

APA-2

Alabama Electronic Security Board of Licensure
(Agency Division: N/A)

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Electronic Security Board
of Licensure

RULE NO. & TITLE: 304-X-1-.08 Administrative Complaints

INTENDED ACTION: Amend Rule

SUBSTANCE OF PROPOSED ACTION:

In order to comply with ACT# 2014-160, amend rule to further expand on the processes involving administrative complaints. This would include clarifying the type of mail service utilized, requesting a hearing with the full board, requesting a hearing officer, and further clarification of the appeal process.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Written comments may be submitted to: Alabama Electronic Security Board of Licensure, 7956 Vaughn Road PMB 392, Montgomery, AL 36116.

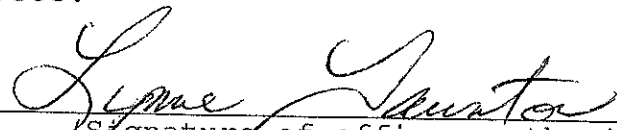
Public Hearing: Tuesday, November 13, 2018, 9:30 a.m., Alabama Industrial Development Training Center, One Technology Court, Montgomery, AL 36116.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

November 13, 2018

CONTACT PERSON AT AGENCY:

Lynne Taunton, Executive Director, Alabama Electronic Security Board of Licensure, 7956 Vaughn Road PMB 392, Montgomery, AL 36116. Telephone# 334-264-9388.


(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

304-X-1-.08Administrative Complaints.

(1) Receiving Complaints

(a) Complaints alleging that licensees and/or non-licensees have violated AESBL laws and/or regulations must be submitted in writing on a form created by the Board. Complaints must be signed to be processed. Any person, including a Board member or person employed by the Board or its contractor, may file a complaint.

(b) Whenever a complaint is received, the AESBL staff will review the information provided regarding the complaint. Additional information may be requested in order for the staff to determine if there is sufficient reason for a formal Administrative Complaint to be accepted. If it is determined by the Executive Director or Secretary upon review of the information provided that a formal Administrative Complaint is not warranted, the complainant will be notified in writing of the reason why the Board will not accept a formal Administrative Complaint. If it is determined that there is sufficient reason or evidence to pursue a formal Administrative Complaint, a form, with potential violations noted by the staff, will be sent to the complainant to complete and have witnessed or notarized. Upon receipt of the completed Administrative Complaint form, it will be assigned a unique identifying number.

(c) If the Board receives more than one complaint concerning related allegations against the same licensee, the Board may consolidate the complaints for purposes of review, investigation, responses, and disciplinary action.

(d) AESBL may contract for the services of an investigator to aid in investigating a complaint.

(e) All licensees, having had a complaint filed against them or their company, shall have a minimum of thirty (30) days (from being notified of the complaint) to respond to the complaint or allegations in writing. Said notification of the complaint shall be made by certified mail, return receipt requested.

(f) After the deadline for the licensee's response to a complaint in writing, a complaint may be referred to the Investigative Committee for a determination of the existence of probable cause to proceed with disciplinary action or to close the complaint.

(2) Investigative Committee

(a) The Investigative Committee will be comprised of one member of the Board, the executive ~~secretary~~ director or his/her designee, and the Board's attorney. The Board member shall be assigned to the Investigative Committee on a rotating equitable basis. The Chairman of the Board shall determine the Board member assigned to a particular complaint and may do so upon the request of the executive ~~secretary~~ director, without prior Board approval and without the requirement of a board meeting before said assignment.

(b) The Board member who participates on the Investigative Committee regarding a complaint will recuse himself or herself from any participation in the hearing and determination of the complaint.

(c) The Investigative Committee may require the licensee to attend a meeting of the Committee to aid in investigating a complaint.

(d) If the Investigative Committee finds that probable cause exists, the Investigative Committee shall recommend disciplinary action by a majority vote of the committee. The licensee shall be notified by ~~certified~~ regular mail of the Investigative Committee's recommendation for disciplinary action and the licensee may either agree to said disciplinary action, request a hearing within thirty (30) days, or enter into informal settlement agreement with Board counsel.

(e) If the Investigative Committee finds the probable cause does not exist to suggest that the licensee has violated the laws and/or regulations of the AESBL, the complaint file will be closed.

(3) Hearings

(a) Any licensee aggrieved by a decision of the Investigative Committee and who ~~cannot reach an informal settlement with Board counsel regarding disciplinary action may request a hearing within thirty (30) days.~~ disagrees with the recommendation of the investigative committee may, in addition to entering into negotiations with Board counsel, request a hearing before the full board. The hearing request shall be made no later than thirty (30) days of the date noted on the initial consent decree.

(b) A quorum of the Board members shall sit for the hearing or the Board may appoint a private Hearing Officer to hear the matter.

(c) The Chair of the Board or Hearing Officer will preside at the hearing, and will rule on all pre-hearing motions and evidentiary issues. All pre-hearing motions must be made in writing and filed with the Board. Copies of motions and responses thereto must be served on the opposing party. Service of motions or responses is complete upon placing the same in the mail. Each motion or response thereto will contain a certificate indicating the date on which the motion was served on the opposing party.

(d) No party will be entitled to any pre-hearing discovery without prior approval of the Board or Hearing Officer. Discovery must be requested by Motion, and this Motion must identify the type of information requested and the intended method of discovering it. The opposing party will be given an opportunity to respond to such motion. The Board or Hearing Officer may order discovery for good cause shown, so long as permitting the discovery will not unreasonably delay the hearing of the matter. Any discovery must be clearly related to the allegations contained in the Administrative complaint.

