

## **CHAPTER 13-01.1-02 PLEADINGS**

### **Section**

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### **13-01.1-02-01. Informal complaint - Form and disposition.**

Informal complaints may be made orally or in writing addressed to the board. Letters to the board will be considered as informal complaints. Matters thus presented will be handled by any of the following methods:

1. Correspondence or other informal communications.
2. Conference with the complaining party or parties.
3. Formal investigation instituted by the board upon its own motion.
4. Any other manner as the commissioner believes appropriate and warranted by the facts and the nature of the complaint in an endeavor to bring about satisfaction of the complaint without formal hearing.

**History:** Effective January 1, 1980; amended effective November 1, 1994.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05.1

### **13-01.1-02-02. Formal complaints.**

1. Complaints may be made by the board on its own motion, by the commissioner on the commissioner's own motion, or by any person. Complaints shall be made in writing setting forth any act or thing done or omitted to be done by any party under the board's jurisdiction in violation of or claimed to be in violation of any provision of law, or any order or rule of the board.
2. Form and content. Each formal complaint must show the venue, "Before the State Banking Board of North Dakota" and must contain a heading showing the name of the complainant and the name of the respondent. The complaint must advise the respondent and the board of the facts constituting the ground of the complaint, the provisions of the statutes, rules, and orders relied upon the injury complained of, and a clear, concise statement of the relief sought.
3. Verification. All formal complaints must be verified by the person filing, or by the person's legal representative.
4. Number of copies. At the time when the complainant files the original complaint, the complainant must also file ten copies more than the number of respondents named in the complaint.

5. **Service.** The board shall serve a copy of the complaint upon the respondent as the commissioner may direct, at least forty-five days before the hearing thereof unless the service of such complaint is waived, in writing, by the respondent, or unless the parties agree upon a definite time and place for hearing thereof with the consent of the commissioner.
6. **Satisfaction of complaint.** If the respondent desires to satisfy the complaint, the respondent may file with the board and complainant, within five days after the service of the complaint, a statement of the relief which the respondent is willing to give. If the offer of relief is satisfactory to the complainant, the complainant must submit a written request to withdraw the complaint within ten days after the offer was served. If a written request to withdraw is not made within the ten days, the offer is deemed denied and the respondent must answer the complaint.
7. **Sufficiency of complaint.** Upon the filing of a formal complaint, the commissioner shall examine same to ascertain whether or not it states a prima facie case and conforms to this article. If the commissioner finds that the complaint does not state a prima facie case or does not conform to this article or does not fall within the board's jurisdiction, the commissioner shall notify the complainant or the complainant's attorney to that effect, and the complainant shall be given an opportunity to amend within a specified time. If the complaint is not so amended within such time, or extension thereof as the commissioner may for good cause grant, it will be deemed dismissed.

**History:** Effective January 1, 1980; amended effective November 1, 1994.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05, 28-32-05.1

#### **13-01.1-02-03. Answers.**

1. **Content.** Each answer filed with the board must contain: (a) the correct title of the proceeding; (b) the name and address of each answering party; (c) a specific denial of such material allegations of the complaint as are controverted by the respondent; and (d) a statement of any matter which may constitute an affirmative defense. If the respondent lacks information or belief upon which to answer an allegation of the complaint, the respondent may so state in the answer and plead the denial upon that ground.
2. **Verification.** An answer must be signed and verified by the respondent.
3. **Service and number of copies.** The original answer must be served within twenty days after the date the complaint was served on each complainant or the complainant's attorney. The respondent must file with the board an original answer and ten copies thereof together with proof of service on each complainant or the complainant's attorney.

**History:** Effective January 1, 1980; amended effective November 1, 1994.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05

#### **13-01.1-02-04. Application.**

An application is a proceeding seeking some right, privilege, or authorization which the board may give under statutory or other authority administered by it.

1. **Contents.** All applications shall be in writing and, under oath, shall: (a) set forth the full name and post-office address of the applicant; (b) state clearly and concisely the authorization or permission sought; (c) cite by appropriate reference the statutory provision or other authority which the board authorization or permission is sought; and (d) comply with the applicable statutory provision or rule specifying form or content.

2. **Application forms.** When the board requires the application to be submitted on a form specifically designed for the particular application, such application shall be submitted on that form. Forms are available from the board upon request.
3. **Additional documents.** When the submission of documents is required in addition to an application, all such documents must be submitted to the board in proper form before the application will be accepted for filing.
4. **Fees.** Application fees must be submitted before the application is accepted for filing.
5. **Signature.** Every application must be signed by the party filing the same.
6. **Number of copies.** At the time the original application is filed, ten additional copies thereof must also be filed.

**History:** Effective January 1, 1980; amended effective May 1, 1993.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05

#### **13-01.1-02-05. Protest.**

In any formal application proceeding, any person having substantial interest in the application may protest the application upon compliance with the provisions of this section.

