

ACA Policies and Procedures for Processing Complaints of Ethical Violations

(Revising) ACA Governing Council Approved 2005

Purpose, Jurisdiction, Eligibility to File Complaints

Section A: General.

1. The American Counseling Association, hereafter referred to as the “Association” or “ACA,” is dedicated to promoting the professional development of counselors, advocating for the profession, and ensuring ethical, culturally-inclusive practices that protect those using counseling services.
2. The Association, in furthering its objectives, administers the ACA Code of Ethics, hereafter referred to as the “ACA Code,” which has been approved by the ACA Governing Council.
3. This *ACA Policies and Procedures for Processing Complaints of Ethical Violations* (the “Procedures”) document provides guidance and procedures for handling and resolving ethics complaints brought against Charged Members under the ACA Code. It specifies the procedures for processing complaints and for the work of the ACA Ethics Committee (“Committee”). It sets forth: the standards and options for judging the ethical conduct of members – and as appropriate, imposing sanctions – and identifies appeals procedures.

Section B: Jurisdiction.

1. To be accepted, an ethics complaint must pertain to a “Charged Member,” meaning an individual who:
 - a. Is a current member of the American Counseling Association; or
 - b. Was an ACA member when the alleged violations occurred.

Section C: Eligibility to File Complaints.

1. The following individuals may file complaints (i.e. serve as “Complainants”):
 - b. Any individual(s) who have reason to believe that an ACA member has violated the ACA Code.
 - c. The Co-Chair(s) of the Committee on behalf of the ACA membership when the Co-Chair has reason to believe through information received by or otherwise available to the Committee that an ACA member may have violated the ACA Code.
 - . (1) In cases where a Co-Chair act as complainant, the remaining Co-Chair shall assume the administration of the complaint.

2. When appropriate, individuals should attempt to resolve complaints directly with Charged Members before filing ethical complaints in alignment with the ACA Code.

The Ethics Committee and Its Co-Chairs

Section D: Ethics Committee Members.

1. The Ethics Committee is a standing committee of the Association with nine (9) appointed members, which includes two (2) Co-Chairs.
2. Generally, three Committee members are appointed each year by the President-Elect for three (3) year terms, subject to confirmation by the ACA Governing Council. Any vacancy occurring on the Committee is filled by the President subject to confirmation by the ACA Governing Council. Filling a vacancy for more than two years is considered service for a full term. Committee members may be reappointed to not more than one (1) additional consecutive term before having to rotate off the Committee, if they have not served a full-term.
3. The Committee Co-Chairs term overlap and expire in alternate years. Each year, one Committee Co-Chair is appointed, ideally a Committee member who has two (2) years of service remaining on the Committee or otherwise with one year of service remaining. Co-Chairs serve in that capacity for two (2) years. Co-Chair appointments are subject to confirmation by the ACA Governing Council.

Section E: Role, Function, and Responsibilities of the Committee Members.

1. The Ethics Committee is responsible for:
 - a. Educating the membership as to the ACA Code;
 - b. Periodically reviewing and recommending changes in the Ethics Code of the Association, as well as the Policies and Procedures for Processing Complaints of Ethical Violations; and,
 - c. Receiving and processing complaints of alleged violations of the ACA Code.
2. The Committee meets by video conference as necessary based on the need to review complaints and other issues meriting attention.
3. A quorum is comprised of 5 of the current voting Committee members. Any Co-Chair or any other Committee member with a conflict of interest shall withdraw from participation in the case as soon as they are aware of the conflict.
4. In the event Committee members recuse themselves from a complaint and there is an absence of a quorum, the President has the power to appoint former ACA Committee members to decide the complaint.
5. The Committee members have an obligation to act in an unbiased manner, to work expeditiously, to safeguard the confidentiality of the Committee's activities, and to follow the procedures to protect the rights of all individuals involved.

Section F: Responsibilities of the Co-Chairs Administering the Complaint.

