

481—1035.7(17A,272C,542) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

1035.7(1) An informal discussion is intended to provide a licensee an opportunity to share the licensee's side of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A licensee may attend an informal discussion but is not compelled to do so. Because disciplinary investigations are confidential, a licensee is not permitted to bring persons other than legal counsel to an informal discussion. Where an allegation is made against a firm, the firm may be represented by a managing partner, member or other firm representative.

1035.7(2) Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question and answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a licensee who desires to attend an informal discussion waives the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A licensee would not be waiving the right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

1035.7(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

1035.7(4) The board may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges is filed simultaneously with the consent order as provided in rule 481—506.35(17A,272C).

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