

AMERICAN SOCIETY OF TRIAL CONSULTANTS
Grievance Procedure
Revised May 13, 2013

The following is a model for addressing grievances pertaining to the ASTC Professional Code. The model is based on the authority to discipline, suspend or expel members granted by the bylaws to the organization's governing body.

Grievance Procedure

All grievance complaints should be handled through the Grievance Committee Chair. Complaints against ASTC members may be initiated by a member of ASTC or a nonmember of ASTC, including the clients of ASTC members. Complaints must be made within 18 months of the behavior(s), event(s), or issue(s) in question or the discovery of that behavior, event, or issue, however the Chair may, at his/her discretion, extend this time frame.

The Grievance Committee, consisting of at least 7 standing members, shall appoint one of its members as Secretary to keep all records and to take notes during the Committee's meetings. A quorum of no less than 3 committee members is necessary to conduct committee business. The Grievance Committee members will serve as a Standing Committee. The President appoints the Grievance Chair.

The Grievance Committee members shall be appointed by the Grievance Chair. All Grievance Committee members, including the chair, will have met one of two qualifications: 1) been an ASTC member for at least 5 years and served as a committee chair for at least 1 year, or 2) served at least 1 year as an elected ASTC Board member. No active board member may serve on the Grievance Committee.

In the event a complaint is raised against a Grievance Committee member, such member shall be recused from all further Grievance Committee action with respect to such complaint. If, because of such recusal, the Grievance Committee is deadlocked, the President shall have the authority to break the deadlock. In the event a complaint is raised against the acting Grievance Chair, the President shall act as the Grievance Chair.

If a complaint is raised against a Member, the following procedure shall apply:

1. A complaint shall be made verbally or in writing and shall explicitly state the grounds for the grievance. The grievance is made to the Grievance Chair, who will then inform the Grievance Committee. Upon receipt of the complaint, the Chair shall send to the complainant a request for a written response containing the information needed to process the complaint.
2. The complainant may request anonymity, provided the nature of the alleged offense can be established through a third party or through other

verification means. The Committee may grant anonymity at its discretion. However, the complainant's anonymity cannot be guaranteed.

3. A committee member shall not participate in the discussion of a complaint or be a member of the hearing panel considering a matter in which he/she has a conflict of interest. The Chair shall have the final authority in determining this issue.

4. During the course of the investigation, all parties shall keep in confidence the information pertaining to the complaint.

5. With the input of the committee, the Chair has the responsibility to make an initial determination of sufficiency of the complaint in terms of violation of the ASTC Professional Code. The Grievance Chair shall immediately inform the Member who is the subject of the complaint of the complainant's allegations and shall forward a copy of the Complaint to such Member. All communications mailed to the complainees shall be sent via certified mail or other method for which a signature is required. The complainees shall be given an opportunity to respond in writing to the allegation(s). The Chair, with the input of the committee, shall have the authority to resolve the complaint informally between the complainant and the complainees. The Chair shall forward his/her finding regarding sufficiency to the Grievance Committee members.

a. If the Chair determines there is no merit to the complaint, the complainant and complainees are notified and the complainant has the opportunity to file an Appeal with ASTC Board for further consideration of the complaint.

b. The Board shall respond to the Appeal within 60 days.

c. If, as a result of the appeal, the Board determines the complaint meets the sufficiency criteria, the President will notify the Grievance Chair to activate an investigation pursuant to the Grievance Guidelines set forth.

d. If the Board determines that there is initial merit to the complaint, the Grievance Committee will take notice and initiate the process to review the complaint. During the course of its investigation and hearings, the Chair and the Grievance Committee shall have the authority to resolve the complaint between the complainant and the complainees.

6. If the complaint is deemed as passing the sufficiency hurdle, the Grievance Chair shall, depending on the severity of the complaint, either (a)

ask the complainee to correct the behavior or (b) begin investigating the complaint.

a. If the complaint is deemed less severe, the Chair shall communicate to the complainee the Grievance Committee's concern and ask the complainee to correct the behavior. If the complainee wishes to contest the Chair's request to correct the behavior, the complainee shall say so, in writing, in a letter to the Grievance Committee which shall then review the complainee's concerns, make a determination, and respond to the complainee. Should the complainee choose either to contest the finding of sufficiency or to refuse to comply with the Committee's request to change the behavior at issue, a formal hearing shall be held on the matter as outlined below. Examples of actions that would most likely be seen as less severe and not requiring more than a simple correction are:

- i. The trial consultant does not fully disclose their academic qualifications and consulting experience to potential clients.¹
- ii. The trial consultant has published what could be construed as a claim to a win-loss record.²

b. The Grievance Chair shall assign one of the committee members to act as lead investigator. The investigator shall gather all information, both supportive and non-supportive, pertinent to the complaint to determine whether a violation of the ASTC Code has occurred. If the investigator determines, in his/her investigation, that a serious enough complaint has been filed as to warrant a formal hearing, the investigator shall communicate that fact to the Grievance Committee. The Grievance Committee will sit as the fact-finding body. The Grievance Chair shall preside over the proceedings and make determinations of admissibility and relevance. The previously assigned investigator shall present information concerning the complaint. The complainee may represent him/herself or bring someone to assist in his/her defense. The information considered for the hearing should include (if not already done so) a written response from the complainant. The general format of the hearing is set forth in the Hearing Format document on file with the ASTC Office. A formal hearing shall be scheduled at the discretion of the Grievance Committee with notice given to the Secretary as to the

¹ Professional Code, General Professional Standards, II.

