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## Form #E-9a

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Board or State Association

Address

City

State

Zip

### Outline of Procedure for Ethics Hearing Involving a Complaint and Counter-Complaint (To be Transmitted in Advance to Both Parties)

**Remote testimony:** Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to ethics hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

**Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date.

**Recording of the hearing:** The Board shall, and any party (may/may not), at their own expense, have a court reporter present at the hearing, or may record the proceeding and, if transcribed, shall furnish a copy to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording.

**Method and objective of procedure:** The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

**Due process procedure:** The hearing will proceed as follows:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) The complaint and counter-complaint will be read into the record.
- (3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at a hearing may be called as a witness without advance notice.
- (4) Complainant/counter-respondent will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that he feels have been violated, explaining how the respondent/counter-complainant violated each Article and refuting the contention that he violated any provisions of the Code of Ethics.
- (5) Respondent/counter-complainant will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that she feels have been violated, explaining how the complainant/counter-respondent violated each Article and refuting the contention that she violated any provision of the Code of Ethics.
- (6) Complainant/counter-respondent presents his case and defenses by offering testimony and evidence from himself and/or his witness(es) to support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and refuting the allegations made by the counter-complainant.
  - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
  - (b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
- (7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and rebutting the complainant's contention that she violated the Code of Ethics.
  - (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

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- (b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.
  - (8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and/or refute the allegations made by the respondent/counter-complainant.
    - (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
    - (b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.
  - (9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and/or refute the allegations made by the complainant/counter-respondent.
    - (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.
    - (b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.
  - (10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondent and/or of the complainant/counter-respondent's witness(es).
  - (11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).
  - (12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.
  - (13) The Chair will then adjourn the hearing.
  - (14) The Hearing Panel will go into executive session to decide the case.

**Findings in ethics hearing:** The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedures of **Part Four**, Section 23 of the *Code of Ethics and Arbitration Manual*.

**Testimony:** Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

**Use of counsel:** A party may be represented in any hearing by legal counsel or by a **Realtor®** of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.

*(Adopted 11/98, Revised 11/15)*