

# **SOUTH DAKOTA STATE BOARD OF TECHNICAL PROFESSIONS**

2040 W Main, Suite 304

Rapid City, SD 57702-2447

P: 605/394-2510

[www.state.sd.us/dol/boards/engineer](http://www.state.sd.us/dol/boards/engineer)

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## **COMPLAINT INSTRUCTIONS**

### **Complaints.**

Any person claiming a holder of a license, or applicant for licensure under SDCL chapter 36-18A, has engaged in or is engaged in conduct constituting grounds for disciplinary action as enumerated in SDCL chapter 36-18A or chapter 20:38:20 or chapter 20:38:24 may file with the board a written complaint. The board may require the complaining party to file a complaint verified on oath stating the name of the applicant or licensee against whom the complaint is made and setting out full details of the conduct which is alleged to be a violation. Failure to file a written complaint, verified under oath, in the form satisfactory to the board, is a basis to dismiss the complaint. On receipt of a complaint deemed to be in proper form by the executive director, the complaint shall be served by mail upon the applicant or licensee complained against and upon any other affected parties, together with a copy of chapter 20:38:20 and 20:38:24.

The applicant or licensee complained against shall respond to the complaint within 20 calendar days after service of the complaint on the applicant or licensee. The response of the applicant or licensee shall be sent to the executive director of the board at the board's office. Any aggrieved party, board member, board legal counsel, or the executive director may file a complaint. Upon receipt of the response of the applicant or licensee, or upon expiration of the time for the applicant or licensee complained against to respond, the chair of the board, considering only the complaint and any response, shall appoint one member of the board who, along with the executive director and such other individuals as may be appointed by the chair of the board, to act as an investigative committee to determine if the complaint has merit and constitutes grounds for disciplinary action, or is frivolous and should be dismissed.

### **Complaint procedure.**

Upon completion of the investigation, the investigating committee shall recommend to the board whether the charges should be dismissed for lack of merit or whether based upon the investigation of the committee there is sufficient basis to proceed with either a formal or an informal hearing or other disposition. The failure of a licensee to comply with the investigation request administered by the board may result in disciplinary action. The board may also petition the court of the county in which the individual licensee resides, and the court may enter an order compelling the compliance or imposing such terms and conditions as the court may deem necessary.

### **Informal proceedings.**

If the investigative committee considers an alleged violation to have merit constituting grounds for disciplinary action, the investigative committee at its sole discretion, with the consent of the licensee, may proceed with informal proceedings and stay formal proceedings pending the outcome of the informal proceedings. The investigative committee may conduct informal proceedings with the affected parties to resolve the matter without a formal hearing.

Informal proceedings do not preclude the board from reinstating formal proceedings. An applicant or licensee, prior to accepting a final disposition through an informal proceeding can reject or decline informal proceedings and elect to proceed with a formal hearing. An applicant or licensee consenting to an informal proceeding waives

all rights to disqualify a board member from participating in a subsequent formal hearing by reason of the board member's participation in the informal proceeding consented to by the applicant or licensee.

The board may accept an assurance of voluntary compliance or a consent order regarding a violation of SDCL chapter 36-18A or chapter 20:38:20 or chapter 20:38:24. The assurance or consent order shall be in writing and is subject to the approval of the board. The assurance or consent order may include a statement that the individual will not engage in such act or practice in the future and one of the following:

- (1) Stipulation for voluntary payment of any fine or cost, or both, of the investigation; and
- (2) Stipulation for the voluntary payment necessary to restore to any person money or property which may have been acquired by the alleged violator.

The assurance of voluntary compliance or consent order may not be considered an admission to a violation for any purpose. The consent of the licensee to a consent order in informal proceedings shall constitute an admission of a violation for any purpose. Proof of the failure to comply with an assurance of voluntary compliance or a consent order shall entitle the board to institute or reinstitute formal proceedings.

The board shall notify in writing any complaining party, the applicant or licensee complained against, and any other affected parties of the results of the informal proceedings and the action taken, if any. The final disposition of an informal proceeding is a public record.

**Formal proceedings.**

If an alleged violation has merit constituting grounds for disciplinary action, the board may commence formal proceedings. Formal proceedings shall be instituted by a formal board complaint and service of a notice of hearing by mail upon the applicant or licensee complained against.

