

201 KAR 18:220. Administrative hearings.

RELATES TO: KRS 13B, 322.290(4)

STATUTORY AUTHORITY: KRS 13B.170(1), 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(4) requires the board to promulgate administrative regulations to carry out the conduct of proceedings before it. KRS 13B.170(1) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of that chapter. This administrative regulation establishes procedural guidelines for administrative hearings as authorized by KRS 322.290(4) and 13B.170(1).

Section 1. Definitions. (1) "Action" means a charge brought pursuant to this administrative regulation and KRS Chapter 13B.

(2) "Administrative complaint" means a written accusation filed by the board's general counsel with the board and with the Office of the Attorney General, Administrative Hearings Division alleging a violation by a licensee of KRS Chapter 322 or a provision of 201 KAR Chapter 18.

(3) "Administrative hearing" or "hearing" is defined by KRS 13B.010(2).

(4) "Board" means the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors.

(5) "Charge" means a written accusation of a violation of a provision of KRS Chapter 322 or of 201 KAR Chapter 18, contained in an administrative complaint.

(6) "Consent decree" means an order entered by the board with the agreement of a respondent.

(7) "Default" means a failure of a respondent to file an answer to an administrative complaint, to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or to comply with the orders of a hearing officer.

(8) "Division" is defined by KRS 13B.010(8).

(9) "Final order" is defined by KRS 13B.010(6).

(10) "Hearing officer" is defined by KRS 13B.010(7).

(11) "Investigation review advisor" means a present or former member of the board, selected by the board chairman in consultation with the executive director, to independently review an investigation and provide the executive director with his or her opinion as to the propriety of filing an administrative complaint against the subject of the investigation, and to make suggestions regarding the nature of the charges, the appropriate penalty, and terms for settlement.

(12) "Letter of complaint" means a factual statement made in writing, by a person or organization, to the board, alleging a possible violation of a provision of KRS Chapter 322 or 201 KAR Chapter 18.

(13) "Licensee" means an individual or business entity licensed to practice engineering or land surveying in this Commonwealth pursuant to KRS Chapter 322.

(14) "Notice" means a notice of administrative hearing satisfying the requirements of KRS 13B.050(3).

(15) "Party" is defined by KRS 13B.010(3).

(16) "Respondent" means a licensee who is the subject of an investigation by the board for a violation of KRS Chapter 322 or 201 KAR Chapter 18.

(17) "Settlement conference" means a conference between board staff and a respondent and his or her attorney, if any, to attempt to resolve matters raised in an administrative complaint or charge.

(18) "Violation" means an act or failure to act that is in conflict with a provision of KRS Chapter 322 or 201 KAR Chapter 18.

Section 2. Letter of Complaint, and Investigation. (1) A letter of complaint shall be in writing, be signed by the individual making the allegations, and shall allege facts showing why that individual believes that a violation has occurred.

(2) An investigation shall be made of every complaint.

(3) An investigation may also be made without the receipt of a letter of complaint if information within the knowledge of the board or board staff indicates that a violation may have been committed.

Section 3. Disposition Following Investigation. (1) Following the completion of the investigation, if it appears to the executive director that no violation has occurred, or that the matter does not warrant further action, the executive director shall terminate any further proceedings and the matter shall be closed.

(2) If, following the completion of the investigation, it appears to the executive director that the respondent may have committed one (1) or more violations sufficient to warrant a charge or charges against that licensee, then to resolve the matter, the executive director shall:

(a) Issue a letter of admonishment to the respondent;

(b) Negotiate a proposed consent decree with the respondent, which shall, after execution by the respondent, be presented to the board for approval or rejection; or

(c) Cause an administrative complaint to be filed.

(3) If a proposed consent decree is rejected by the board, the executive director shall either try to resolve the matter with another proposed consent decree, or shall proceed with an administrative complaint;

(4) The board may enter into a settlement conference following the completion of the investigation.

(5) Prior to causing an administrative complaint to be filed, the executive director may request that the board chairman designate one (1) or two (2) investigative review advisors who shall independently review the investigation, and shall submit to the executive director, their independent opinions as to the propriety of filing an administrative complaint against the subject of the investigation, and suggestions regarding the nature of the charges, the appropriate penalty, and terms for settlement.

(6) A former board member who serves as an investigative review advisor shall be compensated at the same rate as provided for a board member who so serves.

(7) A board member who serves as an investigative review advisor for a specific disciplinary action, shall not thereafter participate in the determination of a final order in that same action, except that he or she may participate in the consideration of a proposed consent decree.

(8) An individual who has filed a letter of complaint shall be notified of the disposition of the subject matter upon its resolution.

Section 4. Administrative Complaints. An administrative complaint shall be in plain language in the pleading form used in the circuit courts of this Commonwealth and shall be signed by the board's general counsel.

Section 5. Actions. (1) An action shall be commenced by sending notice and a copy of the administrative complaint to the licensee at the address for the licensee on file with the board, with a copy to the Office of the Attorney General, Hearing Officer Division consistent with the provision of KRS Chapter 13B.

(2) The board shall file proof of notice with the hearing officer.

(3) Within twenty (20) days of notice, a respondent shall file an answer with the board and with the hearing officer.

(4) The hearing shall be conducted according to the provisions of KRS Chapter 13B.

Section 6. Default. A default shall be deemed a confession of all material allegations contained in the administrative complaint.

Section 7. Amended Pleadings. (1) A party, as a matter of right, may amend a pleading.

(a) A pleading shall not be amended later than thirty (30) days before a scheduled hearing.

(b) A party seeking to amend a pleading within a period less than thirty (30) days before a scheduled hearing shall amend a pleading only by consent of the adverse party or by leave of the hearing officer, and leave shall be freely given if justice so requires.

(2) If an amended pleading introduces new legal or factual issues that cannot reasonably be met by the opposing party prior to the scheduled hearing, the hearing officer shall continue the hearing.

Section. 8. Final Order and Consent Decree. (1) If an administrative complaint has been filed, and the matter resolved by means of a consent decree, the consent decree entered by the board is a final order as established by KRS Chapter 13B.

(2) A consent decree shall not be binding on the parties until approved by the board.

(3) If a final order or consent decree provides that the executive director shall suspend or revoke a license for failure of the licensee to comply with the terms of the final order or consent decree, the executive director shall suspend or revoke the license for failure to comply according to the terms of the final order or consent decree.

(4) If a final order or consent decree does not include a provision for suspension or revocation of a license for the licensee's failure to comply with the terms of the final order or consent decree, and the executive director has probable cause to believe that a respondent has violated the terms of a final order or consent decree, the executive director shall cause a show cause order, over the signature of the board's general counsel, to be issued to the respondent, with a copy to the Office of the Attorney General, Hearing Officer Division.

(5) The show cause order shall meet the requirements of a notice and shall be treated as an administrative complaint for procedural purposes.

Section 9. Publication. At least annually, a summary of all final orders and consent decrees shall be published. (30 Ky.R. 1705; Am. 1925; eff. 2-16-2004; 38 Ky.R. 1991; eff. 8-31-2012.)