropriate inquiry to verify the information received. Upon completion of the preliminary inquiry, the Board member(s) may take one (1) or more of the following actions:

- (1) Terminate the investigation because it appears there has been no violation of the law or rules or 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) Refer the matter to the Investigation Committee.
- (4) Refer the matter to an individual investigator to obtain additional information.
- (5) Refer the information to a special prosecutor, or legal counsel for further action.
- (6) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.

10:15-37-2. Investigation committee

(a) The Board may appoint an Investigation Committee to conduct investigations of allegations of violations of the Oklahoma Accountancy Act or the rules of the Oklahoma Accountancy Board.

(b) The Investigation Committee shall consist of not less than three (3) nor more than nine (9) members who shall serve at the pleasure of the Board.

(1) Only individuals who are holders of permits shall be eligible to serve on the Investigation Committee.

(2) The members of the Investigation Committee shall elect one (1) of their members as Chairman who shall conduct the meetings of the Committee, administer its activities, and perform such other duties as are assigned by the Board.

(c) It shall be the duty of the Investigation Committee upon a request from the Enforcement Committee to investigate to determine whether there exists probable cause to believe that misconduct has occurred which justifies the institution of formal proceedings. The investigation shall be conducted in a timely manner.

(d) The Investigation Committee shall report to the Enforcement Committee the result of any investigation promptly upon its conclusion. Such report shall contain a summary of the evidence considered by the Committee including any material provided by the accused, the conclusions of fact and law of the Committee, and the recommendation of the Committee with respect to institution of formal proceedings.

(e) Before a final report adverse to the accused is made, the Investigation Committee may notify the accused in writing of the allegations and allow the accused not less than ten (10) calendar days to reply in writing.

(1) The accused shall not be entitled to a hearing before the Investigation Committee as a matter of right.

(2) The accused may submit written material for consideration by the Investigation Committee which shall be included in the final report to the Enforcement Committee.

10:15-37-3. Special prosecutors

(a) The Board may employ lawyers licensed to practice law in Oklahoma to serve as Special Prosecutors in formal proceedings before the Board.

(b) An individual serving as Special Prosecutor shall not serve as legal counsel to the Board in the same formal proceeding.

(c) The Special Prosecutor may perform such other duties as are assigned by the Board.

10:15-37-4. Individual investigator

(a) The Enforcement Committee may assign an allegation of a violation to an individual investigator employed by the Board on a part time or full time basis.

(b) An investigator may make use of the Investigation Committee but shall be in full charge of any investigation assigned by the Enforcement Committee, subject to the direction of the Board.

10:15-37-5. Filing of formal complaint

(a) All formal complaints shall be filed by the Enforcement Committee only with the agreement of the Special Prosecutor.

(b) The Enforcement Committee, and the Special Prosecutor must concur. In the event they do not, the Vice Chairman will prepare a report for the Board and the Board will determine future action.

(c) The formal complaint shall be signed by the Special Prosecutor or the Vice Chairman.

(d) The formal complaint shall include a concise statement of the allegations and particular sections of the Oklahoma Accountancy Act and the rules implementing that Act which are involved.

10:15-37-6. Formal proceedings

(a) The Chairman shall set a time and place for the hearing of the formal complaint, provided that such hearing shall be set not less than twenty (20) days from service of the complaint and notice of the proceeding to the accused at the last known address in the official records of the Board.

(b) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of one (1) or more members of the Board.

(c) The accused shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise of any material notices, including any staff memoranda or data to be relied on by the Board and the accused shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the members of the Board may be utilized in the evaluation of the evidence.

(d) Oral proceedings or any part thereof shall be transcribed upon request of any party. All costs of such transcription shall be paid by the requesting party.

(e) Hearings will be conducted by one (1) of the following methods, as determined by the Board:

(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.

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

(g) All orders, whether proposed or final, shall be issued within ninety (90) calendar days of the hearing. Final orders shall state their effective date.

(h) 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.

(i) 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.

(j) The investigation files of the Board shall be confidential, except the Board may provide information in the investigation files and hearing record to the following:

(1) Any Board of Accountancy or Commission of the District of Columbia, or any other state or territory of the United States which exercises disciplinary authority over accountants; and

(2) Any law enforcement agency which makes a proper showing that such information is necessary to conduct a pending investigation.

