TITLE 288 – STATE BOARD OF PUBLIC ACCOUNTANCY
REVISED & SUBSTITUTED RULES OF THE BOARD

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CHAPTER 4 - BOARD MEETINGS AND PROCEEDINGS

001 Organization of the Board

001.01 The Board shall hold an organizational meeting each year. At such meeting, the Board shall elect from its own members a chair, a vice-chair and a secretary.

001.02 At the organizational meeting, the Board may establish the dates on which the regular meetings of the Board will be held.

002 Duties of the Board

002.01 The Board shall exercise administrative control over the practice of public accountancy in the State of Nebraska, subject to the applicable provisions of the Act.

002.02 The Board shall provide for the preparation and adoption of the annual budget to provide the funds necessary to finance the operation of the Board.

002.03 At least annually, the Board shall establish the fees applicable to candidates for the examinations conducted by the Board and for permits issued by the Board.

002.04 The Board shall employ an executive director, additional personnel, and any other assistance as it may require for the performance of its duties. Unless otherwise directed by the board, the executive director shall keep a record of all proceedings, transactions, and official acts of the board, be custodian of all the records of the board, and perform such other duties as the board may require.

003 Duties of Officers

The chair of the Board, or in the event of the chair's absence or inability to act, the vice-chair, shall preside at Board meetings and shall perform all duties imposed by the Act and such other duties as may be prescribed by action of the Board. The chair shall appoint such committees or hearing panels as are provided by the Act and these Regulations or established by the Board. The Board shall determine other duties of the officers.

004 Meetings

004.01 Emergency Meetings. Emergency meetings of the Board may be held in accordance with the provisions of Section 84-1411(3), as follows:

004.01A The Secretary or other designee of the Board shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting, and the subjects to be discussed at the meeting.

004.01B When it is necessary to hold an emergency meeting of the Board without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency.

004.01C Such emergency meetings may be held by means of electronic or telecommunication equipment.

004.02 Closed Meetings. Closed meetings of the Board may be held in accordance with investigations conducted under Section 1-137 of the Act or under the provisions of Section 84-1410, R.R.S., as follows:

004.02A A closed meeting may be called by an affirmative vote of at least five (5) members of the Board; provided, that such session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting.

004.02B The vote to hold a closed session shall be taken in open session.

004.02C The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes of the Board meeting.

004.02D The meeting shall be reconvened in open session before any formal action may be taken by the Board.

004.02E Any member of the Board shall have the right to challenge the continuation of a closed session if the member believes that the session has exceeded the reason stated in the original motion to hold a closed session. Such challenge shall be overruled only by a majority of the members present. Such challenge and its disposition shall be recorded in the Board minutes.

004.03 Open Meetings. Except as provided under 004.01 and 004.02 as given above, meetings of the Board of Public Accountancy shall be held in open session.

004.03A Notice. Not less than seven (7) days prior to any regular or special meeting of the Board notice shall be given to each Board member of the time and place of the meetings and of the agenda of subjects to be discussed or acted upon, as known at the time such notice is given. Such notice shall be deemed served when ~~mailed to the address of~~ provided to each Board member as shown on the records of the Board. Publicized notice of all regular or special meetings of the Board shall be given by the publication of notice of the time and place of the meeting accompanied by a declaration that the agenda of all

meetings is kept continuously current and available for public inspection at the offices of the Board in Lincoln, Nebraska. All notices shall be published in a paper with general circulation within this State at least five (5) days prior to the meeting. In addition, the Board shall provide notice to all other news media requesting such notification.

004.03B Agenda. The Secretary or his or her designee shall maintain an agenda of all business to be considered or conducted by the Board. Any member may place an item on the agenda for consideration at the next meeting of the Board by notifying the Secretary or his or her designee not less than three (3) days prior to the giving of notice for such meeting. Items not placed on the agenda and included in the notice of meeting can only be considered if of an emergency nature.

004.03C Form of Meeting. The parliamentary procedures of meetings of the Board shall be determined by Roberts‘ Rules of Order Revised, unless these Regulations or the Act or other statutes of the State of Nebraska require other procedures. Five (5) members shall constitute a quorum for the transaction of business at any meeting of the Board.

