

**NEVADA STATE BOARD OF
PROFESSIONAL ENGINEERS
AND
LAND SURVEYORS**

RULES OF PRACTICE

RULES OF PRACTICE

In accordance with NRS 233B.050, the Nevada State Board of Professional Engineers and Land Surveyors (the "Board") adopts the following rules of practice.

PROCEDURES FOR HANDLING COMPLAINTS AGAINST LICENSEES

I. Initial Complaint:

a. Upon the receipt of a complaint against a licensee, applicant or third party, a determination shall be made by a Board compliance officer ("Compliance Officer") following consultation with the Board's executive director ("Executive Director"), if necessary, as to whether the complaint sets forth adequate grounds for the imposition of discipline by the Board (See NRS 625.410).

b. In conjunction with the review of the complaint, Compliance Officer may return the Board's complaint form to the person filing the complaint ("Complainant") and request Complainant to more fully set forth the nature of the complaint, the identity of Complainant and/or the identity of the person against whom the complaint is made ("Respondent"). A copy of the complaint form currently used by the Board is attached as Exhibit "1" to these Rules of Practice and Procedure.

c. When the Board receives the completed complaint form, Compliance Officer shall forward a copy of the complaint to Respondent and request a detailed written response to the complaint. Respondent is required to respond to Compliance Officer's request within thirty (30) days (See NRS 625.410(9)).

d. Upon receipt of the Respondent's response to the complaint, Compliance Officer, with the assistance of Executive Director (and/or the Board's legal counsel if necessary), shall make an initial determination as to whether it is probable that a

violation of the statutes, regulations or rules governing the practice of professional engineering or land surveying in the State of Nevada has occurred.

e. Compliance Officer shall make a recommendation to Executive Director concerning the manner in which the complaint should be handled (dismissal, stipulated agreement, referral to an advisory committee or a formal disciplinary hearing). (See NAC 625.640).

f. Upon notification from Executive Director, the Board Chairperson shall appoint a Board member ("Board Liaison") to review the matter with Executive Director, consider the recommendation made by the compliance officer and, if necessary, discuss the matter with the Board's legal counsel.

g. Executive Director and Board Liaison will decide whether to: dismiss the action; offer a Stipulated Agreement; refer the matter to an advisory committee; go forward with a formal disciplinary complaint; or request that additional information be provided (See NRS 2338 and NAC 625.640).

(1) If the matter is dismissed, Complainant and Respondent shall be advised in writing that the complaint has been dismissed, and Executive Director shall report the dismissal at the next regularly scheduled meeting of the Board.

(2) If Executive Director believes that the matter may be best resolved by a stipulated agreement, Executive Director and Board Liaison shall propose terms for a stipulation, which the Board legal counsel shall incorporate into a stipulated agreement and forward to Respondent for consideration. If Respondent accepts the proposed stipulated agreement, it shall be submitted to the Board for consideration at its next meeting, or at such Board meeting thereafter as time permits. The stipulated agreement shall not be effective unless and until approved by the Board, and should Respondent decline to accept the proposed

stipulated agreement, Executive Director shall have the discretion to submit the matter to the Board for formal hearing at the next Board meeting, where time permits. A form stipulated agreement is attached as Exhibit "2".

(3) If Executive Director and Board Liaison decide to have the matter heard by an advisory committee, Compliance Officer shall follow the procedures necessary to establish an advisory committee and shall set a time and place for the committee to review the matter (See NAC 625.646).

(4) If Executive Director and Board Liaison decide to go forward with a formal disciplinary complaint, Executive Director shall set a hearing date and direct the Board's legal counsel to prepare a formal disciplinary complaint.

h. The Board, acting through its Chairperson or Executive Director, may issue subpoenas requiring the attendance of an individual or the production of requested documents (See NRS 625.440).

II. Formal Disciplinary Complaint:

a. The Board's legal counsel shall prepare a formal disciplinary complaint setting forth the specifics of the complaint and the rules, statutes or regulations which the Respondent has allegedly violated. A form disciplinary complaint is attached as Exhibit "3". The Board's legal counsel shall prepare the notice of the hearing on the formal disciplinary complaint. A form notice of hearing is attached as Exhibit "4".

