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# Rules and Procedures

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*June 15, 2018*

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## Ethics Committee of the American Psychological Association

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## Overview

These Rules and Procedures outline the objectives and operating rules for the Ethics Committee of the American Psychological Association (APA), as well as procedures for adjudications against APA members for violations of the APA Ethics Code or other relevant authorities. Investigations of unethical conduct are handled under two different pathways: show cause proceedings based on actions taken by other governmental or private bodies against an APA member and actions based on complaints filed against APA members by other members, non-members, or the Ethics Committee. Failure by the Committee or APA to follow these Rules and Procedures shall be cause to set aside action taken under these Rules only in the event such failure has resulted in genuine prejudice to the member or other person under investigation and/or against whom a complaint has been filed (referred to herein as “the respondent”).

### A. Objectives of the Committee

The fundamental objectives of the Ethics Committee (hereinafter the Committee) shall be to maintain ethical conduct by psychologists at the highest professional level, to educate psychologists concerning ethical standards, to endeavor to protect the public against harmful conduct by psychologists, and to aid the Association in achieving its objectives as reflected in its Bylaws.<sup>1</sup>

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In June 2018, December 1995, August 2001, and December 2015, the APA Board of Directors adopted these Rules and Procedures to replace the earlier set (which was published in the December 1992 issue of the *American Psychologist*, pp. 1612-1628). The Rules are available on the APA website and from the APA Ethics Office, 750 First Street, NE, Washington, DC 20002-4242. In the event application of the revised Rules and Procedures would adversely affect the rights of a member, the pertinent provisions of the Rules and Procedures in effect at the time the member came under the scrutiny of the Ethics Committee will be applied.

## **B. General Operating Rules**

### **B.1. General Provisions**

**B.1.1 APA Documents.**<sup>2</sup> The Committee shall base its actions on applicable governmental laws and regulations, the Bylaws of the Association, the Association Rules, the Association's Ethics Code, and these Rules and Procedures.

**B.1.2 Applicable Ethics Code.** The Committee applies and enforces the Ethics Code in effect at the time the conduct occurred. If conduct continued over a period of time during which more than one Ethics Code was in effect, each Ethics Code will be applicable to conduct that occurred during the time period it was in effect.

**B.1.3 Rules and Procedures.** The Committee may amend these Rules and Procedures from time to time upon a two-thirds vote of the Committee members, provided that no amendment shall adversely affect the rights of a respondent. Changes to the Rules and Procedures must be ratified by the Board of Directors acting for the Council of Representatives.

**B.1.4 Compliance with Time Requirements.** The APA shall use its best efforts to adhere strictly to the time requirements specified in these Rules and Procedures. Failure to do so will not prohibit final resolution unless such failure was unduly prejudicial to the respondent. Failure by a complainant to comply with the time requirements set forth herein may be grounds for dismissal of a complaint or refusal to consider information submitted in an untimely fashion. Failure by a respondent to adhere to the time limits specified herein may be grounds for (a) disregarding information submitted by the respondent, (b) the forfeiture of rights provided to the respondent, or (c) disciplinary action against the respondent under these Rules and Procedures. Upon request, the Director may extend time limits stated in these Rules for submitting statements or responses if there is good cause to do so. In all cases in which a time limit for submitting a response is stated in these Rules and Procedures, the period specified is the number of days allowed for receipt of the response by the Ethics Office. Notwithstanding the foregoing, there are no exceptions to the time limits for initiating a show cause action or submitting a complaint.

### **B.2. Committee Actions**

**B.2.1 Quorum.** The Committee may only take actions at meetings where a quorum exists. A quorum at such meetings shall consist of the majority of the elected members of the Committee.

**B.2.2 Majority Rule.** Except as otherwise noted in these Rules and Procedures, the Committee shall act by majority vote of those elected members present or, in the case of a vote by mail, a unanimous vote of those elected members qualified to vote.

**B.2.3 Director.** The Chief Executive Officer of the Association ("CEO") shall designate a staff member to serve as Director of the Ethics Office.

**B.2.4 Chair/Director Decisions.** For any decisions under these Rules and Procedures that must be made by the Chair and Director that result in a split vote, the Vice Chair shall vote to break the tie.

**B.2.5. Attendance.** Attendance at the Ethics Committee's deliberation of cases is restricted to elected members of the Committee, Committee Associates, the Director of the Ethics Office, the Ethics Office staff, members of the Board of Directors, Legal Counsel of the Association, and other duly appointed persons authorized by the Committee or the CEO to assist it in carrying out its functions, except when the Committee, by two-thirds vote, authorizes the presence of other persons.

### **B.3. Confidentiality and Notifications**

**B.3.1 Requirement of Confidentiality.** All information concerning investigations or complaints against APA members shall be confidential and may only be shared with the Committee and other APA members involved in the review of ethics complaints, the complainant and respondent and their legal representative, if any. Notwithstanding the foregoing, the Director may disclose such information when compelled by a valid subpoena, in response to a request from a state or local board or similar entity,<sup>3</sup> when otherwise required by law, to protect the interests of the Association, or as otherwise provided in these Rules and Procedures.

**B.3.2 Access by Staff, Legal Counsel, and Other Duly Appointed Persons.** Information may be shared with Legal Counsel of the Association, with the CEO, with staff designated by the CEO to assist the Committee with its work, and with other persons authorized by the Committee or the CEO, to assist the Committee in carrying out its functions.

**B.3.3 Patient Identifiable Information.** Under no circumstances shall either complainants or respondents submit any individually identifiable patient information to the Association without a valid patient authorization, except for documents that are in the public domain, such as news articles or court documents that are not subject to a protective order. Any individually identifiable patient information (including but not limited to name, social security number, address, telephone number, or email address) submitted without a patient authorization must be redacted from non-public documents that are submitted as part of an ethics proceeding, including court documents that are subject to a protective order. The Association will return or destroy any non-public documents that it receives as part of an investigation or complaint that contain patient identifiable information without an accompanying patient authorization.

