



ENFORCEMENT PROCESSES

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STATEMENT OF INTENT:

The Virginia Board of Accountancy (VBOA) is required by statutory mandate to take appropriate action against license holders, individuals, and entities to ensure the protection of the public. The VBOA has the authority to investigate possible violations of its statutes and regulations and enforce these laws through several different types of penalties, including, but not limited to: revoking, suspending, or restricting a license, and imposing fines of up to \$100,000 per violation.

VBOA's disciplinary process is governed by (i) the Virginia Administrative Process Act (APA), Virginia Code [§2.2-4000](#) *et seq.*, (ii) the provisions of law generally applicable to the regulation of professions and occupations, and (iii) court decisions interpreting these laws and regulations. The Office of the Attorney General provides significant resources to support the VBOA in the quasi-judicial role of hearing charges of potential violations that have been made against a regulated person or entity.

This manual is designed to provide guidance to potential or actual Complainants and Respondents. The guidance in the manual does not carry the force of law; it is intended to provide a framework for ensuring fair and consistent enforcement of Virginia's public accountancy laws. It has been prepared by the VBOA's Enforcement Division and has been approved as a guidance document by the VBOA. This manual should be used in conjunction with the VBOA's statutes, regulations, policies and other guidance documents.

This manual is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal. The information contained herein does not constitute and shall not be construed as legal advice. Please consult an attorney regarding any legal questions related to state or federal laws and regulations, including the interpretation and application of the laws and regulations governing the profession regulated by the VBOA. Under no circumstances shall the VBOA, its members, officers, agents, or employees be liable for any actions taken or omissions made in reliance on any information contained in this publication.

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SECTION ONE:

Complaint Process

Consistent with statutory duties, all public complaints received by the VBOA that allege a violation of the Board regulations and Code of Virginia are referred to the VBOA Enforcement Division. The VBOA also generates internal complaints and referrals from the Enforcement Division, Licensing Division and CPE Division, which are discovered during performance of their job duties.

The public complaint form is available and can be submitted electronically through the VBOA's website at www.boa.virginia.gov. The public complaint form can also be submitted by fax, email, regular mail or in person at the VBOA office.

A complainant may file a public complaint anonymously; however, anonymous complainants should make sure to include sufficient information for the VBOA to proceed with the complaint. With an anonymous complainant, the VBOA is unable to follow up for additional information concerning the complaint made.

Additionally, named complainants should be aware that their identity will be provided to a Respondent as part of the investigation process. This is necessary because the Respondent is entitled to receive a copy of the complaint made against them, and in many instances the identity of the complainant is necessary for the Respondent to address the allegations made in the complaint.

For questions about the complaint process, contact the VBOA's Enforcement Division at enforcement@boa.virginia.gov or (804)482-8756.

Initial Receipt and Intake

VBOA's Enforcement Director is responsible for reviewing all complaints received to determine if there is a potential violation and if the agency has jurisdiction over the matter. If the Enforcement Director requires additional information to make a determination, a preliminary inquiry is initiated. Various types of records and documents may be obtained, interviews may be conducted by telephone, or correspondence may be generated to gather information to assist in making the initial determination.

The following are examples of items that will *not* be investigated by the VBOA:

- Inquiries seeking advice or information.
- Courtesy copies of complaints addressed to another agency.
- Allegations pertaining to matters over which the VBOA does not have jurisdiction.
- Courtesy copies of internal grievances.
- Allegations submitted with no supporting documentation.
- Allegations that a violation has been committed in another state.
- Fee disputes.

If the Enforcement Director determines that the VBOA lacks jurisdiction, the complaint has been untimely filed, or both, the Enforcement Director will refer the file to the Executive Director for review. If the Executive Director concurs with the Enforcement Director's recommendation, the Complainant is notified by the Enforcement Director, in writing, of the disposition of the complaint.

If the Enforcement Director or Executive Director determines that the information supports a reasonable suspicion that a possible violation of law or regulation has occurred, an enforcement case is opened for investigation and assigned to an Enforcement Specialist. Pursuant to Virginia Code [§54.1-108.3](#), the VBOA does not disclose information about open cases, including to Complainants. The Enforcement Division will, however, provide procedural updates to Complainants and Respondents upon request.

