

Part Three—The Grievance Committee in Ethics Proceedings

Section 17. Authority

The Grievance Committee is established in Part Two, Section 15 and Part Eight, Section 38 of this Manual, which provide in part:

There will be a standing committee, known as the Grievance Committee, of at least ___3___ Board Members in good standing, of whom at least a majority shall be Realtors®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).

Section 18. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee makes decisions on matters involving ethics or arbitration. *(Revised 05/15)*

The Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, does not decide whether members have violated the Code of Ethics, and does not dismiss ethics complaints because of lack of evidence. Complainants are not required to prove their case upon submission of their ethics complaint or arbitration request. The Grievance Committee does not mediate or arbitrate business disputes. The Grievance Committee will hold regularly-scheduled meetings and/or review complaints not later than forty-five (45) days after receipt of the complaint. *(Revised 05/15)*

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a charge of having violated Article 14 of the Code of Ethics. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, Part Six of this Manual). In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, Part Thirteen of this Manual.) If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request. *(Revised 11/15)*

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

- (1) whether ethics complaints and arbitration requests are timely filed,
- (2) whether arbitrable issues exist,
- (3) whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted.

(Revised 05/14)

Section 19. Grievance Committee's Review of an Ethics Complaint

A. Initial action upon receipt of an ethics complaint

Upon receipt of an ethics complaint from the Professional Standards Administrator, the Chairperson of the Grievance Committee shall review the complaint. Any evidence and documentation attached will be considered only to the extent necessary to determine whether a complaint will be referred for hearing. The Chairperson may assign one or more members of the Grievance Committee to review the complaint and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of from the complainant if additional information is necessary to determine whether a complaint will be referred for hearing. The complaint shall be provided to the assigned members by the Professional Standards Administrator upon instruction from the Chairperson. *(Amended 11/15)*

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Administrator to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. *(Amended 4/94)*

B. Consideration of an ethics complaint by the Grievance Committee

In reviewing an ethics complaint, the Grievance Committee shall consider the following:

- (1) Is the ethics complaint acceptable in form as received by the Committee? If not in proper form, the Chairperson may request that the Professional Standards Administrator contact the complainant to advise that the complaint must be submitted in proper form. *(Revised 11/15)*

NOTE: If deemed appropriate by the Chairperson, a member of the Grievance Committee may be assigned to contact the complainant and to provide procedural assistance to amend the complaint or resubmit a new

complaint in proper form and with proper content. The Grievance Committee member providing such assistance shall ensure that only procedural assistance is provided to the complainant, and that the complainant understands that the member is not representing the complainant or advocating on behalf of the complainant. *(Revised 11/15)*

- (2) Are all necessary parties named in the complaint?
- (3) Was the complaint filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later? *(Revised 5/11)*
- (4) Is the respondent named in the complaint a member of the Board, and was the respondent a member of any Board at the time of the alleged offense?
- (5) Is criminal or civil litigation or any government agency investigation or other action pending related to the same facts or circumstances giving rise to the complaint alleging unethical conduct?
 - (a) If criminal or civil litigation is pending related to the same facts or circumstances giving rise to the complaint alleging unethical conduct, the Grievance Committee shall instruct the Professional Standards Administrator to have Board legal counsel review the complaint filed and advise if any hearing should proceed (presuming the matter would otherwise warrant a hearing), with counsel considering the following:
 - (1) similarity of factors giving rise to pending litigation or regulatory or administrative proceeding and the ethics complaint
 - (2) degree to which resolution of the pending litigation or regulatory or administrative proceeding could make consideration of the ethics complaint unnecessary
 - (3) degree to which pending litigation or regulatory or administrative proceeding would delay prompt disposition of the ethics complaint
 - (4) the nature of the alleged violation and the extent to which it could impact on cooperation with other Board Members
 - (5) the assurance of Board legal counsel that consideration of an ethics complaint would not deprive the respondent of due process. *(Revised 11/18)*
- (6) Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?
- (7) Are the specific Articles cited in the complaint appropriate in light of the facts provided? Should additional Articles be cited? Should certain Standards of Practice be cited in support of the Articles charged? Are any inappropriate Articles cited?
- (8) If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred? Complainants are not required to prove their case when initially filing an ethics complaint. A complaint may not be dismissed for lack of evidence if the allegation(s), taken as true on their face, could constitute a violation of the Code of Ethics and the complaint is in an otherwise acceptable form. *(Revised 11/15)*

If all relevant questions have been answered to the satisfaction of the Grievance Committee, and the allegations, if taken as true, could constitute a violation of the Code of Ethics, the Grievance Committee shall refer the complaint to the Professional Standards Committee for a hearing by an ethics Hearing Panel.
(Revised 11/15)

C. Appeal from the decision of the Grievance Committee related to an ethics complaint

If the Grievance Committee dismisses the complaint, the notice of dismissal shall specify the reason(s) for dismissing and the complainant may appeal the dismissal to the Board of Directors within twenty (20) days from transmittal of the dismissal notice using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. If the Grievance Committee deletes an Article or Articles from an ethics complaint, the complainant may also appeal to the Board of Directors using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. The Directors (or a panel of Directors or the Executive Committee) shall consider only the information and documents considered by the Grievance Committee, together with the complainant's rationale for challenging the dismissal, and render its decision, which shall be final. The parties are not present at the meeting at which the appeal is considered. Appeals of dismissals shall be heard at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision.
(Revised 11/15)

D. Criminal or civil litigation or regulatory/administrative proceedings coming to light after an ethics complaint has been referred to an ethics Hearing Panel

If after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing, it is subsequently discovered that criminal or civil litigation or regulatory or administrative proceedings related to the same transaction or event are pending, the Hearing Panel Chair, in consultation with association legal counsel, will determine whether the hearing will proceed or, alternatively, whether the complaint will be held in abeyance pending resolution of the litigation or regulatory or administrative proceedings. (Revised 11/18)