**B.3.4 Notification in Connection with Investigation or Final Disposition of Investigation.** Where these Rules provide for notification of final disposition of a matter, this notification shall include the ethical standard(s)<sup>4</sup> that were judged to have been violated, if violation is found, or the type of underlying action for a show cause proceeding, and the sanction, if any.

**B.3.4.1 Complainant and Respondent.** The Director shall inform the complainant and respondent of the final disposition in a matter. The notification to the respondent shall include the rationale for the Association's actions, if any.

**B.3.4.2 Membership.** The Director shall report annually to the membership the names of members who have lost membership due to unethical behavior and the names of members who have resigned their membership while under ethics investigation. No report to membership shall be made for other stipulated resignations in which such a report was not stipulated.

**B.3.4.3 Council of Representatives.** The Director shall report annually and in confidence to the Council the names of members who have been allowed to resign under stipulated conditions and who have resigned while under ethics investigation.

**B.3.4.4 Other Entities.** When the Board of Directors or the Committee determines that further notification is necessary for the protection of the Association or the public or to maintain the standards of the Association, the Director shall communicate the fact that an investigation is pending or final disposition to those groups and/or individuals so identified. For instance, such notification may be made to (a) affiliated state and regional associations,<sup>5</sup> (b) the American Board of Professional Psychology, (c) state or local boards or similar entities, (d) the Association of State and Provincial Psychology Boards, (e) the Council for the National Register of Health Service Providers in Psychology, (f) law enforcement authorities, and/or (g) other appropriate parties.

**B.3.5 Initiation of Legal Action Constitutes Waiver.** Initiation of a legal action against the Association or any of its agents, officers, directors, employees, or volunteers concerning any matters considered or actions taken by the Ethics Committee or Director shall constitute a waiver by the person initiating such action of any interest in confidentiality recognized in these Rules or other organic documents of the Association with respect to the subject matter of the legal action.

**B.3.6 Communication for Investigation or Other Functions.** Nothing in this section shall prevent the Director from communicating any information (including information from the respondent, complainant, or a witness) to the respondent, complainant, witnesses, or other sources of information to the extent necessary to facilitate the performance of any functions set forth in these Rules and Procedures; provided that the respondent's submissions will not be shared with the complainant.

## **B.4. Jurisdiction**

**B.4.1 Persons.** The Committee has jurisdiction over individual members (including fellows and affiliates), associate members, and applicants for membership or readmission in the American Psychological Association. The Committee shall also have jurisdiction over student affiliates, but only to the extent that the conduct at issue is not under the direct supervision of the student's educational program or of a training site that is officially approved by the program as part of the student's supervised training.<sup>6</sup> The Committee has no jurisdiction over any other non-members.

**B.4.2 Subject Matter.** The Committee will not proceed on a complaint if there is another body with jurisdiction to take action with respect to the member's license or registration and generally will not investigate or adjudicate complaints that are the subject of pending litigation or administrative proceedings.

### **B.4.3 Time Limits for Complaints and Show Cause Notices**

**B.4.3.1 Complaints.** The Committee may consider complaints brought by members of the Association, non-members or student affiliates, or *sua sponte* by the Committee against other members only if the complaint is received less than three years after the alleged conduct occurred, or was discovered by the complainant, as long as it is filed less than ten years after the alleged conduct occurred.

**B. 4.3.2 Show Cause Notices.** The Committee may issue a show cause notice under these Rules and Procedures only if it does so less than 10 years after the alleged conduct occurred, except this latter time limit shall be 20 years in any matter involving an offense against a minor.

**B. 4.3.3 Converted Proceedings/New Charge Letter.** If an ethics proceeding is converted from one type of action to another or if a new charge letter is issued based on new evidence, the initiation date of the original action will be used for determining whether the time limit for commencing the converted action or issuing the new charge letter has been satisfied.

**B.4.4 Resignation Barred.** Except as otherwise specifically provided in these Rules and Procedures, no one under the scrutiny of the Committee will be allowed to resign from the Association either by letter of resignation, by nonpayment of dues, or otherwise.

**B.4.4.1 Resignation Under Ethics Investigation.** A respondent may accept an opportunity to resign from membership "under ethics investigation," which shall be effective upon the Committee's timely receipt of the signed affidavit indicating such resignation. This option will generally only be offered during the preliminary stages of the investigation or adjudication of a complaint or Show Cause action. Failure to return the affidavit within 30 days after the first notification of the initiation of a show cause action or the filing of a complaint will constitute a waiver of the right to resign under ethics

investigation. The Association may inform a complainant, the membership, and anyone who requests the information from APA that the respondent has resigned under ethics investigation.

#### ***B. 5. Reopening a Closed Investigation***

A closed investigation will not be reopened unless significant evidence was brought to the attention of the Committee after the investigation was closed; the evidence could not with reasonable diligence have been brought to the attention of the Committee before the investigation was closed; the evidence was provided to the Committee in a timely manner following its discovery; and the evidence would probably produce a different result.

#### ***B.6. Correspondence and Documentation***

**B.6.1 Personal Response.** Although the respondent has the right to consult with an attorney concerning all phases of the ethics process, the respondent must respond to charges and recommendations of the Ethics Committee personally and not through legal counsel or another third party. If the respondent shows good cause as to why he or she cannot respond personally, the Director may waive this requirement.

**B.6.2 Transcription of Audiotapes, Videotapes, and Similar Data Compilations.** Audio or videotape, or similar media, and documents in languages other than English, must include an accompanying accurate transcription or translation by an accredited translation service. The Director may waive this requirement for good cause shown.

