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312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615.741.2650
Fax: 615.741.5133
Email: register.information@tn.gov

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Sequence Number: 01-17-11
Notice ID(s): 1598-1601
File Date: 01/25/2011

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Private Investigation and Polygraph Commission
Division:	Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person:	Robert Herndon, Attorney for the Commission
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243-1167
Phone:	615-741-4827
Email:	Cody.Vest@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	Department of Commerce and Insurance 500 James Robertson Parkway Nashville, Tennessee 37243
Phone:	615-741-0481
Email:	Don.Coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Andrew Johnson Tower, 2 nd Floor Conference Room, 700 James Robertson Parkway		
Address 2:			
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	04/15/11		
Hearing Time:	9:30 AM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1175-01	Private Investigation and Polygraph Commission
Rule Number	Rule Title

1175-01-.02	Definitions
1175-01-.03	Finger Printing
1175-01-.04	Applicants for Licenses
1175-01-.11	License Fees
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1175-01-.19	Evaluation of Required Experience
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1175-02	Continuing Professional Education
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1175-02-03	Qualifying Programs
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1175-04	Rules of Professional Conduct and Standards of Practice
Rule Number	Rule Title
1175-04-.06	Misconduct
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1160-02	Polygraph Examiner Continuing Education
Rule Number	Rule Title
1160-02-.02	Basic Requirements
1160-02-.03	Qualifying Programs
1160-02-.04	Control and Reporting Systems

Substance of Proposed Rules

Chapter 1175-01
Private Investigation and Polygraph Commission

Amendments

Rule 1175-01-.01 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) "Physical office location" means an office, office building or dwelling submitted to the commission as the private investigation company's principal place of business. Mail boxes and mail drop addresses may be utilized for the private investigation company's mailing address, but such address may not be used as a "principal place of business" or as a "branch office" as defined in Tenn. Code Ann. § 62-26-201(2). A private investigation company license or a branch office license will not be issued without the submission to the commission of a physical office location in the same jurisdiction or area as the postal mail box or mail drop location.
- (2) "Principal place of business" means a physical office location.
- (3) "Timely renewal" means that all documentation and fees required for renewal are included with the renewal application and are postmarked on or prior to the expiration date of the license for which renewal is sought. A late fee will be assessed on any incomplete renewal application.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Paragraph (1) of Rule 1175-01-.03 Finger Printing is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (1) An applicant shall furnish the Commission with three (3) sets of classifiable fingerprints with his or her application for the purpose of allowing the Commission to forward the fingerprints to the Tennessee Bureau of Investigation (TBI) and Federal Bureau of Investigation (FBI) as required by T.C.A. § 62-26-208. An applicant shall be deemed to have furnished the Commission with three (3) sets of classifiable fingerprints if her or she causes a private company contracted by the State to electronically transmit the applicant's classifiable prints directly to the TBI and FBI and to forward a classifiable hard copy of the applicant's fingerprints to the Commission on standard TBI/FBI applicant cards. The Commission shall notify every applicant in writing of the name, address and telephone number of any company contracted by the State to provide such a service. All private investigator and private investigation company applicants shall comply with the following requirements regarding payment for the fingerprinting service:
 - (a) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant;
 - (b) If the applicant chooses to request that the Commission process the fingerprint cards, then the applicant shall submit three (3) sets of classifiable fingerprints on cards provided by the Commission, with his or her application, for processing through the TBI and FBI. The applicant shall pay to the Commission all processing fees established by the TBI and FBI.
 - (c) If the applicant chooses to use the services of a company that has contracted with the state to provide electronic fingerprinting service, then the applicant shall make the arrangements for the processing of his or her fingerprints with the company directly and shall be responsible for payment of any fees associated with processing of fingerprints to the respective agency.
 - (d) In the event the State no longer contracts with any company to provide an electronic fingerprinting service, then the applicant shall submit three (3)

classifiable TBI and FBI fingerprint cards with his or her application and shall pay the Commission all processing fees established by the TBI and FBI.

