

**From:** [Bill Turner](#)  
**To:** [Aaron Conklin](#)  
**Subject:** [EXTERNAL] Re: Rules  
**Date:** Tuesday, October 27, 2020 6:11:52 PM

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Aaron,

Thanks for the response.

Bill

William B. Turner  
President and CEO  
Tennessee811  
615-504-2455  
Sent from my iPad

On Oct 27, 2020, at 10:48 AM, Aaron Conklin <[Aaron.Conklin@tn.gov](mailto:Aaron.Conklin@tn.gov)> wrote:

Bill,

Thank you for these comments. In general, what I am going to suggest for the meeting is that any rules that board members want to consider further (e.g., tweak language, add to the rule, or delete the rule) we note as comments for consideration for the rulemaking hearing and comment submission phase. The statutory process requires that comments received either during the hearing or by written submission must be addressed on a form required to be submitted to the Secretary of State. So, at the Board meeting, for simplification and to move the process forward, I am going to suggest a motion to proceed with the draft to the rulemaking hearing and publication for comments.

All that being said, I have provided information on your questions below:

1230-01-02-.04 (1); Does this mean that during the investigation, the investigator identifies a different person that may have violated the law and they can issue a complaint/violation on them? If so, I like that. Essentially, it allows for current practice while not binding investigative staff if circumstances call for something different. It is the practice now that if the investigation reveals that a subcontractor or another person or entity that is related in some way to the Respondent is the actual responsible party, the investigator sends out an NAV and continues the investigation with the additional party for ExComm consideration under the same file number. In those cases, we often need a motion to cover two Respondents. If the investigation reveals an error on the part of the Complainant

filing against the wrong respondent and there is no rational relationship between the two, the investigator has been coordinating with the Complainant to file a new complaint against the correct Respondent and withdraw or administratively close the first complaint. The language would allow, but not require, the investigator to file the complaint. Leaving it permissive allows for the current practice and allows for the handling of these types of situations as the program evolves and circumstances may require in the future.

1230-01-02-.09 (1); There are times that me or one of the staff might get a call from someone asking for advice about a situation. Sometimes they do not disclose that they have had a complaint issued against them. Does this cause TN811 Employees any concern? It does not cause concern under the Rule since those types of calls are not necessarily intended to influence a decision, but rather seek an opinion on how to proceed. I would give two pieces of advice for these scenarios, as they happen in the legal world all the time: 1. As a matter of practice, inquire early in the contact whether the question relates to a complaint filed by or against the contact. If it is disclosed that it is, point them to the correct part of the law and advise that you cannot advise if a violation has occurred because those decisions are solely the ExComm's. 2. If you can track the contact and relate it to a case, disclose the contact to the Board Chair.

1230-01-02-.10 (3); It suggest that a Board member cannot participate in DISCUSSION. As I understand, it is ok to discuss, but obviously cannot vote. Statutory law and rules relating to boards of every type use the language prohibiting discussion and voting. I realize now that in using the standard language, I caused harm to the Board's current practice, which is based largely upon the rather unique position you (or any TN811 representative) are in with regard to Board business. There is no clear legal precedent to permit discussion but not voting, but this arrangement serves a valuable purpose in the conduct of Board business. I think the best thing to do with regard to this rule, is simply to amend it to read something to the effect of, "The Board will adopt a policy concerning conflict of interest that shall be applicable to Board members in the conduct of the business of the Board and its Executive Committee."

1230-01-03-.01 (1) and (3); I think this is what the Locator Industry is recommending, but may want to reach out to Earl Bolin to make sure. I have exchanged a few emails with Earl Bolin on this part of the Rules with his concerns. He has concerns about the 50' in paragraph 2 and some concerns with paragraph 3.

1230-01-03-.03(2); Hand Digging is defined in the beginning. Might need to

include a reference to it in this section. Also, we have had a lot of discussion about concrete and asphalt. Obviously it cannot be removed by hand so maybe a reference to follow when needing to remove concrete or asphalt. Both of these issues are covered in detail in the CGA Best Practices. By adopting the rule, the Board is adopting the CGA Best practices, which I think is the better way to go, allowing for improvements and advancements to be addressed and accounted for without requiring a change to the rule. I wanted to include definitions for things like, hand digging, boring, and cross boring, so that there is no question as to what the Board means when reading those things in the CGA standards adopted.

On your question, as to including the penalty structure, this is an adopted policy of the Executive Committee. It probably belongs more appropriately in a policy that can be changed more easily, as a change in membership on the ExComm may result in a change in philosophy on methodology in civil penalty assessment. Similarly, the ordered to train twice situation is more appropriate to a policy, or perhaps just a case by case consideration of the ExComm. It is closely related to the policy adopted on substitution of trainees.

The last questions concerning providing information to licensing boards and/or other regulating bodies... I think this is a good concept, and one I have wrestled with back and forth for a while since David Applebaum mentioned it at the Board meeting he attended. I am not sure yet whether it is something we should cover in a rule for notice purposes or something the ExComm should just do as a matter of policy on a case by case basis. Bring this topic up during the rules discussion, and I am going to do a little more research to see if I can figure out what to advise it the best way to address this is.

Thanks for your comments, Bill. These comments, as well as the previous comments you have provided in the drafting process have assisted me tremendously.

Aaron

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**From:** Bill Turner <bturner@tennessee811.com>  
**Sent:** Monday, October 26, 2020 7:44 AM  
**To:** Aaron Conklin <Aaron.Conklin@tn.gov>  
**Cc:** Ryan McGehee <Ryan.McGehee@tn.gov>  
**Subject:** [EXTERNAL] Rules

Aaron,

Good job on the Rules. I have a few comments that I wanted to share for

consideration.

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Other:

Should we include an explanation of the penalty structure. I know that we have proposed legislation to change the civil penalty amount. But it seems the Exec. Comm. has adopted the rule of charging a fourth (1/4) of the \$2500 for a second offense. And increasing by a fourth (1/4) for each additional violation up to the maximum.

I know it has happened and not sure if we need to place it in the Rule or not. There have been times that an additional violation has come in on someone before the first violation has been presented to the EC. This has on occasion resulted in sending the violator to training twice. I know this might not happen on a regular basis, but should we look to illustrate the EC's rule to follow?

Could we include in this Rule that Licensed Contractors that are found in violation, that the EB will provide the Licensing Board with a record of the Violation?

Could we include in the Rule that an Operator found in violation, that the EB will provide their regulating body with a record of the Violation, example Pipeline

Safety or UMRB.

Thanks for your consideration.

Bill

[William B. Turner](#)

President & Chief Executive Officer

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