004.03D Opportunity for Public Expression. The Board, as a representative governmental body, recognizes the importance of the public’s viewpoint relative to its actions. Members of the public and holders of a CPA certificate, a permit to practice, or an inactive registration who desire to express ideas, grievances, or other matters to the Board should notify the Secretary at the commencement of the meeting, if possible, so that the Chairman can recognize such person as the appropriate agenda item is reached. The Chairman is authorized to rule any speaker out of order if the remarks being made are irrelevant and not germane to any subject matter currently before the Board, or if the speaker‘s remarks relate to a subject matter over which the Board lacks jurisdiction.

004.03E Voting. All votes on motions and resolutions shall be by roll call vote by the Board in open session. The record shall show how each member voted, or whether the member was absent or not voting. The votes to elect the officers of the Board may be taken by secret ballot; but the total number of votes for each candidate shall be recorded in the minutes.

004.03F Minutes. The Secretary or his or her designee shall keep minutes of all the Board’s meetings showing the time, place, members present and absent, and the substances of all matters discussed. The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to the public inspection during normal business hours. Duplicated copies of the minutes shall be prepared following each meeting by the Secretary of the Board. Such minutes shall be written and available for public inspection within ten (10) working days, or prior to the next convened meeting, whichever occurs earlier.

005 ~~**Formal Hearings.** For purposes of this Rule, “formal hearings” shall mean a hearing called for the purpose of hearing evidence with regard to a holder of a CPA certificate or a permit to practice or an inactive registration issued by this State. Such hearings shall be based on the charges specified in Section 1-137 of the Public Accountancy Act.~~

~~**005.01** Formal hearings shall be held during open meetings of the Board. Such hearings shall be based on a complaint issued by the Board. Such complaint shall be issued where probable cause has been determined pursuant to Section 1-137 of the Act, or where the Board has received a~~

~~written complaint by any person or firm furnishing grounds for probable cause, or where the Board has received notice of violation from another Board of Accountancy.~~

~~**005.02** The complaint shall set forth the appropriate charges, as listed in 1-137, and shall set forth the time and place for such hearing.~~

~~**005.03** Not less than thirty (30) days prior to the date of the formal hearing the Board shall serve a copy of the complaint and notice of the time and place of the hearing upon the CPA certificate or permit holder or inactive registrant, together with a copy of the Board's rules governing proceedings under this Section, either by Registered or Certified Mail to the certificate holder at his address last known to the Board.~~

~~**005.04** Formal hearing shall be chaired by the Board's Chairman, or his designee.~~

~~**005.05** At such hearing, opportunity shall be offered to all interested parties to present evidence and arguments on the charges specified in the complaint issued by the Board. The Chairman may rule incompetent, irrelevant, immaterial, and unduly repetitious evidence to be out of order.~~

~~**005.06** Any interested party may request that the Board be bound by the rules of evidence applicable in the Lancaster County District Court by delivering to the Board's offices at least three (3) days prior to the scheduled date of the hearing a written request to the effect. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof. Otherwise, the Board shall not be so bound.~~

~~**005.07** The Board may administer oaths; issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony; and cause the depositions of witnesses residing either within or without this State. Such actions may be undertaken either at the request of the parties to the complaint or upon the Board's own motion.~~

~~**005.08** All costs of the formal hearing shall be paid by the party or parties against whom the final decision is rendered.~~

~~**005.09** Every party to the complaint shall have right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence to such testimony.~~

~~**005.10** Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference. All evidence including records and documents in the possession of the Board of which it desires to avail itself be offered and made a part of the record in the case.~~

~~**005.11** The evidence supporting the complaint shall be presented by the investigating officer, if any, by a Board member designated for that purpose, by counsel, or by the party or parties filing the original written complaint. The Board member who presents the evidence or who investigates the complaint under Section 1-137 shall not participate in the vote on the complaint.~~

~~**005.12** If, after service of a complaint and notice of hearing as provided in 005.03 above, the CPA certificate or permit holder or inactive registrant fails to appear at the hearing, the Board may proceed to hear evidence against the CPA certificate or permit holder or inactive registrant and may render such decision as it deems warranted by the evidence. Such order shall be final unless by the Board's motion the hearing be rescheduled. Such rescheduling shall be allowed only if the CPA certificate or the permit holder or the inactive registrant demonstrates within thirty (30) days of the originally scheduled hearing that his failure to attend was for good cause.~~