**B.6.3 Documents to be Shared with Respondent.** All documents submitted by a complainant or respondent or otherwise considered by the Ethics Committee in an investigation or review of a complaint will be shared with the respondent as provided for in these rules; provided that internal Committee or other Association memos, correspondence, analyses, or other documents relating to an ethics proceeding, including without limitation attorney-client privileged documents, will not be shared with the complainant or respondent and respondent's submissions generally will not be shared with the complainant.

**B.6.4 Service of Documents.** For purposes of notice, service shall be made by delivery by mail or common carrier to the respondent's last address on file with the Association. The Ethics Committee assumes that a member has updated his or her address as needed to ensure that the current address is on file with the Association and relies on such address. Service shall also be considered made if delivered to the address of the attorney or other agent of the respondent. Service by mail is complete upon mailing

#### ***B.7. Failure to Cooperate with Ethics Process***

Members are required to cooperate fully and in a timely fashion with the ethics process. Failure to cooperate shall not prevent

continuation of any proceedings and itself constitutes a violation of the Ethics Code that may warrant being expelled.

#### ***B.8. Board of Directors' Standing Hearing Panel***

The President of the Association shall appoint members of the Standing Hearing Panel. Standing Hearing Panel members shall serve a three-year renewable term. The Standing Hearing Panel shall consist of at least 15 members at least 3 of whom shall be public members, and the remainder shall be members of the Association in good standing and shall not include any current members of the Ethics Committee.

#### ***B.9. Available Sanctions***

The following sanctions are available in the event an ethics violation is established under these Rules and Procedures. The specific sanction imposed will be determined based on the evidence presented, including any aggravating or mitigating factors.

**B.9.1 Reprimand.** Reprimand is the appropriate sanction if an ethics violation has been demonstrated that warrants some sanction, but the violation was not of a kind likely to cause harm to another person or to cause substantial harm to the profession and was not otherwise of sufficient gravity as to warrant a more severe sanction.

**B.9.2 Censure.** Censure is the appropriate sanction if an ethics violation has been demonstrated that warrants some sanction and the violation was of a kind likely to cause harm to another person, but the violation was not of a kind likely to cause substantial harm to another person or to the profession and was not otherwise of sufficient gravity as to warrant a more severe sanction.

**B.9.3 Expulsion or Voiding Membership.** Expulsion from membership is the appropriate sanction if an ethics violation has been demonstrated and the violation was of a kind likely to cause substantial harm to another person or the profession or was otherwise of sufficient gravity as to warrant such action. Voiding membership is the appropriate sanction if a member has been found to have obtained membership under false or fraudulent pretenses.

**B.9.4 Stipulated Resignation.** A stipulated resignation may be offered by the Committee if an ethics violation has been demonstrated that warrants expulsion, but mitigating factors weigh in favor of a stipulated resignation instead of expulsion. This sanction is contingent on execution of an acceptable agreement and release setting forth the terms of resignation and approval by the Board of Directors. The Ethics Committee may establish such additional policies and procedures for stipulated resignations as it determines appropriate, subject to approval by the Board of Directors.

**B.9.5 Probation.** Probation is an appropriate sanction to accompany a reprimand or censure or to mirror an

action taken by a licensing authority or other governmental or private body under a show cause action. During a period of probation, a respondent is required to comply with conditions established by the Ethics Committee, including but not limited to supervision, education, training or tutorial requirements.

#### ***B.10. Conflicts of Interest.***

No Association member, staff, or member of the public may participate in any ethics proceeding in which they have conflict of interest, whether economic, professional, or personal. The Association shall maintain procedures to identify and resolve conflicts of interest before and during ethics proceedings.

### **C. Membership**

#### ***C.1. Applications***

**C.1.1 Specific Jurisdiction.** The Committee has the authority to investigate the preadmission scientific and professional ethics and conduct of any applicants for membership or student affiliation in the Association and to make recommendations as to whether the applicant shall become a member or student affiliate. In addition, the Committee has the authority to consider all applications submitted by individuals who were previously denied admission as a result of unethical behavior and to make recommendations as to whether such an individual shall become a member or student affiliate. The Membership Board shall transmit all applications on which there is an indication of possible preadmission unethical conduct and all applications from individuals who were previously denied admission as a result of unethical behavior.

**C.1.2 Procedures for Review.** The Director shall transmit to the Committee a copy of the application and any other materials pertinent to the case. The Director shall take such steps, including contacting the applicant or other sources of information, as are necessary and appropriate to making a fair determination. Upon review, the Committee may recommend to the Membership Board that the application be granted or to the Board of Directors that the application be denied. If a recommendation is made to deny the application, the applicant shall be informed of the basis for that recommendation and shall have 30 days to submit a written response for consideration by the Board of Directors.

#### ***C.2. Applications for Readmission***

**C.2.1 Specific Jurisdiction.** The Ethics Committee has the authority to review and make recommendations concerning all applications for readmission by persons who have lost membership as a result of unethical behavior, who have resigned while under ethics investigation, or whose membership was voided because it was obtained on the basis of false or fraudulent information. The Membership Board shall transmit

all such applications for readmission to the Director of the Ethics Office for review by the Committee.

**C.2.2 Elapsed Time for Review.** Applications for readmission by members who have lost membership due to unethical behavior (including submission of false or fraudulent information in a membership application) shall be considered by the Committee only after five years have elapsed from the date of that action. Applications for readmission by members who have been permitted to resign shall be considered only after the stipulated period or, where no period has been stipulated, three years have elapsed.

**C.2.3 Procedures for Review.** The Director shall transmit to the Committee a summary of the application for readmission and the record of the previous case against the former member. In all cases, the ex-member must show that he or she is technically and ethically qualified and has satisfied any conditions upon readmission established by the Board. The Committee shall make one of the following recommendations to the Membership Board and, as it deems appropriate, shall provide the rationale therefor: readmit; deny readmission; defer readmission until certain conditions have been met; charge the Director to investigate issues specified by the Committee and to place the matter before the Committee at a future date.