(e) If the Board appoints a Hearing Officer, any party desiring to subpoena the attendance of any person at a hearing or the production of documents via a subpoena duces tecum must apply to the Hearing Officer for such a subpoena, pursuant to Ala. Code §41-22-12(c). Such application will be made by motion, and a copy of the motion will be served on opposing party in the method previously described for service of motions. The opposing party will be given an opportunity ~~of~~ three (3) days to object to the issuance of the subpoena.

(f) Both the Board and the Respondent will be entitled to present and examine witnesses, to cross-examine witnesses, to introduce evidence, and to be represented by counsel.

(g) The hearing will be conducted in the following order: opening statement by the Board, opening statement by the Respondent, presentation of the case-in-chief by the Board, presentation of the Respondent's case, presentation of rebuttal evidence by the Board, closing argument by the Board, closing argument by the Respondent. The Board or Hearing Officer retains the discretion to take evidence out of order for good cause shown. Either the Board or Respondent may waive opening or closing arguments. The hearing will be conducted in accordance with Sections 41-22-12 and 41-22-13, Code of Ala.1975, and other applicable provisions of the Administrative Procedures Act.

(h) ~~An appointed Hearing Officer will render a written recommended findings of fact and conclusion of law to the Board. If~~ heard by an appointed Hearing Officer, he or she shall render a

written recommendation with findings of fact and conclusions of law to the Board by the sooner of its next board meeting or within thirty (30) days. If heard by the Board, the Board's attorney shall produce written findings of fact and conclusions of law for the Board's approval at the next scheduled board meeting. After approval or modification of the findings of fact and conclusions of law, the board shall, by a majority vote of the Board, issue an order recommending disciplinary action against the licensee or dismissing the complaint.

(i) The Board (with the exception of that Board member who served on the Investigative Committee for the complaint and any other board member who is biased or who has a conflict of interest) will review the recommended findings of fact and conclusions of law and determine whether they should be adopted, amended or overruled. If a majority of the members of the Board are unable to vote because of bias, conflict of interest or service on the Investigative Committee, the Hearing Officer's findings of fact and conclusion of law will constitute AESBL's final order.

(j) The Board will issue a final order containing its findings of fact, conclusions of law, and discipline, if any. This final order shall comply with the requirements of Section 41-22-16 of the Code of Ala. 1975. A majority of the Board members rendering the decision must reach accord for the decision to be final.

(k) The Respondent may appeal a final order of the Board to the Circuit Court of Montgomery County. Said appeal must follow and meet the requirements for appeal as stated in Ala. Code §41-22-20.

(4) Informal Settlement

(a) Board counsel is authorized to enter into settlement negotiations on behalf of the Board.

(b) Neither the Board nor the Licensee is obligated to participate in informal settlement negotiations or to enter into an informal settlement agreement.

(c) If the Board and the Respondent do enter into an informal settlement agreement, that settlement agreement will be memorialized in a Consent Order, which must be signed by the respondent or its agent and the Executive Secretary of the Board.

(d) A Consent Order must contain a recitation of the facts giving rise to the allegations, a citation to the code or

regulatory sections involved in the allegations, a statement of the terms upon which the parties have agreed to settle the case, and must state that the agreement is not effective unless and until the Board approves the agreement at its next meeting.

(e) ~~The Consent Order must also state that the parties agree that if the Board does not approve the terms of the settlement agreement, the Board members participating in that decision will not be required to recuse themselves from participation in a formal hearing by virtue of having reviewed the terms of the settlement agreement.~~

(f) No informal settlement will be final until a majority of the Board approves it at the next meeting of the Board.

(g) The Board member who served on the Investigative Committee may present the proposed settlement to the Board, but may not participate in deliberations regarding whether to accept it and may not participate in the vote on whether to accept it.

(h) If the Board approves the terms of the informal settlement agreement, the Chairman of the Board will sign the Consent ~~Order~~ Decree on behalf of the Board. The Consent ~~Order~~ Decree is effective from the date of signature of the Chairman of the Board, unless the Consent Order expressly provides otherwise.

(i) If the Board does not approve the terms of the settlement agreement, the Chairman of the Board will not sign the Consent Order and the Consent Order will not take effect. The matter will be referred again for formal hearing.

(j) The terms of the informal settlement agreement must serve the public's interest.

(5) Grounds for Disciplinary Action

(a) Any violation of Section 34-1A-7(a)-7(d) of the Code of Ala. 1975.

(b) Conviction of a crime that could have been grounds for denial of a license had the conviction occurred before issuance of the license.

(c) Violation of any of the Alabama Electronic Security Board of Licensure's Code of Ethics, rules, regulations, or statutory provisions.

(d) Failing to maintain insurance coverage as required by Law and Regulations.

(e) Employing one or more unlicensed alarm installers, alarm technicians, locksmiths, salespersons, helpers, or monitoring station operators for more than ten (10) working days without completing and submitting applications and criminal background requests to AESBL.

Author: Fred Crawford

Statutory Authority: Code of Ala. 1975, §34-1A.

History: New Rule: Filed May 25, 2004; effective June 29, 2004.

Amended: Filed November 13, 2007; effective December 18, 2007.

Amended: Filed February 18, 2010; effective March 25, 2010.

Amended: Filed August 15, 2011; effective September 19, 2011.

Amended: Filed May 27, 2014; effective July 1, 2014. **Amended:** Filed November 19, 2014; effective December 24, 2014. **Amended:** Filed ; effective