

OPERATING PROCEDURES – APPEALS COMMITTEE

The Appeals Committee, (AC) shall respond to any written appeals by the parties affected arising out of the decisions rendered by the Complaints, Investigation, and Discipline Committee (C & D).

Although an Appeals Committee may not be mandatory in a by-laws governed structure with no statutory overlay, it is nevertheless recommended since it ensures consistency across all member Associations and acts a safety valve, providing additional recourse for the member who feels s/he did not receive fair treatment by the first Committee. In a smaller Association, the Appeals Committee could be an ad hoc Committee of the Board, with an exception where the Association is a Party to the complaint or the appeal.

Committee Composition:

- The Chair is a member of the Association's Board of Directors
- All members, except a public member as explained below, should hold the CHRP designation. There should be an uneven number of members, preferably 3-7
- A public member may be appointed to represent the public interest in the profession. This member should be familiar with procedures involved in investigating breaches of a professional code of conduct; e.g. nursing or law
- Members are appointed for one year terms with appointments approved by the association Board of Directors. However, should a case extend beyond the term of the member, the member should remain on the committee until the committee has rendered its decision
- Renewals are possible based on approval of the association Board, but no member should serve longer than 6 years
- AC members cannot be members of the C & D committee and vice versa.
- In addition, no Committee member should be employed by the same employer as either of the parties pertaining to the complaint. In such cases, that Committee member should be excused from the proceedings.
- The Clerk of the committee – a volunteer or staff person who provides administrative support will be a member ex-officio.

Role of Clerk of the Committee – staff or volunteer position:

The clerk will have administrative responsibility for receiving submissions, distributing material to the members of the committees and the parties to the complaint, scheduling meetings, hearings, and so on. Depending on the association, the same person could serve as clerk to both the C& D and Appeals or two different people could be appointed. If there are different clerks then there should be communication between the clerks to ensure coordination of activities between the committees when necessary. However, the clerk must be careful not to bias or to appear to have biased the situation by sending information to the Appeals committee while it is still before the C & D committee.

Committee Confidentiality:

Members will sign a confidentially document agreeing that materials reviewed during the course of membership on the committee will remain confidential and subject to the privacy policy of the association. Further, that during the hearing and prior to the release of the committee's decision, the members agree not to discuss the case outside of the committee meetings. (Copy of agreement is attached below as an appendix)

The Appeal Process:

1. A complaint is received from a **Complainant**. The person who is the subject of the complaint is the **Respondent**. The “Parties” to the complaint are the Complainant and the Respondent. The Association may also be a Party where the Association chooses to intervene, as provided herein.
2. Either the Complainant or the Respondent may appeal the decision of the C&D Committee to the Appeals Committee. The Party requesting the appeal is known as the “Appellant”.
3. An appeal must be received by the Clerk of the Appeals Committee in writing within 30 calendar days of the C&D Committee’s decision.
4. The appeal must set out in detail the grounds of the appeal. This is not a ‘trial de novo’ or a complete re-hearing of the matter. The Appeals Committee can hear a complaint only on the basis of a manifest error in fact, error in law (including interpretation of the Code, the Discipline Process, and any relevant by-laws, statutes or common law) or error in the application of natural justice.
5. Within thirty (30) calendar days of an appeal being received by the Clerk of the Appeals Committee, the Clerk must send the following to the other Party(ies):
 - (1) a copy of the appeal; and
 - (2) a letter advising him/her that he/she has thirty (30) days to file written submissions with the Clerk of the Appeals Committee, if he/she wishes to file submissions.
6. The appeal is to be delivered in person, by registered mail or by courier to the current address on file with the Association, and a signature ensuring receipt of the appeal should be requested.
7. At the time of delivery of the appeal, the Appeals Committee Clerk must send a copy of the appeal to the members of the Appeals Committee.
8. Within seven (7) calendar days of receiving submissions from the other party, the Clerk shall send a copy of the submissions to the Appeals Committee and to the Appellant.
9. Not later than fourteen (14) days after the time for filing submissions has expired, the Appeals Committee Clerk shall notify the Parties and the Appeals Committee of the date for the appeal hearing before the Appeals Committee. The Appeals Committee Clerk shall provide at least thirty (30) days’ notice of the hearing date to the Parties.
10. Not later than fourteen days prior to the hearing, the Appeals Committee Clerk shall provide to the Parties and the Appeals Committee an Appeal file. The Appeal file shall contain all of the correspondence received from the Parties, the original complaint and reply, the decision of the C&D Committee, the appeal document and any submissions filed by any Party.
11. Whether or not it intervened at the C&D Committee hearing, where a complaint raises an issue of general importance to the Association, the Association may choose to intervene in the appeal. The Association shall provide the Clerk of the Appeals Committee with written notice of its decision to intervene. Should it choose to intervene in any appeal, the Association shall:
 - a) become a Party to the appeal, and

- b) have the right to receive notice of the hearing and production of any documents or other matters on the same basis as the other Parties; and
 - c) have the right to make submissions regarding the appropriate disposition of the appeal.
12. Except as otherwise ordered or permitted by the Appeals Committee, because this is an appeal, and not a new hearing, no new evidence is presented. Rather, all Parties set out their positions and submissions on the grounds of the appeal. Since the Appeals Committee has the record before it, submissions should be confined to those documents.
 13. Without limiting the ability of the Appeals Committee to determine the admissibility of evidence, should new facts be uncovered by any Party which could not have been reasonably discovered by due diligence prior to the hearing before the C&D Committee that may have affected the outcome of the hearing before the C&D Committee, the Appeals Committee may consider whether to admit the new evidence. Should the Appeals Committee determine that it is appropriate in the circumstances to admit the evidence, it may do so on such terms as it considers are just, including admitting the evidence as part of the appeal and determining the matter, or referring the matter back to the C&D Committee for a new hearing.
 14. The Appeals Committee may confirm the decision of the C&D Committee in its entirety or overturn the decision. If it overturns the decision, it may substitute its own decision regarding the culpability of the Respondent, or may reduce or increase the penalty imposed by the C&D Committee. The Appeals Committee may also refer the matter back to the C&D Committee for a new hearing regarding culpability, penalty or both.
 15. The Appeals Committee will usually reserve its decision and inform the Association's Executive Committee (or equivalent) after the hearing of the conclusions reached prior to the release of the decision. The Appeals Committee must render its decision in writing, with reasons for the decision.
 16. The Committee has the discretion to waive or extend any time limit(s) provided in the Discipline Process on such terms as the Committee may determine. In exercising its discretion, the Committee shall consider whether there is prejudice to any Party and whether, in the Committee's opinion, it would be just to do so.

Further proceedings:

Any Party to the appeal may seek to have the decision judicially reviewed where such right is provided by statute or in the applicable bylaws. This involves making an application to a court of competent jurisdiction for oversight of the process and disposition of a complaint. Associations should budget for legal fees in the anticipation of such an event.

Liability:

The general principle is that where a member is acting within the scope of the terms of the member's appointment, there is qualified privilege attached to the member's actions. However, it is possible that members may incur legal expenses to defend their action on an individual basis. Member Associations should review their Officers & Directors liability insurance coverage to ensure that their insurance provides adequate protection should there be such an occurrence.