- (e) Applicants shall in all cases be responsible for paying application fees as established by the Commission regardless of the manner of fingerprinting the applicant chooses.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Paragraph (2) of Rule 1175-01-.03 Finger Printing is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (2) In the event that an applicant furnishes unclassifiable fingerprints or fingerprints that are unclassifiable in nature to the Commission, or the Tennessee Bureau of Investigation (TBI) or Federal Bureau of Investigation (FBI), the Commission may refuse to issue the requested license. For the purposes of this rule, "unclassifiable fingerprints" means that the electronic scan or the print of the person's fingerprints can not be read and therefore, can not be used to identify the person. Should an applicant's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Rule 1175-01-.04 Applicants for Licenses is amended by adding new subparagraphs (5), (6), (7), (8) and (9) that shall read:

- (5) An application denied for material misstatement is not eligible to reapply for licensure for a period of six (6) months from the date of denial. Appeals must be submitted to the commission in writing within thirty (30) days from the denial. All documentary dispositions and required court documents must be provided prior to a scheduled appeal hearing before the commission.
- (6) Disposition of the following crimes or actions taken by an authority having jurisdiction may disqualify an applicant, subject to the discretion of the commission:
 - (a) Conviction by any local, state, federal, or military court of any crime involving the illegal sale, manufacture, distribution or transportation of a controlled substance, drug, or narcotic;
 - (b) Conviction of any felony;
 - (c) Conviction of a crime involving unlawful breaking and entering, burglary, larceny, or arson;
 - (d) Conviction as a habitual criminal;
 - (e) Conviction of a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(33);
 - (f) Any misdemeanor conviction involving:
 - 1. Shooting a firearm or other weapon;
 - 2. Shoplifting; or
 - 3. Assault and battery or other act of violence against persons or property.
- (7) An applicant may be disqualified for licensure for suffering from habitual drunkenness or narcotics addiction or dependence and/or are unlawful users of or addicted to any controlled substance, as defined in section 102 of the controlled substances act, 21 U.S.C. 922(G)(3). This prohibition includes any person who is a current user of a controlled substance. The commission may draw an inference of current use from recent use or possession of a controlled substance: e.g. positive drug test upon arrest or during probation within the past year, or a conviction for use or

possession of a controlled substance within the past year, or multiple arrests for such offenses within the past five (5) years if the most recent arrest occurred within the past year.

- (8) An applicant may be disqualified for licensure for having been discharged from the armed forces under conditions less than honorable.
- (9) An applicant may be disqualified for licensure for being subjected to a court order restraining the applicant from committing an act of domestic violence. The order must have been issued after a hearing during which the person restrained received actual notice of the hearing and has had an opportunity to participate in any proceedings. The restrained individual need have only an opportunity to participate in any proceedings; consequently, failure to appear at the proceeding or consenting to the entry of the order without a hearing does not affect this prohibition. Consent orders and orders entered by a court of competent jurisdiction upon the applicant's failure to appear qualify under this prohibition.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Rule 1175-01-.11 License Fees is amended by adding a new subparagraph (4) that shall read:

- (4) For the purposes of assessing the correct private investigation company application and license fees, the employees referenced in T.C.A. § 62-26-208(a) and (b) and this rule shall be identified as licensed private investigators, private investigator license applicants and private investigator apprentices affiliated with the private investigation company. Private investigation company license applicants whose licenses have not yet been issued and who prior to such issuance add any number of investigators above that number listed when application was made shall, prior to issuance, pay all application and license fees which would have been due had the additional private investigators been listed on the notarized statement submitted with the initial application. An individual who applies for a private investigation company license but is not a licensed private investigator and who at the time of issuance of that license has not yet employed a licensed private investigator shall be considered a sole practitioner for the purpose of issuing the license.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Rule 1175-01-.12 Renewal Fees is amended by adding a new subparagraph (3), (4) and (5) that shall read:

- (3) For the purposes of assessing the correct private investigation company renewal fees, the employees referenced in T.C.A. § 62-26-211(b) and this rule shall be identified as licensed private investigators, private investigator license applicants and private investigator apprentices affiliated with the private investigation company. Private investigation company license renewal applicants whose licenses have not yet been renewed and who prior to such renewal add any number of investigators above that number listed when renewal application was made shall, prior to renewal, pay all renewal fees which would have been due had the additional private investigators been listed on the notarized statement submitted with the renewal application. Upon the employment of licensed private investigators, an individual holding a private investigation company license as a sole proprietor pursuant to paragraph (4) of rule 1175-01-.11 shall not be counted in the total number of private investigators employed by that private investigation company for the purpose of assessing the correct private investigation company renewal fee.
- (4) If the required private investigation company notarized statement of affiliates or photos required for the renewal of the private investigator license is not postmarked prior to the license expiration date, a late fee will be assessed. If the required private investigation company notarized statement of affiliates or photos required for the renewal of the private investigator license is not received within thirty (30) days of the license expiration date, the renewal application will not be accepted or approved.
- (5) All late fees must be paid within the thirty (30) days prescribed by T.C.A. § 62-26-211(c).

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Rule 1175-01-.17 Retired Licenses is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, rule 1175-02-.17 shall read:

- (1) A private investigator who has retired his/her license shall remain subject to the disciplinary provisions contained in T.C.A. § 62-26-217 and shall be obliged to comply with the notice provisions contained in T.C.A. § 62-26-213.
- (2) For the purpose of retirement of a private investigator license, the licensee must be in good standing with the commission. The individual requesting retirement must:
 - (a) Be affiliated with a licensed private investigation company, or be within the thirty (30) day grace period as provided by T.C.A. § 62-26-204(c). During retirement the private investigation company affiliation will not be required.
 - (b) Prior to returning the license to an active status, the licensee must have an affiliation with a licensed private investigation company, and will be required to complete the continuing professional education requirements for the renewal period from which the license is returned to active status.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Rule 1175-01-.18 Exceptions to Applicability is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, rule 1175-02-.18 shall read:

- (1) For purposes of T.C.A. § 62-26-223(b)(3)(A), the term "employee" shall be defined as an individual to whom wages are paid by the attorney or law firm and from whose wages Federal Income Tax and/or Federal Insurance Contributions Act monies are withheld by the attorney or law firm.
- (2) The activities performed by the National Insurance Crime Bureau, a non-profit organization, are not required to be performed by a licensed professional private investigator.
- (3) Persons performing the duties of a mortgage default inspector are not required to obtain a private investigator license provided that these persons only interview the homeowner/mortgagor to determine the reason for delinquency in payments. Additionally, if the house is vacant or appears to be so, the company representative performing these duties may talk to neighbors to verify occupancy status of the subject house and, after completion of duties, may file a report with the mortgage company detailing the findings.
- (4) Persons who perform the services of a mystery shopper or who are employed as a mystery shopper are not required to be licensed as a private investigator, as long as the mystery shopper is not performing private investigation services as defined in T.C.A. § 62-26-202(6) and (10). A mystery shopper is someone who is employed by a retail organization to assess the functioning of the retail organization, including but not limited to customer service and product quality.
- (5) Court reporters and persons who perform videographer services for depositions.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Chapter 1175-01
Private Investigation and Polygraph Commission

New Rules

Table of Contents

1175-01-.19 Evaluation of Required Experience

1175-01-.19 Evaluation of Required Experience.

- (1) An applicant for a private investigation company license must possess, or employ at least one person

who possesses, at least two thousand (2,000) hours of compensated, verifiable investigative experience satisfactory to the commission, or at least one (1) year of applicable, related experience or education in a related area of study approved by the commission.

