

Grievance Procedure

AMERICAN SOCIETY OF TRIAL CONSULTANTS Grievance Procedure Updated June 2008

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

Grievance Procedure

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

The Grievance Committee, consisting of at least 7 standing members, shall appoint one of its members as Secretary to keep all records and to take notes during the Committee's deliberations. No less than 3 committee members must preside over a grievance proceeding. The Grievance Committee members will serve as a Standing Committee. The President shall have the authority to fill any vacancy on the Grievance Committee and/or Grievance Chair during such President's term of office.

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

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

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

1. A complaint shall be made verbally or in writing and shall explicitly state the grounds for the grievance. The grievance is made to the Grievance Chair, who will then inform the Grievance Committee.
2. If the nature of the alleged offense can be established through a third party or through other verification means, the identity of the complainant may be kept

anonymous. If, however, no such outside verification is available, the complainant's anonymity cannot be guaranteed.

3. During the course of the investigation, all parties shall keep in confidence the information pertaining to the complaint.
4. With the input of the committee, the Chair has the responsibility to make an initial determination of sufficiency of the complaint in terms of violation of the ASTC Professional Code. The Grievance Chair shall immediately inform the Member who is the subject of the complaint of the complainant's allegations, and, if the complaint is in writing, shall forward a copy of the Complaint to such Member. All communications mailed to the accused member shall be sent via certified mail or other method for which a signature is required. The Chair, with the input of the committee, shall have the authority to resolve the complaint informally between the complainant and the complaine. The Chair shall forward his/her finding regarding sufficiency to the Grievance Committee members
 - a. If the Chair determines there is no merit to the complaint, the complainant and complaine are notified and the complainant has the opportunity to file an Appeal with ASTC Board for further consideration of the complaint.
 - b. The Board shall respond to the Appeal in reasonable time frame, but no later than its annual meeting.
 - c. If the Board determines the complaint constitutes a grievable offense, the President will notify the Grievance Chair to activate an investigation pursuant to the Grievance Guidelines set forth.
 - d. If it is determined that there is initial merit to the complaint, the Grievance Committee will take notice and determine a process to review the complaint. The Grievance Committee cannot stop further investigation at this point. During the course of its investigation and hearings, the Chair and the Grievance Committee shall have the authority to resolve the complaint between the complainant and the complaine.
5. If the complaint is deemed as passing the sufficiency hurdle, the Grievance Chair shall do one of two things depending on the severity of the complaint:
 - a. Communicate the Grievance Committee's concern and ask the aggrieved to correct the behavior. If the aggrieved member wishes to contest the request, he or she may voice that response to the Grievance Committee, in writing.
 - b. Gather evidence to determine whether a violation of the ASTC Code has occurred. If the Chair determines, in his/her investigation, that a serious enough complaint has been filed as to warrant a formal hearing, the Chair

will communicate that fact to the Grievance Committee. The Grievance Committee will sit as the fact-finding body, with the Grievance Chair acting as Prosecutor. The aggrieved member may represent him/herself or bring someone to assist in his/her defense. The evidence considered for the hearing should include (if not already done so) a written response from the complainant. The format of the investigation shall be determined by the Grievance Chair. A formal hearing may be scheduled at the discretion of the Grievance Committee with notice given to the Secretary as to the time and date of the hearing. The Secretary shall send notice of the date and time of the hearing, by mail, to all parties. Should a formal hearing take place, a recording and/or transcript shall be made of the proceedings.

Note: The accused member is expected to respond to notices sent by the Grievance Chair or the Grievance Committee within 10 days of receipt of the notice. This applies to all notices sent during any portion of the Grievance Procedure. Failure to respond, by the accused member may, at the discretion of the Board, constitute a default by that member and result in the immediate sanction of that member's expulsion from membership in the ASTC.

6. At the conclusion of its investigation, the Grievance Committee shall make a determination of *fault* or *no fault*, using a two part test:
 - 1) Is there a PREPONDERANCE OF THE EVIDENCE that the standard was violated? And if so,
 - 2) Is there a PREPONDERANCE OF THE EVIDENCE that the violation was knowing or intentional, or was it an inadvertent error (careless, ignorant, misunderstanding, etc.)?
 - a. If the Grievance Committee finds fault, they shall also determine sanctions. Those sanctions might range from: 1) a letter of instruction put on file, 2) a private letter of reprimand 3) a public letter of reprimand, 4) suspension from the ASTC, 5) expulsion from the ASTC, 5) written admonishment to suspension or expulsion from the ASTC. The Grievance Committee shall mail a copy of the determination and sanctions, if any, of the Grievance Committee to the parties and to the Board. The copy mailed to the accused member shall be sent via certified mail, or other method for which a signature is required.
 - b. If fault is found and sanctions are assigned, the aggrieved member may request an appellate hearing before the Board for procedural issues concerning the actions of the Grievance Chair during his/her investigation and/or the Grievance Committee's hearing.

7. Procedural and Cost Issues

- a. The Grievance Chair shall conduct his/her initial investigation within 60 days of the receipt of the complaint. If the Grievance Chair deems the grievance to have merit, he/she shall begin the next level of investigation immediately and present it to the Grievance Committee within 45 days. The Grievance Committee should then schedule and hold the hearing within 45 days and render its decision within 30 days of the hearing.
- b. The Grievance Chair shall be reimbursed for expenses involved in making telephone calls, shipping materials via express delivery services, photocopies, etc.
- c. All hearings shall be audio taped so that a transcript may be created as needed. If a transcript is needed, it will be generated by a typist selected by the Grievance Chair.

8. Grievance Appellate Process

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

- a. Notice of Appeal. An affidavit which states the violations of procedures shall be filed with the Secretary-Treasurer of ASTC by the Grievance Chair and/or Committee
- b. Notification of hearing date. The Secretary-Treasurer of the ASTC shall send a certified letter to all parties at least thirty (30) days before the date of the hearing, containing a copy of the Notice of Appeal, the time and place of the hearing, and a statement of the aggrieved member's right to be present at the hearing, to be represented by an attorney if he or she wishes, and to receive a copy of the transcript of the hearing held by the Grievance Committee. Any party seeking a transcript shall pay for the costs of obtaining and sending this transcript.
- c. Hearing. An appellate hearing before the Board shall be restricted to procedural issues only. The format of the hearing shall be determined by the Board. Neither the Grievance Chair nor the Grievance Committee members shall hear the appellate case brought before the Board.
- d. Decision. The Board shall, within a reasonable time, make its decision as to any actions to be taken and send a copy of the recommended decision

to all parties and to the Secretary-Treasurer of ASTC.