1. The Co-Chair administering the complaint shall not have a vote in the decision.
2. In cases where both Co-Chairs have a conflict of interest: a third-year Committee member, if ready and willing, or if not, a second-year Committee member, will be appointed to serve as Chair for the purpose of administering the complaint. Otherwise an experienced Committee member will be appointed.
3. In cases where a Co-Chair act as complainant, the remaining Co-Chair shall assume the

- administration of the complaint.
4. The responsibilities of the Co-Chairs, which are performed with the assistance of the Headquarters staff liaison and legal counsel, as necessary, include the following:
 - a. Presiding over the meetings of the Committee;
 - b. Overseeing the process of preparation and sending communications to the Complainant and Charged Member;
 - c. Finalizing and signing the letters reflecting the decisions of the Committee; and,
 - d. Making additional determinations and taking actions as noted in the Sections below.

Timelines and Communications

Section G: Timelines.

1. The timelines set forth in these standards are guidelines only and have been established to provide a reasonable time framework for processing complaints.
2. The Committee may consider complaints received less than five years after the alleged conduct either occurred or was discovered by the complainant.
3. The Co-Chairs have the authority, in their discretion when justified by circumstances, to grant extensions of deadlines upon request by a Complainant or Charged Member.
4. The Co-Chairs have the latitude to adjust procedures for good cause as they deem necessary to protect any party, participant, or subject of a complaint.
5. Adjudication of the complaint shall correspond with the version of the ACA Code of Ethics in effect at the time of the alleged violation.

Section H: Nature of Communication.

1. Communications and complaints must be legibly printed or typed.
2. Correspondence related to ethical complaints may be provided by hard copy via certified means or electronic means, but complaints and Committee decisions must be signed.
3. Correspondence related to ethical complaints are to be addressed to the ACA Staff Liaison at the ACA Headquarters and marked "confidential", if provided by certified mail.

Handling of Ethics Complaints

Section I: Intake and Finalizing of Submitted Complaints.

1. Complainants are required to contact the ACA Staff Liaison prior to filing a formal complaint.
2. Complainants must identify who the complaint is about so that the ACA Staff Liaison can determine whether the person is subject to the jurisdiction of the ACA Ethics Code.
3. Complainants are sent a copy of these Policies and Procedures, the ACA Ethics Complaint Form, and a copy of the ACA Code. They are told that they will have to provide authorization for the release of information to and from the Charged Member about the complaint, in order for the complaint filing to proceed (as this is not an anonymous process).
4. If there is jurisdiction, the Complainant describes the reason for the complaint to the ACA Staff Liaison, who sends a formal Ethics Complaint form for the Complainant to identify:
 - (a) the name and last known address of the Complainant, the Charged Member, and anyone who has knowledge of the facts involved; and
 - (b) an explanation of how the code

was violated.

5. The Complainant then works with the ACA Staff Liaison in order to accurately identify the ACA Ethics Code sections that apply, as necessary, to identify any evidence and witnesses the Complainant wants to offer. To then finalize the complaint, steps will be taken in setting forth into separate charges according to the sections of the ACA Ethics Code that were allegedly violated.
6. The Complainant maintains the right to approve or make any or none of the suggested changes made by the ACA Staff Liaison.
7. Once the Complainant is satisfied with the contents of the completed formal complaint, Complainants must sign the complaint to begin the formal adjudication process.
8. If the ACA Staff Liaison is unable to obtain a response from potential complainants for 45 business days after repeated attempts, those are treated as incomplete cases and are reported to the Co-Chairs and subsequently to the Committee as administratively dismissed, but can be refiled by the Complainant in accordance to this policy.

Section J: Co-Chair Initial Review, Acceptance; Other Pending Legal Actions/Non-Acceptance of Complaints.