- (a) The applicant may meet the required experience requirement for a private investigation company license by submitting a detailed resume and a sworn statement stating that the applicant has the minimum amount of experience for the appropriate designation. Verification may not be made using a submitted resume, but must be documented in order to verify two thousand (2,000) hours of compensated investigative experience.
 1. Acceptable proof of experience will include documentation from previous employers, submitted on that employer or agency letterhead, stating the length of service with a detailed job description showing actual work experience as a private investigator.
 2. Such documentation shall also state that the applicant has been compensated for this work, and shall state for how many hours the applicant has been compensated.
 3. The commission may consider proof other than the above as acceptable in its discretion.
- (2) Out-of-state applicants who own or operate their own private investigation company, and who are not required to hold a license or registration in their state of residence, may provide the following documentation:
 - (a) A city, county or state business license showing the issuance and expiration date;
 - (b) A federal tax identification;
 - (c) Federal tax returns; and/or
 - (d) Corporate charter information documenting which state the applicant corporation was originally chartered in and the date when the applicant corporation was chartered.
 - (e) The commission may consider documentation other than the above as acceptable in its discretion.
- (3) If the applicant holds a license issued in another jurisdiction, a "letter of good standing" is required from each jurisdiction for which the applicant holds a license or registration, and which details how the applicant qualified for the license or registration, the date when the license or registration was issued, the current license or registration status and a statement regarding any disciplinary action taken against the license or registration in any applicable jurisdiction.
- (4) The required submitted resume is not proof of experience.
- (5) In order to qualify under the one (1) year of related experience or education provision, the applicant must submit to the commission a detailed resume and a sworn statement that the applicant has a minimum amount of experience or education for that designation. The applicant must also submit proof of experience which shall include documentation from previous employers on those previous employers' or agencies' letterhead stating the length of service, along with a detailed job description showing actual working experience in a related field. The commission has the discretion to review any submitted experience documentation for acceptability.
- (6) In order to qualify under the one (1) year of education in a related field provision, the applicant must submit to the commission transcripts from an accredited college or university showing the course of study along with the number of hours completed and evidence of any degree earned. The commission has the discretion to review any submitted degree programs and fields of study for acceptability.
- (7) Military service may be acceptable experience to meet these qualifications if the applicant documents two thousand (2,000) hours of verifiable, compensated experience while serving in an investigative capacity with any federal, U.S. armed forces, state, county or municipal law enforcement agency or any other governmental agency.

Authority: T.C.A. §§ 62-26-206(6) and (7) & 62-26-303(a).

Chapter 1175-02
Continuing Professional Education

Amendments

Rule 1175-02-.03 Qualifying Programs is amended by adding a new subparagraph (4) that shall read:

- (4) For the purposes of this rule, the commission will not accept Post Officers Standards and Training (POST) Commission courses which are not open to the public, nor will any other courses submitted to the commission which are not open to the public be approved as meeting continuing professional education requirements.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Rule 1175-02-.08 Failure to Complete Required Continuing Professional Education is amended by deleting the text of rule in its entirety and substituting the following language so that, as amended, rule 1175-02-.08 shall read:

If the required continuing professional education is not completed on or prior to the expiration date of the license, a late fee will be assessed. If the required continuing education is not completed within thirty (30) days of the license expiration date, the renewal application will not be accepted or approved. If a late fee is assessed, no license will be approved until such late fee is paid in full.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Chapter 1175-04
Rules of Professional Conduct and Standards of Practice

Amendments

Subpart (5) of rule 1175-04-.06 Misconduct is amended by deleting the text of the subpart rule in its entirety and substituting instead the following so that, as amended, subpart (5) of rule 1175-04-.06 shall read:

- (5) (A) The licensee shall not falsify or permit misrepresentation of his/her or his/her associates' academic or professional qualifications. He/she shall not misrepresent or exaggerate his/her degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employer, employees, associates, joint ventures, or his/her or their past accomplishments with the intent and purpose of enhancing his/her qualifications and his/ her work.
- (B) Production and/or use of any printed matter or promotional materials, including but not limited to radio, television, internet or print advertising, letterhead, business cards or flyers regarding a licensee of the commission which do not bear the true name(s) under which the licensee is licensed by the commission as a private investigator or a private investigation company shall constitute misrepresentation.
- (C) Failure to include the true name under which a licensee is licensed by the commission as a private investigator or a private investigation company, in addition to any D/B/A's, A/K/A's, or alias names on any printed matter or promotional materials, including but not limited to radio, television, internet or print advertising, letterhead, business cards or flyers shall constitute misrepresentation.
- (D) Failure by a private investigator to indicate his or her private investigation company affiliation on any printed matter or promotional materials, including but not limited to radio, television, internet or print advertising, letterhead, business cards or flyers shall constitute misrepresentation.

