

# **USBF GUIDELINES FOR CONDUCTING ADJUDICATORY PROCEEDINGS**

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# GUIDELINES FOR CONDUCTING ADJUDICATORY PROCEEDINGS

## INTRODUCTION

The purpose of this document, *Guidelines for Conducting Adjudicatory Proceedings* (“Guidelines”), is to help the USBF Board of Directors (the “Board”) in its role as adjudicatory committee-of-the-whole (the “Adjudicatory Committee”) provide fair hearings for all USBF Members and all participants in USBF events charged with cheating or other ethical violations (each, an “Ethical Violation”). These *Guidelines* are modeled on the ACBL “Guidelines for Conducting Disciplinary Proceedings,” with modifications as appropriate given the different organizational structure of the USBF.

Disciplinary proceedings are not criminal trials and do not involve personal liberty or property rights. Rather, they involve the privilege of playing bridge at a USBF Event and/or being a member of the USBF.

These procedures are intended to provide a process that is fair and expeditious and as simple and informal as circumstances permit, while keeping in mind at all times the rights of the parties.

Unless the context clearly dictates otherwise, the singular includes the plural and the masculine includes the feminine and vice versa.

### I. COMPLAINT, CHARGES, ADVOCATE

#### A. Complaint

When one or more people allege that a USBF Member or a participant in a USBF Event has engaged in an Ethical Violation, the USBF President (or the USBF Vice President if the USBF President is not able or willing to do so), in consultation with the USBF Chief Operating Officer (“COO”), may refer the matter to the Ethics Investigation Committee (“EIC”) to review the allegation(s). If that EIC concludes that a *prima facie* case of an Ethical Violation exists, it may bring a Complaint to the Reviewing Party. The Reviewing Party is the COO, or the USBF Recorder if the COO is not able or willing to serve, or an individual to be appointed by the Board if the USBF Recorder also is not able or willing to serve. The Complaint is a written document in which the EIC sets out the allegations and its basis for concluding that a *prima facie* case of an Ethical Violation exists.

#### B. Reviewing Party, Charging Party and Charges

The Reviewing Party must review the Complaint to determine if it establishes a *prima facie* case of the Violation(s) alleged. If, in the sole discretion of the Reviewing Party, the Complaint contains credible assertions and/or evidence that on its face lays out a basis for the alleged Ethical Violation, it should be deemed sufficient for presenting a *prima facie* case. If the Reviewing Party concludes that no *prima facie* case can be established, then no Charges should be brought.

If the Reviewing Party decides to move forward, he/she, now in the role as the charging party (the “Charging Party”) shall submit the Charge to the President of the Board along with a request that the Board convene as an Adjudicatory Committee (“Committee”) and hold a hearing (the “Hearing”).

C. Advocate

Each of the Charging Party and the party(ies) charged (the “Charged Party(ies)”) has the right to select a person to represent him or her before the Adjudicatory Committee. An Advocate need not be an attorney but must not be a member of the Board or an Officer of the USBF. The Advocate need not be neutral or unbiased. The Advocate is free to aggressively prosecute or defend the Charges.

## II. THE ADJUDICATORY COMMITTEE

A. Bias of Board Members Should be Considered

Every member of the Adjudicatory Committee must be unbiased as to the personalities and issues involved. Common sense should prevent most improper service. To the extent possible, no Adjudicatory Committee member should be a regular partner, close friend, spouse, significant other or known enemy of any Charged Party or have a business or financial association with any Charged Party. Any Adjudicatory Committee member who has any dealings with a Charged Party (or the Charging Party, excluding their dealings as COO and Board Member) that might give even the appearance of impropriety should recuse himself or herself from further service. However, membership in, employment by or an ownership interest in a particular organization or business (or being part of an ethnic group, race or culture) does not constitute a bias *per se*.

Adjudicatory Committee members should conduct themselves appropriately.

If a member of the Committee feels unable to act impartially at a hearing, he or she should recuse himself or herself. If there is a possible appearance of partiality or bias, the Committee may remove such member from the Adjudicatory Committee and/or discuss the matter with the Charged Party, the Charging Party, and their Advocates, if any, (collectively, “the Parties”) to determine if anyone objects to the presence of that person on the Adjudicatory Committee.

B. Composition of the Adjudicatory Committee

The Adjudicatory Committee shall be comprised of all members of the USBF Board of Directors as of the date the Charging Party forwards the Charge to the Board, except for any such Board members who may recuse themselves or be removed. The Committee shall consist of no fewer than five (5) members. In the event that fewer than five Board

members are able and willing to serve on the Adjudicatory Committee, the Committee shall select such number of USBF Members to be members of the Adjudicatory Committee so as to bring the number of Committee members up to five (5). The Committee is the sole determiner of the eligibility of USBF Members to be Adjudicatory Committee members.

