GOVERNMENT ACCOUNTABILITY BOARD

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Judge David Gienapp, ret.
Judge John Bastian, ret.
Ch. Just. David Gilbertson, ret.
Judge Larry Long, ret.

Complaints Procedure

The South Dakota Legislature created the Government Accountability Board to review and investigate allegations of misconduct by certain people:

1. Any person holding a statewide office;
2. Any employee of the executive branch of the State of South Dakota government.

Complaints against any other person(s) cannot be considered by the Government Accountability Board and will be dismissed.

Any person who furnishes information or files a report with the board relating to suspected, anticipated or completed violations of a corrupt act relating to any subdivision of SDCL 3-24-3; or any person who files a complaint alleging a violation of a subdivision of SDCL 3-24-3 shall submit a signed complaint on a form provided by the board. The complaint must name the individual (respondent) suspected or alleged to have violated a provision(s) of SDCL 3-24-3, identify the Respondent's public office, and detail the specific acts which encompass the alleged misconduct.

A. COMPLAINT PROCESS

a. Within 15 working days of the receipt of a complaint, the board will notify the complainant of the receipt of the complaint and, if appropriate, the board will provide a copy of the complaint to the respondent. The respondent will have 15 working days to respond to the complaint. The respondent may request more time to submit a

response. The board will send notices of board actions to the complainant and respondent.

b. Any person who has submitted information, a report or complaint to the board pursuant to SDCL 3-24-4 may request a status update from the board. The board will respond in writing.

c. If the board chair determines from an examination of the complaint that it is outside the board's jurisdiction, then the chair shall so notify the other members of the board. If any board member disagrees with the chair's determination as to jurisdiction, that board member shall so notify the chair of the disagreement within 10 business days of receiving the chair's notification. If there is disagreement, the complaint shall then be addressed at a meeting of the board. If there is no disagreement, the complainant shall be notified that the complaint is dismissed for the reason that the board does not have jurisdiction over the complaint.

d. Otherwise, the board, in executive session, will make an initial determination whether the complaint alleges facts sufficient to constitute a violation of SDCL 3-24-3. The board may decide to initiate an investigation, to dismiss the complaint or may take other appropriate action. A decision to investigate does not mean the complaint is valid, rather, it indicates that the allegations, if true, fall under the provisions of SDCL 3-24-3. Neither the complainant nor the respondent is required to participate in the initial determination.

B. INVESTIGATION

a. Pursuant to SDCL 3-24-5, the board may refer any information, report or complaint it receives to the Division of Criminal Investigation for investigation. If the

Division of Criminal Investigation has cause to believe that a law has been violated, the division shall refer the matter to a state's attorney or the attorney general for prosecution. If its investigation does not reveal sufficient facts to support a criminal prosecution, the Division of Criminal Investigation shall refer the matter back to the board for the board's consideration. If the Division of Criminal Investigation determines that the information, report or complaint is frivolous, it shall communicate this determination to the board in writing and board may dismiss the matter.

b. The board may issue subpoenas to compel the production of evidence or the attendance of witnesses. The board may take oral or written evidence under oath or affirmation. An investigation must be completed within 180 days after the complaint is filed, unless the board approves an extension for good cause, with a maximum of two 60-day extensions.

c. At a scheduled meeting, the board, in executive session, will review the investigative report of the prosecution as well as any answer or other information submitted by the respondent. Action to dismiss the complaint, to amend the complaint or to conduct a contested case hearing may be taken by the board in a scheduled meeting, open to the public. If a majority of the board votes that there is sufficient evidence to proceed to a contested case hearing, a hearing shall be conducted pursuant to SDCL Chapter 1-26.

C. CONTESTED CASE HEARING

a. At any time subsequent to the vote to conduct a contested case hearing, the parties may seek an informal disposition through an agreed settlement, consent order,

or other informal resolution of the pending complaint. The informal process shall not be used as evidence in any subsequent proceeding. Any informal disposition of a pending complaint shall be subject to the approval of the board. Once the informal disposition is approved, the resolution, settlement agreement and any orders issued regarding the complaint become a public record.

b. A contested case hearing may be held only after proper notice is given to the respondent regarding the allegations raised by the complaint. The board, at any time prior to its determination, may for good cause, allow or require amendments to the notice of formal proceedings and may allow amendments to the answer submitted by respondent. In case such amendment is made, the respondent shall be given reasonable time both to answer the amendment and to prepare and present a defense.

   i. A contested case hearing is an adversarial hearing, the parties may present evidence and examine witnesses. Additionally, the board may question witnesses. Rules of evidence apply rules of civil procedure and, and principles of due process will govern all procedures of the board.

   ii. A stenographic record shall be kept and the hearing shall be conducted in an open and public session.

c. Final disposition: the board shall meet in executive session to deliberate and determine whether respondent has violated any provision of SDCL 3-24-3. Upon a finding of a violation of SDCL 3-24-3, the board may: (1) issue a public or private reprimand; (2) direct respondent to engage in coursework or community

service; (3) make a specific recommendation to the Governor.

d. The information, report or complaint and the investigative records and files of the board are confidential and not a public record according to SDCL Chapter 1-27 until the board votes in favor of conducting a contested case hearing.