

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 30 Department or Agency Alabama State Board of Public Accountancy
Rule No. 30-X-7-.02
Rule Title: Complaint Procedure

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer D. Boyd Busby
D. Boyd Busby, CPA, Executive Director

Date September 19, 2016

(DATE FILED)
(STAMP)

ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY

NOTICE OF INTENDED ACTION

AGENCY NAME: The Alabama State Board of Public Accountancy

RULE NO. & TITLE: 30-X-7-.02, Complaint Procedure

INTENDED ACTION: The Alabama State Board of Public Accountancy intends to amend rule 30-X-7-.02.

SUBSTANCE OF PROPOSED ACTION: Rule will be amended to clean up language and allow a Board member with specific technical ability to be chosen for an investigative committee in a disciplinary proceeding.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Executive Director of the Alabama State Board of Public Accountancy at any time until and including November 16, 2016 following the 30th day of September 2016, or, if requested in advance, by personally appearing at the Alabama State Board of Public Accountancy Board Meeting to be held at The University of Alabama, The Ferguson Student Center, 751 Campus Drive West, Tuscaloosa, Alabama, 35404, at 10:00 a.m., Wednesday, November 16, 2016.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: November 16, 2016

CONTACT PERSON AT AGENCY: 

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ALABAMA STATE BOARD OF PUBLIC ACCOUNTANCY
ADMINISTRATIVE CODE

CHAPTER 30-X-7
PROCEDURE FOR ENFORCEMENT

TABLE OF CONTENTS

30-X-7-.01	Initiation Of Proceedings
30-X-7-.02	Complaint Procedure
30-X-7-.03	Informal Settlement
30-X-7-.04	Notice And Hearing
30-X-7-.05	Designations Considered To Be Violations
30-X-7-.06	Publicizing Disciplinary Actions
30-X-7-.07	Ownership Of Client's Records
30-X-7-.08	Conduct Discreditable To The Public Accounting Profession
30-X-7-.09	Disciplinary Hearings
30-X-7-.10	Safe Harbor Language
30-X-7-.11	Communications
30-X-7-.12	Internet Practice
30-X-7-.13	Return Of Certificate, Registration Or Permit To Practice
30-X-7-.14	Bad Checks
30-X-7-.15	Documentation And Retention

30-X-7-.01 Initiation Of Proceedings.

(1) The Board may initiate such action as it deems appropriate to investigate and determine certificate holders', permit holders' and registered Public Accountants' compliance with the provisions of the Act or the Board's regulations.

(2) Unless the Board initiates proceedings on its own motion, it shall take action only upon receipt of a complaint made in writing, stating in detail the activities that the party complained of is alleged to have engaged in, and presenting the evidence of when, where and how a violation occurred. The complaint shall be filed with the ~~Secretary of the Board~~ Executive Director.

(3) Any person submitting a complaint may be required to support it by personal appearance before the Board.

(4) In the event the charges brought are not sustained and the accused is declared not guilty by the Board, the complainant shall be assessed all costs in connection with the hearing of the complaint, and as an evidence of good faith the

Accountancy**Chapter 30-X-7**

Board, in its discretion, may require the complainant to deposit with the Board at the time of filing of the complaint a certified check in the sum of \$100.00 payable to the Alabama State Board of Public Accountancy.

Author: Alabama Board of Public Accountancy

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

History: Filed September 3, 1982. Amended: Filed September 19, 2016.

30-X-7-.02 Complaint Procedure.

(1) In the event a complaint is filed against a certificate holder, permit holder or a registered Public Accountant (licensee) or the Board determines from other information that an investigation is necessary, the procedure for investigation or complaint shall be as follows:

(a) An investigative committee consisting of a Board member, the Executive Director, and/or a consultant shall investigate said information or complaint to determine whether there is probable cause for disciplinary proceedings. If the complaint or information is received by the Executive Director or someone other than a Board member, the Board member on the investigative committee shall be the Board member whose office is closest to the place of business of the licensee who is being investigated or the Board member possessing a specific technical ability related to the complaint. If the complaint or information is received by a Board member, that Board member automatically will become a member of the investigative committee. The Board member who participates on the investigative committee shall not participate in any disciplinary proceedings arising from the investigation.

(b) The investigative committee may exercise subpoena power in investigating any complaint or information obtained regarding a licensee.

