

GRIEVANCES

INTRODUCTION

The following are some easy guidelines for handling complaints that have been compiled by the USA Track & Field (USATF) legal department. Please note that by listening, understanding and compromising, many complaints can be resolved. Those that cannot be resolved by diplomacy should be handled as outlined below.

JURISDICTION OF ASSOCIATION OVER A GRIEVANCE

According to USATF Regulation 21-D (Association Proceedings), Associations shall conduct disciplinary and formal grievance proceedings for matters not specifically referred to the National Athletics Board of Review (NABR) that arise wholly within the particular Association's boundaries, and for which the disciplinary measures or relief sought shall apply only within the Association's boundaries Regulation 21-C defines that the NABR shall conduct all proceedings related to (note: check the most recent USATF Bylaws and Operating Regulations for a current list):

1. Disciplinary Complaints filed or prosecuted by USATF;
2. Persons from more than one Association;
3. Matters arising out of or resulting from national or international Athletics competitions;
4. Violations of IAAF Rules, other than doping violations;
5. Conduct prohibited by the Sports Act;
6. Hearings for any athlete, coach, trainer, manager, administrator, or official who alleges that he or she has been denied an opportunity to participate in an Athletics competition;
7. Sexual misconduct;
8. Other hearings specified in the USATF Bylaws and Operating Regulations; and
9. All other grievance and disciplinary matters not reserved to individual Associations.

HOW TO CONDUCT A GRIEVANCE

Each Association's Bylaws are required to include clear and concise provisions on how to manage disputes and grievances. Per USATF Regulation 7-G-2, these must include provisions for the following:

1. Arbitrators – individuals that can impartially make decisions about the dispute,
2. Challenge – the opportunity to object to an arbitrator because of a conflict of interest,
3. Filing – specific procedures for filing and handling the grievance,
4. Dates – deadlines, in which the grievance must be conducted,
5. Delay – the opportunity for arbitrators to dismiss a grievance not handled in a timely manner, and
6. Appeals – the opportunity to appeal a decision by the arbitrators.

Sample language for “Formal Grievances and Disciplinary Proceedings” for Association bylaws can be found in the Associations Resource Center (<http://usatf.org/mgmt/assoc/forms.aspx> under “Other Resources” -Policies, Memos & Email Communications or by clicking [here](#)).

Association Arbitrators Panel

Timely adjudication of a grievance is critical to ensuring the process is handled in the most professional manner possible. Lingered complaints often cause Associations to spend unnecessary energy and resources. Most Associations are not prepared to handle grievances because they have failed to identify a pool of individuals who will serve on the Association Arbitration Panel (AAP). While most hearings will require three (3) panelists to conduct a hearing it is best to have a minimum of five (5) individuals make up the pool of panelists. This provides the Association with a “safety net” in case one or more of the panelists cannot participate in the hearing due to a scheduling conflict or a conflict of interest with the case. Having a panel in place also allows USATF to educate the panel on best practices and communicate procedural changes.

Once an Association receives a grievance, the Association should make every effort to resolve the matter informally. This process may include working with the parties to find a mutually acceptable solution. The USATF Associations Committee has resources and individuals who can assist an Association with mediation before a grievance hearing is held, and which can help an Association work within the procedural requirements of this process. If the matter cannot be resolved informally, the Association must refer the matter to an “independent hearing panel/committee.”

ADEQUACY OF A GRIEVANCE COMPLAINT

An Association member’s grievance should be in writing and should be filed with the appropriate Association official. The complaint should specify the conduct or the Association Bylaw/rule violation that occurred and the remedy sought. In addition, the complaint should be signed by the complainant and notarized.

CHOOSING AN IMPARTIAL PANEL/COMMITTEE

“Impartial” means that none of the individual(s) serving on the panel have any relationship to the pending matter or to any of the parties to the proceeding. If a potential panelist discloses a “conflict,” the parties and panelists may waive the conflict, and the person may serve on the panel. If a potential panelist does not disclose a conflict, and one, or both, of the parties has reason to believe that a panelist(s) may not be impartial, a party may challenge the seating of the panelist.