SECTION TWO:

Investigations

Once jurisdiction has been established, complaints are assigned for investigation, by a staff member known as an Enforcement Specialist for investigation and processing. The VBOA may also engage outside consultants or investigators (see Section Six) to assist in the investigation of a complaint.

Once an investigation is initiated, the Enforcement Division will notify the Respondent of the complaint in writing through a document known as a Notice of Apparent Violation (NOAV). Included in the NOAV will be a copy of the complaint, information on the nature of the violations being investigated and the specific information being requested. This may include producing documents, answering specific questions, or both. Included with all open investigations of an active CPA license holder will be a CPE compliance review for the three-year period immediately preceding the complaint.

Generally, a Respondent is given 14 calendar days to submit a written response to any request from the VBOA.¹ Failure to respond without good cause within the time frame set forth in VBOA regulation [18VAC5- 22-170](#) is a violation of the VBOA's regulations and may result in additional disciplinary action being taken.

The purpose of the investigation is to gather facts and assess whether violations of Virginia's public accountancy laws and the VBOA's regulations have occurred. Enforcement Division staff may make multiple requests during an investigation to obtain all necessary information and documentation.

The Enforcement Division will send the NOAV and any information requests to the Respondent's address of record. If a Respondent does not have an address of record, then NOAV and information requests will be sent to the Respondent's last known address. The Enforcement Division may also send copies of its correspondence to the Respondent via the Respondent's email address of record. It is a licensee's responsibility to notify the VBOA of any change to their mailing address or email address within 30 days of a change.

It is important for Respondents to fully cooperate with the VBOA during the entire investigation process. Below are some tips for assisting in the investigation:

- Respond promptly to any requests from Enforcement Division staff.
- Provide true, accurate, and complete responses to questions and documentation requested by Enforcement Division staff.

¹ Pursuant to VBOA regulation [18VAC5-22-170](#), Communication with the board, "...each licensee or applicant shall respond within 30 calendar days to any board request for information...."

- Provide as much documentation as possible to ensure Enforcement Division staff have a clear understanding of the facts and circumstances.
- Ensure that mailing and email addresses of record are current.

Refusing to provide complete documentation to the VBOA may result in the VBOA pursuing a subpoena to secure the relevant evidence. The VBOA can issue subpoenas under its own authority and can petition a court to issue a subpoena. This includes subpoenas to produce documents and subpoenas for witnesses.

The VBOA is committed to adjudicating complaints and cases in a timely manner, and treating the Respondent fairly and objectively during the investigation to ensure it has all necessary and relevant facts and documentation to reach an outcome.

SECTION THREE:

License Eligibility Informal Fact-Finding Conferences

In addition to handling investigations regarding violations of the Board regulations or Code of Virginia the Enforcement Division of the VBOA handles Informal Fact-Finding (IFF) Conferences upon the denial or the inability of the Licensing Division to issue, renew or reinstate a CPA license for lack of information.

The Licensing Division will transfer the license application and its attachments to the Enforcement Division if a licensing applicant requests an IFF Conference. An applicant must request an IFF. IFFs for licensing matters are not automatically scheduled upon the denial of a licensing application. The Enforcement Director will generate a case number for the referral, and it will be assigned to an Enforcement Specialist. The purpose of the IFF will be to gather additional information regarding the reason for denial, or information needed to help determine if a CPA license should be granted, renewed, or reinstated. In such cases the Respondent bears the burden of proof to establish evidence that they meet eligibility requirements and are fit and suited to be licensed as a CPA. Following the conclusion of the IFF the Presiding Officer will draft a recommendation to the full Board for its acceptance, rejection, or modification during a public meeting.

SECTION FOUR:

CPE Compliance Reviews and Sanctions

All holders of a Virginia individual CPA license are required to meet the continuing professional education (CPE) requirements prescribed by VBOA regulations [18VAC5-22-90](#) and [18VAC5-22-140](#) unless they have applied for and received an exemption from the VBOA or have been granted an Inactive license by the Board. As part of the annual renewal process, CPAs are required to either (i) affirm they are in compliance with the VBOA's CPE regulations or (ii) if they cannot make such affirmation, contact the VBOA to self-report their CPE deficiencies.