#### ***C.3. Allegations That Membership Was Obtained Under False or Fraudulent Pretenses.***

Obtaining membership under false or fraudulent pretenses is a violation of the APA Ethics Code. Allegations of such violation will be grounds for an ethics investigation and/or show cause action or complaint under these Rules and Procedures, and, if proven, would warrant sanctions up to and including voiding membership.

### **D. Show Cause Procedures Based Upon Actions by Other Recognized Tribunals**

#### ***D.1. Predicates for Use of Show Cause Procedures***

**D.1.1 Felony or Equivalent Offense.** If a member has been convicted of a felony or equivalent offense (including any felony as defined by state/provincial law and any other criminal offense with a possible term of incarceration exceeding one year based on conduct that if proven could warrant expulsion) **and** such conviction is not under appeal, the show cause process may be used, if determined by the Chair and the Director to be appropriate. A conviction within the meaning of this section includes a conviction following a *nolo contendere*, *Alford*, or other similar plea that constitutes or is the equivalent of a conviction under federal, state, or provincial law.

**D.1.2 Expulsion, Suspension, Unlicensure, Decertification, or Other Actions.** If one of the following actions has been taken and is not under appeal, the show cause process may be used if the conduct at issue if proven could

warrant expulsion and the Chair and the Director determine that use of the show cause process is appropriate: (a) a member has been expelled or suspended based on unethical or illegal conduct by an affiliated state or regional psychological association; (b) a member has been denied a license, certificate, or registration, or has had a license, certificate, or registration revoked or suspended or otherwise significantly limited by a state or local board or similar entity, or has voluntarily surrendered a license or certificate of registration as a result of pending allegations, even if such action has been stayed or otherwise postponed.

**D.1.3 Disciplinary Actions by Other Entities Based on Unethical or Illegal Conduct.** If one of the following actions has been taken and is not under appeal, the show cause process may be used, if the conduct at issue if proven could warrant expulsion and the Chair and the Director determine that use of the show cause process is appropriate: (a) a member has been terminated, sanctioned or otherwise disciplined, had federal funding terminated or suspended, or been subject to an adverse judgment in a civil action; (b) by a body constituted to take action pursuant to due process (such as a governmental body, including any governmental body that investigates scientific misconduct or fabrication of data, a faculty grievance committee or similar body, or a civil or criminal court; and (c) a record is available or can be obtained by the ethics office that delineates the behavior, process and the adverse action.

***D.2 Notice of Automatic Expulsion and Response by Respondent.***

If the predicates for a show cause action are met, the respondent shall be notified by the Director that he or she has been barred from resigning membership in the Association and will be expelled 30 days after receipt of the notice of expulsion unless the respondent exercises the right to request a review of the pending expulsion by submitting in writing within the 30-day period a request for review and a statement showing good cause why he or she should not be expelled from membership in the Association. If no response is received within the 30 days, the right to a review shall be considered waived and the Director shall inform the Membership Office that the respondent has been expelled, effective immediately.

***D.3. Showing by Respondent That Prior Proceeding Lacked Fair Procedure.***

In addition to a response to the substance of the charges under this part, the respondent may seek within the 30-day period to show that the other recognized tribunal did not follow fair procedure. If the Committee finds merit to this contention, it may exercise its discretion to convert the matter to a *sua sponte* action under Part V, or it may dismiss the show cause action.

***D.4. Investigation***

If the respondent provides a response and request for review of

a proposed show cause action, the Committee may conduct a further investigation, including seeking additional information from the respondent or others. Any evidence not obtained directly from the respondent and relied upon by the Committee in connection with its review and recommendation shall first have been provided to the respondent, who shall have been afforded not less than 15 days to respond thereto in writing.

***D.5. Review and Recommendation by the Committee Following a Request for Review.***

Upon receipt of the respondent's request for review and supporting statement and upon conclusion of any necessary further investigation, the case shall be reviewed by the Ethics Committee. When review of a case has been completed, the Committee shall vote to dismiss the matter or impose any of the available sanctions set forth under these Rules and Procedures

***D.6. Notification of Respondent***

The Director shall notify the respondent of the Committee's recommendation and shall provide the respondent the opportunity to file a written response with the Board of Directors.

***D.7. Respondent's Response to Recommendation***

Within 15 days of receipt of notification of the Committee's recommendation, the respondent may file a written response with the Board of Directors. The response should be mailed to the Ethics Office.

***D.8. Committee's Statement***

The Ethics Committee shall have 15 days from the time it receives the respondent's written response, or from the time such response was due, to file a written statement, if any. A copy will be provided to the respondent.

***D.9. Respondent's Final Response***

Within 15 days of receipt of the Ethics Committee's statement, if any, the respondent may submit to the Director a written response to that statement.

***D.10. Review by the Board of Directors***

As soon as feasible after receiving the record, the Committee's recommendation, any written response by the respondent, any written statement by the Committee, and any final response from the respondent, the Board of Directors shall vote whether to accept the Committee's recommended sanction, to issue a different sanction, or to dismiss the case. The Board may select a sanction more or less severe than that recommended by the Committee, or it may remand the matter to the Ethics Committee for further consideration.



## **E. Complaints Alleging Violation of the Ethics Code**

### ***E.1. Initiation of Actions***

Other than show cause actions, ethics proceedings against a member are initiated by the filing of a complaint or, in the case of a *sua sponte* action, by the issuance of a letter notifying the respondent that the Ethics Committee has commenced a *sua sponte* action.

### ***E.2. Complaints***

**E.2.1 Complaints Submitted.** Complaints may be submitted by members or nonmembers of the Association.

**E.2.2 Alternative Venues.** Except for *sua sponte* or show cause matters, the Committee will not proceed on a complaint if:

**E.2.2.1 Licensure/Registration.** There is a state or local board or government body that has jurisdiction to review the alleged unethical conduct and take disciplinary action with respect to the member's license or registration.

