

CHAPTER 20:81:09

COMPLAINTS

Section

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20:81:09:01. Complaints authorized -- Procedure following filing. A person claiming that a party has engaged or is engaging in conduct constituting grounds for disciplinary action by the Commission may file with the Commission a written complaint stating the name and address of the party complained against. The complaint must fully detail the conduct upon which the complaint is made.

An investigation may be conducted by a member, agent or an appointee of the Commission to determine if a violation has been committed. If the Commission determines the complaint has merit, the Commission must ~~immediately~~ serve the complaint by mail on the party complained against and any other affected parties a copy of the complaint. The party complained against has twenty days to answer after service of the complaint. The answer may admit, deny, qualify, or explain the allegations contained in the complaint. A Commission member, the Commission, or an agent of the Commission may file a complaint. The Commission may reject a complaint if it does not meet the requirements of this section.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:02. Dismissal of complaint. After receipt of the answer to the complaint, after the time has expired to answer, or after having determined that no answer is necessary, the Commission must examine the complaint, any answer, and other supporting documents to determine whether the complaint has merit, is frivolous, or whether it charges conduct constituting grounds for disciplinary action. If the Commission determines that the complaint is without merit, is frivolous, or that it does not charge conduct constituting grounds for action by the Commission, the Commission must dismiss the complaint and notify in writing the complainant, the party complained against, and other affected parties, stating the ~~reasons for dismissal~~ the complaint is dismissed. The Commission may investigate the complaint and use extrinsic evidence to determine if the complaint has merit.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:03. Informal consultation. If the Commission considers the complaint to have merit for action, the Commission may consult with the party complained against and the parties affected in an effort to resolve the matter satisfactorily without a formal hearing. The Commission must notify in writing the complainant, the party complained against, and affected parties of the results of the informal consultation. The informal consultation does not prevent the Commission from conducting a formal hearing.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:04. Assurance of voluntary compliance. The Commission may accept an assurance of voluntary compliance regarding any act or practice alleged to violate this article or SDCL chapter 42-12 from a person who has engaged in, is engaging in, or is about to engage in such acts or practices. The assurance must be in writing and may include a stipulation for the voluntary payment of the costs of the investigation or a monetary penalty and an amount necessary to restore to a person money or property which may have been acquired by the alleged violator because of the acts or practices. Proof of failure to comply with the assurance of voluntary compliance is prima facie evidence of a violation of this chapter. The Commission may approve, reject, or modify an assurance of voluntary compliance.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:05. Formal proceedings. If the Commission decides to conduct a formal hearing after a complaint has been filed, and after informal consultation, if any, the Commission shall mail a notice of hearing to the party complained against, the person making the complaint, and other affected parties.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:06. Procedure for formal hearing. The Commission shall use the following procedure in conducting formal hearings:

(1) The Commission shall provide written notice to the party complained against by mail stating the time, place, and date of the formal hearing. The notice shall require the attendance of the party at the hearing. The notice shall be given at least ten days prior to the formal hearing;

(2) The Commission shall keep a transcript of all formal hearings and proceedings;

(3) The Commission chair may conduct the formal proceeding or the Commission may have a hearing examiner conduct the proceedings in part or in full; and

(4) The party appearing before the Commission at a formal hearing shall appear in person, unless otherwise waived by the Commission. The party and 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.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:07. Disqualification. If the complaint was filed by a Commission member, that Commission member is disqualified from sitting at the hearing as a Commission member and from participating in the decision made by the Commission. The Commission member may appear as a witness.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:08. Per diem and mileage. The Commission may authorize per diem and mileage for complainants, witnesses, and affected parties at informal consultations and for complainants and witnesses at formal hearings. The per diem may not exceed the amounts authorized in SDCL 19-5-1 for per diem and the mileage may not exceed the amounts authorized by §§ 5:01:02:01 and 5:01:02:02.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:09. Final action by Commission. After hearing the evidence and reaching a decision, the Commission may dismiss the complaint or take any action or combination of actions provided for in SDCL chapter 42-12 or article 20:81. Written findings of fact, conclusions of law, and an order must be entered after the decision. The Commission may allow or require briefs of law before making its decision. The Commission's decision shall be made and entered with notice of the decision in accordance with the provisions of SDCL 1-26-23 to 1-26-25, inclusive.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.

20:81:09:10. Action on one license or registration applies to all licenses or registrations. Any person who holds more than one license or registration issued by the Commission and is disciplined under one license or registration will be disciplined under all licenses or registrations the person holds.

Source: 41 SDR 7, effective July 28, 2014.

General Authority: SDCL 42-12-10.

Law Implemented: SDCL 42-12-10.