

1-205. Powers of the board; investigation of complaints; subpoenas; witness fees and mileage; district court jurisdiction. (a) Upon receipt of a complaint or information suggesting violations of the accountancy statutes or the rules and regulations of the board of accountancy, the board may conduct investigations to determine whether there is probable cause to institute proceedings under K.S.A. 1-311, 1-312, 1-316 and 1-322, and amendments thereto. An investigation shall not be a prerequisite to such proceedings in the event that a determination of probable cause can be made without an investigation.

(b) The board may designate one or more board members to serve as investigating officers. The investigating officer or officers may employ, appoint, designate or utilize any other person of appropriate competence to assist with the investigation. Such person, if required, may later provide testimony in the event of a hearing.

(c) Upon completion of an investigation, the investigating officer or officers shall determine whether probable cause exists based upon the documents gathered, discussions with the person or firm under investigation and reports submitted by any other person assisting with the investigation.

(d) If the investigating officer or officers find no probable cause, the complaint, if any, testimony and any documents gathered during the investigation including any information regarding the pendency of an investigation shall be confidential and shall not be disclosed to any person, without the consent of the person or firm under investigation, except to law enforcement and state or federal agencies.

(e) Upon a finding of probable cause, the matter may be referred for prosecution or disciplinary action to the office of attorney general or to an attorney retained by the board.

(f) No person who provides services to the board in conjunction with any investigation authorized in subsection (a) shall be liable in a civil action for damages or other relief arising from any testimony, recommendation or opinion provided by such person acting in good faith and without malice.

(g) In all investigative and disciplinary matters pending before the board, the board shall have the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books and records, documentary evidence and materials. Any person failing or refusing to appear or testify regarding any matter about which such person may be lawfully questioned or to produce any papers, books, records, documentary evidence or materials in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so, upon application to any district judge of the state of Kansas, may be ordered to comply with such subpoena. Upon failure to comply with the order of the district judge, the court may compel obedience by bringing an indirect contempt action pursuant to K.S.A. 20-1204a, and amendments thereto. A subpoena may be served upon any person named therein, anywhere within the state of Kansas with the same fees and mileage being paid as for any officer authorized to serve subpoenas in civil actions in the same manner as is prescribed by the code of civil procedure for subpoenas issued out of the district courts of this state.

(h) Within five days after service of a subpoena on any person requiring the production of any evidence in the person's possession or under the person's control, such person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify such subpoena if in its opinion: The evidence required does not relate to practices which may be grounds for disciplinary action; the subpoena is not relevant to the charge which is the subject matter of the proceeding or investigation; or the subpoena does not describe with sufficient particularity the physical evidence which is required to be produced. The district court, upon application by the board or by the person subpoenaed pursuant to subsection (g), shall have jurisdiction to issue an order revoking, limiting or modifying the subpoena if in the court's opinion: The evidence demanded does not relate to practices which may be grounds for disciplinary action; the subpoena is not relevant to the charge which is the subject matter of the hearing or investigation; or the subpoena does not describe with sufficient particularity the evidence which is required to be produced.

(i) This section shall be part of and supplemental to article 2 of chapter 1 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 2009, ch. 38, § 1; Apr. 2.