

**ARKANSAS
STATE BOARD
OF COSMETOLOGY**

**GRIEVANCE
COMMITTEE**

MEETING REPORT

JULY 17, 2007

GRIEVANCE COMMITTEE MEMBERS (PRESENT)

Jane Powell, President

Susan Collins-Burrough, 1st Vice President

Scottie Burchett, Board Member

Kathy Wittum, Director

Erika Gee, Legal Counsel

COMMITTEE MEMBERS (NOT PRESENT)

Barbara Ward, Treasurer

Vacant Manicurist Position

OTHER PARTICIPANTS IN ATTENDANCE

Carla Jones, Arthur's Beauty Colleges

Nicole Thompson, Governor's Office

Meeting Report

The Grievance Committee held its first meeting today to begin reviewing the Board's Rules to make recommendations on revisions that are necessary for compliance with recent law revisions. In addition, this Committee will recommend language to establish a more fair and impartial complaint process. The meeting was called to order at 2:40 p.m.

Scottie Burchett was nominated for the Chairperson position for this Committee.

Erika Gee initiated the discussion by questioning the reasoning behind naming Rule 10 *Consumer Complaint*. She stated her knowledge of other boards is they do not limit complaints in this manner but rather have language that allows the board to initiate an investigation or action on their own motion. This question basically remained unanswered; however, President Powell stated there were two forms of complaints she recalls the board's staff dealing with in the past: 1) complaints against a hairdresser with the Board acting as a mediator; and 2) complaints against unlicensed activity. Ms. Gee stated there is no action for the Board to take when complaints are made about a bad haircut.

Director Wittum stated the office distinguishes between the official and unofficial complaint. In addition, she stated there were changes made to Rule 10 in the previous rule revisions that she did not realize would impact her to the extent that it has and that concerns who reviews the complaints. She stated the rule previously required a committee comprised of a secretary, consumer representative, legal counsel and the director to address and respond to complaints. However, the change made during the last rule revision process changed that to only the director addressing and responding to them. She stated that she does not consider this to be a fair process for either the complainant or respondent and it places a tremendous burden on the director.

President Powell stated the change was made by previous Director Taylor and it was not caught prior to the change being finalized. She stated she recalled Debra Norton commenting that the inclusion of a secretary posed a potential conflict. She stated there may have been confusion over whether it was the board secretary or office secretary, but there would be a potential conflict if it is the board secretary. President Powell suggested reviewing the previous language to ensure we do not go back to it in making changes this time.

Ms. Gee stated she works with numerous boards that generally use the same process for complaints. She stated none are as formal as this board, as complaints do not have to be made in writing or the written document notarized - all of which create an unfriendly process for the general public. She stated there may have been good reason to create such a formal system, but it is an unfriendly process. Generally speaking, she stated the process is typically as follows:

1. determination is made as to whether the board has jurisdiction over the nature of the complaint, which she suspects would not frequently be the case;
2. a committee would exist (possibly comprised of the board chair, investigator, director and legal counsel) and the committee determines where they want to go with the

complaint (i.e. do they want to pursue an informal resolution, should it go to the full board for review, is more information needed, etc.);

3. send the complaint to the respondent for a response;
4. determine where it goes from there and complete the process.

Ms. Collins-Burrough explained it has been her experience that frivolous complaints are made by practitioners who become angry with each other, such as practitioners working in the same salon having a disagreement that causes some to move out and open their own salon. The two groups then begin complaining against each other.

Director Wittum agreed with the above and stated it is amazing how much time an anonymous caller will spend to complain about another practitioner or salon.

Committee members indicated their agreement with the above process explained by Ms. Gee and supported the idea for the full responsibility to be taken off the Director.

Ms. Gee stated a committee comprised of a combination of board and staff is good and that one thing to consider in this regard is that if there is more than one board member on the committee then the meeting is a public meeting. She stated this is fine but public meeting notification becomes an issue in that case. Another potential problem with this is that board members could be accused of making up their minds about complaints prior to a formal hearing.

Committee members asked if there was a written process used by a board that could be shared and they began to discuss what would happen if the complaint was against a person on the committee. Ms. Gee stated an alternate member may be needed to prevent this from happening.