~~**005.13** In formal hearings, the Board may take notice of general, technical, or scientific fact and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge. Likewise, the Board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Parties to the complaint shall be notified during the hearing of the facts so noted. The parties will be afforded the opportunity to contest the facts so noted by the Board.~~

~~**005.14** Every decision and order adverse to a party to the complaint, as rendered by the Board, shall be in writing; shall be stated in the minutes of the open meeting; and shall be accompanied by the findings of fact and the conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact.~~

~~**005.15** Parties to the complaint shall be notified of the Board's decision and order either in person or by Certified Mail. A copy of the decision and order and the accompanying findings shall be delivered or mailed upon request to each party or his attorney of record.~~

~~**005.16** Any party aggrieved by a final decision before the Board, whether such decision is affirmative or negative in form, is entitled to judicial review under Section 84-917 to 84-919 or under Section 1-149. Nothing in this subsection shall be deemed to prevent resort to other means of review, redress, or relief provided by law.~~

005 Contested Case

005.01 Definitions. The following definitions shall apply as used throughout Chapter 4 of these rules and regulations.

005.01A. **Contested case** shall mean a proceeding before the Board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Board hearing.

005.01B. Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

005.01B1. Communications which do not pertain to the merits of a contested case;

005.01B2. Communications required for the disposition of ex parte matters as authorized by law;

005.01B3. Communications in a ratemaking or rulemaking proceeding; and

005.01B4. Communications to which all parties have given consent.

005.01B5. Prohibitions against ex parte communications. The prohibitions found in this section shall apply beginning at the time notice for hearing is given.

005.01B5(a). Prohibitions; to whom applicable.

005.01B5(a)1. Parties and public. No party in a contested case or other person outside the Board having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to the Board member or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case.

005.01B5(a)2. Persons in decision-making roles. No hearing officer or the Board member or employee who is or may

reasonably be expected to be involved in the decision-making process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the Board having an interest in the contested case.

005.01B5(a)3. Investigators. No Board member or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or Board member or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case.

005.01B5(b). Disclosure of contacts. The hearing officer or Board member or employee who is or may reasonably be expected to be involved in the decision-making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 005.01B5(a)1 through 005.01B5(a)3 shall file in the record of the contested case:

005.01B5(b) 1. All such written communications;

005.01B5(b) 2. Memoranda stating the substance of all such oral communications;

005.01B5(b) 3. All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

005.01B5(b) 4.The filing shall be made within five working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

005.01B5(b) 5. Filing and notice of filing provided under subsection 005.01B5(b)4 shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

005.01C. Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

005.01D. Party means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

005.01E. Petition means the initial document filed by or with the Board that sets forth a claim and request for the Board action.

005.02 Commencement of a Contested Case. The contested case begins with the filing of a petition and request for hearing, if applicable, with the Board.

005.02A. The petition is the initial document filed by or with the Board that sets forth a claim and request for Board action.

005.02B. The parties to a contested case shall be the petitioner or person by whom a contested case is brought and the respondent or person against whom a contested case is brought.

005.02C. A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

005.02D. The pleadings in a contested case may include a petition, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before the Board. Any pleading filed in a contested case shall meet the following requirements:

005.02D1. The pleading shall contain a heading specifying the name of the Board and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Board is being requested to take, shall contain the name and address of the petitioner, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney.

005.02D1a. Attorneys shall also include their address, telephone number and bar number.

005.02D1b. The initial petition shall also contain the name and address of the respondent.

005.02D2. All pleadings shall be made on white, letter sized (8½ x 11) paper and shall be legibly typewritten, photo statically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

005.02E. All pleadings shall be filed with the Board at its official office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Board.

005.02F. The Board shall serve a copy of the petition on each respondent listed in the petition personally or by first-class or certified mail. Written proof of such service shall be filed with the Board. Each respondent who chooses to file a responsive pleading must do so within 30 days from the date of personal service or the date of Board mailing of the petition.

005.02G. All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the Board.

005.02H. Unless state law provides that a hearing is not required, a hearing date shall be set by the Board in accordance with statutory requirements. A written notice of the time and place of hearing and the name of the hearing officer, if known, shall be served by the Board upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the Board.