**E.2.2.2 Matters Not Involving Licensure or Registration.** If there is another entity that can review and discipline the conduct (including non-governmental bodies such as a member's employer, a faculty grievance committee or similar entity, a state or regional psychological association, or other appropriate entity), the Chair and Director have discretion whether to proceed with the matter or defer to the other body. In matters where a state or local board, a government body, or another appropriate entity is determined to be available, the Chair and Director may recommend that the complainant refer the complaint to that entity, or they may make a referral on their own initiative.

**E.2.3 Sua Sponte Action.** When it appears a member may have violated the Association's Ethics Code, the matter involves conduct that could, if proven, warrant expulsion and the Chair and Director determine that there is no other entity that can more appropriately review and discipline the conduct, the Committee may proceed on its own initiative. The Committee may, at any time, exercise its discretion to discontinue a *sua sponte* action. If the Committee does so, the respondent shall be so notified.

**E.2.4 Sua Sponte Action Based Upon a Member's Filing of a Capricious or Malicious Complaint.** To prevent abuse of the ethics process, the Committee is empowered to bring charges against a complainant if the initial complaint is judged by two thirds of Committee members voting to be (a) frivolous and (b) intended to harm the respondent rather than to protect the public. The filing of such a complaint constitutes a violation of the Ethics Code.

**E.2.5 Anonymous Complaints.** The Committee shall not act upon anonymous complaints. If material in the public domain is provided anonymously, the Committee may choose to consider such material in connection with a *sua sponte* matter or other complaint or may initiate a *sua sponte* action.

**E.2.6 Complaints Against Nonmembers.** If the complaint does not involve an individual within the jurisdiction of the Committee, the Director shall inform the complainant that the Committee lacks jurisdiction to review the complaint.

**E.2.7 Consecutive Complaints.** When a complaint is lodged against a member with respect to whom a case involving similar alleged behavior was previously closed, materials in the prior case may be considered in connection with the new case and may be considered as evidence as long as the Ethics Committee and/or the Board of Directors is informed of the final disposition of the original case and the legitimate confidentiality interests of any complainant, witness, or respondent are protected.

**E.2.8 Simultaneous Complaints.** When more than one complaint is simultaneously pending against the same member, the Committee may choose to combine the cases or to keep them separate. In the event the cases are combined, the Committee shall take reasonable steps to ensure that the legitimate confidentiality interests of any complainant, witness, or respondent are protected.

### ***E.3. Procedures for Filing (non-Sua Sponte) Complaints***

A complaint must include: a completed APA Ethics Complaint Form; such releases as are required by the Committee; and a waiver by the complainant of any right to subpoena from APA or its agents for the purposes of private civil litigation any documents or information concerning the case;<sup>7</sup>

### ***E.4. Preliminary Evaluation of Complaints by the Chair and Director***

The Chair and Director shall review each complaint to determine if jurisdictional criteria are met, including whether the timeliness requirements are satisfied and whether there is a state or local board or government body that has jurisdiction to review the alleged unethical misconduct and take disciplinary action with respect to the member's license or registration. The Chair and Director may request more information from the complainant as necessary to make such determinations. If jurisdictional criteria are not satisfied, the matter shall be closed and the complainant so notified.

### ***E.5. Evaluation of Complaints by Chair and Director***

All complaints not closed based on lack of jurisdiction shall be reviewed by the Chair and the Director to determine whether the standards for opening a case are otherwise satisfied.

### **E.5.1 Complaints by members or nonmembers.**

In these matters, the Director and Chair shall determine whether a case should be opened because no appropriate alternative venue is available. If a determination is made that an appropriate alternative venue is not available, the Chair and Director shall determine whether cause for action by the Ethics Committee exists. Cause for action shall exist when the respondent's alleged actions and/or omissions, if proven, would in the judgment of the decision maker constitute a breach of the Ethics Code. For purposes of determining whether cause for action exists, incredible, speculative, and/or internally inconsistent allegations may be disregarded. The Chair and Director shall also consider whether the allegations would constitute only minor or technical violations that would not warrant further action, have already been adequately addressed in another forum, or are likely to be corrected. If they agree that one or more of these conditions are met, the matter shall be closed. Otherwise, the matter shall be opened as a case.

**E.5.2 Sua Sponte Complaints.** In these matters, the Director and Chair shall determine whether cause for action could reasonably be found to exist, the matter involves conduct that could, if proven, warrant expulsion and there is no other entity that can more appropriately review and discipline the conduct.

### **E.5.3 Information Insufficient to Determine Whether to Open Case.**

#### **E.5.3.1 Request for Supplementation of Complaint.**

If the information is not sufficient to determine whether a case should be opened, the Director may so inform the complainant, who will be given 30 days from receipt of the request to supplement the complaint. The Chair and Director may additionally, or in the alternative, commence a preliminary investigation.

**E.5.3.2 Consequences of Failure to Supplement Complaint.** If no response is received from the complainant within 30 days, the matter may be closed. If at a later date the complainant shows good cause for delay and responds to the request for supplementation, the supplemented complaint may be considered.

**E.5.4 Dismissal or Preliminary Investigation Due to Insufficient Information.** If the Chair and Director agree that they lack sufficient information to determine whether a case should be opened, in either a case initiated by a complainant or in a *sua sponte* action, the case may be closed or, in instances of extenuating circumstances, a preliminary investigation may be initiated.

**E.5.4.1 Notification to Respondent.** If a preliminary investigation is opened, the Director shall so inform the respondent in writing. The Director will include a copy of all evidence in the file; a copy of the APA Ethics Code; the Committee's Rules and Procedures; and a statement that information submitted by the respondent shall become a part of the record and can be used if further proceedings ensue.

