

201 KAR 31:090. Complaint management process.

RELATES TO: KRS 322A.030(6), (7), (8), 322A.100(1)-(5)

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.030(8) allows any person or organization to file a complaint regarding misconduct against any registered professional geologist or geologist-in-training. KRS 322A.090(2) prohibits any person not registered by the board from practicing geology or using or otherwise assuming in any way any title or description tending to convey the impression that the person is a registered professional geologist. This administrative regulation establishes procedures for the investigation of a complaint received by the board.

Section 1. Definitions. (1) "Chair" means the chair or vice-chair of the board.

(2) "Charge" means a specific allegation contained in a Notice of Administrative Hearing, as established in subsection (7) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 322A or 201 KAR Chapter 31.

(3) "Complaints committee" means the committee appointed pursuant to Section 7 of this administrative regulation.

(4) "Informal proceeding" means a proceeding instituted before, during, or after the disciplinary process with the intent of reaching a disposition of a matter.

(5) "Initiating complaint" means a written statement alleging possible misconduct by a registered professional geologist or geologist-in-training, or other person which might constitute a violation of KRS Chapter 322A or 201 KAR Chapter 31.

(6) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint.

(7) "Notice of Administrative Hearing" means a formal administrative pleading authorized by the board which sets forth charges against a registered professional geologist or geologist-in-training and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

Section 2. Receipt of Initiating Complaints. (1)(a) An initiating complaint may be submitted by an individual, organization, entity, or the board based on information in its possession.

(b) An initiating complaint shall be in writing and shall be signed by the person offering the initiating complaint.

(2) Upon receipt of an initiating complaint.

(a) A copy of the initiating complaint shall be sent to the individual named in the initiating complaint, along with a request for that individual's response to the initiating complaint.

(b) The individual shall submit a written response within twenty (20) days from the date of receipt.

Section 3. Initial Review. (1)(a) After the receipt of an initiating complaint and the expiration of the period for the individual's response, the complaints committee shall consider the initiating complaint, the individual's response, and other relevant material available and make a recommendation to the board.

(b) The board shall determine whether there is enough evidence to warrant an investigation of the initiating complaint.

(2) If, in the opinion of the board, an initiating complaint does not warrant an investigation of the initiating complaint, the board shall dismiss the initiating complaint and shall notify both the complaining party and the individual of the outcome of the initiating complaint.

(3) If, in the opinion of the board, an initiating complaint warrants an investigation against ei-

ther a registered professional geologist, geologist-in-training, or a person who may be practicing without appropriate credential, the board shall authorize an investigator to investigate the matter and make a report to the complaints committee.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1)(a) Upon completion of an investigation, the investigator shall submit a report to the complaints committee of the facts regarding the initiating complaint.

(b) The complaints committee shall review the investigative report and make a recommendation to the board.

(c) The board shall determine whether there is enough evidence to believe that a violation of KRS Chapter 322A or 201 KAR Chapter 31 may have occurred and whether a Notice of Administrative Hearing shall be filed.

(2)(a) If, in the opinion of the board, an initiating complaint does not warrant the issuance of a Notice of Administrative Hearing, the board shall dismiss the initiating complaint or take other action in accordance with Section 5 of this administrative regulation.

(b) The board shall notify both the complaining party and the individual of the outcome of the initiating complaint.

(3) If, in the opinion of the board, a person may be practicing without appropriate credential, the board may:

(a) Issue a letter ordering that person to cease and desist from the uncredentialed practice of geology or using any words or phrases prohibited by KRS 322A.090(2); or

(b) Forward information to the county attorney of the county of residence of the person allegedly practicing without appropriate credential with a request that appropriate action be taken under KRS 322A.990(1)-(2).

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel and the complaints committee, may enter into informal proceedings with the individual who is the subject of the initiating complaint for the purpose of appropriately dispensing with the matter.

(a) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the initiating complaint.

(b) The board may employ mediation as a method of resolving the matter informally.

(2)(a) The board may issue a written admonishment to the registered professional geologist or geologist-in-training if in the judgment of the board:

1. An alleged violation is not of a serious nature; and

2. The evidence presented to the board after the investigation and appropriate opportunity for the registered professional geologist or geologist-in-training to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the registered professional geologist or geologist-in-training.

(c) Within thirty (30) days of receipt of a written admonishment, the registered professional geologist or geologist-in-training may file:

1. A response to the written admonishment which shall be placed in the registered professional geologist's or geologist-in-training's permanent file; or

2. A request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

Section 6. Notice and Service Process. A notice required by KRS Chapter 322A or this ad-

ministrative regulation shall be issued pursuant to KRS 13B.040.

Section 7. Complaints Committee. The Complaints Committee shall:

- (1) Be appointed by the chair of the board to:
 - (a) Review an initiating complaint or investigative report; and
 - (b) Participate in an informal proceeding to resolve a formal complaint;
- (2) Consist of two (2) board members, who may be assisted by board staff, an investigator, and counsel. (32 Ky.R. 1013; 1225; eff. 2-3-2006; 39 Ky.R. 2395; 40 Ky.R. 540; eff. 10-4-2013.)