005.02I. In computing time prescribed or allowed by these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

005.03 Intervention in a Contested Case.

005.03A. Intervention in a contested case shall be allowed when the following requirements are met:

005.03A1. A petition for intervention must be submitted in writing to the hearing officer or designee at least ten working days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

005.03A2. The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law; and

005.03A3. The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

005.03B. The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

005.03C. If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervener's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

005.03C1. Limiting the intervener's participation to designated issues in which the intervener has a particular interest demonstrated by the petition;

005.03C2. Limiting the intervener's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

005.03C3. Requiring two or more intervener's to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

005.03D. The hearing officer or designee, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

005.03D1. The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

005.03D2. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

005.04 Hearing Officer; criteria.

005.04A. The Board or it's chair may delegate to a hearing officer, including a Board member, the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Board.

005.04B. A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 005.04D.

005.04C. A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 005.04D.

005.04D. If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

005.04E. A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

005.04F. A person may serve as hearing officer at successive stages of the same contested case.

005.05 Prehearing Procedures

005.05A. Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, subject to the Board's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

005.05A1. If a prehearing conference is conducted:

005.05A2. The hearing officer shall promptly notify the Board of the determination that a prehearing conference will be conducted. The Board may assign another hearing officer for the prehearing conference; and

005.05A3. The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The Board shall give notice to other persons entitled to notice.

005.05A4. The notice referred to in subsection 005.05A3 shall include the following:

005.05A4 (a). The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

005.05A4 (b). The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Board;

005.05A4 (c). The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

005.05A4 (d). A statement of the time, place, and nature of the prehearing conference;

005.05A4 (e). A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

005.05A4 (f). The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

005.05A4 (g). A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and
005.05A4 (h). Any other matters that the hearing officer considers desirable to expedite the proceedings.

005.05B. The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

005.05C. The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

005.06. Discovery in contested cases.

005.06A. The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the applicable statutes except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.
005.06B. Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:
005.06B1. Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;
005.06B2. State the reasons supporting the motion;
005.06B3. Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and
005.06B4. Be filed with the Board. The moving party must serve copies of all such motions to all parties to the contested case.
005.06C. Other than is provided in subsection 005.06 B4 above, discovery materials need not be filed with the Board.

005.07. **Continuances.** The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

005.07A. Good cause. Good cause for an extension of time or continuance may include, but is not limited to, the following:

005.07A1. Illness of the party, legal counsel or witness;

005.07A2. A change in legal representation; or

005.07A3. Settlement negotiations are underway.

005.08. Amendments.

005.08A. A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, a petitioner must request permission to amend from the hearing officer.

005.08B. A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

005.09. Informal Disposition. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

005.10 Conducting a contested case hearing.

005.10A. Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

005.10A1 The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

005.10A2. Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

005.10A3. Presentation of evidence.

005.10A3(a). Evidence will be received in the following order:

005.10A3(a) 1. Evidence is presented by the petitioner;

005.10A3(b) 2. Evidence is presented by the respondent;

005.10A3(c) 3. Rebuttal evidence is presented by the petitioner; and

005.10A3 (d) 4. Surrebuttal evidence is presented by the respondent.

005.10A3(b). With regard to each witness who testifies, the following examination may be conducted:

005.10A3 (b)1. Direct examination conducted by the party who calls the witness;

005.10A3 (b) 2. Cross-examination by the opposing party;

005.10A3 (b) 3. Redirect examination by the party who called the witness; and

005.10A3 (b) 4. Recross-examination by the opposing party.

005.10A4. After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.

005.10B. Evidence.

005.10B1. In contested cases, the Board or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

005.10B2. Any party to a formal hearing before the Board, from which a decision may be appealed to the courts of this state, may request that the Board be bound by the rules of evidence applicable in district court by delivering to the Board at least three days prior to the holding of the hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

005.10B3. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

005.10B4. All evidence including records and documents in the possession of the Board of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

005.10B5. A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

005.10B6. The Board shall give effect to the rules of privilege recognized by law.

005.10B7. The Board may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such Board.

005.10B7 (a). Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

005.10B7 (b). Parties shall be afforded an opportunity to contest facts so noticed.

005.10B7 (c). The record shall contain a written record of everything officially noticed.

005.10B8. The Board may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

005.11. Conducting the hearing by electronic means. The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

005.12. Official record.

005.12A. The Board shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the Board upon request and tender of the cost of preparation.