1. The ACA Staff Liaison sends the Formal Complaint and supporting documentation to (via appropriate means of communication) the Assigned Co-Chair (usually the Co-Chair who did not administer the last complaint) for an **Initial Review**.
2. If the Co-Chair determines that there is insufficient information to make a fair determination of whether the alleged conduct would violate the Code or be properly decided, the Co-Chair may request further information from the complainant or others. The complainant or others from whom information is requested shall be given a reasonable deadline –of 30 business days or more, in the discretion of the Co-Chair– from receipt of the request to respond.
3. If the Assigned Co-Chair determines that the Formal Complaint, if true, would violate one or more sections of the Codes and could be properly decided if accepted, **then the Formal Complaint is accepted** (and becomes an “Accepted Complaint”).
4. If the Assigned Co-Chair determines that a Formal Complaint **would not violate** one or more sections of the Codes (or if the complaint could not be properly decided if accepted), then the complaint is forwarded to the other Co-Chair.
 - a. **Separate Legal Actions Can Postpone or Replace the Complaint Process**
 - i. Complainants and the Charged Member(s) are required to notify the Committee if they learn of any type of legal action (civil, administrative, or criminal) being filed related to the complaint.
5. If either Co-Chair believes the Formal Complaint, if true, would violate one or more sections of the Codes and that the Formal Complaint could be properly decided if accepted, **the Formal Complaint is accepted and becomes an Accepted Complaint.**

Section K: Notice to and Responses from Charged Members.

1. The ACA Staff Liaison will send the Charged Member, by certified U.S. mail, or by electronic means with confirmation of receipt: a copy of an Accepted Complaint, a copy of the evidence and documents submitted in support of the complaint, the list of any witnesses expected to testify at the hearing against the charged member, a copy of these Policies and Procedures, a copy of the Code of Ethics, a request for a hearing form, and a notification of deadline.
2. The Charged Member has thirty (30) business days to:

- a. respond to each section of the ACA Codes they have been accused of having violated and provide supporting evidence and documentation if they choose to (noting that a response is not required from the Charged Member as the Complainant bears the burden of proof. A refusal to submit a response shall not be construed as an admittance of guilt.); and,
 - b. exercise the right to request a hearing or to waive the right to a formal hearing by signing a waiver of the right to a hearing, noting that failure to request a hearing within the time limit constitutes a waiver of the hearing.
3. The Charged Member may request that the Committee delay or postpone its review of the case for good cause, if done so in writing at least 15 days prior to any scheduled hearing date.
 4. If the Charged Member opts not to participate in the hearing or fails to attend the hearing, the Committee shall decide the complaint on the written record.
 5. Charged Members are reminded by the ACA policy to disclose to the ACA membership status in its newsletter known as Counseling Today, to state licensing boards, and national professional associations of the Committee's decision that involve a member's suspension or expulsion.

Section L: Withdrawal of Complaints.

1. A Complainant and Charged Member might agree to discontinue the complaint process and to have the Complainant's complaint withdrawn.
2. In cases where the Complainant and Charged Members agree to discontinue the complaint process, they must do so in writing via electronic or certified mail to the ACA Headquarters to the attention of the ACA Staff Liaison.
3. However, the Assigned Co-Chair has the discretion to continue the adjudication process if the available evidence indicates that this is warranted, in which case that Co-Chair becomes the complainant on behalf of the ACA membership.

Section M: Circulation of Complaint and Response Materials.

1. The Ethics Staff Liaison is expected to circulate the full case materials within 20 business days of receiving the response materials from the Charged Member (via secure electronic means).

Conducting the Ethics Hearings

Section N: Notice and Scheduling of the Hearings.

1. The Committee may, in its discretion, delay or postpone its review of the case with good cause, including if the Committee wishes to obtain additional information, which shall be sought by the Assigned Co-Chair.
2. If the Charged Member has timely requested to participate in the hearing, the ACA Staff Liaison on behalf of the Assigned Co-Chair, shall notify both the Complainant and the Charged Member of their right to participate in the hearing.
3. The ACA Staff Liaison, on behalf of the Assigned Co-Chair, will schedule the hearing via telephone or video conference.
4. All participants bear their own expenses in the overall complaint process and in participating in the hearing.

Section O: Hearing Procedures.

Purpose, Intent.

1. The hearing will be conducted electronically, either by telephone or video conference, before a panel made up of a quorum of the Ethics Committee.
2. The purpose of the hearing is to determine if a violation of the ACA Code of Ethics has occurred and, if so, to determine appropriate disciplinary action.
3. The Committee will be guided in its deliberations based upon the basic principles of fairness and professionalism, and will keep its deliberations as confidential except as provided herein.