The chairperson of the Adjudicatory Committee (the “Chairperson”) shall be the President of the Board or, in his or her absence, the Vice President of the Board. In the event that neither is available, the remaining Adjudicatory Committee members shall select the Chairperson.

### C. Comments Regarding Hearing by Members of the Adjudicatory Committee

#### (1) Comments Made Prior to the Hearing

Adjudicatory Committee members should not discuss any substantive matter pertaining to the case with anyone, except in meetings of the Committee. This includes the Parties as well as third parties.

#### (2) Comments Made During the Hearing, Including During Deliberations

Adjudicatory Committee members should discuss the matter only with other Adjudicatory Committee members and the Parties. Deliberations, however, may be discussed only among Adjudicatory Committee members.

#### (3) Comments Made Post-Hearing

Once the Adjudicatory Committee has rendered a decision and has communicated that decision to the Parties, the Committee shall provide the COO a public statement, if appropriate, regarding the decision which may be posted on the USBF website. ***An Adjudicatory Committee member may not discuss anything related to the Adjudicatory Committee's deliberations.*** This restriction precludes, among other things, posting on website blogs.

## III. PRE-HEARING PROCEDURES

### A. Notification of Parties is Required

All of the Parties involved must receive timely written notice of the date, time and place of the Hearing, be furnished with written Charges, and be advised of their right to each be represented at the Hearing by an Advocate. In most cases, thirty-day’s prior notice is recommended. No written reply to the Charges is expected or required.

The Chairperson must verify that the appropriate notices have been sent.

B. Motion Practice, Discovery, and Pre-Hearing Conferences

There shall be no motion practice other than a request for continuance if good cause is shown for such request. All issues other than such a request shall be decided at the Hearing.

The Charged Party shall not be entitled to prehearing discovery as might be provided in civil litigation (e.g., no depositions, interrogatories, or requests for production of documents). The Investigative Committee's final report, including any documents referenced in the report, must be provided to the Charged Party at the time the Charge is submitted by the COO to the President of the Board. No later than 7 days prior to the Hearing both parties must exchange any other reports, exhibits, and/or witness statements they plan to use at the Hearing. The Chairperson may exclude at the Hearing any documents that are not timely exchanged, and may allow additional documents to be used at the Hearing for impeachment, rebuttal, or other good cause.

The Adjudicatory Committee or its Chairperson may hold a pre-hearing conference with the Parties to narrow or frame procedural questions. This pre-hearing conference is not a mini disciplinary hearing. At this conference, the Adjudicatory Committee or its Chairperson also may direct the disclosure of available evidence and permit the presentation of affidavits or written statements for use at the Hearing. In cases in which numerous witnesses and affidavits or statements are involved, the Adjudicatory Committee may require an exchange of witness lists, witness statements, a summary of expert witness testimony and/or affidavits prior to the Hearing. This disclosure or exchange does not require a Party to present the witnesses at the Hearing. In addition, when more than one person is charged in the same situation, or when one person is charged in several situations, the proceedings may be consolidated.

C. Persons with Disabilities

The Board will undertake a good faith effort to ensure that any physical or mental disability will not be a disadvantage.

**IV. HEARING PROCEDURES (see also EVIDENCE below)**

A. Presence at the Hearing

The Hearing may be conducted in person, electronically, or telephonically. The Parties are entitled to be present while all evidence is given. Other individuals may be present at the Hearing only at the discretion of the Chairperson. The Chairperson should consider permitting witnesses to be present only when they are giving testimony.

An advisor may be present to advise the Adjudicatory Committee to ensure that proper procedure is followed.

B. Chairperson is in Charge of the Hearing

After calling the hearing to order, the Chairperson should clarify to all parties that the Chairperson is in charge and that no one is to speak unless recognized by him or her. After introducing all individuals present to each other, the Chairperson should then explain how the hearing will proceed.

C. Chairperson Statements to the Adjudicatory Committee

The Chairperson addresses the Adjudicatory Committee members as follows: "If there is any reason why you feel you should not serve on this committee, please recuse yourselves now." –or– "If you believe you can serve and make an unbiased decision, but you know of conditions or circumstances that may be perceived as creating potential bias or perceived as such, please disclose those issues now."

D. Documentation of the Hearing is Required

A full record is mandatory. A court reporter may be used. The Chairperson should attempt to provide for the best record-keeping permitted by the circumstances. At the very least, in the absence of a court reporter or a video and/or audio recording, one or more members of the Adjudicatory Committee should be charged with the task of keeping good written records. Documentary evidence should also be preserved. The Chairperson should ensure that any such records are sent to the USBF COO, along with either a typed Hearing Report or a video recording of the Hearing, for safekeeping in the event of future need.

D. Presentation of the Case

The Chairperson should read the Charges (if the Charges are voluminous, they may be summarized).