(c) The investigative committee may enter into informal settlements with the licensee they are investigating provided said settlement is ratified by the Board.

(d) At the end of the investigation, the investigative committee shall make a recommendation to the Board as to whether probable cause exists for the Board to issue a summons and complaint and initiate a formal disciplinary proceeding. If the investigative committee determines at this time that no probable cause exists, the proceedings will terminate at that point.

(2) In the event the investigative committee determines that probable cause exists for the filing of a summons and complaint, the Board shall instruct its counsel to prepare

such.

(3) The summons and complaint shall be mailed by certified mail, return receipt requested, and regular first class mail to the most recent address of the respondent on file with the Board and shall be mailed at least 35 days prior to the scheduled date of the hearing.

(4) The summons and complaint shall give notice of substantial compliance with the Alabama Administrative Procedure Act, Section 12(2).

(5) If the person complained of shall be a member of the Board, the member shall be notified as provided by Section 13(b); and the person complained of shall thereafter abstain from any participation in any consideration of, or acts of, the Board upon the subject of the complaint.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §§34-1-31, 41-22-1.

History: Filed September 3, 1982. **Amended:** Filed March 29, 1985.

Amended: Filed September 19, 2016.

30-X-7-.03**Informal Settlement.**

(1) No action shall be taken to effect an informal settlement of a controversy, either prior to or during a contested case proceeding, without formal approval by the Board of such action.

(2) Informal settlement negotiations may be initiated by either party to the controversy but neither party is obligated to utilize the informal procedures.

(3) If the Board approves participation in an informal settlement procedure, it shall negotiate a settlement upon terms it believes to be in the best interest of the Board and the public, and if the settlement is effectuated the terms of the settlement shall be incorporated, by reference, in the official minutes of the Board.

Author: Alabama Board of Public Accountancy

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

History: Filed September 3, 1982. **Amended:** Filed November 18, 2009; effective December 23, 2009.

30-X-7-.04**Notice And Hearing.**

(1) Initiation and hearings shall be in accordance with the provisions of the Alabama Administrative Procedure Act.

Accountancy**Chapter 30-X-7**

(2) Any Board member who has a possible conflict of interest in any matters resulting in hearings before the Board shall be disqualified from participation in the hearing.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §§34-1-3, 44-22-1.

History: Filed September 3, 1982. **Amended:** Filed May 7, 1985.

30-X-7-.05 Designations Considered To Be Violations. Without

being limited thereto in the interpretation of Section 15, the following designations are deemed to be violations of the Act:

(a) The term "licensed," "registered," "enrolled," "bonded," "accredited," or similar terms before the authorized designation of "public accountant."

(b) The term "certified" or similar terms before the words "tax consultant" or similar words used by a tax consultant or tax return preparer.

Author: Alabama Board of Public Accountancy

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

History: Filed September 3, 1982.

30-X-7-.06 Publicizing Disciplinary Actions. If the Board deems it to be in the public interest, it may publicize disciplinary action taken, in such manner and for such periods as it may direct.

Author: Alabama Board of Public Accountancy

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

History: Filed September 3, 1982.

30-X-7-.07 Ownership Of Client's Records.

(1) When considering complaints filed against licensees for violations of Section 20 of the Act a distinction shall be made in those cases where Certified Public Accountants or Public Accountants are engaged to and do record and keep the regular books of account for a client. Such actual books, whether recorded in formal records or on working papers, shall not be considered to be records or working papers made incident to or in the course of professional service to clients, and, therefore, are considered to be the property of the client.

(2) A licensee shall furnish to a client or former client, upon request and reasonable notice:

Accountancy**Chapter 30-X-7**

(a) A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account; the licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

Author: Alabama Board of Public Accountancy

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

History: Filed September 3, 1982. **Amended:** Filed May 18, 2004; June 22, 2004.

30-X-7-.08 **Conduct Discreditable To The Public Accounting Profession.**

When considering complaints filed against registrants for violating Section 11(k) of the Act or Rule 30-X-6-.05(1) the phrase "conduct discreditable to the public accounting profession" shall be construed in the light of the following broad recognition of responsibilities:

(a) The reliance of the public in general and the business community in particular on sound financial reporting and advice on business affairs imposes on the public accounting profession an obligation to maintain high standards of technical competence, morality and integrity. To this end all persons permitted to practice as Certified Public Accountants or Public Accountants under the laws of Alabama shall at all times maintain independence of thought and action, hold clients' affairs in strict confidence, strive continuously to improve the practitioner's skills, observe generally accepted accounting principles and generally accepted auditing standards, promote sound and informative financial reporting, uphold the dignity and honor of the public accounting profession, and maintain high standards of personal conduct.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §34-1-3.

