

## **SECTION .1300 – BOARD DISCIPLINARY PROCEDURES**

### **21 NCAC 56 .1301 IMPROPER PRACTICE BY A LICENSEE**

(a) General. Licensee practice that may violate the rules of this Chapter or G.S. 89C is subject to Board investigation and disciplinary action by the Board.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, Professional Land Surveyor, or business holding a certificate of licensure is in violation of the provisions of G.S. 89C or the rules in this Chapter may prefer charges against that person or business, in the form of a complaint, completed to the best of that individual's knowledge and belief, along with providing corroborative evidence that helps support the charges. An optional complaint form is provided by the Board to aid in filing the complaint.

(c) Preliminary Review:

- (1) Upon receipt of a filed charge that meets requirements of G.S. 89C and the rules of the Board a case shall be opened. Other information indicating that a licensee is in violation of the provisions of G.S. 89C or the rules of the Board may be a basis for opening a case by the Board.
- (2) A field investigation may be performed if determined necessary by the Executive Director in order to obtain additional information and evidence.
- (3) If the Executive Director determines that the charges are corroborated by evidence, a written notice and explanation of the charge shall be forwarded to the person or business against whom the charge is made and a response requested, within 15 days, to show compliance with G.S. 89C and the rules of the Board for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt request.
- (4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee, made up of the following individuals:
  - (A) one member of the Board who is licensed in the respective profession;
  - (B) the legal counsel of the Board; and
  - (C) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (5) Upon review of the evidence, the review committee shall:
  - (A) recommend that the Board dismiss the charge as unfounded or trivial;
  - (B) when the charge is admitted as true, recommend that the Board accept the admission of guilt by the person charged and order that person not to commit in the future the specific act or acts admitted and also not to violate any of the provisions of the Board rules or the statutes at any time in the future;
  - (C) present the charge, whether admitted or denied, to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
  - (D) whether the charge is admitted or denied, give written notice to the licensee that:
    - (i) sufficient evidence exists which, if not rebutted or explained, would justify the Board in taking an action set out in Rule .1402(4) through (12) of this Chapter;
    - (ii) stating the nature of the evidence; and
    - (iii) that unless the licensee, within 20 days after service of said notice, deposits in the mail a certified letter addressed to the Board and containing a request for a hearing or settlement conference, that it will recommend that the Board take the action(s) specified in the notice, set out in Rule .1402(4) through (12) of this Chapter.

(d) Consultant. A consultant to the review committee shall be designated by the Board Chair if a board member is a complainant, witness, or respondent in a case. The consultant shall be a licensed professional engineer or professional land surveyor, depending on the nature of the case. The consultant shall review all case materials and make a recommendation for consideration by the review committee as to the merits of the case. The consultant shall review any new information presented in the event of a settlement conference and make a recommendation to the settlement conference committee.

(e) Board Decision. When the review committee proceeds pursuant to Parts (c)(5)(A) or (B) of this Rule, upon approval of the Board, notice shall be given to the party against whom the charges have been brought and the party submitting the charge. The Board is not required to notify the parties of the reasons of the Board in making its decision.

(f) Settlement Conference. When the review committee proceeds pursuant to Parts (c)(5)(C) or (D) of this Rule, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding shall commence. During the course of the settlement conference, no sworn testimony shall be taken, nor shall any witnesses be cross-examined.

- (1) The Board's settlement committee shall be made up of the following individuals:
  - (A) the member of the Board who served on the review committee or a replacement member if the member is not available;
  - (B) one public member from the Board;
  - (C) the legal counsel of the Board; and
  - (D) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (2) Upon review of the evidence, the settlement committee shall:
  - (A) recommend that the Board dismiss the charge as unfounded or trivial;
  - (B) when the charge is admitted as true, recommend the Board accept the admission of guilt by the person charged and order the person not to commit in the future the specific act or acts admitted and, also, not to violate any provisions of the Board Rules or the statutes at any time in the future;
  - (C) direct that the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
  - (D) recommend that the Board approve a settlement agreed to by the licensee and proposed by the settlement conference committee.

*History Note: Authority G.S. 89C-10; 89C-21; 89C-22;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;  
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