² Professional Code, General Professional Standards, III.

time and date of the hearing. The complainee shall be given written notice 20 business days prior to the hearing of which, if any, witnesses will be presented by the investigator. The complainee shall provide notice of any witnesses he/she may want to present 10 business days prior to the hearing. The Secretary shall send notice of the date and time of the hearing, by mail, to all parties. Should a formal hearing take place, a recording and/or transcript shall be made of the proceedings. Examples of actions that would most likely be seen as more severe and requiring more than a simple correction are:

- ii. Trial Consultant is running a push poll instead of a proper venue survey.³
- ii. Trial consultant provides services for a client where they have a conflict of interest without a conflict waiver.⁴

Note: The complainee is expected to respond to notices sent by the Grievance Chair or the Grievance Committee within 10 business days of receipt of the notice. This applies to all notices sent during any portion of the Grievance Procedure. Failure to respond, by the complainee may, at the discretion of the Board, constitute a default by that member and result in the immediate sanction of that member's expulsion from membership in the ASTC. With the exception of the use of business days for the complainee's response in this paragraph, all days shall be considered calendar days.

7. At the conclusion of the hearing, the Grievance Committee shall make a determination of violation or no violation. The Committee shall make its decision by a simple majority of the Committee members sitting on the hearing panel. The Committee shall use the following test:

a. The required majority of the members hearing the complaint shall decide whether a violation of the standard or standards has occurred. The committee need not find that the violation was either intentional or unintended in its finding of a violation.

b. If the Grievance Committee finds a violation, it shall also determine sanctions. Those sanctions may include but are not limited to: 1) a letter of instruction put on file, 2) a private letter of reprimand, 3) a public letter of reprimand, 4) suspension from the ASTC, or 5) expulsion from the ASTC. The Grievance Committee shall mail a copy of the

³ Professional Code, General Professional Standards, V. Venue Surveys, I.A.

⁴ Professional Code, General Professional Standards, IV.

determination and sanctions, if any, of the Grievance Committee to the parties and to the Board. The copy mailed to the complainee shall be sent via certified mail, or other method for which a signature is required.

c. If a violation is found and sanctions are assigned, the complainee may appeal to the ASTC Board.

8. Procedural and Cost Issues

a. The Grievance Chair shall conduct his/her initial investigation within 60 days of the receipt of the complaint. If the Grievance Chair deems the grievance to have merit, he/she shall assign an investigator to begin the next level of investigation immediately, presenting his/her results to the Grievance Committee within 45 days. The Grievance Committee should then schedule and hold the hearing at the annual meeting unless an emergency hearing is requested by either party. The emergency meeting may be conducted by telephone at the discretion of the Chair and at a date and time scheduled by the Chair. The hearing panel shall render its decision within 30 days of the hearing.

b. The Grievance Chair and the investigator shall be reimbursed by ASTC for expenses involved in making telephone calls, shipping materials via express delivery services, photocopies, etc.

c. All hearings shall be audio taped so that a transcript may be created as needed. If a transcript is needed, it will be generated by a typist selected by the Grievance Chair. Any party requesting a transcript shall pay for the costs associated with producing and sending the transcript.

9. Grievance Appellate Process

The complainee has thirty (30) days in which to file a written Notice of Appeal. The thirty (30) day Notice of Appeal period shall begin on the date that the Secretary sends the determination of the Grievance Committee to the complainee. The general procedures for the appeal process shall include the following:

a. Notice of Appeal. A written request which states the basis for the appeal shall be filed with the Secretary of ASTC.

b. Notification of hearing date. The Secretary of the ASTC shall send a certified letter to all parties at least thirty (30) days before the date of the hearing, containing a copy of the Notice of Appeal, the time and place of the hearing, and a statement of the aggrieved member's right to be present at the hearing, to be represented by an attorney if he or she wishes, and to receive a copy of the transcript of the hearing held by the Grievance Committee. Any party seeking a transcript shall pay for the costs of obtaining and sending this transcript.

c. Hearing. The format of the hearing shall be determined by the Board. Neither the Grievance Chair nor the Grievance Committee members shall hear the appellate case brought before the Board.

d. Decision. The Board shall, within a reasonable time, make its decision as to any actions to be taken and send a copy of the recommended decision to all parties and to the Secretary of ASTC.