**Contents of a formal board complaint.**

The formal board complaint shall include the name of the applicant or licensee complained against, a statement setting forth the nature of the violations being charged that constitute grounds for disciplinary action.

**Answer to formal board complaint.**

The applicant or licensee shall file an answer within 20 calendar days after service of the complaint admitting, denying, qualifying, or explaining all facts alleged in the formal complaint and all defenses of the applicant or licensee or mitigating factors. The licensees shall file the original upon the executive director of the board and a copy by mail to the board counsel.

**Disqualification.**

If an alleged violation against a licensee is filed by a board member, or if a board member participates in the investigation of a violation by the licensee, that board member is disqualified from sitting at the hearing as a board member and from participating in the decision rendered by the board.

**Procedure for formal hearing.** The following procedure shall be used by the board in conducting formal hearings:

- (1) The board shall provide written notice to the applicant or licensee by mail stating the time, place, and date of the formal hearing. The notice shall require the attendance of the applicant or licensee at the hearing. The notice shall be given at least ten days prior to the formal hearing;
- (2) A transcript shall be kept of all formal hearings and proceedings;
- (3) The board chairman may conduct the formal proceeding or the board may have a hearing examiner conduct the proceedings in part or in full;
- (4) The applicant or licensee appearing before the board at a formal hearing shall appear in person, unless otherwise waived by the board. The applicant or licensee, and his legal counsel, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence on the party's behalf.

**Final action by board.**

After a formal hearing, the board may decide to dismiss the formal complaint, revoke the registration license of the licensee, suspend the registration license of the licensee, place the licensee on probation, or issue a letter of reprimand to be placed in the file of the applicant or licensee. The board's decision shall be made and entered with notice of the decision given in accordance with the provisions of SDCL 1-26-23 to 1-26-25, inclusive.

**Petition for hearing by an aggrieved person.**

In a contested case, as it is defined in SDCL 1-26-1(2), including disciplinary proceedings, a person aggrieved by an action of the board taken without a hearing may, within 30 days following the date of the board action, petition the board for a hearing. The hearing shall be held not later than 60 days following receipt of the petition. Twenty days before the date set by the board for hearing, the board shall serve by mail upon the petitioner and other interested or affected parties a copy of the notice of hearing and a copy of the aggrieved person's petition.

**Petition for declaratory ruling.**

A person seeking a ruling as to the applicability to that person of a statutory provision or rule or order of the board may file with the board a Petition for Declaratory Ruling in substantially the following form:

Pursuant to the provisions of SDCL 1-26-15, I, (name of petitioner), of (address of petitioner), am (title or capacity of petitioner), and do hereby petition the Board of Technical Professions for its declaratory ruling in regard to the following:

- (1) The statute or rule or order in question is: (here identify and quote the pertinent statute, rule, or order.)
- (2) The facts and circumstances that give rise to the issue to be answered by the board's declaratory ruling:
- (3) The precise issue to be answered by the board's declaratory ruling:

Dated at (city and state), this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Petitioner

### **Board action on petition.**

Upon receipt of the petition, the board may request from the petitioner any information that may be required for the issuance of its ruling. Within 30 days following the receipt of the petition, or within 30 days following receipt of requested information, the board shall issue its declaratory ruling and serve a copy of it by mail upon the petitioner.

### **Adverse ruling.**

Any person seeking a declaratory ruling hereunder, is deemed to be aggrieved, in an issue that constitutes a contested case as defined in SDCL 1-26-1(2) made within 30 days of the board's declaratory ruling requests the board for a formal hearing, which hearing shall be held not later than 60 days following the receipt of the request.

## **ADDITIONAL INFORMATION**

### **Contested Cases:**

#### **Petition for hearing**

In a contested case, including disciplinary proceedings, a person aggrieved by an action of the board taken without a hearing may, within 30 days following the date of the board action, petition the board for a hearing. The hearing shall be held not later than 60 days following receipt of the petition.

#### **Notice of hearing**

At least 20 days before the date set by the board for hearing, the board shall serve by mail upon the petitioner and other interested or affected parties a copy of the notice of hearing.