History: Filed September 3, 1982. **Amended:** Filed May 9, 2007; effective June 13, 2007.

30-X-7-.09 **Disciplinary Hearings.**

(1) Conduct of Hearing.

(a) Hearing Examiner. The Board may, and in its discretion, appoint some person to act as a hearing examiner at disciplinary hearings. In the event a hearing examiner is

Accountancy**Chapter 30-X-7**

appointed, he shall assist the Chairman of the Board in presiding at the disciplinary proceeding and shall assist the Chairman in ruling on all questions of evidence and procedure, notwithstanding any other provisions of these rules to the contrary.

(b) Plea. The respondent shall plead either guilty or not guilty to the charges set forth in the complaint.

(c) Opening statement. Each side shall be permitted to make a short opening statement.

(d) The State shall present its evidence, followed by the respondent, followed by rebuttal by the State. Each witness called may be examined in the following manner:

Direct examination
Cross-examination
Examination by Board
Redirect examination
Recross examination
Reexamination by the Board

(e) Closing argument. Each side shall be permitted to make a short closing statement summarizing the evidence presented urging the application of relevant law to the evidence presented.

(f) The Board may request one or both sides to prepare within seven days for the Board's consideration a proposed order of the Board, including findings of fact, official notice and conclusions of law. The underlying facts of record which support the findings should be cited.

(2) Order. The Board shall issue an order within 30 days of the date of the final hearing which shall include findings of fact, official notice taken, and conclusions of law, separately stated. Respondent shall be delivered a copy of the order by certified mail, return receipt requested, and a copy shall be mailed first class to each attorney of record.

(3) Evidence. Evidence shall be admitted in accordance with Alabama Administrative Procedure Act, Section 13.

(4) Emergencies. The Board may in an emergency situation when danger to the public health, safety and welfare requires, suspend a license without hearing or with an abbreviated hearing in accordance with the Alabama Administrative Procedure Act, Section 19(4).

(5) Other. The hearing shall otherwise be conducted in compliance with the provisions of the Alabama Administrative Procedure Act.

Accountancy

Chapter 30-X-7

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §§34-1-3, 41-22-1.

History: Filed May 7, 1985.

30-X-7-.10

Safe Harbor Language.

(1) Non-licensees may not use language in any statement relating to the financial affairs of a person or entity, which is conventionally used by licensees in reports on financial statements. Notwithstanding the foregoing, non-licensees may use the following disclaimer language in connection with financial statements to not be in violation of the Act:

(a) "I (We) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners).

(b) I (We) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §34-1-16.

History: New Rule: Filed May 18, 2004; effective June 22, 2004.

30-X-7-.11

Communications. A licensee shall respond in writing to any communication from the Board requesting a response, within thirty (30) days of the mailing of such communication by registered or certified mail, to the last address furnished to the Board by the licensee.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §34-1-3.

History: New Rule: Filed May 18, 2004; effective June 22, 2004.

30-X-7-.12

Internet Practice. A CPA or PA firm offering or rendering professional services via a Web site shall provide in the Web site's homepage, a name, an address, and principal state of licensure as a means for regulators and the public to contact a responsible licensee in charge at the firm regarding complaints, questions, or regulatory compliance.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §34-1-3.

History: New Rule: Filed May 18, 2004; effective June 22, 2004.

30-X-7-.13

Return Of Certificate, Registration Or Permit To Practice. Any licensee who holds a certificate, registration, or permit issued by the Board shall, upon surrender, suspension or

Accountancy

Chapter 30-X-7

revocation, promptly return such certificate, registration, or permit to the Board.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §34-1-3.

History: New Rule: Filed May 18, 2004; effective June 22, 2004.

30-X-7-.14 Bad Checks.

(1) If a bad check or negotiable instrument is dishonored, the writer of the check or instrument shall be required to tender payment of the full amount of such check or instrument plus a service charge of \$30.00 as provided by the Code of Ala. 1975, Section 8-8-15.

