

Complaints Against a Licensee – Initial Investigation

§ 1. Initial handling and investigation by the staff

- A. When the board receives a complaint from any source against a licensee, the staff shall evaluate the complaint to determine if it involves a probable violation of a statute, regulation, or order affecting licensing.
 1. If the complaint does not involve a probable violation of a law affecting licensing, the staff shall inform the complainant in writing of its determination, and the matter will be deemed informally resolved.
 2. If the complaint involves a probable violation of a law affecting licensing, the staff will interview the licensee, the complainant, or any other people, organizations, or agencies who can furnish relevant information or evidence.
- B. The staff may assign an outside investigator or prosecutor as needed to assist the staff in evaluating a complaint.
- C. The Board may, in its discretion, pre-approve a non-exclusive or exclusive list of outside investigators or prosecutors for the staff to select from.
- D. When the investigation is concluded, the staff will, based on the evidence, recommend one or more of the following actions:
 1. Closing the complaint file because of lack of evidence or a finding of no probable violation.
 2. Closing the complaint file because the matter is moot.
 3. Requesting that the compliance committee or a member of the committee review the complaint.
 4. Requesting mediation before the compliance committee or a member of the committee.
 5. Enter into a proposed consent agreement with the respondent that must be approved by the Board at a regularly scheduled meeting. The consent agreement shall contain a clause in which the complainant waives objections to prior knowledge that may be caused by presenting the consent agreement to the Board.
 6. Filing a petition with the Board.
 7. Referring the matter to the Louisiana Attorney General's office or other appropriate agency or authority if it involves a criminal matter or a matter that cannot otherwise be handled appropriately or lawfully under the Board's jurisdiction or authority.

Board Proceedings Other than Rulemaking; General Procedures

§ 2. Proceedings by the Board

- A. Proceedings initiated by the board, except for the promulgation, amendment or repeal of a regulation (“rulemaking”), shall be commenced by the issuance of an order to show cause directed to the respondent. The order shall state the act or acts, conduct, or the failure or omission to act alleged to be contrary to or in violation of any provision of law or of any of the lawful rules, regulations, orders, decisions or opinions issued, rendered and/or promulgated by the board.
- B. The Board may assign a particular matter to a committee as authorized under La. R.S. 37:711.23.

§ 3. Proceedings by Persons other than the Board

- A. Any person desiring to initiate adjudication proceedings, except for rulemaking, and who is entitled or required by law to do so, shall prepare and file with the board a petition in the form and content set forth in these procedures.
- B. Any person desiring to initiate adjudication proceedings, except for rulemaking, but who is not entitled or required by law to do so shall prepare and file with the board a petition that meets the requirements for a petition as described in these procedures or a complaint as authorized in La. R.S. 37:711.23. If the board determines that the petition or complaint is filed in good faith and that allegations otherwise justify the initiation of adjudication proceedings, the board shall initiate adjudication proceedings in accordance with these rules.

§ 4. Notice

- A. The board shall issue a notice in conformity with the provisions of La. R.S. 49:955 when issuing an order to show cause, or upon the initiation of adjudication proceedings pursuant to a petition or complaint filed by any person in accordance with these rules.
- B. The hearing set by this notice shall be fixed not less than 20 days from the date the notice is served.

§ 5. Service of Notice; Pleadings, and other Documents

- A. Service of notice, pleadings, decisions, orders, and other papers and documents shall be made by:
 - 1. Delivering one copy to each party or his attorney of record in person;
 - 2. Depositing it in the United States mail, first class, postage prepaid, certified or registered mail, directed to the party or his attorney of record. Service by mail shall be deemed complete at the date of mailing; or
 - 3. Any other method of service the parties mutually agree to in writing that is acceptable under the Louisiana Code of Civil Procedure.

- B. Unless otherwise provided, when any party has appeared through an attorney, service upon that attorney is deemed valid service on the party until written notice of dismissal of that attorney is received by the board and served on all parties of record to the proceeding.

§ 6. Answer or Appearance

- A. A respondent may file an answer or other appearance personally or through an attorney not later than five days before the date fixed for the hearing.

- B. The filing of an answer or other appearance by an attorney constitutes an appearance by the party for whom the pleading is filed, and also constitutes an appearance of the attorney on behalf of such party. An attorney who has appeared on behalf of a party may withdraw from any proceeding upon:
 - 1. good cause shown to the board,
 - 2. written notice to the board,
 - 3. written notice to the client party, and
 - 4. evidence or a certification submitted to the board that the attorney sent notice to the client.

§ 7. Appearances

- A. No person, except an individual appearing on his own behalf or as a representative or witness on behalf of a party, shall be permitted to participate in any proceeding before the board unless such person is represented by an attorney of this state in good standing.

- B. Any attorney or counselor from any other jurisdiction, of good standing there, may, at the discretion of the board, be admitted, *pro hac vice*, to associate with an attorney of this state in a proceeding and to participate therein in the same manner as an attorney of this state. However, all pleadings, briefs, and other papers filed with the board in such matters shall be signed by an attorney authorized to practice in this state who shall be held responsible for them, and who shall be present at all times during the proceeding unless excused by the presiding officer.