To encourage strict compliance with the VBOA's CPE requirements, the VBOA randomly selects a percentage of licensees on a yearly basis (spread out over 12 months) to complete CPE compliance reviews. Additionally, some licensees may be subject to a CPE compliance review under the terms and conditions of a previously entered Consent Order. Finally, if a Respondent is a licensee who is under

investigation related to a complaint as discussed in Sections One and Two above, they will be subject to a CPE compliance review as part of that process.

Regardless of the basis for a CPE compliance review, the Respondent must respond within 30 days of the notice of the CPE compliance review, as required by [18VAC5-22-170\(A\)](#). Failure to respond without good cause is a violation of the VBOA's regulations and will result in disciplinary action being taken.

To promote fairness and consistency in assessing penalties for CPE compliance violations, the VBOA has established and approved [CPE Violation Penalties Guidelines](#). These Guidelines can be found at [CPE Violation Penalties](#). [<https://boa.virginia.gov/individual-cpas/cpe/violations/>]

SECTION FIVE:

Unlicensed Use of CPA Title Violations

It is prohibited by the Code of Virginia for persons to use the CPA title in Virginia without proper licensure. The VBOA has the ability to impose penalties for unlicensed use of the CPA title against both former licensees, as well as individuals and entities that have never been licensed.

Individual licensees who either hold Active or Inactive CPA license status are permitted to use the CPA title. However, non-licensees, and former licensees such as those persons with a status of expired, suspended and/or revoked are not permitted to use CPA, Certified Public Accountant, or public accountant in any form.

Per Code of Virginia [§54.1-4400](#), "Using the CPA title in Virginia" means using "CPA," "Certified Public Accountant," or "public accountant" (i) in any form or manner of verbal communication to persons or entities located in Virginia or (ii) in any form or manner of written communication to persons or entities located in Virginia, including but not limited to the use in any abbreviation, acronym, phrase, or title that appears in business cards, the CPA wall certificate, internet and social media postings, letterhead, reports, signs, tax returns, or any other document or device.

In order to promote fairness and consistency in assessing penalties for use of the CPA title violations, VBOA has established and approved [Guidelines for Disposition of Cases Involving the Unlicensed Use of the CPA Title by a Former Licensee](#).² These Guidelines can be found at [CPA Title Violations](#).

SECTION SIX:

Experts and Consultants

The scope of the VBOA's regulatory authority and the range of possible complaints demand that in some cases the VBOA receive guidance from consultants for licensing and disciplinary matters involving specialized fields of practice. The VBOA may contract with an expert in a particular specialty to review the investigative file and, if necessary, to testify on behalf of the VBOA in an administrative or court proceeding arising from the matter. An expert assists the VBOA in understanding the standards of practice in the specialty, and in evaluating the evidence to determine whether a practitioner performed in accordance with those standards.

² Use of the CPA title violations by persons who were never licensed in Virginia fall outside of these guidelines and are subject to enforcement action on a case-by-case basis.

SECTION SEVEN:

Reasonable Cause Determination

Following completion of an investigation, the investigative file is reviewed by a Board member or designee to determine whether reasonable cause exists that one or more of the VBOA's statutes or regulations may have been violated. In order to take disciplinary action against a licensee, the VBOA must have substantial evidence that a violation of law or regulation has occurred. While one may believe that a practitioner's actions could be considered improper, unethical or otherwise deserving of corrective action, such actions may not be a violation of law or the Board's regulations.

The Reasonable Cause Review may conclude with:

- Requesting additional information from the Complainant or Respondent.
- Closing the case by issuing an Advisory Letter or Letter of No Finding.
- Offering a Consent Order to the Respondent to resolve the matter. If accepted by the Respondent, the Consent Order must then be approved by the Board to officially resolve the matter.
- Referring the matter to an Informal Fact Finding (IFF) Conference as described in Virginia Code [§§ 2.2-4019](#) and [2.2-4021](#).

SECTION EIGHT:

Informal Fact-Finding Conferences

Informal Fact-Finding (IFF) Conferences, as described in Virginia Code [§§2.2-4019](#) and [2.2-4021](#), provide for case resolution without the formalities of a formal hearing and trial-like procedure. These conferences are public proceedings, held before a Presiding Officer assigned by the VBOA. The IFF Conference gives the Respondent the opportunity to discuss with the Presiding Officer the allegations stated in the VBOA's Notice of Apparent Violation and the evidence contained in the investigative file. In all disciplinary matters and proceedings, the burden of proof rests with the Commonwealth to establish substantial evidence of a violation of law or regulation.