Rules of the Hearing.

4. If, within the stated deadline, the Charged Member has made a timely request to participate in the hearing, the Charged Member and the Complainant have the right to participate in the hearing.
5. The Assigned Co-Chair in charge of the case shall preside over the hearing and deliberations of the Committee.
6. Legal counsel for ACA shall also be present at the hearing to advise the Committee and shall have the privilege of the floor as necessary.
7. A record of the hearing shall be made and preserved, together with any documents presented in evidence, at ACA Headquarters for a period of three (3) years or until the complaint process is final, whichever is longer. The record shall consist of a summary of testimony received, at the discretion of the Committee.
8. Right to Counsel. If the Charged Members chooses to have legal counsel present to advise and represent them throughout the hearing, then the Complainant may also choose to have legal counsel represent them throughout the hearing.
9. Witnesses
 - a. Either party shall have the right to call witnesses to substantiate his or her version of the case. Witnesses for the Complainant must have been identified in the Complaint in order to give proper notice to the Charged Member.
 - b. The Committee shall have the right to call witnesses it believes may provide further insight into the matter.
 - c. The Assigned Co-Chair shall have the sole discretion to determine the number and identity of witnesses to be heard.
 - d. Witnesses shall not be present during the hearing except when they are called upon to testify and shall be excused upon completion of their testimony and any cross-examination.
 - e. The Assigned Co-Chair administering the complaint shall allow questions to be asked of any witness by the opposition, or members of the Committee if such questions and testimony are relevant to the issues in the case.
10. The Assigned Co-Chair administering the complaint and ACA legal counsel will determine what questions and testimony are relevant to the case. Should the hearing be disturbed by irrelevant testimony, or other occurrences, the Co-Chair administering the complaint may call a brief recess until order can be restored.
11. The parties bear their own expenses associated with their engagement of counsel.

Sequence of the Hearing; Presentation of Evidence.

12. The Assigned Co-Chair administering the complaint, or at their request the ACA Staff Liaison, shall be called upon first to present the charge(s) made against the Charged Member, briefly describe the evidence supporting the charge and otherwise present the matter during the hearing.
13. The Complainant, if participating, and any witnesses who can substantiate the case, may be called upon to testify and answer questions of the charged member and the Committee.
14. Once a Complainant chooses to testify, however, he or she may be questioned by the Charged Member and members of the Committee.
15. A Charged Member who has exercised the right to be present at the hearing shall be called upon after the Complainant or the ACA staff liaison or the Assigned Co-Chair administering the complaint has presented the case against the charged member, and after the Complainant's witnesses, if any.
16. The Charged Member may decline to testify. The Charged Member will not be found guilty simply for refusing to testify. A Charged Member who declines to testify still has the right to submit documentary evidence.
17. A Charged Member who chooses to testify may be questioned by the Complainant and members of the Committee.
18. The Charged Member may present any evidence, witnesses, or additional written statements at the time of the hearing to refute the charges.
19. The Committee will endeavor to conclude the hearing within a period of approximately three (3) hours. The parties will be requested to be considerate of this time frame in planning their testimony. If it appears that additional time is needed to develop the issues adequately, an extension of time may be granted.
20. Testimony that is merely cumulative or repetitious may, at the discretion of the Assigned Co-Chair administering the complaint, be excluded.
21. At any time during the presentation of evidence, the Committee members and ACA legal counsel may ask pertinent questions.

Section P: Evidence.

1. The Hearing Committee is not a court of law and is not required to observe formal rules of evidence. Evidence that would be inadmissible in a court of law may be admissible in the hearing before the Committee, if it is relevant to the case. That is, if the evidence offered tends to explain, clarify, or refute any of the important facts of the case, it may generally be considered.
2. The Committee will not consider evidence or testimony for the purpose of supporting any charge that was not set forth in the notice of the hearing or that is not relevant to the issues of the case.