- C. Any person appearing before or transacting business with the board in a representative capacity may be required by the board or the presiding officer to file evidence of his authority to act in such capacity.

§ 8. Formal Requirements for Pleadings

- A. All pleadings shall be printed or typewritten and shall be prepared on either letter size or legal size paper.
- B. All pleadings must be signed in ink, or in a secure electronic manner if filed electronically, by the party or attorneys of record, if any.
- C. All pleadings initiating a proceeding or otherwise seeking affirmative relief and all petitions of intervention shall be verified, except for pleadings, motions, notices, or orders to show cause brought by the board or the attorney general of the State of Louisiana.

§ 9. Statutory References in Pleadings

All pleadings shall cite, by appropriate reference, the statutory provision or other authority under which the board's action is sought, and shall refer to any statutes, rules, regulations, decisions, orders, or opinions germane to the particular matter or proceeding involved.

§ 10. Ex Parte or Emergency Relief

- A. If a petition or other pleading filed by a person other than the board seeks *ex parte* action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action, and must be supported by affidavits or other competent evidence needed to make a *prima facie* case.
- B. The chair may take any such emergency action as they deem appropriate in their sole discretion.

§ 11. Contents of answer

- A. The answer shall:
 1. conform to the requirements for answers under the Louisiana Code of Civil Procedure;
 2. contain a specific detailed statement of any affirmative defense or matter in extenuation or mitigation;
 3. contain a clear and concise statement of the facts and matters of law relied upon constituting the grounds of the defense or the basis for extenuation or mitigation.

§ 12. Default in Answering or Appearing

In the event of the failure of a respondent to answer or otherwise appear within the time allowed, and provided that these rules relative to service and notice have been complied with, such respondent failing to answer or otherwise appear shall be deemed to be in default. At the time fixed for the hearing, the party initiating the proceeding shall present its evidence and in due course, and after due consideration of all of the pleadings, evidence and the entire record, the board shall render its decision or issue its order or ruling, as appropriate.

§ 13. Leave to Intervene Necessary

- A. Persons, other than the original parties to any proceeding, whose interests are directly and immediately affected by the proceeding, shall secure an order granting leave to intervene before being allowed to participate, provided that the granting of leave to intervene in any proceeding shall not be construed to be a finding or determination by the board for purposes of judicial review or appeal.
- B. A petition for leave to intervene must:
 - 1. clearly identify the proceedings in which the intervention is sought,
 - 2. set forth the name and address of the petitioner for intervention,
 - 3. contain a clear and concise statement of:
 - a. the direct and immediate interest of the petitioner in such proceeding,
 - b. the manner in which such petitioner will be affected by such proceeding
 - c. the matters and things relied upon by such petitioner as a basis for his request to intervene, and
 - 4. if affirmative relief is sought, contain a clear and concise statement of the relief sought and the basis thereof.
- C. A petition to intervene and adequate proof of service of a copy thereof on all parties of record to the proceeding shall be filed not less than 10 days prior to the commencement of the hearing. For good cause shown, the board shall allow a petition of intervention to be filed not later than the time of the hearing.
 - 1. If such petition to intervene is not filed in accordance with these rules, such petition will not be considered.
 - 2. If a petition to intervene shows direct and immediate interest in the subject matter of the proceeding or any part thereof, and does not unduly broaden the issues, the board may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed.
 - 3. If it appears during the course of a proceeding that an intervenor has no direct or immediate interest in the proceeding, and that the public interest does not require

participation by such intervenor therein, the board may dismiss such intervenor from the proceeding.

§ 14. Prehearing Conference

- A. The chair or the chair's appointee may, of their own volition, or upon the motion of any party of record, hold a prehearing conference for the purpose of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, and considering such other matters as may expedite the orderly conduct and disposition of the proceeding, or the settlement thereof.
- B. The action taken at such prehearing conference, including without limitation, all the agreements, admissions, and/or stipulations made by the parties concerned, shall be made a part of the record. Such action shall control the subsequent course of the proceeding, unless otherwise stipulated by all parties of record with the consent of the chair or the chair's appointee.
- C. In any proceeding, the chair or the chair's appointee may, in its discretion, call all parties together for a conference prior to the taking of testimony, or may recess a hearing, after it has commenced, for the purpose of holding a conference.

§ 15. Hearing

- A. At the date, time, and place fixed for the hearing, the board shall hear all matters presented in connection with the proceeding pending before it.
- B. The hearing shall be conducted by the chair or the chair's appointee. The board and all other parties may be represented by counsel.
- C. Opportunity shall be afforded all interested persons to respond and present evidence on all issues of fact involved and arguments on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.
- D. The chair or the chair's appointee conducting any proceeding subject to these rules shall have the power to direct, control and regulate the order, procedure and course of the hearing, including, but not limited to, opening statements, the order and method of presentation of testimony and evidence by all parties, and closing statements. The chair or the chair's appointee shall have the further power to set the time and place for continued or recessed hearings, fix the time for filing of memoranda and other documents, and generally to do all things necessary and proper for the conduct of a full and fair hearing.