Authority: T.C.A. §§ 62-26-206(6) and (7) & 62-26-303(a).

Polygraph Examiners
Chapter 1160-02
Continuing Education

Amendments

Rule 1160-02-.02 Basic Requirements is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 1160-02-.02 shall read:

Rule 1160-02-.02 Basic Requirements

Every licensed polygraph examiner seeking annual renewal of a license shall as a prerequisite for renewal of such license, report with the license renewal form satisfactory evidence of having completed at least twenty-four (24) credit hours of qualified continuing education in subject area of polygraph examinations, and/or related fields.

Authority: T.C.A. §§ 62-27-105.

Subpart (7) of rule 1160-02-.03 Qualifying Programs is amended by deleting the text of the subpart in its entirety and substituting instead the following so that, as amended, subpart (7) of rule 1160-02-.03 shall read:

- (7) The Tennessee Private Investigation and Polygraph Commission specifically reserves the right to approve or disapprove credit for continuing education claimed under this rule.

Authority: T.C.A. §§ 62-27-105.

Rule 1160-02-.04 Control and Reporting System is amended by deleting the text of the rule in its entirety and substituting instead the following so that, as amended, rule 1160-02-.04 shall read:

Rule 1160-02-.04 Control and Reporting System

- (1) Each licensee shall submit the following form as a prerequisite for renewal. This must include a signed statement setting forth the continuing education programs in which the licensee has participated during the renewal period:

VERIFICATION OF CONTINUING EDUCATION

I, _____ do attest that on the following dates, that I attended a total of _____ hours of continuing professional education.

Date: _____ Seminar Sponsor: _____

Hours Completed: _____ Location: _____

Date: _____ Seminar Sponsor: _____

Hours Completed: _____ Location: _____

Date: _____ Seminar Sponsor: _____

Hours Completed: _____ Location: _____

Enclosed are copies of my certificates and the seminar agendas for each session attended.

I certify that the above information is true and correct.

SIGNATURE OF EXAMINER

DATE

Such licensee shall retain documentation supporting such statement for at least two (2) years subsequent to the date of submission.

- (2) If any continuing education credit hours claimed in a statement submitted by a licensee pursuant to paragraph (1) of this rule are disapproved, the Tennessee Private Investigation and Polygraph Commission shall notify such licensee of the reason for the disapproval. The Tennessee Private Investigation and Polygraph Commission may allow a specified period of time for correction of the deficiencies noted.
- (1) The Tennessee Private Investigation and Polygraph Commission will verify information submitted by licensees under this rule on a test basis.

Authority: T.C.A. §§ 62-27-105.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: JANUARY 25, 2011

Signature: *[Handwritten Signature]*

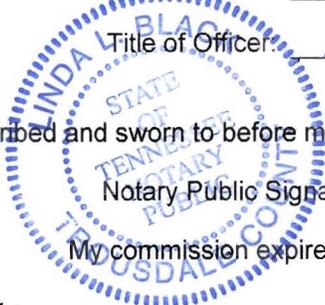
Name of Officer: ROBERT E. HERNDON

Title of Officer: ATTORNEY FOR THE COMMISSION

Subscribed and sworn to before me on: January 25, 2011

Notary Public Signature: *[Handwritten Signature]*

My commission expires on: 5/6/2012



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Filed with the Department of State on: 1/25/11

[Handwritten Signature]

Tre Hargett
Secretary of State

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