Section Q: Burden of Proof.

1. Although the charge(s) need not be proved "beyond a reasonable doubt," the Committee will not find the charged member guilty in the absence of substantial, objective, and believable evidence to sustain the charge(s).
2. The Committee, in taking any action, shall only take the degree of disciplinary action that is reasonable with objectivity and fairness, and in general act only to further the interests and objectives of the Association, its membership, and its members' clients.

3. The burden of proving a violation of the ACA Code of Ethic is upon the Complainant. It is not up to the Charged Member to prove his or her innocence of wrongdoing.

Section R: Committee Deliberations, Decisions, and Deadlines for Appeals.

1. After the hearing is completed, the Committee shall meet in a closed session to discuss the complaint, response, and supporting documentation and testimony, if any, and determine the outcome of the complaint. ACA legal counsel attends the closed session to advise the Committee.
2. The Committee is the trier of the facts, and shall weigh the evidence presented and assess the credibility of the witnesses.
3. The Committee's decision will be based on the evidence and documents provided by the Complainant and Charged Member or others.
4. Only members of the Committee who were present throughout the entire hearing shall be eligible to vote, for findings of violation or no violations, as well as decisions related to sanctions.
5. The act of a majority of the members of the Committee present shall be the decision of the Committee. A unanimous vote, including abstentions, is required for permanent expulsion from ACA membership.
6. The Assigned Co-Chair administering a complaint will not vote on the case.
7. After deliberations, using the applicable burden of proof, the Committee members present and eligible to vote will first determine, by majority vote, to resolve the issue of the guilt or innocence of the Charged Member on each charge.
8. If the Committee determines that the Charged Member violated any of the ACA Codes, the Committee will then determine what possible sanctions, will be imposed.
9. If the Committee determines that none of the cited charges constitutes an ethical violation, the Complaint is dismissed. However, the Committee may still choose to counsel the Charged Member, offering guidance and educational advice to advance the Charged Member's ethical counseling practices. Educational advice and counsel rendered by the committee should in no way be construed as a finding of unethical conduct or sanction.
10. The Charged Member has 30 business day after receiving the decision to file a notice of appeal.

Section S: Sanctions; Penalties for Failure to Fulfill Sanctions.

1. In imposing Sanctions, the Committee shall do so with objectivity and fairness in the case, and in act to further the interests and objectives of the Association, its membership, and the protection of clients.
2. The Committee may impose any sanction it deems reasonable for the case at hand. Examples of sanctions individually or in concert include:
 - a. Remedial requirements, imposed to be completed within a specified period of time, such as successful completion of a specific education or training, supervision, and evaluation or treatment, and research, thought, or reflective papers related to the ethical violations.
 - b. Reprimand.
 - c. Probation for a specified period of time subject to Committee review of compliance.
 - d. Suspension from ACA membership for a specified period of time subject to Committee review of compliance with terms set forth by the Committee.
 - e. Permanent expulsion from ACA membership. This sanction requires a unanimous vote of those voting. 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 & all conditions are met. The respondent's failure to respond within 30 days of notification, shall be deemed acceptance of the Committee's recommendations.
3. If the Charged Member fails to fulfill a remedial requirement, the Charged Member shall be suspended until the requirement is met, unless the Committee determines that the remedial requirement should be modified based on good cause shown.
 4. If the Charged Member is suspended pending the satisfactory completion of a remedial requirement, failure to fulfill one or more remedial requirements imposed by the Committee as a result of a suspension sanction can result in expulsion from ACA membership (if the Committee has voted unanimously for that consequence), unless the Committee determines that the remedial requirement should be modified based on good cause shown prior to the end of the suspension period.
 5. The determination as to whether the Charged Member satisfactorily completes remedial or other sanctions, is made by the ACA Ethics Committee, unless the Committee has assigned that responsibility to the Co-Chairs.
 6. The Committee, or if authorized by the Committee, the Co-Chairs may impose other, additional corrective or punitive actions if a Charged Member fails to fulfill Sanctions.
 7. One of the Co-Chairs by way of the ACA Staff Liaison shall notify the Charged Member in writing about any deficiency or satisfaction of the imposed sanctions.