§ 16. Conflict and Bias

- A. A Board member shall not be entitled to participate in any disciplinary action if such Board member is biased against the respondent.
- B. Any respondent in a disciplinary proceeding may assert conflict or bias by filing with the Board at least three days before the scheduled disciplinary hearing an affidavit asserting the basis for disqualification together with specific details of the underlying factual basis for the assertion. The accusation of conflict or bias filing shall not, however, defer or delay a scheduled hearing.
- C. Challenges as to bias shall be determined individually by each Board member so challenged, on the record. Challenged Board members who determine that they can be fair and impartial to all concerned may serve. Those who cannot shall rescue themselves.

§ 17. Adjudication Procedure

In the conduct of adjudication the board shall conform to and comply with the applicable provisions of the Administrative Procedure Act.

§ 18. Judicial Review of Adjudication

- A. Judicial review of a final decision or order in adjudication proceedings shall be in accordance with, and is governed by, the Administrative Procedure Act.

The party seeking such judicial review shall prepare and transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. All costs of preparing and transmitting the record for review shall be borne by the party prosecuting such appeal.

§ 19. Informal Proceedings authorized

- A. Nothing in these procedures shall be construed as prohibiting the board or its staff from holding lawful informal proceedings, hearings, or conferences for the purpose of aiding the board in ascertaining and determining facts necessary for the performance of its duties.
- B. Any person who is aggrieved by any action or determination of the board or its staff following such an informal proceeding, and who is otherwise entitled to do so, may file a petition requesting the promulgation, amendment, or repeal of a rule, or may file a petition to initiate an adjudication proceeding, under applicable provisions of these rules. Such petitions shall be handled by the board *de novo*.

§ 20. Fine Schedules for Violations of the Louisiana Professional Geoscience Practice Act

- A. The Board, at its discretion, after notice and hearing as required by the Administrative Procedure Act, and in lieu of a complete suspension or complete revocation of a certificate of authority or a license, may impose fines or other relief for violations of the statutes or regulations of the board according to a schedule in existence at the time of the violation.
- B. The schedule must be approved in the following way:
 - 1. The Board must announce a proposed schedule at a regularly scheduled public meeting of the board at least 60 days before amendment or adoption.
 - 2. The proposed schedule must be available on the board's website and in physical form in the board's office for public inspection for at least 60 days before amendment or adoption.
 - 3. The Board may amend, adopt or rescind the schedule by a majority vote of the entire board membership authorized to participate in the proceeding at a public meeting.
- C. The schedule must be available on the board's website and in physical form in the board's office for public inspection at the time of the violation.
- D. By agreement of the Board and the respondent, the parties may waive the hearing and enter into a written consent agreement, stipulating to the facts and law applicable to the alleged violation.
- E. The Board may, but is not required to, adopt a modified schedule for consent agreements using the same procedure as described in part B above.
- F. The Board may, but is not required to, adopt a schedule for resolving certain violations outside of the formal disciplinary proceedings, as authorized under La. R.S. 37:711.23.
- G. Each willful or nonwillful act shall constitute a separate violation for the purposes of imposing the relief set forth in the schedule.

§ 21. Right to seek Order or ruling; Procedure

- A. A request for a declaratory order or ruling on the applicability of any statutory provision or of any rule or order of the board, shall be by petition filed with the board at its administrative office.
- B. The petition shall set forth in clear and concise language all facts, circumstances and relevant information as to the necessity for a declaratory order or ruling, and shall make specific reference to the statutory provision, rule, or order of the board about which the declaratory order or ruling is requested.

- C. The petition shall be considered by the board at the next regularly-scheduled meeting that allows at least 45 days between the filing of the petition and the meeting.
- D. The board may consider the petition at a regularly scheduled public meeting with less than 45 days' notice upon:
 - 1. a showing of good cause by any person,
 - 2. a vote of the majority of the entire board membership authorized to participate in the proceeding, and
 - 3. the presence of the petitioner at the public meeting. The petitioner may waive this requirement in writing, provided the board receives the written waiver before the vote and enters it into the record of the meeting.
- E. Pending the issuance of the decision by the board, an order may be issued that other proceedings and actions connected with the matter submitted to the board shall be held in abeyance or stayed.

§ 22. Declaratory Judgement for Determining Validity or Applicability of a Rule

The validity or applicability of a rule may be determined in an action for declaratory judgment in district court as provided for in the applicable provisions of the Administrative Procedure Act.

§ 23. Informal Opinions

Nothing in these rules shall be construed as prohibiting the board from rendering an informal or advisory opinion to any person on any matter arising out of the administration or enforcement of the Louisiana Professional Geoscience Practice Act.

§ 24. Amending These Procedures

- A. The Board may amend, adopt or rescind these procedures by a majority vote of the entire board membership authorized to participate in the proceeding at a public meeting.