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

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

(m) The notice and hearing procedures required for individual proceedings as set forth in the Oklahoma Administrative Procedures Act shall be followed by the Board.

10:15-37-7. Discipline for violations by candidates

A candidate who is alleged to have violated the Oklahoma Accountancy Act, the rules implementing that Act, or who subverts or attempts to subvert the examination process shall be subject to disciplinary action by the Board. Upon the determination that the candidate is guilty of the allegations, the Board may impose one (1) or more of the following disciplinary measures on the candidate:

(1) Withhold the candidate's grades on the examination;

(2) Declare the candidate's scores on the examination invalid;

(3) Disqualify the candidate from holding a certificate or license permanently or for a specified period of time; or

(4) Impose other authorized penalties.

10:15-37-8. Violations by individuals who do not hold a certificate or license

(a) In the event the investigation of an allegation against an individual who is not a holder of a certificate or license concludes that the accused is in violation of the Oklahoma Accountancy Act and action should be taken to stop the violation, the Board may delegate to the Vice Chairman or the Executive Director, or the Board's designate, acting for the Board, who shall be authorized 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 Oklahoma Accountancy Act 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 these Rules and the Oklahoma Accountancy Act.

10:15-37-9. Violations by certificate or license holders and candidates

(a) In the event the investigation of an allegation against a certificate or license holder or a candidate concludes that the accused is in violation of the Oklahoma Accountancy Act or the rules of the Oklahoma Accountancy Board, the Board shall take any action authorized by law, or these rules, to protect the public from the unauthorized or illegal action of the certificate or license holder.

(b) All proceedings and related procedures shall be conducted in accordance with the provisions of the Oklahoma Administrative Procedures Act.

10:15-37-10. Investigation costs

(a) Members of the Investigation Committee, investigators, and Special Prosecutors may be compensated at a rate established by the Board on a case by case basis.

(b) Members of the Investigation Committee, investigators and Special Prosecutors shall submit claims for payment in the same manner as other vendors doing business with the Board.

(c) Members of the Investigation Committee, investigators, and Special Prosecutors shall also be reimbursed for necessary expenses incurred in the performance of their duties upon submission of receipts.

10:15-37-11. Felony convictions and pleas

(a) The provisions of this section shall be applicable, except where indicated, to applicants for the examination, examination candidates, applicants for certificates and licenses, and registrants.

(b) When an applicant has been convicted of or plead guilty or *nolo contendere* to a felony, the applicant shall be required to furnish to the Board documentation of the charges and the final judgment of the Court in the form of certified documents from the Court file. Failure by an applicant for the examination to furnish adequate documentation no later than sixty (60) days prior to the commencement of the examination applied for shall result in denial of the application.

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

(d) The Enforcement Committee shall review all documents pertaining to the applicant's conviction or plea and may further require that an investigation be conducted in accordance with Subchapter 37 of the Oklahoma Administrative Code.

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

(f) The Enforcement Committee shall make a preliminary determination of whether the applicant satisfies the requirement of good moral character as set forth in Sections 15.8 and 15.9 of the Act. The Enforcement Committee shall consider, but not be limited to, the nature of the felony conviction or plea and the

time period which has elapsed since the offense was committed or judgement was entered.

(g) When, in the opinion of the Enforcement Committee, public protection requires conditional approval of an applicant, the Enforcement Committee may negotiate a consent order with the applicant. The consent order shall set forth the terms and conditions proposed by the Enforcement Committee for approving the application. All consent orders must be either approved or disapproved by the Board.

(h) If the Enforcement Committee is unable to negotiate a consent order with an applicant, or if the Board does not approve the consent order, a hearing may be held to determine whether the application may be approved and to determine conditions for such approval which may be imposed by the Board as a result of the hearing.

(i) A list of all applicants having criminal histories, with information describing each felony conviction or plea and the penalty imposed for each, shall be presented to the Vice Chair. Board approval must be granted, or a hearing, as ordered by the Board, must be held in conjunction with each application presented to the Board.

(j) Individual registrants who have a felony conviction or plea are subject to the provisions of the Act and the enforcement procedures set forth in this Subchapter.