IFF Conferences offer a timely, less costly, less adversarial means of adjudication. Respondents have the following rights with respect to IFF Conferences:

- To receive reasonable notice of the date, time, and location of the proceeding.
- To receive reasonable notice of the allegations of misconduct.
- To receive copies of all documentation or information that may be relied on during the decision-making process.
- To be informed, briefly and in writing, of the action that VBOA is authorized to take.

A Respondent may choose to be represented by counsel at the IFF Conference. Enforcement Division staff's function at an IFF Conference in public session is to assist the Presiding Officer and to ensure that the statutory requirements of the administrative process are being met.

IFF Conferences take place at the main office of the VBOA, in Henrico County, Virginia. Pursuant to Virginia Code [§2.2-4003](#), venue for administrative proceedings is where the agency has its principal office, unless the parties agree otherwise.

A VBOA selected Presiding Officer conducts the IFF Conference. A Presiding officer can be a member of the Board, or a subordinate appointed by the VBOA. Any Presiding Officer, VBOA members, or staff who participate in an IFF Conference may not participate in and must recuse themselves from subsequent deliberations regarding the matter with the full Board.]

Following the conclusion of an IFF Conference, the Presiding Officer may take any of the following actions:

- Offer a Consent Order, which the Respondent may accept. If accepted by the Respondent and ratified by the VBOA, the Consent Order will resolve the matter without the need for further administrative proceedings.
- Submit a Presiding officer Recommendation to the full VBOA Board for its acceptance, rejection or modification during a public meeting.

SECTION NINE:

Formal Hearings

Formal hearings are provided for by section [§2.2-4020](#) of the Virginia Administrative Process Act. Formal hearings are used to take evidence in a matter and help the Board make a decision, generally, after an Informal Fact-Finding Conference, if the Informal Fact-Finding Conference procedures have failed to be able to dispose of a matter. Formal hearings are presided over by a hearing officer, who is an attorney selected from a list maintained by the Executive Secretary of the Supreme Court of Virginia in accordance with [§2.2- 4024](#).

In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. The burden of proof shall be upon the proponent or applicant. The presiding officers at the proceedings may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing.

All decisions or recommended decisions shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

SECTION TEN

Respondents' Due Process Rights

Board Members and staff who have an actual or perceived conflict of interest with respect to any matter coming before the Board will recuse themselves from deliberations on such matter and will abstain from voting on such matter.

Code of Virginia, [Title 2.2, Chapter 40](#) (Administrative Process Act (APA)) contains the following provision:

§ 2.2-4024.2. Ex parte communications, Part A, states, *“Except as otherwise provided in this section, while a formal hearing conducted in accordance with § 2.2-4020 is pending, the hearing officer shall not communicate with any person concerning the hearing without notice and opportunity for all parties to participate in the communication.”*

Although § 2.2-4024.2. only pertains to *formal hearings*, VBOA has applied the spirit of this provision to Informal Fact-Finding (IFF) proceedings pursuant to § 2.2-4019, to protect respondents' due process rights.

Any Presiding Officer, VBOA members, or VBOA staff who participated directly in an Informal Fact-Finding Conference, pursuant to § 2.2-4019 or a Formal Hearing, pursuant to § 2.2-4020, may not participate in any subsequent deliberations regarding the same matter or consideration of the matter by the full Board.

Pursuant to [§2.2-3712.F.](#), “Closed meetings procedures; certification of proceedings,” other parties, including Board legal counsel and Board Staff who did not participate directly in the Informal Fact-Finding Conference or Formal Hearing may be authorized to attend a closed session if their presence is deemed necessary or will reasonably aid in consideration of the matter. The role of Board staff in any disciplinary case being deliberated by the Board is limited to compiling and clarifying the case information and answering questions regarding previous sanctions imposed by the Board. Staff or other individuals authorized to participate in a closed session do not advocate any specific finding or sanction.

Upon returning to open session, the Board may take action on matters discussed in closed session. As appropriate, findings will be put in the form of a written Order and provided to the respondent. In all disciplinary cases in which an IFF is conducted, a final determination will be made within 90 days of the conclusion of the IFF conference. All final case decisions will be in writing, signed by the Board, and served upon the parties.