Chairperson Burchett asked how complaints are presented, which opened up a discussion about a possible investigator report and whether the complaint should be in writing. The discussion included the fact that written complaints may hold more value than non-written complaints. Also discussed were the fact that complaints generally were filed because of a person unsatisfied with his/her haircut or by students unhappy with something relating to the school and their education. This point presents another issue in that there are school officials on the board that may potentially be on the committee to review complaints. The discussion included whether complaints should be divided depending upon who files them or the nature of the complaint.

Ms. Gee stated this is the only board she is aware of that regulates the schools. Director Wittum stated that in communicating with other state cosmetology boards she learned there are those that do not regulate cosmetology schools. She stated in those states the student/school must provide proof of the education and hours earned after the program is completed and before he/she can be scheduled for an exam.

Chairperson Burchett stated the rule allows the director to designate another person to be responsible for the complaints to which Director Wittum stated there is no one in the office that can absorb this responsibility at this time. She stated there have been instances when an inspector has been sent out to obtain additional information, but she has not shifted the responsibility for addressing complaints to any other staff member.

Ms. Gee stated she would like to see Rule 10 contain more guidance than what it currently contains. She stated there is no process outline for a board member observing something that he/she would like to have investigated and she believes this may occur at some point.

Director Wittum stated she would like to see clarification in the rule that outlines what does not fall within the board's jurisdiction. She stated if this was more clearly outlined it might discourage people from filing frivolous complaints.

Chairperson Burchett stated there are other complaints that will need to be addressed besides consumer complaints to which Ms. Gee agreed.

Director Wittum stated there has not been a process to follow when an exam candidate has a bad experience during exams, and that has happened; however, PCS has a complaint process that will address these issues. Nor has there been any guidance for how someone complains about a staff member, inspector or board member.

President Powell and Ms. Gee stated that complaints against personnel (office staff or inspectors) would need to be addressed by Director Wittum and not be included in Rule 10.

Chairperson Burchett stated she believes there should be one process to follow and she believes it should include personnel issues. Director Wittum stated if a complainant is not satisfied with her resolution of a personnel matter, then the next step would be to address the issue with the board. Chairperson Burchett questioned what the process would be if the complaint was against the director to which Director Wittum responded that it would be initially addressed by the board.

President Powell and Ms. Gee questioned Director Wittum about the existence of a grievance policy in the office to which Director Wittum stated there is a policy in place. President Powell stated Director Wittum's authority as director of employee issues places the responsibility to address personnel issues on her.

The ensuing discussion centered on the distinction between consumer and personnel complaints, which Chairperson Burchett indicated should be handled in the same manner.

Nicole Thompson questioned if there is a written process for constituents to address complaints against board members or the director. She stated the Governor's office has received numerous complaints against members of this board and against Director Wittum.

Ms. Gee stated she is not aware of any board that has a written policy on how to complain against a board member. Chairperson Burchett stated since board members are appointed by the Governor, then that is where complaints should be filed.

Ms. Thompson was asked about the process followed in the Governor's office when complaints are received and she stated they document the information received, talk to the parties involved, document their findings and maintain it in the file.

Director Wittum stated previous conversations she has had with legal staff at the Governor's office indicated terminations could be made based on excessive absences or dereliction of duty but someone has to define what dereliction of duty is for this board.

In the ensuing discussion, Chairperson Burchett stated that valid complaints do not need to be overlooked in the midst of frivolous complaints and do not need to be the sole responsibility of the director. Ms. Collins-Burrough stated she trusted Director Wittum's judgment.

Director Wittum stated she is not speaking about personnel matters, but she has approximately 7-10 complaints on her desk dealing with issues that may turn out to be outside the board's jurisdiction. However, she has to spend a lot of time researching the areas pertaining to the complaints in order to determine what is and is not a legitimate complaint, as she is not a cosmetologist or a federal aid specialist. She stated it might would be a simple process if she had 30 years experience like Debra Norton had, but that is not the case for now. She stated she needs the board's guidance and expertise during this time while she becomes familiar and knowledgeable about the industry. She stated she is not attempting to shift responsibility in this regard but believes it is important to the complainant and the respondent to have the complaint reviewed by a person or persons who have the knowledge and expertise to make a fair decision. She stated the research she believes is necessary to make a fair decision is time-consuming and has to be mostly done on her personal time because there are other issues demanding time during the 8-10 hours a day that she gives to the office. She stated she is tired of taking the complaint folder home every weekend to try to carve out time from her personal life to deal with these issues.

