

# Overview of the VBOA Disciplinary Process

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Robert Cox of Briglia Hundley, P.C. is not a representative of the Virginia Board of Accountancy and his views do not represent the VBOA.



## Robert H. Cox

Bob Cox is a trial attorney with over two decades of experience litigating all types of business cases in courts across the nation. As part of his commercial litigation practice, Bob represents accounting firms and accountants in connection with regulatory and enforcement matters before the Securities and Exchange Commission, PCAOB, and state licensing bodies. Before joining Briglia Hundley in 2017, Bob was an Assistant Director with the PCAOB's Division of Enforcement and Investigations for more than six years.



# Objectives

- Background regarding VBOA complaint process
- Understand steps in VBOA investigation
  - Letter request and investigative questionnaire
  - Closure of investigation
  - Consent Order
- Informal Fact-Finding Conference
- Formal Hearings
- Sanctions

# Virginia Board of Accountancy

- Independent board in the executive branch of state government.
- Duties include regulation and discipline of CPAs and CPA firms.
- Responsible for investigating complaints against licensed Virginia CPAs, expired licensees, or non-licensees using the CPA title or performing services in Virginia restricted to CPAs.

# VBOA Enforcement Division

- Investigates complaints against Virginia licensees, expired licensees, and unlicensed individuals using the CPA title or performing services in Virginia restricted to CPAs.
  - Investigates an average of 75-100 complaints a year.
- Coordinates investigations of matters with other agencies that involve significant loss of harm to Virginia citizens.
- Increase adherence to licensing requirements and professional standards by CPAs and public accounting firms.
- Resolve VBOA enforcement matters and adjudicate complaint cases in a timely manner.
- Maintain the confidentiality of information obtained during investigations.
- Monitor licensees disciplined by the VBOA.
- Publicize disciplinary actions necessary to protect the public.

# Overview of Enforcement Process

- Once a complaint is received by VBOA staff it is reviewed by the Enforcement Division.
- If probable cause exists to initiate an investigation, the investigation process begins.
- If sanctions are deemed appropriate, a potential resolution of the complaint is proposed in writing in a consent order. Enforcement can also refer for Informal Fact-Finding (IFF) conference or formal hearing.
- If the individual chooses not to sign the order, he/she may elect to be heard in an IFF conference before two or more Board members or a formal hearing before the entire Board.
- Enforcement Committee will review the case and present the presiding officer's recommendations to the full Board for consideration. The Board may accept or reject the recommendations in whole or in part.
- Individual can appeal IFF decision by requesting formal hearing.
- Individual has 30 days to appeal the Board's final decision to the courts.

# Common Complaints Investigated

- CPA title use by expired licensees, non-CPA accountants, bookkeepers, or firms (unlicensed activity)
- Tax errors or failure to complete services
- Failure to return client records or respond to clients
- Embezzlement, fraud and/or theft
- Disclosure of confidential information
- Misrepresentations
- Independence
- Audit failure
- Insider trading
- Failure to maintain competency
- IRS sanctions
- Felonies
- Failure to provide due professional care
- Ethics violations
- Violations of the respective Virginia statutes and/or regulations

# Complaints Not Investigated

- VBOA does not investigate:
  - Fee disputes
    - The VBOA has no authority over fee disputes. Fee disputes are legal matters resolved through the courts.
  - Non-CPA accountants or bookkeepers (unless they are using the CPA title or are performing services in Virginia restricted to CPAs)
  - Tax fraud (normally referred to the IRS Fraud Division)
  - Minor errors or mistakes
  - Cases currently in litigation

# Complaint

- Anyone who believes a firm or individual has violated Virginia statutes and/or Board regulations may file a complaint with the VBOA.
  - VBOA accepts anonymous complaints, but if an anonymous complainant does not provide sufficient evidence, the VBOA will be unable to contact him or her for further information, and the investigation may be impaired or closed.
- Complaint must be in writing, must detail the specific claim(s) against the CPA or firm, and must include supporting documentation.
- Complaint form is available on VBOA site.
  - ([www.boa.Virginia.gov/Forms](http://www.boa.Virginia.gov/Forms))
- Complainant cannot request a formal hearing or Informal Fact-Finding Conference. However, if the respondent or the VBOA decides that either such a proceeding is necessary, the VBOA will notify the complainant of the time and place so he or she can be present if he or she chooses.

# Complaint Form

- Must identify the type of complaint.
- Provide contact information for complainant (unless done anonymously).
- Provide contact information of respondent (the individual or firm against which the complaint is made).
- List allegations against the individual or firm that include accurate names and dates of alleged action(s).
- Attach supporting documentation to validate allegations.
- If the complainant is represented by legal counsel, a letter of representation must accompany the complaint and the attorney will be contacted for any additional information needed.

# Supporting Documentation

- Examples of Supporting Documentation:
  - Engagement letter
  - Correspondence (letters, emails, text messages, etc.)
  - Voice mails
  - Pictures
- Complainant should redact (white-out or black-out) all sensitive and confidential information in his or her initial submission (i.e., Social Security Numbers).

