

The New York State Society of Certified Public Accountants Board Procedures

Leadership Policy 2 – Resolving NYSSCPA Policy Disputes

Preamble. The NYSSCPA Board of Directors is responsible for resolving disputes involving allegations of NYSSCPA policy violations, except where that responsibility has been otherwise assigned by the Bylaws or delegated by the Board. The Board recognizes that violation of some policies should result in an investigation and, if warranted, the imposition of discipline. This policy sets forth the procedures to be followed in those instances.

Overriding Principles. This policy shall be implemented in accordance with the following overriding principles to protect the rights of all participants in this dispute resolution process:

- To the extent reasonably possible, communication occurring during the process described in this policy will be dealt with confidentially.
- An individual who files a complaint under this policy (the “Complainant”) and the person he or she complains about (the “Respondent”) will be protected from retaliation.¹ However, retaliation, as used here, does not refer to (1) discipline authorized in this policy or (2) the filing of a countercomplaint by the Respondent.
- Both the Complainant and the Respondent shall have the right to representation by a third party (at their own expense).
- During the investigative phase described below, both the Complainant and the Respondent shall have the right to be interviewed by the Executive Committee. Also, at some point during the investigative phase, the Complainant and the Respondent jointly shall meet with the Executive Committee so as to be able to hear, respond to, and challenge each other’s positions.
- Discussions at Executive Committee meetings about matters under this policy shall be held in executive session with the Executive Committee determining the appropriate attendees.
- Throughout the process set forth in this policy, there is no power or right to compel discovery.
- Discipline under this policy may be public or private in the determination of the Executive Committee or the Board and may include, but is not limited to, the following: censure, reprimand, suspension of authority, or removal from a volunteer position.² However, discipline under this policy may not include suspension of or expulsion from NYSSCPA membership, which is governed by article XII of the Bylaws.
- The Board may waive application of NYSSCPA policy, provided such waiver (a) is by formal action, (b) would not violate the NYSSCPA Certificate of Incorporation or Bylaws, and (c) is in conjunction with appropriate monitoring of the situation giving rise to the waiver. The Board reserves to itself (and therefore does not grant to the Executive Committee) the power to waive NYSSCPA policy.

Preliminary Phase

1. Complaint. Any person who believes an NYSSCPA policy has been breached may file a complaint with the NYSSCPA President (or President-elect, if the President is the Respondent, or if both are Respondents, then with any member of the Executive Committee). The individual who receives a complaint is referred to here as the “Complaint Manager.”

The complaint shall

- be in writing,
- identify the Complainant and the Respondent by name,
- describe the facts in detail, upon which the complaint is based, and
- state why the Complainant believes NYSSCPA policy has been violated.

If the Respondent files a countercomplaint, it shall meet the requirements for a complaint. The due date for a countercomplaint shall be ten days after the Respondent is sent a copy of the complaint.

2. Call of Initial Executive Committee Meeting. The receipt of a complaint shall be deemed to be a call for a special meeting by at least one-third of the Executive Committee. Pursuant to the Bylaws, therefore, the Complaint Manager, who if not the president shall be deemed to be a “substitute for president” for the purpose of calling a special meeting as provided in the Bylaws, shall set a special meeting of the Executive Committee within ten days of receipt of the complaint and shall provide the Executive Committee at least three days notice of such meeting. The purpose of the special meeting, which may occur telephonically, shall be to discuss the complaint and determine (i) if the matter is to be investigated and (ii) the procedures to be followed.

3. Distribution of Complaint. The Complaint Manager promptly and confidentially shall distribute copies of the complaint to the Executive Committee, the Complainant and the Respondent. In no event, shall this occur later than the notice described in the preceding paragraph.

Investigation Phase

The Executive Committee shall conduct an investigation in accordance with the overriding principles set out above. No later than the next regularly scheduled Executive Committee meeting which occurs at least thirty days after the receipt of the Complaint, the Executive Committee shall, by separate votes, during executive session make the following determinations:

- (a) find by a preponderance of the evidence that NYSSCPA policy either has or has not been violated, and
- (b) if a policy violation is found, determine an appropriate discipline.

The Executive Committee shall cause the Complainant and the Respondent promptly to be notified of its determinations.

Appeal Phase

Either the Complainant or the Respondent may appeal the Executive Committee’s determinations to the full Board of Directors. The statement of intent to appeal shall be filed with the Complaint Manager within fourteen days of the Executive Committee determination. The statement should state why the appellant believes the Executive Committee determination is incorrect. If such a statement is filed, it promptly shall be sent to the other party who may submit a response prior to the next Board meeting.

At the Board's next succeeding regular meeting following the receipt of a statement of intent to appeal by one of the parties, the Board shall deliberate the matter in executive session. The Complainant and the Respondent each shall be permitted to make an oral statement to the Board and respond to questions posed by the Board; but both the Complainant and the Respondent shall be excluded from the Board's deliberations. The Board's decision on the matter shall be final.

Approved: Board of Directors, December 7, 2007, Agenda Item 10.

¹References to the Complainant and the Respondent shall be deemed to refer to either one or more individuals, as the context of each case warrants.

² Per the NYSSCPA Bylaws Article VIII, paragraph 2, officers elected by the membership may only be removed by the membership. Bylaws do permit, however, the suspension of officer's authority.