SECTION ELEVEN:

Final Case Dispositions

Generally, there are five types of final case dispositions:

1. **Issuance of a Letter of No Finding.** This is a determination, either by the Presiding Officer or the Board, that there is a lack of substantial evidence to support a finding that a violation has occurred.

2. **Issuance of an Advisory Letter.** This is a determination, either by the Presiding Officer or the Board, that while there may be substantial evidence to support a violation, the violation is minor or inconsequential, and therefore, further disciplinary action is not warranted.
3. **Issuance of a Censure.** This is a formal sanction of a person or entity who holds a Virginia CPA license or the license of a substantially equivalent jurisdiction. It is a declaration that a Respondent is guilty of misconduct that does not require suspension or revocation. A stern rebuke that finds the conduct of the Respondent violates the standards of conduct and practice, detrimentally affects the integrity of the profession, and undermines public confidence in the practice of public accountancy. A censure also serves as a public warning to other members of the profession.
4. **Issuance of a Consent Order.** This results from a negotiated settlement, either prior to or in lieu of further disciplinary proceedings, and reflects a decision agreed to by the Board and a Respondent. A proposed Consent Order that contains findings of fact, conclusions of law, sanctions and a waiver of rights to further proceedings is prepared and presented to the Respondent. If the Respondent agrees to the settlement offered, the Consent Order will be presented to the Board at a public meeting for approval.³ While Consent Orders are generally offered before an IFF Conference, one may be offered after an IFF Conference or Formal Hearing.
5. **Issuance of a Final Opinion and Order.** This is a unilateral decision by the Board. Generally, a Final Opinion and Order is not utilized unless an IFF Conference or Formal Hearing has been held. The Presiding Officer or Hearing Officer will prepare a Recommendation and Summary of the IFF Conference or Formal Hearing and present it to the full Board for its consideration. The Board, in its Final Opinion and Order, may accept or reject, in whole or in part, the proposal and may make its own findings of fact, conclusions of law, and impose penalties that differ from what the Presiding Officer or Hearing Officer has recommended.

The Board publishes outcomes of certain disciplinary actions on its website, in the VBOA newsletter, and with the Accountancy Licensee Database (ALD). Not all final disciplinary matters are published. Matters that are published are determined by [Board Policy #5](#), which can be found on the Board's website.

SECTION TWELVE:

Appeals

An appeal of a VBOA Final Order must be made within 30 days from the date of service by mail and is handled in the judicial system at the Circuit Court level. An appeal at this level must comply with the procedures in Part Two A of the [Rules of the Supreme Court of Virginia](#). The final order issued by the Board is **not** automatically vacated when appealed to the circuit court. However, the appealing party may request from the court a stay of the VBOA's Final Order pending the appeal.

In addition to an appeal to the appropriate Circuit Court, a Respondent may petition the Board for Reconsideration pursuant to the Virginia Administrative Process Act [§2.2-4023.1](#). A petition for reconsideration must be filed with the VBOA no later than fifteen (15) days after service of the final

³ Consent Orders that involve certain CPE violations or certain unlicensed use of the CPA title violations will not go before the full Board at a public meeting for approval. Rather, consent orders involving these limited matters will be executed as they are received by the Executive Director, pursuant to delegations of authority granted to the Executive Director by the Board.

decision. A timely filed petition for reconsideration shall not suspend nor toll the time for filing an appeal to the appropriate Circuit Court under Rule 2A:2 of the Rules of the Supreme Court of Virginia.

Any Respondent wishing to appeal or challenge a final order issued by the Board is strongly encouraged to consult legal counsel regarding their appeal or reconsideration options.

Final Board Orders and Consent Orders are matters of public record, pursuant to Virginia Code [§§2.2-4023](#) and [54.1-2400.2](#). A copy of a Final Board Order or Consent Order is mailed to the Complainant, except in the case of anonymous Complainants. Final Board Orders, Consent Orders and all related disciplinary case information obtained and maintained during the course of an investigation or disciplinary proceeding become a matter of public record upon the closure of an investigation and are subject to disclosure under the Virginia Freedom of Information Act (FOIA), Virginia Code [§2.2-3700 et seq.](#), unless otherwise exempted.