

## **201 KAR 41:080. Complaint procedure.**

RELATES TO: KRS 329A.025(3)(g), (i)-(k), 329A.040(2)(a), 329A.060(2), (3)

STATUTORY AUTHORITY: KRS 329A.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 329A.060(1) states that the board shall promulgate administrative regulations regarding the receiving and investigating of complaints. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

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

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a licensed individual or other person which might constitute a violation of KRS Chapter 329A, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of up to two (2) members of the board appointed by the chair to review complaints and investigative reports, and to participate in informal proceedings to resolve a complaint. In addition to board members, legal counsel for the board and one (1) other staff member may be appointed to assist the committee, but shall not have voting privileges.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests a court of competent jurisdiction to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of resolving any matter with the consent of the board and the respondent in lieu of formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the attorney general or the board.

(8) "Respondent" means the licensee or an unlicensed person who is the subject of a complaint.

Section 2. Receipt of Complaints. (1) A complaint may be submitted by an individual, a legal entity, or the board on its own initiative.

(2) If the complaint is offered by an individual or a legal entity, it shall be:

(a) Submitted in writing using the Complaint Form and Instructions; and

(b) Signed by the individual or a representative of the legal entity offering the complaint.

(3) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the respondent with a request for the respondent's answer to the complaint. The respondent shall be allowed a period of twenty (20) days from the date of receipt of the complaint. Failure to answer within twenty (20) days of receipt may be considered an admission to the complaint.

(b) Upon receipt of the respondent's written answer, a copy of the answer shall be sent to the complainant. The complainant may reply in writing within seven (7) days from receipt of the respondent's answer.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period

for the respondent's answer, the complaint screening committee shall consider the respondent's answer, complainant's reply to the answer, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it may authorize an investigation into the matter.

(4) If the board determines it possesses sufficient evidence to issue a formal complaint without the need for a formal investigation, it may issue a formal complaint without a formal investigation.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS Chapter 329A or the administrative regulations promulgated thereunder and whether a formal complaint should be filed.

(2) Following the investigation, if the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants the issuance of a formal complaint against the respondent, counsel for the board, in conjunction with the complaint screening committee, shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the respondent as required by KRS Chapter 13B. Following an investigation, if the board determines that an unlicensed person may be in violation of KRS 329A.015, it may initiate action in circuit court pursuant to KRS 329A.025(3)(l) for injunctive relief to stop the violation of KRS 329A.015.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and the complaint screening committee may at any time during this process enter into informal proceedings with the respondent for the purpose of resolving the matter.

(2) A proposed agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and the chair.

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

Section 6. Notice of Service of Process. A notice required by this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference. (1) "Complaint Form and Instructions", (2006 Edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Private Investigators, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (32 Ky.R. 2393; 33 Ky.R. 730; eff. 10-6-2006; 45 Ky.R. 3486; 46 Ky.R. 427; eff. 9-6-2019; Crt eff. 12-11-2019.)