

## APPENDIX C

### MANUAL OF PROCEDURES OF THE COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND GRIEVANCES FOR DISCIPLINARY PROCEEDINGS UNDER ARTICLE IV, SECTION 2, OF THE BY-LAWS OF THE NATIONAL ACADEMY OF ARBITRATORS

#### **Article I** **General**

##### *1. Preamble*

It is the policy of the Academy that disciplinary matters be handled expeditiously with due regard to the right of the charged member to full and fair consideration of the charges.

##### *2. Definitions*

As used in these rules:

- (a) *Academy*—The National Academy of Arbitrators.
- (b) *Appeals Tribunal*—The Tribunal Appeals Committee of the National Academy of Arbitrators.
- (c) *CPR&G*—Committee on Professional Responsibility and Grievances.
- (d) *Chair*—The Chair of the Committee on Professional Responsibility and Grievances.
- (e) *Charge*—A charge is an allegation of misconduct by a member.
- (f) *Charged Member*—A charged member is a member charged with misconduct or a violation of the Code of Professional Responsibility.
- (g) *Code*—The Code of Professional Responsibility for Arbitration of Labor-Management Disputes.
- (h) *Complainant*—A complainant is a person or entity who makes a charge of misconduct.

(i) *Hearing Officer*—The Hearing Officer is a person designated by the Chair of the Committee on Professional Responsibility and Grievances.

(j) *Misconduct*—Misconduct is behavior of a member which violates the Code or brings the arbitration profession into disrespect.

## **Article II**

### **Preliminary Investigation by Chair**

#### *1. Initiation of Charges*

A proceeding may be instituted by a member or by any affected person against a member by filing with the Academy a written charge that a member has violated the Code. All charges will be referred to the Chair of the CPR&G. The charge need not be in any special form. The Chair may seek supplementation or clarification of the charge from complainant. If the Chair concludes that no provision of the Code is implicated by the charge, the complainant shall be so informed and the matter closed.

#### *2. Investigation by Chair*

If the Chair determines that misconduct under the Code has been charged, the Chair, or a member of CPR&G designated by the Chair, shall investigate the charge. An informal or conciliatory approach will be followed where appropriate. The Chair, or the designee, will require the member to supply information relevant to the charge, and the charged member shall comply promptly and as fully as reasonably possible with such request.

#### *3. Closure by Chair*

After the investigation the Chair shall consult with two other members of the CPR&G. If it is determined that no probable cause has been established, the Chair shall prepare a written report to that effect. A copy of the report shall be sent to the complainant and the charged member, and the matter shall be closed.

#### *4. Appointment of Hearing Officer*

If the investigation discloses that there is probable cause to proceed, the Chair shall prepare a brief written report to that

effect and shall appoint a Hearing Officer from among the members of the CPR&G to hear the matter.

*5. Time*

The Chair shall endeavor to complete the preliminary investigation within 45 calendar days of the receipt of the complaint.

**Article III  
Proceedings Before the Hearing Officer**

*1. Notification*

The Hearing Officer shall supply the charged member with the written charge specifying the particular provision of the Code which relates to the charge.

*2. Response of Charged Member*

The charged member shall within 21 calendar days of receipt of the charge submit to the Hearing Officer a written statement responding to the charge.

*3. Presumption of Admission*

Should the charged member fail to respond to the request of the Hearing Officer, the presumption will be that the charge as presented has not been denied.

*4. When Facts Are Not Disputed*

If the facts are not in dispute, the Hearing Officer may make a determination based upon the record and relevant standards set forth in the Code.

*5. When Facts Are Disputed*

On finding that there are factual matters in dispute, the Hearing Officer shall establish a suitable time and place for a hearing on the charge.

*6. Notice of Hearing*

The charged member and the complainant shall be given at least 30 days notice of the scheduled hearing.

*7. Privacy and Due Process*

The hearing shall be private and need not follow formal rules of court procedure but shall be conducted so as to assure the charged member a fair hearing, including the right of representation and confrontation.

*8. Transcript or Tape Recording*

A transcript or a tape recording shall be made of the hearing at the expense of the Academy. After the hearing is concluded, at the written request of the complainant or charged member addressed to the Chair of the CPRG, the transcript or tape recording shall be made available for review but not for reproduction. The Chair of the CPR&G shall select a site for such review, as conveniently located to the requesting party as possible. For this purpose he may select the office of any member of the CPR&G, or any officer or member of the Board of Governors of the Academy.

*9. Extensions*

The Hearing Officer shall have the right to grant extensions of time.

*10. Waiver of Hearing*

The charged member has the right to waive a hearing.

*11. Report of Hearing Officer*

Upon completion of the hearing and the receipt of all documentary evidence, including any briefs which may be submitted, the Hearing Officer shall make a written report, which shall include findings of fact and a decision as to the appropriate disposition of the matter, including the discipline, if any, to be imposed. The Hearing Officer will endeavor to complete the report within 45 calendar days of the close of the record.

*12. Dispositions Available to Hearing Officer*

(a) If the Hearing Officer finds that the charge has not been proved by clear and convincing evidence, the complaint shall be dismissed. The complainant and the charged member will be notified of this action by the Chair who shall transmit a copy of the Hearing Officer's report to both persons.