005.12B. The Board shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

005.12C. The Board record shall consist only of the following:

005.12C1. Notices of all proceedings;

005.12C2. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board pertaining to the contested case;

005.12C3. The record of the hearing before the Board, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Board during the proceeding, and all proffers of proof and objections and rulings thereon; and

005.12C4. The final order.

005.12D. As provided in 53 NAC 4 Section 002.03 the hearing officer or Board member, or employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

005.12E. Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Board record shall constitute the exclusive basis for Board action in contested cases under the act and for judicial review thereof.

005.13. Costs. All costs of a contested case may be ~~paid~~ assessed to the party or parties against whom a final decision is rendered.

005.14 Decision and Order in a contested case.

005.14A. Every decision and order adverse to a party to the proceeding, rendered by an Board in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

005.14A. The decision and order should include:

005.14A 1. The name of the Board and name of the proceeding;

005.14A 2. The time and place of the hearing;

005.14A 3. The names of all parties or their attorneys who entered an appearance at the hearing;

005.14A 4. The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

005.14A 5. The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising there from; and

005.14A 6. The order consisting of the action taken by the Board as a result of the facts found and the legal conclusions arising there from.

005.14B. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

005.15 Appeals.

005.15A. Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

005.15B. Parties desiring to appeal a Board decision must file a petition for review in the district court of the county where the Board action is taken within thirty days after the service of the final decision by the Board. The thirty day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

005.15C. Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. § 84-917 govern the procedure for taking an appeal.

006 ~~Informal Hearings~~ Investigation of complaints and finding of probable cause. ~~For the purposes of these Rules, "informal hearings" means investigations of complaints filed with this Board. Such~~ ~~i~~Investigations of complaints, including matters brought to the Board's attention without a complaint from the public, shall be for the purpose of determining whether there is probable cause to institute proceedings under 005, ~~"Formal Hearings,"~~ "Contested Case", for violations of ~~Section 1-137 of~~ the ~~Public Accountancy~~ Act, or ~~Chapter 5 of~~ the Board's Rules and Regulations. ~~An informal hearing is not, however, a necessary prerequisite to a formal hearing on any matter that comes before the Board.~~

~~**006.01** Informal hearings may be held upon receipt by the Board of a written complaint.~~

006.0~~2~~1. The Board may designate one of its members, or any other person of appropriate competence, to serve as its investigating officer to obtain information relative to the complaint.

006.0~~3~~2 Upon completion of his investigation, the investigating officer shall file and report as to his findings with the Board. The investigating officer will recommend that the Board either find probable cause and schedule a ~~formal hearing~~ contested case or else lack of probable cause and dismiss the complaint. The Board's determination shall be on the basis of the investigating officer's report. The report may be returned for further investigation.

006.0~~4~~3 ~~Until there has been a determination of probable cause, t~~The report of the investigating officer, the testimony, and the documents gathered during the investigation shall be treated as confidential information, and ~~shall not be disclosed except to the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned during the course of the investigation.~~ as records which may be withheld from the public pursuant to Neb. Rev. Stat. § 84-712.05.

006.0~~5~~4 Upon the findings of probable cause, if the subject of the investigation is the holder of a CPA certificate or a permit to practice, or an inactive registration, the Board shall issue a ~~complaint~~ petition and hold a public hearing on the ~~complaint~~ petition in accordance with Chapter 4 ~~Section~~ 005. If the subject of the investigation is not a holder of a CPA certificate or a permit to practice or an inactive registration, the Board may take appropriate action pursuant to either Section 1-165 or Section 1-166 of the Act; or the Board may, under its own motion, issue a cease and desist order to such offender.

006.0~~6~~5 ~~After a finding of probable cause and prior to the beginning of a formal hearing,~~ D~~d~~isposition may be made of any complaint by stipulation, agreed settlement, or consent order~~, or default~~ without a finding of probable cause prior to the beginning of a ~~formal hearing~~ contested case. Such disposition shall be binding on all parties to the complaint.

~~006.07~~ 007 Quality Enhancement Program. The Board may review the professional work of permit holders which is public information on a general and random basis, without any requirement of a ~~formal~~ complaint or suspicion of impropriety on the part of any particular permit holder.