Chairperson Burchett commented these complaints may be something familiar to other board members that could be easily rectified if others were involved in the process. President Powell stated this is exactly why there were more people involved in the complaint process previously. She stated Rule 10 does need to be revised and the designees defined. She stated frivolous complaints should be able to be addressed independently, but language added to require a committee to address potentially valid complaints. She stated the current structure places Director Wittum as judge and jury and this needs to change.

From the floor, Carla. Jones questioned why the complaints could not be referred to the different committees that have been created to review the rules. Director Wittum stated there would not be enough committees to section them all out. Ms. Gee stated the committees are primarily comprised of board members which would present a problem, if the complaint goes before the board at some point.

Chairperson Burchett stated a board member needs to be on the committee and there should probably be a standing grievance committee. President Powell stated she believes the director needs to be on the committee, as board members may be new and unknowledgeable about past decisions, etc. She stated the only question she has is who should hold the third position since the consensus is for the committee to include three members, plus legal counsel. Director Wittum suggested the administrative assistant. Inspectors would be utilized as the investigative team. This composition appeared to be satisfactory for the committee.

President Powell questioned how the board member position would be defined, which prompted a discussion that included suggestions on rotating board members or having the director randomly select a member. The discussion did include the need to have someone from the industry unless the nature of the complaint was more consumer-related instead of industry-related. Director Wittum stated it might be wise to consider what area of the state the complaint is coming from and not select a board member from that same area. Ms. Gee suggested having a board member assigned to the committee but have guidelines on how to replace that person if the nature of the complaint warranted. She stated this would allow the committee to maintain some sense of consistency and stability.

Ms. Gee stated the basic outline of Rule 10 is sufficient, but there needs to be more details on the process. There was also a discussion concerning the distinction between official and unofficial complaints. Director Wittum stated the administrative assistant generally takes the unofficial calls and documents the nature of the complaint and who it is against so the information can be forwarded to the inspector. The inspector basically keeps this information on hand for the next inspection of the salon or practitioner. The unofficial complaints are not ones that the inspector will drop everything to address.

Ms. Gee suggested removing the requirement to have an official complaint notarized to which Chairperson Burchett agreed. Director Wittum stated she gives more validity to a signed written complaint but has no preference on the need to have it notarized. Ms. Collins-Burrough stated she disagrees with removing the notary requirement, as it presents a more official air. President Powell stated she has no preference on this issue. Committee members agreed an official complaint needs to be signed, but there was no agreement made on whether to include the requirement to have the complaint notarized.

There was a discussion about whether to require the students who complain against a school to sign the complaint in order for it to be considered official. Committee members agreed it is necessary, especially when the issue is reviewed legally where the student would most likely have to testify before the board in order for the issue to reach a disciplinary level.

Chairperson Burchett stated she believes all complaints should be in writing and there is a committee to review it. President Powell agreed and stated she does not want to see the office staff inundated with complaint calls that amount to nothing less than gossip. Director Wittum stated calls like this contribute to the problems with the phone lines being tied up. She stated there have been times when all five staff members were on calls similar to these type complaints and she gets off to learn someone has called President Powell because they could not get through.

A question was raised concerning the complaint form and whether it is available through the website, and if so, if it can be electronically submitted. Director Wittum stated it is on the website but must be printed and mailed in order to obtain an original signature and to be notarized.

Ms. Gee suggested she and Director Wittum draft revisions to Rule 10 and present it to the committee at the next meeting. Chairperson Burchett suggested utilizing conference calls for committee review of complaints. Committee members also discussed incorporating language in the rule that requires all complaints be made in writing and the office staff will not listen to them or take any information over the phone. It was also discussed if the complaint could be e-mailed and possibly not on the complaint form.

After no additional comments were forthcoming from participants, the meeting was concluded at 4:00 p.m.

*** End of Report ***

Report prepared by:

Kathy Wittum, Director