#### **Hearing procedure**

A person compelled to appear before the board may be represented by counsel.

#### **Briefs**

A party to the hearing, upon request made before the close of the hearing, may file a written brief with the board within a reasonable time fixed by the board. The board may also direct the submission of written briefs and set a reasonable time for their filing when, in its opinion, briefs are warranted by the issues involved in the proceedings.

#### **Decision**

The board's decision shall be made and entered and notice of the decision given in accordance with the provisions of SDCL 1-26-23 to 1-26-25, inclusive.

## **DUTY TO INVESTIGATE.**

The South Dakota Board of Technical Professions (board) has a statutory duty to investigate and review any alleged violation of SDCL 36-18A. When the board receives a report of a violation from a registrant, the board investigates. Board counsel and the Executive Director perform the initial investigation. If further investigation is necessary a committee is appointed by the board to perform the investigation. The committee will consist of at least one board member and board counsel. The Executive Director or investigator may be part of the investigating committee. Any board member involved in the investigation is automatically disqualified from hearing and rendering a decision in the case. The separation of the board's investigative and prosecutorial functions from the adjudication (judging) is necessary to guarantee due process to any registrant charged with a violation.

## **IF THE BOARD HAS A DUTY TO INVESTIGATE WHY IS THE INVESTIGATION DONE BY A COMMITTEE?**

The due process clause of the Fourteenth Amendment of the United States Constitution and the South Dakota Constitution requires that the investigation and prosecutorial duties be separate from the duties of judging and rendering a decision. The board, under statute, has both duties and the law requires that these duties be separated. This separation may be better understood in the context of a criminal charge. If an architect or engineer is investigated for criminal fraud in a bidding process, and the investigation results in charging the architect/engineer with criminal conduct, the registrant would not want the investigator/prosecutor, i.e., state's attorney, also being the individual that would sit in judgment to decide whether he was guilty. The separation of the investigation/prosecution from judging/decision making, is mandated by our system of due process. This right of due process applies to administrative boards, such as the South Dakota Board of Technical Professions. To be fair to a registrant charged with a violation of SDCL 36-18A, the board members that will judge the registrant's conduct will not be involved in the investigation. If they are, these members are recused.

## **DUTY TO REPORT VIOLATIONS.**

Each registrant within the jurisdiction of this board has a duty to report violations. Failure to report a violation is a violation. All registrants have a duty to report and all are encouraged to report violations. Prosecution of a registrant for non-reporting of a violation is reserved generally for situations where the failure to report places the public at risk of harm, or when non-reporting is shielding a registrant from criminal prosecution.

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**COMPLAINT FORM**

You may use this form to file a complaint against an architect, professional engineer, land surveyor, landscape architect, petroleum release assessor or remediator, certified business entity, or an individual or business entity engaged in the unauthorized practice of a profession regulated by the Board. Your complaint will be disclosed to the person you are complaining against and to other persons who might have information about the matter. Your complaint may be disclosed to members, employees and consultants of the Board. Please type or write legibly and use additional paper if necessary. Or complete this form on line.

**The Person making the Complaint:**

\_\_\_\_\_

*Name*

\_\_\_\_\_

*Address*

\_\_\_\_\_

*City, State, Zip*

\_\_\_\_\_

*Phone*

**The Person against whom Complaint is being made:**

\_\_\_\_\_

*Name*

\_\_\_\_\_

*Address*

\_\_\_\_\_

*City, State, Zip*

\_\_\_\_\_

*Phone*

**Details to show reasonable cause why the Board should investigate and act: (Facts only; avoid opinions)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Names, addresses and phone numbers** of other known parties who have direct interest or possess pertinent information in this matter whose testimony should be considered before final disposition of this complaint.

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**Attached are Exhibit A through \_\_\_ for consideration in evaluating this complaint.**

A. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State of \_\_\_\_\_)

ss.

County of \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn upon oath,  
Name

deposes and states: That I am the person who subscribed to the foregoing Complaint; that I have read the same and know the contents thereof, and that the same is true to my own knowledge, information and belief, except as to matter therein stated upon information and belief and as to those matters, I believe them to be true.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

(SEAL)