

PROFESSIONAL STANDARDS COMMITTEE  
HEARING PANEL PREPARATION AND ETIQUETTE

Note: It is essential for all panel members, including the chair, to maintain confidentiality before, during, and after a hearing. Do not discuss the case with anyone, except as required by the board of directors, bylaws, or law.

Before the Hearing

- If, a few days before or on the day of the hearing, there is an emergency preventing you from serving as a panelist, provide staff with immediate notice.
- Dress in professional business attire.
- Review all hearing materials carefully, and;
- For ethics hearings, review all relevant Code Articles, Standards of Practice, and Case Interpretations.
- For arbitration hearings, review the California Professional Standards Reference Manual (Manual) and Procuring Cause Guidelines.
- Keep an open mind.
- Be impartial going in. (If any doubts, ask to be excused from the panel).
- Do not discuss the case under any circumstances except as authorized in the Manual.
- Only the hearing panel, staff, alternate, and/or board counsel should be in the hearing room before the hearing and during breaks.
- Be sure the video recorder is turned off.

During the Hearing

- Chairpersons follow the procedural guide provided in the Manual.
- Chairpersons take and keep charge of the proceeding, calmly and sensitively explaining rulings.
- Chairpersons strive to keep discussions focused on relevant subjects.

- Electronic transmission devices are not allowed without prior permission of Presiding Officer.
- Presiding Officer can allow remote testimony in extreme circumstances.
- Alternates do not ask questions, make comments or contribute to the hearing in any way. The alternate’s job is to listen attentively and be ready to step in for a panel member should the need arise. It’s a good idea to have the alternate operate the tape recorder.
- Witnesses must leave the room after they are sworn-in and after their testimony.
- Keep doors closed throughout the hearing.
- Give the hearing full attention.
- Watch your body language. Sit straight, lean forward, look alert and be attentive.
- Avoid movements such as shaking your head (in agreement or disbelief), rolling your eyes, or raising your eyebrows.
- Avoid showing you are tired, bored, or annoyed. No napping!
- Be an excellent listener. If you do not understand something, ask for clarification from the appropriate person when necessary
- Do not make statements—ask only relevant questions.
- When asking questions:
  - + Watch your tone of voice.
  - + Wait to be recognized by the chair and, ideally, save questions until the redirect.
  - + Avoid asking leading questions.
  - + Ask questions in a positive and generally open-ended manner.
  - + Ask questions to clarify a point not understood, not to assist either party.
  - + Stay away from judgment words and phrases such as “why”, or “should”, or “do you mean to tell me”.
- When addressing anyone during the hearing:
  - + Speak slowly and evenly.
  - + Do not interrupt—only one person should speak at a time.
  - + Do not use the first name of one party and the surname of another.
- Allow each side to present his or her case without interference or interruptions

- Distinguish between hearsay and legitimate evidence, but be neutral.
- Take recess before dismissing parties to determine whether disciplinary complaint should be amended.
- If the evidence warrants, a disciplinary complaint may be amended by the panel during the hearing. The panel must call a recess and amend the complaint in writing – signed by the Chairperson on behalf of the panel as complainant. The respondent, then, has the opportunity to have a 21-day continuance (with a new or the same panel) or may waive the right to a continuance and go forward with the hearing.
- Get any waiver of the right to a continuance in writing.
- If antitrust issues come up—STOP EVERYTHING!
- Do not eat, drink, or smoke during the hearing.
- If a break is necessary for some reason, request a recess.
- Do not wear a company name badge.
- Keep all surfaces clean and uncluttered, except for relevant hearing materials.
- Remove soda cans, lunch bags, coffee cups, etc.
- Shut off all cell phones.
- Do not try to assist either side. It is not your responsibility to help a party who presents a weak case.
- Do not refer to general practices of the market area or board.
- Avoid laughing even if something is funny. It is possible that one or both of the parties might not appreciate your sense of humor on appeal.
- Do not press issues. This is the parties' problem, not your problem.
- Do not allow ethics issues to come up during arbitration in a determinative manner.
- Do not leave the hearing to take a call unless there is an emergency (such as death in immediate family).
- Relax, smile; be courteous and professional at all times.

## After the Hearing

- After the parties leave, be sure to turn off the video recorder and close all doors.
- The alternate leaves with the parties and is not allowed to be present during deliberations.
- During the executive session, it is all right for panelists to disagree, but all dissenting opinions should be debated in a professional and productive manner. Focus on the goal of making the best decision or award given what was presented.
- Present an opinion concisely and avoid making personal or derogatory comments about any party, witness, or counsel.
- No amendments to the complaint may be made after the parties are dismissed.
- The matter stands as presented. The hearing panel does not request further clarification or documentation.
- Decide whether the respondent's conduct was a violation – or not.
- Write findings of fact to support your decision as if the reader knows nothing about the case.
- If discipline is recommended, be specific as to when the discipline must be completed, and if the discipline is not complied with give the specific results of not complying.
- For arbitrations, you may award only money, and only up to the amount requested by the parties, plus costs if requested and appropriate.