

<b>OUTFITTERS &amp; GUIDES LICENSING BOARD</b>  <b>POLICY MANUAL</b>	<b>POLICY NUMBER:</b> 3002	<b>PAGE NUMBER:</b> 1 of 5
	<b>SUBJECT:</b> Complaint Investigation and Enforcement Proceedings	Drafted: Adopted: 10/18/02 Revised: 1/17/08 Reformatted: 10/26/15

## **1.00.00 POLICY OF THE AGENCY**

It is the policy of the Outfitters and Guides Licensing Board that the Agency complies with applicable state statutes regarding the Complaint Investigation and Enforcement Proceedings.

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## **3.00.00 REFERENCES**

## **4.00.00 PROCEDURE**

### **4.01.00 Financing**

The Chief of Education and Enforcement will propose and manage the annual enforcement budget. Money allocated to the enforcement budget will ultimately be used for investigation and enforcement expenses, including payment for the services of the Enforcement Attorney.

### **4.02.00 Enforcement Citations**

- 4.02.01 Enforcement Agents or investigators may issue administrative complaints in the form of uniform citations or warnings.
- 4.02.02 The citations will be used for minor violations when the licensee does not have any history of prior disciplinary action by the Board.
- 4.02.03 The Chief of Education and Enforcement may authorize the Enforcement Agent or Investigator to include in the citation a pre-determined administrative fine to be paid by the licensee to resolve the case without an administrative hearing.

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#### 4.03.00 Investigations

Chief of Education and Enforcement will be responsible for the quality of the investigations.

- 4.03.01 Parties must submit detailed written allegations in order to be considered for investigation. These complaints will be reviewed by the Chief of Education and Enforcement and, when appropriate, assigned to an Enforcement Agent or Investigator.
- 4.03.02 The Chief of Education and Enforcement will develop a standard format for investigative reports.
- 4.03.03 Agents or Investigators will identify potential code and rule violations and review specific items needed to be proven to establish a violation.
- 4.03.04 Agents or Investigators will attempt to obtain statements from all necessary parties (including business phone number, home phone numbers and residential and e-mail addresses).
- 4.03.05 Agents or Investigators will establish where (location), when (date and time), and what occurred (relevant conduct of the parties).
- 4.03.06 Agents or Investigators will acquire all relevant information related to proof of a statutory or rule violation and also information related to the appropriate discipline to be imposed by the Board.
- 4.03.07 Agents or Investigators will provide appropriately detailed maps identifying relevant location (including GPS coordinates) and marking the significant activities of the parties.
- 4.03.08 All Agents and Investigators will use a standard investigation report format and the Chief of Education and Enforcement will review all reports submitted by Enforcement Agents or Investigators to ensure the reports are complete and in the proper format.
- 4.03.09 The Chief of Education and Enforcement and Enforcement Attorney will provide appropriate training for Enforcement Agents and Investigators

#### 4.04.00 Procedures Manual

Executive Director will develop and maintain a board procedures policy.

#### 4.05.00 Board Enforcement Hearings

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- 4.05.01 The Enforcement Attorney, prior to contacting the licensee, will meet with the Executive Director and Chief of Education and Enforcement to review whether a stipulated consent agreement is appropriate and, if so, the proposed terms and conditions. The cut off date for resolving cases by stipulated consent agreements will be 21 days prior to the scheduled hearing date.
- 4.05.02 The Executive Director, Chief of Education and Enforcement, and Enforcement Attorney will meet approximately two weeks prior to enforcement hearings to review the prosecutorial plan for each enforcement hearing.
- 4.05.03 Board members will receive copies of complaint, notice of hearing and list of elements for the violation in the Board packet prior to the date and time of hearing.
- 4.05.04 The Executive Director will review schedule of enforcement hearings with the Board at the beginning of the board meetings. Whenever possible, Executive Director will schedule enforcement hearings to be heard on the same day for the convenience of the Board, staff, parties and witnesses.
- 4.05.05 The Board may use the Board Attorney to conduct the hearing and address matters regarding hearing procedures. The Board and/or Executive Director may choose to utilize the services of a Hearing Officer to conduct the hearing as set forth more fully below. All hearings shall be conducted in compliance with the Idaho Administrative Procedures Act, applicable statutes, and Board Policy 1003.
- 4.05.06 The Enforcement Attorney may expedite enforcement hearing by providing a list of witnesses and exhibits to the Executive Director for distribution to Board members and when appropriate will use witness affidavits and pre-marked exhibits. The Enforcement Attorney will provide at least three (3) copies of the proposed exhibits and/or affidavits to the Executive Director.
- 4.05.07 The Board will conduct a two-part hearing on formal administrative complaint violations.
- 4.05.07.1 The first segment will provide for presentation of all information related to the proof of the violation. The Board, if it so chooses, will go into executive session to review the case and return to the public hearing to make its decision whether there was a violation and, if so;
- 4.05.07.2 The second phase will be conducted to receive information from the parties concerning the appropriate discipline to be imposed. The Board will issue its final decision on the case after the conclusion of the hearing and prior to the close of

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the Board meeting. The Board will send copies of the order to all parties to the case and a courtesy copy will be sent to all concerned agencies.

4.05.07.3 The Board may choose to utilize the services of a Hearing Officer. If the Executive Director anticipates that a hearing may require more than four (4) hours of evidence, testimony, and argument, the Executive Director shall have the authority to appoint a Hearing Officer to hear all matters involved in the administrative complaint and to render a proposed or preliminary order. If the Board determines that the circumstances of a particular case warrant the use of a Hearing Officer, the Board shall retain the services of a Hearing Officer pursuant to the provisions of the Idaho Administrative Procedures Act.

4.05.08 The Board may include, as part of its final order, the requirement for the licensee to reimburse the Board for the costs and expenses related to the investigation, enforcement, and legal services rendered in each case. An award of attorney fees is a sanction, which, like any other penalty, must be tied to the sanctioned conduct. The imposition of attorney fees and costs on a licensee is discretionary, and the Board shall act consistently with the legal standards applicable to the available choices, and shall reach a decision through an exercise of reason. The Board shall be guided by the principle that the sanction must be related to the discipline. The Board shall consider how many of the claims the licensee prevailed on, the overall success of the Enforcement Attorney and/or Chief of Education and Enforcement in supporting the Board's allegations and the amount of time and effort devoted to proving the claimed misconduct for which discipline was imposed. If the Board imposes as a sanction the imposition of attorney fees and costs, the Board shall afford the licensee an opportunity to respond or object to the proposed award of attorney fees and costs. The Board shall consider the reasonableness of the attorney fees and costs given the nature and scope of the services and the rate charged for the legal services.

#### 4.06.00 License Denial Appeal Hearings

Information at the license denial appeal hearing will be present by the Chief of Education and Enforcement when appropriate. The Enforcement Attorney will assist Chief of Education and Enforcement with hearing preparation and, when necessary (if it is a complicated case or if appellant is represented by legal counsel) attend the hearing and present the appropriate information to the Board.

#### 4.07.00 Evaluation

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The Board, Executive Director, Chief of Education and Enforcement, Board Attorney and Board Enforcement Attorney will evaluate these procedures on an annual, if not more frequent, time period.