**E.5.4.2 Time for Respondent Response.** The respondent shall have 30 days after receipt of the notification of a preliminary investigation to file an initial response. The respondent may in the alternative accept the opportunity to resign from membership as provided under these Rules and Procedures.

**E.5.4.3 Information from Other Sources.** Additional information may be requested from the complainant, respondent, or any other appropriate source. The Committee will not rely upon information submitted by such sources unless it has been shared with the respondent and the respondent has been afforded an opportunity to respond thereto.

**E.5.4.4 Action if There Continues to Be Insufficient Information.** At the conclusion of the preliminary investigation, if the Director and Chair determine that they still lack evidence sufficient to determine whether to open a case, or the allegations constitute only minor or technical violations that would not warrant further action, have already been adequately addressed in another forum, or are likely to be corrected, the matter shall be closed.

**E.5.5 Educative Letter.** If a matter is closed under this part, the Chair and Director may, if appropriate, send an educative letter to the respondent.

## **E.6. Case Investigation**

### **E.6.1 Issuance of Charge Letter and Response from Respondent**

**E.6.1.1 Charge Letter.** If a case is opened, the Director shall so inform the respondent in a charge letter. The charge letter shall contain a concise description of the alleged behaviors at issue and identify the specific section(s) of the Ethics Code that the respondent is alleged to have violated. The Director shall enclose a copy of any completed Ethics Complaint Form and any materials submitted to date by the complainant or on the complainant's behalf that will be included in the record before the Committee; a copy of the Ethics Code and the Committee's Rules and Procedures; and a statement that information submitted by the respondent shall become a part of the record, and can be used if further proceedings ensue.

**E.6.1.2 Time for Respondent's Response.** The respondent shall have 30 days after receipt of the charge letter to file an initial response. Any request to extend the time for responding to the charge letter must be made in writing, within the 30 days, and must show good cause for an extension. The respondent may in the alternative accept the opportunity to resign from membership as provided under these Rules and Procedures.

**E.6.2 Referral to Committee.** When, in the sole judgment of the Chair and Director, the investigation is complete, the case will be referred to the Committee for review and resolution. The Director shall notify the complainant and respondent that the matter has been referred to the Committee.

## **E.7. Review and Resolution by the Committee**

Upon conclusion of the investigation, the case shall be reviewed by the Ethics Committee. When review of a case has been completed, the Ethics Committee shall vote to take one of the following actions described below: remand, dismiss the charges, or impose one of the sanctions provided for in Part II. If the Committee decides to dismiss the complaint, it may do so based on lack of ethics violation or any ethics violation was of a technical or minor nature that would not warrant further action, was adequately addressed by another forum, or is likely to be corrected. In addition to any of these actions, the Committee may vote to issue an educative letter. The Committee may choose to dismiss some charges but find violation and take disciplinary action on the basis of other charges in the charge letter. The respondent shall then be notified of the Committee's action, the ethical standard(s) involved, if any, the rationale for the Committee's decision, and any sanction.

## **E.8. Procedures Subsequent to Committee Recommendation of Reprimand, Censure, or Probation**

**E.8.1. Acceptance of Reprimand, Censure, or Probation.** If the respondent accepts the Committee's recommended sanction of reprimand, censure, or probation the right to request further review shall be waived, any probation conditions will be implemented by the Director, and the case will remain open until any conditions are met. The respondent's failure to respond within 30 days of notification shall be deemed acceptance of the Committee's recommended sanction, including any probation conditions.

**E.8.2 Independent Adjudication After Recommended Sanction of Reprimand, Censure, or Probation.** The method of adjudication for a recommended sanction of reprimand or censure is an independent adjudication based on the written record by a three-person Independent Adjudication Panel.

**E. 8.2.1 Request for Independent Adjudication and Rationale for Nonacceptance.** The respondent may exercise his or her right to independent adjudication by furnishing the Committee, within 30 days after notification of the Committee's recommendation, a written request for independent adjudication and rationale for nonacceptance of the recommendation.

**E. 8.2.2 Statement by Committee.** Within 30 days of receipt of the respondent's rationale for nonacceptance, the Committee may prepare a statement and provide a copy to the respondent. No statement by the Committee is required.

**E.8.2.3 Respondent's Final Response.** Within 15 days of receipt of the Ethics Committee's statement, if any, the respondent may submit to the Director a written response to that statement.

**E. 8.2.4 Selection of Independent Adjudication Panel.** Within 60 days of receipt of the request for an independent adjudication, the Director shall provide the

respondent with the names and curricula vitae of six members of the Board of Directors' Standing Hearing Panel, of whom at least one shall be a public member. The panel members need not include any member having a particular specialty or representing a particular geographic location. The Director shall make inquiry and ensure that selected panel members do not have a conflict of interest as defined by applicable law and appear otherwise able to apply fairly the APA Ethics Code based solely on the record in the particular case.

**E.8.2.4.1 Opportunity to Object to Panel Members.** Within 15 days after receipt of the six-member list, the respondent may submit written objections to the list of panel members based only on alleged conflicts of interest or other disqualifying bias on the part of one or more panel members. The Chair and the Director will determine whether there is a reasonable basis for any such objection, after discussing the objection with the panel member or members who have an alleged conflict of interest or other disqualifying bias. If necessary, the Director will provide additional names of members of the Standing Hearing Panel to the respondent for his or her review. This process will continue until the Chair and Director are able to select a panel of three members of the Standing Hearing Panel with no conflicts or other disqualifying bias to serve as an Independent Adjudication Panel.

**E.8.2.4.2 Designation of Chair of Independent Adjudication Panel.** The President shall designate one of the three Panel members to serve as Chair. The Chair of the Panel shall ensure that the Panel fulfills its obligations according to these Rules and Procedures.

