

CHAPTER 2
COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

497—2.1(23) Complaints.

2.1(1) Form. A complaint shall be written and signed by the person filing the complaint on forms provided by the board or shall be submitted electronically via the board's Web site. The complaint shall allege a violation of Iowa Code chapter 21 or 22; provide specific facts in support of the allegation, including the identification of persons and government entity involved in the alleged violation; and provide the specific relief sought. A complaint involving an injunction under Iowa Code section 23.5(3) shall be filed and conducted in accordance with the provisions set out in 497—Chapter 10.

2.1(2) Board acceptance or dismissal. Upon receipt of a written complaint alleging a violation of Iowa Code chapter 21 or 22, the board shall either:

a. Accept the complaint, following a review of the allegations on their face, having determined that the complaint is within the board's jurisdiction, appears legally sufficient, and could have merit; or

b. Dismiss the complaint, following a review of the allegations on their face, having determined that the complaint is outside the board's jurisdiction, appears legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been disposed of on its merits by the board or a court.

2.1(3) Delegation. In order to expedite proceedings, the board may delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board. The board's staff may conduct an initial review of the complaint and obtain more information to assist in the decision to accept or dismiss the complaint.

2.1(4) Notice. If the complaint is accepted, the board shall notify the parties in writing. If the complaint is dismissed, the board shall notify the complainant in writing and explain its reasons for dismissal.

2.1(5) Board review. The board's review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint and the results of the initial review conducted by the board's staff.

2.1(6) Administrative resolution. To assist with resolving complaints in an informal and expeditious manner, the board may, at any time during the complaint process, order administrative resolution of a matter by directing that a person take specified remedial action. A board order directing remedial action shall constitute final agency action for purposes of judicial review under Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 23.8.

[ARC 0741C, IAB 5/15/13, effective 7/1/13; ARC 2089C, IAB 8/5/15, effective 9/9/15; ARC 2913C, IAB 1/18/17, effective 2/22/17; ARC 2914C, IAB 1/18/17, effective 2/22/17]

497—2.2(23) Investigations—board action.

2.2(1) Referral to staff. Upon acceptance of a complaint, the board's staff shall work with the complainant and the subject of the complaint toward an informal, expeditious resolution. If the complaint is not resolved, the staff shall initiate an investigation to determine whether there is probable cause to believe a violation of Iowa Code chapter 21 or 22 or rules of the board has occurred. Offers to settle a complaint during the informal resolution process or as part of a settlement negotiation under rule 497—2.4(23) shall not be presented either to the board or admitted in a subsequent contested case proceeding as evidence that a violation of Iowa Code chapter 21 or 22 or rules of the board has occurred.

2.2(2) Subpoenas. Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, electronic records and other real evidence, as well as requiring the attendance and testimony of witnesses.

2.2(3) Completion. Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

2.2(4) Board action. Upon receipt and review of the staff investigative report and any recommendations, the board may:

a. Redirect the matter for further investigation;

b. Dismiss the matter for lack of probable cause to believe a violation has occurred;

c. Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or

d. Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

[ARC 0741C, IAB 5/15/13, effective 7/1/13; ARC 2139C, IAB 9/16/15, effective 10/21/15; ARC 2914C, IAB 1/18/17, effective 2/22/17; ARC 4754C, IAB 11/6/19, effective 12/11/19]

497—2.3(23) Civil penalties and other appropriate remedies. If it is determined after a contested case proceeding that a violation of statute or rule under the board’s jurisdiction has occurred, the board may impose any of the remedies set out in Iowa Code section 23.6(8) or 23.10(3)“b.”

[ARC 0741C, IAB 5/15/13, effective 7/1/13; ARC 2139C, IAB 9/16/15, effective 10/21/15]

497—2.4(23) Settlements. Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the prosecutor and a governmental body or government official against whom a complaint has been filed.

2.4(1) Board member participation. The board may designate the chairperson or another board member to participate in settlement negotiations after initiation of a contested case.

2.4(2) Ex parte communications. If settlement negotiations are undertaken after a contested case has been initiated, the respondent may be required to waive any objections to ex parte communications concerning settlement discussions.

2.4(3) Approval. A settlement shall be in writing and is subject to approval of a majority of the board. If the board declines to approve a proposed settlement, the settlement shall be of no force or effect.

[ARC 0741C, IAB 5/15/13, effective 7/1/13; ARC 2139C, IAB 9/16/15, effective 10/21/15]

These rules are intended to implement Iowa Code chapter 23.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

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