(b) If the discipline determined to be appropriate by the Hearing Officer is either advice or censure, such decision shall be conveyed to both the charged member and the complainant by the Chair together with a copy of the report.

(c) If the Hearing Officer believes that discipline more severe than advice or censure is appropriate, he shall consult with two past presidents of the Academy before arriving at a decision. Following such consultation, if the Hearing Officer decides that suspension or expulsion from the Academy is the proper discipline, that determination, with a copy of the report, shall be transmitted by the Chair to the charged member and the complainant.

### *13. Guidelines to Hearing Officers Regarding Suspensions*

I. A suspension under the Academy's By-Laws, Article IV, Section 2, shall be for a minimum of one year.

II. In the discretion of the Hearing Officer, a suspension of a member for a specified period may include, but is not necessarily limited to, the following actions:

- A. Removal of the member's name from the Academy Directory and mailing lists during the period of suspension, as far as practicable.
- B. Barring the member from using the Academy's name as a reference or for purposes of identification during the period of the suspension.
- C. Barring attendance by the member at any members-only session of the Academy at national and regional levels.
- D. Suspension of the member from Academy office or Committee membership for the period of the suspension.
- E. Cancellation of legal representation rights provided by the Academy for matters arising during the period of the suspension.
- F. Cancellation of any obligation to pay dues and make contributions to the Legal Representation Fund during the period of suspension.
- G. Provision that failure by the member to comply with the final action on any of the above (13 II A-F) that were adopted by the Hearing Officer may result in the expulsion of the member.

#### 14. *Finality*

The decision of the Hearing Officer shall be final unless an appeal is taken.

### **Article IV Appeals**

#### 1. *Appeals Tribunal*

Appeals shall be heard by the Appeals Tribunal.

#### 2. *Who May Appeal*

Either the complainant or the charged member may appeal the decision of the Hearing Officer.

#### 3. *Time for Appeal*

An appeal must be submitted within 30 calendar days from the date the decision of the Hearing Officer is transmitted to the charged member and the complainant.

#### 4. *Content of Appeal*

The appellant should set forth the rationale for the appeal. A copy of the appeal shall be sent by the Chair of the Appeals Tribunal to the other party who shall be notified of a right to respond and the date when the response is due.

#### 5. *The Appellate Record*

The record made before the Hearing Officer shall be forwarded by the Hearing Officer to the Chair of the CPR&G and to the Chair of the Appeals Tribunal. The Tribunal's decision will be based on this record and not on a *de novo* proceeding.

#### 6. *Appellate Proceedings*

The Appeals Tribunal may decide the case on the basis of the appellate record, oral argument, and/or briefs. Whether reply briefs should be permitted, and any other procedural matters which may arise during the appeal, shall be within the discretion of the Appeals Tribunal, consistent with this manual of procedure.

### *7. Guidelines*

The Hearing Officer's findings of fact shall be deemed final if supported by clear and convincing evidence. The determination of a violation of the Code shall be based on clear and convincing evidence. The Tribunal shall provide a written rationale for its opinion if it modifies or revises the decision of the Hearing Officer or disagrees with the Hearing Officer's rationale.

### *8. Finality*

The decision of the Tribunal shall conclude the proceeding. The Chair of the CPR&G shall forward copies of the decision of the Tribunal to the complainant and the charged member. The decision of the Tribunal shall become final 30 days after its rendition.

### *9. Time for Disposition*

The Tribunal shall endeavor to complete its determination of the appeal within 45 days.

## **Article V Miscellaneous**

### *1. Effect of Advisory Opinion*

Advisory opinions of the Academy are binding on Hearing Officers and the Tribunal.

### *2. Notice of Action*

Where the final official action on a charge is a finding that the charge has been proved and that discipline no more severe than advice or censure is appropriate, notice of the action shall be given only to the member and the complainant.

Where the final official action on a charge is a finding that the charge has been proved and that suspension or expulsion is appropriate, notice of the action shall be given to the charged member and the complainant; in addition, the Secretary of the Academy will advise the membership of the Academy of the disciplinary action taken in such form as will best serve the interests of the Academy. In any of these cases, the circumstances surrounding the

final action may form the basis for an opinion by the CPR&G which, if issued, shall not identify any of the parties involved.

*3. Right of Representation*

The complainant and the charged member may at any stage of the proceeding be represented by a person of their choice who may be an attorney.

*4. Right of Member to Terminate Proceedings*

The charged member shall have the right at any time to terminate the proceedings by resigning from the Academy. In that circumstance, a record of the matter shall be kept by the Chair of the CPR&G and the Secretary of the Academy. In the event of a reapplication by the member, the information and record shall be disclosed to Academy members considering such application.

*5. Communications*

All written communications from the Chair of the CPR&G and the Hearing Officer shall be marked personal and confidential and shall be sent by registered mail, return receipt requested. Copies of all written communications shall be sent to the complainant and the charged member. In the initial letter, the charged member shall be informed that the complainant will be sent copies of all communications.

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