

481—2018.10(17A,272C,543B) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee an opportunity to appear before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

2018.10(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 commission determines whether probable cause exists to initiate a disciplinary proceeding. Licensees are not obligated to attend an informal discussion. Because disciplinary investigations are confidential, the licensee cannot bring other persons to an informal discussion, but licensees may be represented by legal counsel. When an allegation is made against a firm, the firm may be represented by the designated broker, a managing partner, member or other firm representative.

2018.10(2) Unless disqualification is waived by the licensee, commission 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 commission 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 commission members to participate in commission decision making and to receive the advice of staff, licensees who desire to attend an informal discussion therefore waive their right to seek disqualification of a commission member or staff based solely on the commission member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that a participating commission member or staff person is not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

2018.10(3) Because an informal discussion constitutes a part of the commission's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the commission in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

2018.10(4) The disciplinary committee, subject to commission approval, 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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