

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED
JAN 12 5 50 PM '00
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Accountancy TITLE NUMBER: 1

CITE AUTHORITY: W.Va. Code §§ 30-9-1 et seq., 30-1-1 et seq., 29A-5-1 et seq.

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO

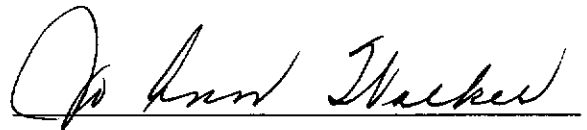
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 3

TITLE OF RULE BEING ADOPTED: Disciplinary and Complaint Procedure
for Public Accountants

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 31, 2001



KEN HECHLER
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(Plus all the volunteer
help we can get)

Memo

Date: November 20, 2000
Subject: HB 207

HB 207, passed on November 14, 2000, during a special session of the Legislature, was signed into law on November 18, 2000 by the Governor. This bill allows all Boards that are licensed under Chapter 30 of the West Virginia Code to change to procedural and final file rules that had originally been filed as legislative. This applies to rules that relate **ONLY** to complaint procedures or contested case hearing procedures.

The Boards must final file their rules no later than January 31, 2001.

FILED

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Dec 12 6 58 PM '00

TITLE 1
PROCEDURAL RULE
BOARD OF ACCOUNTANCY

OFFICE OF THE CLERK OF THE
SECRETARY OF STATE

SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR PUBLIC ACCOUNTANTS

§ 1-3-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against public accountants, registrants, certificate holders or applicants for licensure.

1.2. Authority. -- W.Va. Code §§ 30-9-1 et seq., 30-1-1 et seq. and 29A-5-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

§ 1-3-2. Application.

This rule applies to all licensed certified public accountants, licensed registrants, certificate holders or applicants.

§ 1-3-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1. "Applicant" means any person making application for an original or renewal license or certificate pursuant to West Virginia Code § 30-9-1 et seq.

3.2. "Board" means the West Virginia Board of Accountancy.

3.3. "License" means a license or registration issued by the Board pursuant to W.Va. Code § 30-9-1 et seq.

3.4. "Certificate" means a certificate as a certified public accountant issued by the Board pursuant to W.Va. Code § 30-9-1 et seq.

3.5. The practice of public accountancy means a person who practices public accountancy as defined in W. Va. Code § 30-9-2.

3.6. "Ethics investigator" means a person or board committee member licensed to practice public accountancy in this state, who is hired or directed by the Board for the purpose of reviewing complaints against public accountants, registrants or certificate holders under the Board's authority.

§ 1-3-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Public Accountants.

The Board may deny an application for license, registration or certificate; reprimand a licensee; place a licensee on probation; limit or restrict a license; suspend a license, registration or certificate; or revoke any license, registration or certificate issued by the Board, upon satisfactory proof that a licensee, registrant, certificate holder or applicant has been convicted of a felony or is, in his or her professional capacity,

engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of West Virginia Code § 30-9-1 et seq. or the rules of the Board.

§ 1-3-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a public accountant, registrant, certificate holder or applicant with a violation of West Virginia Code § 30-9-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the public accountant or applicant against whom the complaint is lodged;

5.1.2. The date of the alleged wrongful conduct;

5.1.3. The nature of the alleged wrongful conduct.

5.2. A complaint against a public accountant, registrant, certificate holder or applicant shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct or other improper act in violation of West Virginia Code § 30-9-1 et seq. or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their

complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee, registrant, certificate holder or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees, registrants, certificate holders or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee, registrants, certificate holder or applicants to keep the

Board informed of his or her current address.

5.9. Upon receipt of a licensee's, registrant's, certificate holder's or applicant's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of sub-division 5.6 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator or investigating committee shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, registrant, certificate holder or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the investigating committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall be attached for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a public accountant, registrant, certificate holder or applicant may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the investigating committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§ 1-3-6 Contested Case Hearings.

6.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that public accountant, registrant or certificate holder has committed conduct, practices or acts which constitute an immediate danger to the public.

§ 1-3-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in West Virginia Code § 29A-5-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

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(Plus all the volunteer
help we can get)

November 20, 2000

JO ANN WALKER
BOARD OF ACCOUNTANCY
812 QUARRIER ST STE 200

CHARLESTON WV 25301-2695

HB 207 passed on November 14, 2000, during a special session of the Legislature authorizes you to file, **Title 1, Series 3, Disciplinary & Complaint Procedure for Public Accountants** as a procedural rule. The Governor has already signed the bill.

You need to final file your rule no later than January 31, 2001 and set the effective date no less than 30 days or more than 60 days after you final file it. To final file your procedural rule, fill in the blanks on the enclosed form #5, the "Agency Adoption" form and file the form with a copy of your rule in our office. For your convenience, the forms are now available on the Internet. Go to www.state.wv.us/csr and click on forms. You may fill out the form online and then print it. Please have an authorized signature on the bottom line.

Please remember that this relates **ONLY** to complaint procedures or contested case hearing procedures. If you are not sure if your rule complies with this, please contact Legislative Rule Making Review Authority for a final answer.

*****IMPORTANT: YOUR BOARD MUST FILE THE PROCEDURAL RULE IN WORD PERFECT, OR WORD PERFECT COMPATIBLE, ON A 3 1/2" DISK AS WELL AS A PAPER COPY. YOU ONLY NEED TO SUBMIT ONE PAPER COPY TO THE SECRETARY OF STATE'S OFFICE. YOU MUST ALSO SUBMIT A CLEAN ELECTRONIC COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE PAPER COPY. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the Board for review and proofing. The Board has ten (10) working days to send a confirmation or corrections to the Secretary of State. **If the agency fails to return this within ten (10) working days, the rule WILL be filed in the data base with a disclaimer attached stating that the agency failed to review the rule.** Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division