

2B-1.0041 Expedited Hearings for False Military Service.

The procedure for the investigation and hearing, if necessary, of a sworn complaint alleging a violation of Section 104.271(2) or 104.2715, F.S., will be as described in Rule 2B-1.004, F.A.C. and Sections 106.24, 106.25, 106.26, F.S., except that the following procedures and time restrictions shall be adhered:

- (1) The executive director shall make a determination as to legal sufficiency of the complaint, and the legal sufficiency or legal insufficiency letter shall be sent by certified mail no later than 5 days after the expiration of the time allotted for the respondent to provide a written response to the complaint.
- (a) If the complaint also alleges a violation of any section of law other than Section 104.271(2) or 104.2715, F.S., the executive director shall cause the complaint to be separated into two complaints, one of which shall contain all allegations made under Sections 104.271(2) and 104.2715, F.S., and one of which shall contain all other allegations made by the complaint.
- (b) A new case number shall be assigned to the complaint containing all allegations other than those made under Section 104.271(2) and 104.2715, F.S., and the procedures and time restrictions of subsections (2) through (5) of this rule shall not apply to the investigation and hearing, if necessary, of such complaint.
- ~~(1) If the executive director finds that the complaint is legally sufficient, the legal sufficiency letter shall be sent by certified mail no later than 10 days after the expiration of the time allotted for respondent to provide a written response to the complaint.~~
- (2) On the same day that a legal sufficiency letter is sent to the respondent regarding allegations made under Section 104.271(2) or 104.2715, F.S., the Chairman shall issue an order to show cause to the respondent, the complainant, and their counsel setting a hearing to occur within no less than 15 days and no more than 20 days at which the respondent shall be provided the opportunity to show cause as to why the investigation of the complaint should not proceed. Notice of the hearing shall be sent to the respondent, the complainant, and their counsel on the day that the order to show cause is issued.
 - (a) The hearing on the order to show cause shall be held before not less than a quorum of the Commission.
 - (b) The respondent, the complainant, and their counsel shall be permitted to attend the hearing on the order to show cause, and they may make brief oral statements in the nature of oral argument to the Commission.
 - (c) At the hearing on the order to show cause, the Commission shall consider the complaint, all affidavits, statements, and documents submitted by the respondent, the complainant, and their counsel up to and including the day before the hearing, and any other paper or document considered to be relevant by the Commission.
 - (d) The Chairman shall, within 5 days of the conclusion of the hearing on the order to show cause, issue an order setting forth the Commission's determination of whether the respondent was able to show cause as to why the investigation of the complaint should not proceed. The order shall contain findings of fact as to whether the respondent was able to establish the veracity of the statement(s) or representation(s) relating to the allegation of a violation of Section 104.271(2) or 104.2715, F.S., and whether the respondent was able to establish that the respondent did not make the statement(s) or representation(s) relating to the allegation of a violation of Section 104.271(2) or 104.2715, F.S.
 - (e) At the hearing on the order to show cause, the Commission may order an investigation and hearing, if necessary, of the complaint in accordance with Section 106.25, F.S., subject to the procedures and time restrictions of subsections (3) through (5) of this rule; may dismiss the complaint and order the issuance of a public report if the respondent shows cause as to why the investigation of the complaint should not proceed; or may take such other action as it deems necessary to resolve the complaint, consistent with due process of law.
- ~~(3)(2) The Commission shall complete its report of investigation no later than 30 60 days after the respondent's receipt of the legal sufficiency letter.~~
- ~~(4)(3) A copy of the Commission counsel's probable cause recommendation shall be furnished to the respondent no later than 540 days after the expiration of the time allotted for respondent to provide a written response to the investigator's report.~~
- ~~(5)(4) Upon a finding of probable cause, the case shall proceed to hearing in accordance with Section 106.25(5), F.S., except that:~~
 - ~~(a) In cases to be heard by the Division of Administrative Hearings, the executive director shall, no later than 540 days after receipt of an election from the respondent to have a formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings order finding probable cause, refer the case to the Division of Administrative Hearings for an expedited hearing. The respondent may elect for such hearing to be expedited by requesting an expedited hearing in writing.~~
 - ~~(b) In cases involving disputed issues of material fact to be heard by the Commission, the Chairman shall, within 540 days of~~

determining that a disputed issue of material fact exists, issuing an order finding probable cause, direct that a Commissioner or Commissioners hear the case, in accordance with subsection 2B-1.004(5), F.A.C. Determination as to the existence of a disputed issue of material fact shall be made by the Chairman within 5 days of receipt of such claim by respondent. The Chairman shall direct that the hearing be an expedited proceeding, and shall provide a framework for expedited discovery.

(c) Informal hearings, involving no disputed issues of material fact, shall be conducted before the Commission at the next scheduled commission meeting, unless the Chairman elects to proceed in accordance with subsection 2B-1.004(5), F.A.C.

Rulemaking Authority 104.2715(3) FS. Law Implemented 104.2715 FS. History—New 1-8-14.