

CHAPTER 9
COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURES

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 1]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 1]
[Prior to 8/21/02, see 351—Ch 1]
[Prior to 9/17/03, see 351—Ch 5]

351—9.1(68B) Complaints.

9.1(1) Form. A complaint shall be on forms provided by the board and shall be certified under penalty of perjury. The complaint shall contain all information required by Iowa Code section 68B.32B(1).

9.1(2) Board acceptance. A complaint shall not be deemed accepted by the board until completion of the legal review required by Iowa Code section 68B.32B(4). If the board's legal counsel opines that the complaint contains a legally sufficient allegation, the complaint is deemed accepted. If the board's legal counsel opines that the complaint does not contain a legally sufficient allegation and the board, upon review, makes a determination that the complaint does contain a legally sufficient allegation, the complaint is then deemed accepted. If both the board's legal counsel and the board opine that the complaint does not contain a legally sufficient allegation, the complaint shall be dismissed.

9.1(3) Notice. Notice to the subject of a complaint is made only when a complaint is accepted, subject to the conditions of Iowa Code section 68B.32B(3). A complaint is a public record, subject to the conditions of Iowa Code section 68B.32B(11).

9.1(4) 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.

9.1(5) Information provided to board. The board may, on its own motion and without the filing of a complaint, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. As provided in Iowa Code section 68B.32B(7), persons may provide information to the board for possible board-initiated investigation instead of filing a complaint.

351—9.2(68B) Investigations—board action.

9.2(1) Referral to staff. Upon a determination that a complaint contains a legally sufficient allegation, the board shall refer the complaint to staff for investigation.

9.2(2) Board-initiated investigation. On its own motion the board may refer to staff for investigation matters that the board believes may be subject to the board's jurisdiction, including matters brought to the board's attention by members of the public.

9.2(3) Subpoenas. Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, and other real evidence, as well as requiring the attendance and testimony of witnesses.

9.2(4) Completion. Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

9.2(5) 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. Dismiss the matter without a determination regarding probable cause as an exercise of administrative discretion;
- d. Make a determination that probable cause exists to believe a violation has occurred and direct administrative resolution of the matter as provided in subrule 9.4(2); or
- e. Make a determination that probable cause exists to believe a violation has occurred and direct the issuance of a statement of charges to initiate a contested case proceeding.

351—9.3(68B) Grounds for disciplinary action. The board may impose discipline against a person subject to the board's jurisdiction who commits a violation of Iowa Code chapter 68A, Iowa Code chapter 68B, Iowa Code section 8.7, or rules adopted by the board.

This rule is intended to implement Iowa Code section 68B.32A(9).
[Editorial change: IAC Supplement 4/8/09]

351—9.4(68B) Disciplinary remedies; administrative resolution of enforcement matters.

9.4(1) Action after hearing. 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 actions set out in Iowa Code section 68B.32D, including as a remedial action the assessment of direct costs related to the hearing for printing, postage, long-distance telephone charges, witness fees, and compensation paid to the presiding officer.

9.4(2) Administrative resolution. Violations may be handled by administrative resolution rather than through the full investigative and contested case proceeding process. The board may order administrative resolution by directing that the person take specified remedial action. The board may also order administrative resolution by issuing a letter of reprimand or by imposing a civil penalty as set out in subrule 9.4(7).

9.4(3) Response to administrative resolution. A person subject to board discipline may accept administrative resolution, but is not required to do so. If the person accepts the administrative resolution by complying with the directed remedial action or accepting a letter of reprimand, the matter shall be closed. If the person wishes to appeal the administrative resolution, the person shall make a written request for a contested case proceeding and shall submit the request within 30 days of the date of the correspondence informing the person of the board's decision.

9.4(4) Statement of charges. The board shall issue a statement of charges upon timely receipt of a request for a contested case proceeding to appeal the administrative resolution. The contested case shall be conducted in accordance with the provisions in 351—Chapter 11. The board's legal counsel shall have the burden of proving the violation. Failure to challenge the administrative resolution through a request for a contested case proceeding is a failure to exhaust administrative remedies for purposes of seeking judicial review.

9.4(5) Automatic civil penalties. The board may administratively resolve late-filed reports by the assessment of automatic civil penalties, subject to the civil penalty waiver process, as set out by board rule. The board may retain two dollars of any civil penalty that is ultimately not waived by the board or by a court of law as return receipts covering incidental costs such as printing and postage. The remainder of the civil penalty shall be deposited in the state general fund.

9.4(6) Admonishment. The board may admonish any person who it believes has committed a minor violation to exercise care. An admonishment is not discipline and is not subject to a contested case proceeding appeal.

9.4(7) Civil penalty for violation. If the board determines that probable cause exists to believe that a violation of any statute or rule under its jurisdiction has occurred, except for a late-filed disclosure report, the board may order administrative resolution of the violation by imposing a civil penalty not to exceed \$500. A person assessed a civil penalty may appeal the decision by requesting within 30 days of the date of the correspondence informing the person of the board's decision a contested case proceeding to be held under the process set out in subrule 9.4(4).

[ARC 7993B, IAB 7/29/09, effective 9/2/09; ARC 7991B, IAB 7/29/09, effective 9/2/09]

351—9.5(68B) Settlements. Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the board's legal counsel and any person subject to the investigation or contested case proceeding. 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.

351—9.6(68B) Whistle-blower protection. A person who discharges or discriminates against an employee because the employee filed a complaint, provided information to the board for a possible

board-initiated investigation, or provided information during the course of a board investigation shall be subject to the board's complaint process if the employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this rule, "good faith" means that any statements or materials in a complaint, in information provided to the board for a possible board-initiated investigation, or provided in information during the course of a board investigation were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code sections 68B.32A(14) and 68B.32B.
[Editorial change: IAC Supplement 4/8/09]

These rules are intended to implement Iowa Code section 68B.32B.

[Filed July 3, 1974]

[Filed 10/28/75, Notice 8/25/75—published 11/17/75, effective 12/22/75]

[Filed emergency 2/11/76—published 3/8/76, effective 2/11/76]

[Filed emergency 4/1/76—published 4/19/76, effective 4/1/76]

[Filed 11/6/81, Notice 9/30/81—published 11/25/81, effective 1/1/82]

[Filed 8/21/87, Notice 6/17/87—published 9/9/87, effective 10/14/87]

[Filed 4/23/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]

[Filed 9/23/93, Notice 4/28/93—published 10/13/93, effective 11/17/93]

[Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 5/4/94]

[Filed 7/29/94, Notice 5/25/94—published 8/17/94, effective 9/21/94]

[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]

[Filed 3/3/99, Notice 1/13/99—published 3/24/99, effective 4/28/99]

[Filed 8/1/02, Notice 6/26/02—published 8/21/02, effective 9/25/02]

[Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]

[Filed 1/28/05, Notice 11/10/04—published 2/16/05, effective 3/23/05]

[Filed 9/25/06, Notice 8/2/06—published 10/25/06, effective 11/29/06]

[Filed 4/2/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]

[Editorial change: IAC Supplement 4/8/09]

[Filed ARC 7993B (Notice ARC 7808B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]

[Filed ARC 7991B (Notice ARC 7810B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]