Appeals and Post-Hearing Procedures

Section T: Appeal.

1. Charged Members who have been found in violation of one or more charges, have thirty (30) business days to notify the Committee in writing that they want to appeal the decision.
2. **If an appeal is not requested within thirty (30) business days, the Committee's decision shall stand as the final decision.**
3. Decisions of the ACA Ethics Committee may be appealed by the member found to have been in violation, based on whether the decision of the Ethics Committee stands on one or both of the following grounds:
 - a. The Committee violated its policies and procedures for processing complaints of ethical violations;
 - b. The decision of the Committee was arbitrary, capricious and was not supported by the materials provided by the complainant and charged member; and/or,
 - c. The Sanctions imposed are inconsistent with or disproportional to the violations.
 - d. If the appeal is based upon an alleged procedural error by the Committee, it must cite the error and the reasons for believing that the alleged error influenced the decision.
4. A notice of appeal may consist only of a letter stating one or more of the grounds of appeal. The filing of an appeal automatically stays the execution of a decision by the Committee until the appeal is completed.
5. The Charged Member may submit statements to accompany the appeal. Generally, the appeals panel will not consider evidence that was not presented to the Ethics Committee.
 - a. Appeals are heard by the ACA Ethics Appeal panel, consisting of six (6) appointed members. Generally, two (2) members are appointed annually for three (3) year terms by the President-Elect, subject to confirmation by the ACA Governing Council. In making Committee nominations, candidates' ethics training and experience will be

considered, and the Ethics Committee Co-Chairs may be consulted. No member of the Ethics Committee may be appointed to the Appeals Committee if they have served on a case that was adjudicated in the previous year.

6. The six (6) member appeals panel will be given copies of the materials available to the Committee when it made its decision, a copy of the Committee decision, and the appeal letter and any accompanying materials filed by the Charged Member.
7. The appeal is conducted by documentary evidence, not testimony or argument.
8. The decision and remedies determined by the Ethics Committee shall stand unchanged, unless the appeal submitted by the Charged Member, demonstrates that the Ethics Committee decision and remedies were clearly erroneous and not supported by the evidence.
9. The appeals panel will act by majority vote, generally trying to meet thirty (30) working days of their receipt of the above materials.
10. The decision of the appeals panel is limited to:
 - a. Upholding one or more aspects of the Ethics Committee's decision;
 - b. Upholding one or more aspects of the Ethics Committee's decision, but altering one or more of the Sanctions; or,
 - c. Reversing one or more aspects of the Ethics Committee's decisions, which may include adjusting one or more of the Sanctions.
11. All decisions of the appeals panel are final and binding and not subject to further hearings or appellate review.

Section U: Substantial New Evidence.

If in a case in which an appeal was not filed, or in a case for which a final decision has been rendered, the Co-Chairs -in their discretion- has determine that substantial new evidence has been presented. If said substantial new evidence was substantiated, and is capable of exonerating a member who was expelled or suspended, the Co-Chairs may re-open an ethics case for the entire complaint process to begin again.

Section V: Public Notification of Ethics Decisions; Records.

1. After the deadline for filing an appeal, or in the event an appeal is filed, after a decision of violation on appeals has been rendered -resulting in the charged member being suspended or expelled- the following entities will generally be notified of the results: the complainant, counselor and/or other mental health licensure, certification or registry boards, voluntary national certification boards, appropriate professional associations, ACA divisions, state branches, and other ACA-related entities.
2. The notice will **generally** include the sections of the ACA Code of Ethics that were found to have been violated and the sanctions imposed.
3. The decision and notice will be published in the ACA newsletter i.e. Counseling Today.
4. The records of the Committee regarding complaints are confidential except as provided herein.
5. Original copies of complaint records will be maintained by ACA in secure and confidential files in any format, including physically or electronically.
6. Members of the Committee will keep copies of complaint records confidential, and will be instructed to destroy copies of records after a case has been closed or when they are no longer a member of the Committee.