(2) If the dishonored check or instrument was tendered for the purpose of sitting for an examination, payment of the full amount of such check or instrument plus a service charge of \$30.00 must be paid in full prior to the individual being allowed to take said examination. If the individual has already taken the examination prior to the board office receiving notification of the dishonored check or instrument, the individual's examination results will be held until such time as payment is made in full including the \$30.00 service charge.

(3) If the dishonored check or instrument was tendered for the purposes of renewing an individual license/permit or registration or a firm license/permit, the license/permit or registration will be rendered invalid, unless the payment is made in full including the \$30.00 service charge within 30 days.

(4) If the dishonored check or instrument was tendered for the purposes of applying for licensure or certification, the application will not be processed until such time as payment is made in full including the \$30.00 service charge.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §§34-1-3, 8-8-15.

History: New Rule: Filed May 6, 2008; effective June 10, 2008.

30-X-7-.15 Documentation And Retention.

(1) Licensees shall comply with all professional standards for documentation applicable to particular engagements, including, but not limited to standards adopted by recognized standards setting bodies such as the Public Company Accounting Oversight Board (PCAOB), the Comptroller General of the United States, and the AICPA.

Accountancy**Chapter 30-X-7**

(2) If the applicable standards do not otherwise specify, the retention period for documentation shall be five (5) years and shall be measured from the report date.

(3) If documentation is required to be kept for longer than provided in the applicable standards or Rule 30-X-7-.15(2) because of a pending Board investigation or disciplinary action, documentation shall not be destroyed until the licensee has been notified in writing by the Board of the closure of a Board investigation or disciplinary proceeding.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §34-1-3.

History: New Rule: Filed May 6, 2008; effective June 10, 2008.

30-X-7-.16 Reporting Convictions, Judgements, and Administrative Proceeding.

(1) Licensee shall notify the Board, on a form and in the manner prescribed by the Board, within thirty (30) days of:

(a) Receipt of a peer review report or a PCAOB firm inspection report containing criticisms of or identifying potential defects in the quality control systems.

(b) Receipt of a second consecutive peer review report that is deficient or

(c) Imposition upon the licensee of discipline, including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, suspension, revocation, or modification of a license, certificate, permit or practice rights by:

(i) the Securities and Exchange Commission (SEC), PCAOB, Internal Revenue Service (IRS) (actions by the Director of Practice); or

(ii) another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(iii) any other federal or state agency regarding the licensee's conduct while rendering professional services; or

(iv) any foreign authority or credentialing body that regulates the practice of accountancy.

(d) Occurrence of any matter reportable that must be reported by the licensee to the PCAOB pursuant to

- Sarbanes-Oxley Section 102(b)(2)(f) and PCAOB Rules and forms adopted pursuant thereto;
- (e) Notice of disciplinary charges filed by the SEC, PCAOB, IRS, or another state board of accountancy, or a federal or state taxing, insurance or securities regulatory authority, or foreign authority or credentialing body that regulates the practice of accountancy;
 - (f) Any judgement, award or settlement of a civil action or arbitration proceeding of \$150,000 or more in which the licensee was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall only notify the Board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or
 - (g) Criminal charges, deferred prosecution or conviction or plea of no contest to which the licensee is a defendant if the crime is:
 - (i) any felony under the laws of the United States or of any state of the United States or any foreign jurisdiction; or
 - (ii) a misdemeanor if an essential element of the offense is dishonesty, deceit, or fraud.
- (2) The resident manager shall report any matter reportable under this rule to which a non-licensee owner with a principal place of business in this state is a party.
- (3) Reports of pending matters or reports of private litigation resolved by settlement or arbitration shall be deemed confidential records not subject to public disclosure (to the extent permitted by this State's law on Public Records) unless and until the pending matters are concluded or the Board commences a contested case proceeding based upon the subject matter of such reports.
- (4) During the pendency of a reported matter, the reporting licensee may submit a written explanatory statement to be included in the licensee's record. If reported charges or allegations are subsequently concluded in the licensee's favor or otherwise closed without disciplinary action by this Board, upon the reporting licensee's request, documents received pursuant to said report shall be expunged from the Board's records.

Author: Alabama Board of Public Accountancy

Statutory Authority: Code of Ala. 1975, §34-1-12.

History: New Rule: Filed September 19, 2016.