

Judicial Branch Certification Division (JBCC)

Complaint Investigation

The JBCC, through the Director, may conduct complaint based investigations to enforce the laws administered by the JBCC. Upon receipt of a signed complaint form, the Compliance Section will determine (1) if JBCC has legal jurisdiction, and (2) if the complaint clearly alleges misconduct. The name and contact information of the complainant and respondent, a description of the allegations, and relevant documentation should be included in the complaint. We may request additional information from the complainant. If we determine that the JBCC does not have jurisdiction in the matter or that the complaint does not clearly allege misconduct, the complaint may be administratively dismissed.

When the complaint is opened for investigation, an opening letter is issued to the complainant informing him an investigation has been initiated. A copy of the complaint and any attachments are sent to the respondent. The respondent is requested to submit a written answer to the complaint to be received by the JBCC within 20 days after receipt of the notice. If the respondent is a provisionally-certified guardian, the JBCC shall also send a copy of the complaint and attachments to the guardian's supervisor.

As a standard practice, the Compliance Investigator will interview the complainant, the respondent, and any pertinent witnesses, either by telephone or in person. The investigator will also gather copies of any documents relevant to the complaint. After the investigation is complete, the investigator will prepare a detailed report of the facts including who, what, when, where, how and why.

Resolution

Upon completion of the Investigation, the Compliance Section refers the complaint to a Complaint Review Committee, established by the JBCC and comprised of members of the appropriate advisory board. The Complaint Review Committee shall meet to review the complaint and answer, make a determination on whether a violation occurred; and, if so, identify violations and impose an administrative penalty, a sanction, or both.

The Complaint Review Committee is not an investigatory body and will generally render its determination based on the submissions of the complainant and respondent and the information gathered by the Compliance Investigator. The complainant and respondent may attend the Complaint Review Committee's meetings. The Complaint Review Committee must provide its determination to the JBCC in writing. The Complaint Review Committee will give the respondent written notice by certified mail of its determination on whether a violation occurred and each imposed penalty or sanction, if any.

The Director may administratively dismiss complaints that clearly do not allege misconduct, are not within the JBCC's jurisdiction, or alleges misconduct which took place more than 5 years before the complaint was filed. The Director shall inform the JBCC of all dismissals made under this rule. A person who files a complaint that is dismissed under this rule, within 30 days, may request in writing that the JBCC reconsider the complaint.

Based on the review of the complaint, the Complaint Review Committee may recommend dismissal of the complaint or issue a Notice of Violation (NOV) seeking administrative penalties and possible sanctions against the respondent's license. An administrative penalty is a monetary fine paid by the respondent to

the State of Texas. A sanction is an action upon the respondent's license, and may include suspension of the license, probated suspension, a written reprimand, refusal to renew, or outright revocation of the license. The amount of an administrative penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Factors considered by the Complaint Review Committee and the JBCC in determining the amount of penalty or level of sanction include:

1. The severity or seriousness of the violation.
2. Whether the violation was willful or intentional.
3. Whether the respondent acted in good faith to avoid or mitigate the violation or to correct the violation after it became apparent.
4. Whether the respondent has engaged in similar violations in the past.
5. The level of penalty or sanction necessary to deter future violations, both by the respondent and by the industry as a whole.
6. Any other matter that justice may require.

Hearing

Not later than the 20th day after the date the respondent receives the Notice of Violation the respondent may in writing accept the determination of the Complaint Review Committee and imposed penalty and/or sanction; or request a hearing on the occurrence of the violation, the imposition or amount of the penalty, the imposition of the sanction, or any combination.

If the respondent accepts the determination and recommended penalty or sanction or fails to respond to the notice, the JBCC by order shall impose the recommended penalty and/or sanction as an agreed order; or may revise, reject, or remand the matter back to the committee. If the JBCC revises or rejects the proposed agreed order, it will give the respondent notice and an opportunity to accept the revised order or request a hearing. If the respondent requests a hearing, the JBCC shall give the respondent written notice of the hearing that includes the time, place, legal authority, and jurisdiction under which the hearing is held and the laws and rules related to the violation.

The respondent may appear, testify, present evidence, and respond to questions from the JBCC at the hearing. The complainant may appear and may testify at the discretion of the prosecutor and the Presiding Officer. A party may appear by telephone or videoconference, or present the testimony of a witness by telephone or videoconference.

On request of the JBCC, at least one member of the applicable Advisory Board Complaint Review Committee shall attend the hearing to consult with the JBCC on the reasons for the Advisory Board Complaint Review Committee's determinations. At the hearing, the JBCC shall apply the general rules of evidence applicable in a district court, except that the JBCC may admit and consider any information the JBCC determines is relevant, trustworthy, and necessary for a full and fair adjudication and determination of fact or law. The JBCC may establish rules for conducting the hearing.

The JBCC shall deliberate and announce its decision at the conclusion of the hearing. The JBCC shall make findings of fact and conclusions of law and promptly issue an order on the occurrence of the violation, the amount of any penalty imposed, and the imposition of any sanction. The JBCC shall give the respondent and complainant notice and a copy of the final order.

The complainant and respondent are each responsible for their own costs of preparing for and attending the hearing. If the respondent fails to appear at the hearing, upon proof that notice of the hearing was given to respondent, the JBCC may proceed in the respondent's absence; and the factual allegations in the complaint may be admitted.

Appeal

A person seeking to appeal an order imposing a penalty and/or sanction shall submit a written request to appeal such order to the General Counsel of the Office within 30 days after the JBCC's order is issued. The General Counsel shall promptly forward the appeal to a special committee consisting of three Administrative Regional Presiding Judges, *see* Texas Government Code Section 74.041.

The special committee shall consider the appeal under an abuse of discretion standard of review for all issues except issues involving questions of law. The standard of review for issues involving questions of law is *de novo*. Under either standard, the burden is on the appellant to establish that the JBCC's decision was erroneous.

If the special committee does not sustain the finding that a violation occurred, the special committee shall order that a penalty is not owed and that a sanction may not be imposed. The special committee shall notify the JBCC and appellant in writing of its decision. No rehearing or further appeal shall be allowed.

For further information please refer to the JBCC Rules.