~~006.07A Quality Enhancement Program~~

~~006.07Al~~ 007.01 There is hereby established a Quality Enhancement Program (~~the~~ "Program"). The purpose of the Program is to improve the quality of financial reporting and to assure that the public can rely on the ~~fairness of presentation of~~ financial information on which licensees issue reports. The program emphasizes education and rehabilitation rather than disciplinary action. Appropriate educational programs or procedures will ordinarily be recommended or required where reporting does not comply with appropriate professional standards. However, when a licensee is unwilling or unable to comply with such standards, or a licensee's professional work is so egregious as to warrant disciplinary action, such action may be reported as the appropriate means of protecting the public interest.

~~006.07A2~~ 007.02 The Board will annually appoint a Quality Review Committee (hereinafter the "Committee") to assist in the implementation and administration of the Program. The Committee will consist of no fewer than seven members which will include a member of the State Board who will serve as liaison between the State Board and the Committee and one accounting educator selected by the State Board from the faculty of an accredited Nebraska College or University and who possesses a valid Nebraska CPA certificate. The remaining members of the Committee shall be filled by appointment of the State Board and must be holders of certificates and currently valid Nebraska permits to practice public accountancy issued under Section 1-136.02 of the Act and shall, to the extent practical, represent a cross-section of the different sized firms in the state. The Committee's responsibilities will include:

~~006.07A2a~~ 007.02A Developing procedures for the internal operation of the Committee;

~~006.07A2b~~ 007.02B Developing criteria for assignment of reviewers to specific tasks taking into account such factors as geographic location, size of firm, technical skill requirements, and such other criteria as the Board determines appropriate;

~~006.07A2c~~ 007.02C Assisting the Board in the selection and training of reviewers;

~~006.07A2d~~ 007.02D Developing and recommending to the Board a system for selection of reports to be reviewed and for the review of supporting work papers following a substandard report review;

~~006.07A2e~~ 007.02E Evaluating the findings of the reviewers and making reports and recommendations to the Board;

~~006.07A2f~~ 007.02F Compiling and reporting to the Board statistics on the impact and effect of the Program;

~~006.07A2g~~ 007.02G Considering such other matters and performing such other duties regarding the Program as may be assigned to it by the Board from time to time.

~~006.07A3~~ 007.03 ~~On and after June l, 1987, e~~ Each practice unit seeking renewal of a permit to practice under Section 1- 136.01 of the Act shall furnish in connection with its application, with

respect to each office maintained by the applicant and practicing public accountancy in this State, one copy of each of the following kinds of reports issued by the office during the twelve month period next preceding the date of application, if any report of such kind was issued during such period:

~~**006.07A3a**~~ **007.03A** A compilation report;

~~**006.07A3b**~~ **007.03B** A review report; and

~~**006.07A3c**~~ **007.03C** An audit report.

~~**006.07A4**~~ **007.04** The Board may exempt from the requirements of ~~subsection 006.07A – 006.07A12~~ the Program any office which within the three years immediately preceding the application has been subjected to a quality review at least consistent with the requirements of this rule; provided, that a copy of the report of such quality review, including, at the Board's request, any letters of comment and responses from the practice unit or firm to such letters of comment, is submitted with the permit renewal application.

~~**006.07A5**~~ **007.04A** Any documents submitted in accordance with ~~subsection 006.07A – 006.07A12~~ the Program may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the enterprise undeterminable. For example, the client name, address, or federal identification number may be omitted but reference to the type of organization, such as, financial institutions, school districts, hospital, etc., may not be omitted.

~~**006.07A6**~~ **007.04B** The Committee may also solicit for review financial statements and related reports of licensees from public agencies, banks, and other users of financial statements.

~~**006.07A7**~~ **007.04C** The identities of the sources of financial statements and reports received by the Board or the Committee from other than the licensees who issued the reports shall be preserved in confidence. Reports submitted to the Committee pursuant to ~~subsection 006.07A – 006.07A12~~ the Program and comments of reviewers, the Committee and the Board on such reports or work papers relating thereto, shall also be preserved in confidence except to the extent that they are communicated by the Board to the licensees who issued the reports.

~~**006.07A8**~~ **007.04D** The Committee shall annually review approximately one-third of the reports submitted in accordance with subsection ~~006.07A3~~ 007.03, and in addition such reports as it receives pursuant to subsection ~~006.07A6~~ 007.04B and such reports as may be referred to it by the Board.