**E. 8.2.5 Provision of Case File to Independent Adjudication Panel.** Within 15 days of selection of the Independent Adjudication Panel and receipt of the Committee's and respondent's statements, if any; the Director will provide the complete case file to the members of the Independent Adjudication Panel. No documents or other evidence will be presented to the Panel that was not presented to the Committee as part of its review process.

**E.8.2.6 Consideration and Vote by Independent Adjudication Panel.** Within 60 days of receipt of the case file, the members of the Panel shall confer with each other and, solely on the basis of the documentation provided and deliberations among themselves, shall vote to take one of the following actions: adopt the Committee's recommended sanction; adopt a lesser sanction; or dismiss the case. The Panel may also make recommendations to the Committee as to which groups should be notified of the decision, if any.

**E. 8.2.7 Decision of the Independent Adjudication Panel.** Decisions of the Independent Adjudication Panel will be made by majority vote, and at least two reviewers must agree to written findings, a sanction, if any, and any probation conditions. The Committee bears the burden to prove the charges by a preponderance of the evidence. The panelists' votes and the majority's written decision must be submitted to the Ethics Office within the 60-day period for their deliberation and vote. If no two panelists can agree as to the appropriate outcome or a written decision, the case will be referred back to the Committee for further action.

**E.8.2.8** *Finality of Decision by Independent Adjudication Panel.* The decision of the Independent Adjudication Panel is unappealable. The decision is binding on the Committee and the respondent except that subsequent to the Panel's decision, the Committee may determine that any probation conditions are impractical or unduly burdensome and may choose to reduce or dismiss conditions required in the Panel's decision. A decision by the Panel either to impose a sanction and/or probation conditions or to dismiss the case will be implemented by the Director as the final adjudication, unless modified by the Committee.

**E.8.2.9** *Notification.* The Director shall inform the respondent and complainant, if any, of the final disposition. The respondent shall be provided a copy of the Panel's written decision.

## **E.9 Procedures Subsequent to Committee Recommendation of Expulsion**

**E.9.1 Acceptance of Recommendation of Expulsion.** If the respondent accepts the Committee's recommendation to the Board of Directors of expulsion, the right to a formal hearing shall be waived, and the Committee shall proceed with its recommendation to the Board of Directors. In such event, the recommendation of the Ethics Committee shall be treated as the equivalent of the recommendation of a Formal Hearing Committee that the respondent be expelled from membership. The respondent's failure to respond within 30 days after notification shall be deemed acceptance of the Committee's recommendation.

**E.9.2 Formal Hearing After Recommendation of Expulsion.** If the respondent does not accept the Committee's recommendation, the respondent may request a formal hearing in writing within 30 days after receipt of notification of the Committee's recommendation. Upon request, the respondent will be provided with a copy of the APA Ethics Office "Guidelines for Formal Hearings." These guidelines are for guidance and information purposes only and are not binding on the APA, the Ethics Committee, or hearing participants. The proceedings are governed solely by the Rules and Procedures of the Ethics Committee and the Ethics Code. Alternatively, a respondent may request an independent adjudication to be provided according to the procedures described in these Rules. The Independent Adjudication Panel will make a recommendation that will be subject to review by the Board of Directors.

**E.9.2.1** *Establishment of Hearing Date and Provision of Standing Hearing Panel List.* Within 60 days after the receipt of the respondent's request for a formal hearing, the Director shall establish the date of the hearing and provide the respondent with the date and the names and curricula vitae of six members of the Board of Directors' Standing Hearing Panel. The Director shall develop this list of six members, and the three members of the Formal Hearing Panel will be selected from this list of six in the same manner as the Independent Adjudication Panel is selected, except the six identified members of the Board

of Directors' Standing Hearing Panel shall include at least one public member.

**E.9.2.2** *Designation of Chair of Hearing Committee.* The President shall designate one of the three Hearing Committee members to serve as Chair. The Chair of the Hearing Committee and Legal Counsel for the Association shall assure proper observance of these Rules and Procedures at the formal hearing.

### **E.9.2.3 Documents and Witnesses**

**E.9.2.3.1** *Committee.* At least 30 days prior to the scheduled date of the formal hearing, the Ethics Committee shall provide the respondent and the Hearing Committee with copies of all documents and other evidence, and the names of all witnesses that may be offered by the Committee in its case in chief.

**E.9.2.3.2** *Respondent.* At least 15 days prior to the scheduled date of the formal hearing, the respondent shall provide the Ethics Committee and the Hearing Committee with copies of all documents and other evidence, and the names of all witnesses that may be offered by the respondent.

**E.9.2.3.3** *Rebuttal Documents and Witnesses.* At least 5 days prior to the scheduled date of the formal hearing, the Committee shall provide the respondent and the Hearing Committee with copies of all documents and other evidence, and the names of all witnesses that may be offered in rebuttal.

**E.9.2.3.4** *No new evidence.* Neither the Committee nor respondent may present any evidence that was not presented to the Committee as part of its review process.

**E.9.2.3.5** *Failure to Provide Documents, Other Evidence, and Names of Witnesses in a Timely Fashion in Advance of the Formal Hearing.* Failure to provide copies of a document or other evidence or the name of a witness in a timely fashion and consistent with this section and these Rules and Procedures is grounds for excluding such document, other evidence, or witness from evidence at the formal hearing, unless good cause for the omission and a lack of prejudice to the other side can be shown.

**E.9.2.4** *Presiding Officer* The Chair of the Hearing Committee shall preside at the hearing.

**E.9.2.5** *Legal Counsel* The General Counsel of the Association shall designate Legal Counsel to assist the Hearing Committee.

**E.9.2.5.1** *Legal Counsel for the Hearing Committee* shall be present to advise on matters of procedure and admission of evidence and shall represent neither the Ethics Committee nor the respondent at the formal hearing.