In general, the Chairperson will provide an opportunity for each side to present its case, beginning with a very short opening statement. The Adjudicatory Committee should then hear the evidence, first on behalf of the Charging Party in support of the Charges and then on behalf of the Charged Party, followed in each case by questioning by the other side. (See Witnesses immediately below.) Committee members shall be free to seek permission of the Chairperson to ask questions at any point in the proceedings. If the Committee deems it necessary or appropriate, the Chairperson may allow very short closing statements.

E. Witnesses

Following opening statements, witnesses may testify and be questioned by the party (or its Advocate) who calls them, by the other party (or its Advocate), as well as by the members of the Adjudicatory Committee. At his or her discretion, the Chairperson may sequester one or more witnesses (e.g., allow them to attend the Hearing only while giving their testimony

and caution them against discussing the case until the Hearing is completed). This practice is strongly encouraged.

F. Deliberations

After hearing all the testimony and arguments, the Adjudicatory Committee retires to consider the case in a closed session; these deliberations are privileged. The standard for determining responsibility for an Ethical Violation is Comfortable Satisfaction. (See Section V below.) A simple majority decision prevails.

Each Charge (and its corresponding burden of proof) should be considered separately.

G. Discipline Imposed Following a Finding of Guilt

If the Adjudicatory Committee finds the Charged Party guilty, the Adjudicatory Committee shall then determine what discipline to impose.

## V. EVIDENCE

A. Burden of Proof

Each Charge should be considered separately. To find a person responsible of a Charge requires a simple majority vote by the Adjudicatory Committee.

Any allegation that the Charged Party has engaged in an Ethical Violation must be proved by Comfortable Satisfaction. ***"Comfortable Satisfaction" is met when, after a careful weighting of the evidence and the facts proved by direct, circumstantial or other evidence, the decision maker has a comfortable satisfaction that he or she has reached a correct and just conclusion. It is higher than a "preponderance of the evidence" but not as high as "beyond a reasonable doubt." Direct evidence, circumstantial evidence, hearsay evidence, witness statements, mathematical analysis and any other relevant evidence (including evidence from outside of the USBF) may be used to establish Comfortable Satisfaction. These factors go to the weight given to such evidence and not its admissibility.***

B. Principles of Evidence to be Applied at Hearings

The USBF is a membership organization whose governing body, the Board, sets its own rules, subject to its ByLaws. The Adjudicatory Committee is not a court of law so the rules of evidence applicable to courts of law and other legal tribunals do not necessarily apply to the Adjudicatory Committee.

Any relevant evidence, including hearsay evidence, may be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.

While the Adjudicatory Committee may permit hearsay evidence, the weight given the hearsay evidence should be less than the weight given direct testimony made based on first-hand experience. The reason is that hearsay is not as reliable as direct testimony and there is no effective way to question it. This means one often has no way to be certain the hearsay evidence is true.

The Adjudicatory Committee should consider *relevant* any evidence that bears on an issue before it. If particular testimony makes any contested fact or factual inference more or less likely, then that particular testimony is relevant too and the committee should hear it. However, the Adjudicatory Committee should not allow testimony that fails this test of relevancy because hearing it is a waste of time and may be prejudicial to the ultimate decision.

C. Credibility and Weight of the Evidence

*Credibility* is the extent to which the testimony of a witness is believable.

Witnesses usually testify to the truth as they perceive it. If two people testify to opposite facts, such as whether a traffic light was green or red when the automobile drove through the intersection, one *must* be wrong. However, each witness could firmly believe he/she is correct and that the other person is wrong. It is up to the individual members of the Adjudicatory Committee to determine whom they believe is more credible.

*Weight* is the degree to which credible evidence controls the ultimate decision of the members of the Adjudicatory Committee. Weight is the importance assigned to the particular evidence.

Sometimes a party may present evidence that is *irrelevant* to the issues being considered at the Hearing. With limited time at the Adjudicatory Committee's disposal, at his or her discretion, the Chairperson may limit the admission of irrelevant testimony.

## VI. POST-HEARING PROCEDURES

A. Notification of Discipline

The decision of the Adjudicatory Committee is final.

When the Adjudicatory Committee imposes discipline(s) to be effective immediately, the Adjudicatory Committee shall immediately notify the Charged Party of the discipline in writing, stating its immediate effective date (a "written decision").

Usually, however, the Charged Party will be informed that the Committee's decision will be forthcoming in a matter of days. If that is the case, the official Notice of Discipline will be sent by the USBF COO after the Hearing documents are received from the Chairperson.

**B. Hearing Report Submitted to USBF COO**

It is mandatory that the Adjudicatory Committee send to the USBF COO: (1) a fully typed Hearing Report or full recording of the Hearing and (2) a copy of the written decision, if any, sent to the Charged Party. The Hearing Report or full recording must be sent to the USBF COO within thirty (30) days after the conclusion of the Hearing.