The Board's legal counsel shall forward by certified mail, return receipt requested, the formal complaint and notice of the hearing to Respondent, together with a letter advising the Respondent of his rights and obligations, as well as the requirement for Respondent to

provide a list of witnesses and exhibits to Board's legal counsel at least ten (10) calendar days before the hearing. A form letter to Respondent is attached as Exhibit "5".

b. Respondent may request a continuance of the scheduled hearing. Generally, Executive Director will grant one continuance of a scheduled disciplinary hearing. All other requests for continuances will be denied unless Respondent can demonstrate clear and convincing grounds for the granting of a second continuance.

c. Prior to the hearing, Executive Director shall discuss with Board Liaison and the Board's legal counsel the parameters within which the disciplinary complaint may be settled. The Board's legal counsel shall discuss possible settlement of the disciplinary action with Respondent. If it appears that the complaint can be resolved by stipulated agreement, the Board's legal counsel shall draft a proposed Stipulation and Decision to resolve the formal disciplinary complaint. A form Stipulation and Decision of the Board is attached as Exhibit "6".

d. The proposed Stipulation and Decision shall be submitted to the Board at its next meeting. The Stipulation and Decision is not effective unless and until the Stipulation and Decision is approved by the Board at a public meeting.

e. Prior to the hearing, if a Stipulation and Decision is not entered, the Board's legal counsel shall attempt to enter into a stipulation of proposed list of exhibits with Respondent/ to be admitted at the hearing.

III. Procedures Governing a Formal Disciplinary Hearing:

a. Respondent is entitled to be represented by an attorney licensed in the State of Nevada. (See NAC 625.635).

b. The Chairperson of the disciplinary hearing shall request all Board members to advise whether they have a conflict which requires them to recuse themselves from participating in the hearing.

c. Board Liaison in a matter shall recuse him or herself from participating in the hearing.

d. The Board's legal counsel shall mark and place into evidence all exhibits which support the allegations contained in the complaint. Respondent may state his/her objections, if any, to the exhibits and may submit additional exhibits which are relevant to the charges set forth in the complaint or to the defenses raised in Respondent's answer to the complaint.

e. The Board's legal counsel and Respondent may make a short opening statement. Thereafter, the Board's legal counsel shall call witnesses to testify concerning the allegations contained in the complaint. Respondent may cross-examine the witnesses and may call witnesses to testify on his or her behalf.

f. The Board Chairperson, or a Board member designated by the Board Chairperson, shall chair the disciplinary hearing. The Chairperson of the disciplinary hearing shall make all rulings concerning the admission of evidence. The Chairperson of the disciplinary hearing may accept into evidence those exhibits that have been marked and offered by either the Board's legal counsel or Respondent.

g. Formal rules of evidence do not apply. (See NRS 2338.123).

h. After the evidence, exhibits and testimony have been submitted, Respondent may make a closing argument. The Board's legal counsel does not make a closing argument and does not make any recommendation to the Board concerning the

manner in which the disciplinary complaint should be resolved, but it may clarify to the Board the various counts asserted against Respondent.

i. After the evidence has been submitted and Respondent has finished his or her closing statement, the Chairperson of the disciplinary hearing shall summarize the issues to be decided by the Board. The alleged violations must be proved by substantial evidence.

j. Any Board member may make a motion concerning the decision to be made by the Board. The motion must be seconded and adopted by a majority vote of the Board members participating in the hearing to be effective.

k. After the Board has orally advised Respondent of its decision, the Board's legal counsel shall draft a formal Decision and Order and submit the draft to the Executive Director. A form Decision and Order is attached as Exhibit "7". The Executive Director may make appropriate revisions and forward the revised Decision and Order to the Chairperson of the disciplinary hearing for signature.

l. The signed Decision and Order shall be served by certified mail on Respondent, return receipt requested.

m. Respondent has 30 days following receipt of the written decision to seek judicial review. (See NRS 2338. 130).