**E.9.2.5.2** *Legal Representation of the Respondent and Ethics Committee.* The respondent may choose, at the respondent's own expense, to be represented by a licensed attorney. The General Counsel of the Association may designate Legal Counsel to advise the Ethics Committee. The Chair of the Ethics Committee, the Chair's designee, or Legal Counsel to the Committee presents the Committee's case.

**E.9.2.6** *Rules of Evidence.* Formal rules of evidence shall not apply. All evidence that is relevant and reliable, as determined for the Chair of the Hearing Committee

in consultation with Legal Counsel for the Hearing Committee, shall be admissible.

**E.9.2.7 *Rights of the Respondent and the Committee.*** Consistent with these Rules and Procedures, the respondent and the Committee shall have the right to present witnesses, documents, and other evidence, to cross-examine witnesses, and to object to the introduction of evidence.

**E.9.2.8 *Burden of Proof.*** The Ethics Committee shall bear the burden to prove the charges by a preponderance of the evidence.

**E.9.2.9 *Decision of the Hearing Committee.*** The decision shall be made by a simple majority vote. Within 30 days of the conclusion of the hearing, the Hearing Committee shall submit in writing to the Board of Directors, through the Director, its decision and the rationale for that decision. The Hearing Committee may decide to 1) Adopt the Committee's Recommendation to the Board of Directors, 2) Recommend to the Board of Directors a Lesser Sanction, or 3) Dismiss the Charges.

**E.9.2.10 *Notice to the Respondent and the Ethics Committee.*** Within 15 days of receipt of the Hearing Committee's decision, a copy of the decision and the rationale for the decision shall be provided to the respondent and the Ethics Committee. If the Hearing Committee determines that the charges must be dismissed, the Ethics Committee will implement this as the final adjudication.

### **E.9.3 Proceedings Before the Board of Directors**

**E.9.3.1 *Referral to Board of Directors.*** If the Hearing Committee or Independent Adjudication Panel recommends that the respondent be expelled from membership or otherwise disciplined, the matter will be referred to the Board of Directors. The Director shall provide the materials of record to the Board, including a copy of the Hearing Committee's or Independent Adjudication Panel's decision; all timely responses permitted under this formal hearing process, and the record.

**E.9.3.2 *Respondent's Response.*** Within 30 days of receipt of the Hearing Committee's or Independent Adjudication Panel's decision, the respondent may file a written response with the Board of Directors, through the Ethics Office. A copy of the respondent's written response shall be retained by the Chair of the Ethics Committee.

**E.9.3.3 *Ethics Committee's Statement.*** Within 15 days of receipt of the respondent's response or the date such response was due, the Ethics Committee may prepare a written statement and provide a copy to the respondent.

**E.9.3.4 *Respondent's Final Response.*** Within 15 days of receipt of the Ethics Committee's statement, if any, the respondent may file with the Board of Directors, through the Director, a written response to the Ethics Committee's statement. A copy of this response shall be retained by the Chair of the Ethics Committee.

**E.9.3.5 *Action by the Board of Directors.*** Within 180 days of receipt of the recommendation of the Hearing Committee or Independent Adjudication Panel (or of the Ethics Committee if no subsequent adjudication was held), together with any timely responses thereto and the record, the

Board of Directors will consider these materials and will adopt the recommendation, unless by majority vote it finds the following grounds for nonacceptance: incorrect application of the Ethics Code; the findings of fact were clearly erroneous; the procedures used were in serious and substantial violation of the Bylaws of the Association and/or these Rules and Procedures; or the sanction recommended is grossly excessive in light of all the circumstances.

**E.9.3.6 *Consequences of Nonacceptance.*** If the Board of Directors finds grounds for nonacceptance, it shall remand the case back to the Ethics Committee, citing the applicable grounds for nonacceptance and providing the Committee with instructions whether it believes the case should be dismissed or reconsidered in accordance with these Rules and Procedures. If the Board remands for further consideration, the Ethics Committee may return the matter for reconsideration before a newly constituted Hearing Committee or Independent Adjudication Panel or may continue investigation and/or readjudicate the matter at the Committee level.

#### Footnotes

1 The Ethics Committee seeks to protect the public by deterring unethical conduct by psychologists, by taking appropriate action when an ethical violation has been proved according to these Rules and Procedures, and by setting standards to aid psychologists in understanding their ethical obligations. Of course, in no circumstances can or does the Committee or the Association guarantee that unethical behavior will not occur or that members of the public will never be harmed by the actions of individual psychologists.

2 For a copy of the relevant sections of the current Bylaws and Association Rules, see <http://www.apa.org/about/governance/bylaws/index.aspx>.

3 For purposes of these Rules and Procedures, a reference to state or local boards or similar entities shall include state, local, or provincial licensing boards (whether located in the United States or Canada); state, local, or provincial boards of examiners or education in those cases where the pertinent licensing or certification is secured from such entities; or in states or provinces with no licensing authority, nonstatutory boards established for similar purposes (such as registering bodies).

4 In this document "ethical standard(s)" and the Ethics Code refers to the ethical standard(s) in the Ethical Principles of Psychologists and Code of Conduct, the ethical principle(s) in the Ethical Principles of Psychologists, or the enforceable provisions of any subsequent ethics code.

5 For purposes of these Rules and Procedures, a state association shall include territorial, local, or county psychological associations, and in cases of Canadian members of the Association, provincial psychological associations.

6 Whether an individual is a member of the Association is determined according to the Bylaws, Association Rules, and other pertinent organic documents of the Association. Under the current rules, nonpayment of dues results in discontinuation of membership only after one full calendar year during which dues to the Association have remained unpaid. For a copy of the relevant sections of the current Bylaws and Association Rules, contact the APA Ethics Office. For purposes of these Rules and Procedures, high school and foreign affiliates are not members of the Association.

7 This waiver is required to help assure participants in the APA ethics process, including complainants, that the process will not be inappropriately used to gain an advantage in other litigation.