~~**006.07A9**~~ **007.04E** The Committee shall determine, with respect to each report that it reviews,

~~**006.07A9a**~~ **007.04E1** Whether the report is or is not in general conformity with applicable professional standards;

~~**006.07A9b**~~ **007.04E2** If not, in what respects the report is deemed substandard or seriously questionable; and

~~**006.07A9c**~~ **007.04E3** Any recommendations it may have concerning possible improvement of the quality of the report;

~~**006.07A9d**~~ **007.04E4** and it shall report its determinations and recommendations to the Board of Public Accountancy.

~~**006.07A10**~~ **007.04F** If the Committee reports to the Board that a report is substandard or seriously questionable pursuant to subsection ~~006.07A9b~~ 007.04E2, the Board may direct that a review of the workpapers be conducted by a reviewer. The review of the workpapers under this section shall be conducted by a person other than the person who performed the original review of the report. The findings of any such review of the workpapers shall be transmitted directly to the Board. The cost of any workpaper review shall be borne by such licensee.

~~**006.07A11**~~ **007.04G** The Board shall review the determinations and recommendations regarding reviews of reports by the Committee pursuant to ~~005.07A9;~~ 007.03; and in any case where the Committee has determined, and the Board concurs, that a report is in general conformity with applicable professional standards, the Board shall forward the Committee's determination and recommendations, if any, to the person in charge of the office which submitted the report.

~~**006.07A12**~~ **007.04H** If the Board determines that a report referred to the Board by the Committee is substandard or seriously questionable with respect to applicable professional standards, the Board may take any one or more of the following actions:

~~**006.07A12a**~~ **007.04H1** The Board may submit to the licensee firm a letter of comment detailing the perceived deficiencies noted in connection with the review and requiring the licensee to develop a set of planned control procedures to insure that similar occurrences will not be present in the future. A written response from the licensee firm will be required within 30 days of the mailing of the Board's letter and will be subject to follow-up review by the Board.

~~**006.07A12b**~~ **007.04H2** The Board may require any individual licensee who had responsibility for issuance of the report or who substantially participated in preparation of the report and/or the related workpapers to complete successfully specific courses or types of continuing education as specified by the Board. The cost of any course or courses shall be borne by such licensee.

~~**006.07A12c**~~ **007.04H3** The Board may require that the office responsible for the substandard report submit all or specified categories of its reports to a preissuance review in a manner and for a duration prescribed by the Board.

~~**006.07A12d**~~ **007.04H4** The Board may require the office or the licensee firm responsible for the substandard report to submit to a quality review pursuant to this Rule.

~~**006.07A12e**~~ **007.04H5** If it appears that the professional conduct reflected in the substandard report is so serious as to warrant consideration of possible

disciplinary action, the Board may initiate an investigation pursuant to the laws of the State of Nebraska.

~~007~~ 008 Adoption of Rules

~~007~~ 8.01 Any interested person may petition the Board requesting the promulgation, amendment, or repeal of any rule. Such petition shall be submitted in written form and shall give the specific language of the petitioner‘s proposal.

~~007~~ 8.02 No rule shall be adopted, amended, or repealed by the Board except at a public hearing held during a regularly scheduled meeting of the Board.

~~007~~ 8.03 Notice of such public hearing shall be given at least thirty days prior to the hearing and in accordance with the notice for the open meeting of the Board at which the adoption, amendment, or repeal of such rule is to be considered.

~~007~~ 8.04 Draft copies or working copies of all rules to be considered for adoption, amendment, or repeal by the Board shall be available to the public at the offices of the Board and at the offices of the Revisor of Regulations at the time notice is given and until two (2) weeks following the public hearing.

~~007~~ 8.05 All hearings for the adoption, amendment, or repeal of a rule shall be open to the public.

~~008~~ 9 Conflicts of Interest; Board members; participation; disclosure.

~~008~~ 9.01 Pursuant to Nebraska Revised Statutes, Section 1-108.01, the Board shall follow the definitions and procedures set forth in the Nebraska Political Accountability and Disclosure Act and any rules and regulations promulgated pursuant to such Act and as amended from time to time with respect to conflicts of interest of Board members.

Statutory Authority: Section 1-108, Section 1-112, Sections 84-904 to 84-917, Section 84-712.05 and Sections 84-1408 to 84-1414, R.R.S. 1943