# Confidentiality of Investigations

- Code of Virginia § 54.1-108. During the period of time in which the complaint is open, official records are not subject to disclosure; however, once the complaint is closed, information submitted to the VBOA is subject to disclosure as a public record, pursuant to Code of Virginia § 2.2-3700, et. seq.
- All closed investigations are available to the public in accordance with the Virginia Freedom of Information Act. The VBOA notifies the complainant when the case has been closed and of any disciplinary action(s) taken and/or penalties imposed.
  - If prior notification of the complaint has been sent to the respondent, the respondent is notified that the complaint is being closed and the reason for the decision.
- It is the policy of the VBOA to publish the information of licensees against whom the VBOA has taken a disciplinary action resulting in suspensions and revocations and for other professional violations.
  - Board disciplinary actions are published in the VBOA newsletter.

# Opening of Investigation

- After an official complaint is filed, the VBOA Enforcement Division determines if probable cause exists to open an investigation.
  - The Enforcement Manager is responsible for determining if the information received warrants investigation (determination of probable cause).
  - Enforcement Manager reviews the information, checks the licensure status of the subject of the complaint and identifies possible violations to the Enforcement Committee with a brief summary.
  - If the Enforcement Manager determines that the information does not appear to warrant an investigation, it is referred to the Executive Director for review. If the Executive Director concurs with the recommendation, the information is filed as “No Probable Cause” and all parties are notified.
- VBOA has the authority to find that no violation has occurred, to impose penalties in accordance with the Code of Virginia § 54.1-4413.4, or to provide the information of illegal activity to the local Commonwealth’s Attorney for action. The VBOA will review the complaint to determine the most efficient and effective way to protect the public.

# Notification Letter

- If the VBOA determines that there is probable cause to proceed with an investigation, the complainant and respondent are notified that VBOA has accepted the complaint for investigation.
- The notification letter to the complainant and respondent contains the following information:
  - The basis for the complaint, including who filed the complaint;
  - A brief statement of the allegations;
  - A brief statement of VBOA's jurisdiction over the respondent;
  - An indication of when the parties will be contacted; and
  - A copy of the complaint and any and all supporting documents.

# Information Request

- In gathering information from the respondent, an initial request for response letter is sent to the respondent requesting information relevant to the allegations under investigation.
- Generally, the letter includes an investigative questionnaire seeking information from the respondent, including a Statement of Explanation.
- 18VAC5-22-170(a) states, in relevant part: “When requested by the board:
  3. Persons or firms shall provide the board documents related to the board’s investigation of their possible violation of provisions of Chapter 44 (Section 54.1-4400 et seq.)”

# Onsite Interview

- VBOA will determine whether an onsite visit to either the respondent or complainant is necessary.
- An onsite investigation will not be necessary where any of the following conditions are present:
  - All of the allegations have been addressed and supporting documents have been submitted with the response from the respondent;
  - The respondent is outside of the Commonwealth of Virginia; or
  - The respondent can provide written documentation to verify his/her position in the response to the VBOA's information request letter.
- If an onsite interview is necessary, VBOA sends a notification letter with the anticipated date of the onsite visit; the time and place for the interview; request any additional information or data VBOA wants submitted prior to the onsite visit; and request the individual to provide any additional information and documentation.
- At the interview the VBOA investigator will:
  - Show credentials;
  - Listen effectively during the interview;
  - Distinguish factual information from opinions;
  - Use effective probing questions;
  - Take clear, precise notes; and
  - Obtain a signed summary statement of the interview.

# Investigative Report

- Whenever a full investigation is completed and the Enforcement Division has all supporting documentation, evidence, responses, and statistical information needed, the investigator prepares an Investigative Report.
- The Investigative Report is a detailed document that:
  - Sets forth all facts pertinent to the case
  - Analyzes those facts in light of the complainant's allegations; and
  - Recommends a determination as to the validity of the allegations and the compliance status of the recipient.
- Purpose of the IR is to provide the Enforcement Committee with a summary of the case file, the factual information collected during the investigation, the responses of the respondent, and present conclusions based on an analysis of the facts.
- The IR is not released to the complainant or respondent except in conjunction with a judicial or administrative proceeding.

# Potential Early Resolution

- VBOA can consider resolving a complaint through alternative dispute resolution, such as the use of a neutral third party as a mediator.
  - Advantage – resolution of the matter that does not result in the issuance of a violation.
- Alternative Dispute Resolution
  - Formal mediation – mediator attempts to assist the complainant and respondent in working out a resolution to their dispute. VBOA has a non-partisan third party who is assisting VBOA and the respondent in reaching a resolution.
- Agreement with Respondent
  - VBOA does not represent the complainant, but rather the interest of the citizens of the Commonwealth.
  - If the respondent has agreed to provide what VBOA has determined would constitute full resolution and the complainant disagree with the policy changes or refuses to accept individual resolution, VBOA may complete the agreement with the respondent and close the complaint on that basis.