1. **Notice of intent to protest.** Any person intending to protest an application must notify the board and the applicant of that intent.
2. **Content.** The notice must be in writing and must set forth the grounds of the protest and the position and interest of the protestant.
3. **When made.** Notice of intent to protest must be made no later than five business days prior to the commencement of the hearing.
4. **Number of copies.** The protestant shall furnish a copy of the notice of intent to protest to each party to the proceeding and shall furnish the board with the original and ten copies thereof.

**History:** Effective January 1, 1980; amended effective May 1, 1993.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05

#### **13-01.1-02-06. Intervention.**

In any formal proceeding, any person having substantial interest in the subject matter of any proceeding may petition the commissioner for leave to intervene in such proceeding and may become a party thereto upon compliance with the provisions of this section. In general such petitions will not be granted unless it shall be found: (1) that such person has a statutory right to be made a party to such proceeding; or (2) that such person has a property or financial interest which may not be adequately represented by existing parties, and such intervention would not unduly broaden the issues or delay the proceeding.

1. **Contents of petition to intervene.** A petition for leave to intervene shall be in writing and must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether the petitioner's position is in support of or in opposition to the relief sought.
2. **When filed.** A petition for leave to intervene in any proceeding must be filed no later than five business days prior to the commencement of the hearing.

3. **Number of copies.** The petitioner shall furnish a copy of the petition to each party to the proceeding and shall furnish the board with the original and ten copies thereof.
4. **Effect.** Admission as an intervenor must not be construed as recognition by the board that the intervenor might be aggrieved by an order of the board in the proceeding.

**History:** Effective January 1, 1980; amended effective May 1, 1993.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-08.2

#### **13-01.1-02-07. Extensions of time.**

A request for an extension of time in which to perform an act required or allowed to be done at or within a specified time by any rule, regulation, or order of the board shall be by motion in writing timely filed with the board, stating the facts on which the motion rests and conforming to the provisions of section 13-01.1-02-10. Except as provided in section 13-01.1-02-08, such extensions of time will be granted or denied by the commissioner in the commissioner's discretion.

**History:** Effective January 1, 1980.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05

#### **13-01.1-02-08. Extensions of time for satisfaction of conditions subsequent.**

A request for an extension of time in which to satisfy any condition subsequent to an order of the board granting an application shall be by motion in writing timely filed with the board.

1. **Content of motion.** The motion shall specify the particular conditions subsequent which have not been satisfied and upon which an extension of time is requested, and shall state the facts upon which the motion rests.
2. **Service.** All such motions shall be served by the movant on the other parties to the original application proceeding.
3. **Number of copies.** At the time the original motion is filed, ten additional copies shall be filed with the board.
4. **Argument.** The movant or any other party may argue the motion before the board.
5. **Disposition.** Such motions will be granted or denied by the board in its discretion.

**History:** Effective January 1, 1980; amended effective May 1, 1993.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05

#### **13-01.1-02-09. Amendments and withdrawal.**

The commissioner may, after notice to the other parties to a proceeding, allow any pleading to be amended or corrected or any omission to be supplied. If any such amendment so alters or broadens the issues, the commissioner may permit the affected party a reasonable time to reply. A party desiring to withdraw a pleading filed with the board may file a written notice of withdrawal. The notice must state the reason for the withdrawal. A copy of the withdrawal notice must be served upon all other parties to the proceeding and proof of service to that effect filed with the notice of withdrawal. This section shall not be construed as allowing, without express permission of the commissioner, withdrawal of any pleading in any proceeding in which a hearing has been held or convened.

**History:** Effective January 1, 1980; amended effective November 1, 1994.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05

**13-01.1-02-10. Motion.**

Except as provided in section 13-01.1-02-08, the hearing officer is authorized to rule upon all motions unless the action on the motion involves or constitutes a final determination of the proceeding, in which case the motion shall be ruled upon by the board. The hearing officer may set any motion for oral argument.

**History:** Effective January 1, 1980; amended effective November 1, 1994.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 6-01-04, 28-32-05

**13-01.1-02-11. Show cause orders.**

1. The board or commissioner may, by order, compel any person to whom it has granted authority to show cause why the authority should not be suspended, changed, or revoked in whole or in part. The term "authority" includes a certificate, license, and permit.
2. The show cause order shall specifically advise the respondent of the alleged violation and of the time and place of the hearing on such order.
3. When the board finds that the respondent has committed, or is committing, the alleged violation, the board may enter a cease and desist order or any order the board deems just and reasonable.

**History:** Effective January 1, 1980; amended effective November 1, 1994.

**General Authority:** NDCC 6-01-04, 28-32-02

**Law Implemented:** NDCC 6-01-01, 6-01-04, 28-32-05