# Three Types of Closure Letters

- No Violation Letter – This letter is issued when the respondent is found to be in compliance or the Enforcement Committee has determined that there has been no violation of regulations or statutes.
- Unfounded Letter – This letter is used where there was either not enough information to determine if a violation had occurred or there were too many mitigating circumstances regarding the violation and a determination could not be made either way.
- Letter of Violation/Consent Order – This is a letter indicating a violation and enclosing a Consent Order. The Consent Order is issued by the Enforcement Committee when the Respondent is found to be in violation or noncompliance.
- All letters are sent to the respondent and then a letter of information to the complainant upon the closing of the case.

# Consent Orders

- Consent orders are typically offered by the Enforcement Committee when the respondent admits to the facts or when the issues are clear.
- Consent orders are always the best way to proceed with a case that is a clear violation because if the respondent agrees to the settlement offered, they waive the right to an IFF and the right to appeal.
- When entered by the Board, the case is closed.
- The benefits of a consent order includes a rapid settlement and the avoidance of costly proceedings.
- While consent orders are generally offered prior to an informal conference or formal hearing is scheduled, they may be offered prior to an IFF or formal hearing.

# Two Types of Hearings

- The Virginia Administrative Process Act provides for two types of proceedings, informal fact-finding conferences (IFF) (Section 2.2-4019 of the Code of Virginia) and formal hearings (Section 2.2-4020 of the Code of Virginia).
- If the individual chooses not to sign the consent order, he/she may elect to be heard in an IFF before the Enforcement Committee.
- In the alternative, the VBOA may elect not to offer a consent order and to proceed with an IFF or formal hearing.
- The Enforcement Committee will review the case and present the presiding officer's recommendations to the full Board for consideration.
- The Board may accept or reject the recommendations in whole or in part.

# Informal Fact-Finding Conference

- At an informal conference, a special conference committee, consisting of at least two Board members, meets with the respondent accused of a violation in an informal setting for the purpose of allowing the respondent to speak directly to a member of the Board and explain in his or her own words.
- Prior to the convening of an informal conference, the respondent receives a notice that contains the specific allegations and violations asserted by the Board; and all information in the possession of the committee that it may rely upon in making a decision.
- The complainant may be called upon to answer questions from the committee members, but is usually not required to do so.
- IFF conference is open to the general public and is posted on the Town Hall/Commonwealth Calendar prior to the meeting date.

# IFF Decision

- If the committee believes there is insufficient evidence to substantiate a violation of law or regulation, the matter is dismissed.
- If the committee believes there is evidence that a violation of law or regulation was committed, the presiding officer of the IFF will make a recommendation in the way of a formal summary which contains findings of fact, conclusions of law, and a disciplinary action/sanction and the rationale for the recommendation.
- The recommendation is first sent to the respondent along with a copy of the transcripts from the IFF, then sent to the complainant, and then sent to each Board member prior to the next scheduled full Board meeting for ratification.
- During closed session at the full Board meeting the Board votes (without the presence of the two Board members involved at the IFF level). The Board votes in public session to accept, modify, or reject the presiding officer's IFF Conference Report or may remand the IFF Conference Report back to the Enforcement Committee for additional consideration.
- The sanctions may include the following ranges:
  - Place the respondent on probation with terms;
  - Reprimand;
  - Modify a previous order; and/or
  - Impose a monetary penalty.
- Additionally, the Board may agree that suspension or revocation of the respondent's license is justified.
- After the full Board meeting, VBOA staff will send to the respondent a "5-Day letter" indicating that the Board has rendered a final case decision, will reduce the findings to a written Final Board Order, and respondent will be notified upon completion of the order.
- The order becomes "final" thirty-three days after the order is mailed to the respondent, unless a written request for a formal hearing is received by the Board during that time period.

# Formal Hearing

- Should a case be referred to a formal hearing, the process begins again with notice to the respondent.
- Alternatively, a respondent can appeal an IFF order. Once a timely written request for an appeal to a formal hearing is received, the order from the committee is vacated and a formal hearing before the Board or a panel thereof is scheduled and held.
- A formal hearing may be conducted by a hearing officer, a panel of the Board, or the full Board (Section 2.2-4024 of the Code of Virginia).
- A formal hearing is an administrative proceeding similar to a trial.
- It is open to the public.
- All parties may call witnesses and introduce evidence.
- VBOA may be represented by the presiding board member or a prosecutor assigned by the Attorney General's office.
- The Board decides whether the respondent has violated a law or regulation, and if so, it imposes disciplinary action.
- At the conclusion of the hearing, the decision of the Board is announced, and a final order is served on the respondent. The order is the final decision and disposition of the case by the Board in the matter.
- Matter of public record. The Final Opinion and Order will be noted on the respondent's record and generally is published on the Board's website and in the Board's newsletter.

# Appeal of the Final Opinion and Order

- The Final Opinion and Order is subject to the administrative appeal process set out in the Rules of the Supreme Court of Virginia pursuant to the Virginia Administrative Process Act.
- If the respondent wishes to contest the action, he/she may appeal the decision to the appropriate circuit court.
- The circuit court may affirm the Board's decision, or suspend or set it aside and remand the matter to the Board.
- A further appeal is to the Supreme Court of Virginia, if certain conditions are satisfied.

# Questions?

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