For example, if Paul files a grievance complaint that has been referred to a panel, his cousin, team member, wife, or best friend should not be selected to sit on the panel. However, if Paul’s cousin discloses the relationship and asserts his/her ability to be impartial, notwithstanding the relationship, the parties may agree to waive any objection to the conflict. This means that, after a decision is rendered; neither party can object to the result on the basis that a particular panel member was not impartial. If Paul’s cousin, team member, wife, or best friend does not disclose the conflict, and the opposing party has reason to believe that Paul’s cousin, team member, wife, or best friend may not be impartial, the opposing party may object to the seating of Paul’s cousin, team member, wife, or best friend.

THE HEARING

Who Should Attend

The hearing itself should consist of only those individuals that are parties to the proceeding (complainant and respondent(s)), any witnesses who may be called to testify, and the panelists. In addition, a party may at his/her own expense, be represented by an attorney or other representative. The witness(es) should only be in the hearing room when testifying, unless the parties agree that they may be present at all times. In making this determination, consideration should be given to concerns about confidentiality. In addition, provisions should be made, although it is not mandatory, to record the hearing either by a court reporter or tape recording. If a hearing is recorded, one individual who is not a part of the proceeding should be designated to operate the recorder.

Association Staff

Association officers and/or staff should not participate in a proceeding, except as required to provide proper interpretation of Bylaws, rules or regulations. The National Office staff can also perform this function.

National Office Staff

If questions of rule interpretation or proper procedure arise during the proceeding, either a party or a panelist may consult with the USATF Counsel to the Board, the Chair of the Law & Legislation Committee and/or the Chair of the Rules Committee. However, said Counsel or Committee Chairs,

may only respond to questions regarding the administration of the hearing or the proper interpretation of USATF Bylaws, Regulations or Competition Rules and should not serve to interpret an Association's Bylaws.

Setting the Hearing Date

Once a panel has been selected, the parties and panelists should work together to schedule a hearing date. However, the panel Chair should control the conduct of the process. The date should be convenient, allowing both parties sufficient time to prepare a thorough presentation. Except in urgent matters, the hearing should typically be held within 30 to 60 days after the matter has been referred to a panel. However, if a party needs more time to adequately prepare, a reasonable delay should be granted at the discretion of the panel Chair. If any delay or postponement is allowed, the hearing should be rescheduled as soon as reasonably possible. It is a generally accepted legal principle that "fairness" of a hearing process, requires adequate preparation time for both parties.

Thus, for example, a hearing that has been rescheduled ten (10) days from the date of the original hearing would generally be considered a reasonable delay. However, a hearing rescheduled fifty (50) days after the original hearing date may be considered unreasonable.

Conduct of the Hearing

Once the panel has been confirmed, the panelists should select one panelist to serve as panel chair. The panel chair is responsible for presiding over the entire hearing proceeding. Therefore, consideration should be given to leadership skills and similar experiences when selecting the panel chair. After consultation with the other panelists, the panel chair should issue the panel decisions regarding requests for delays, pre-hearing discovery issues, submission dates for evidence, witness statements, and pre-hearing briefs, if necessary.

It is important to note that the formal rules of evidence are not followed in these proceedings. Thus, all relevant evidence should be presented to the panel, which shall reserve the right to disregard irrelevant information. Lack of relevancy is generally the only valid objection and should be sustained in rare instances.

Typically, a hearing begins with the opening statement of each party, complainant first. Next, the complainant presents his/her case, which may include calling any witnesses or presenting any written documentation that s/he deems necessary. The respondent must, however, have the opportunity to cross-examine each witness(es) once the complainant has finished his/her direct questioning of the witness. Upon the completion of the complainant presenting his/her witnesses, the respondent will have the opportunity to present his/her case, which may also include calling any witnesses or presenting any written documentation. The complainant also has the opportunity to cross-examine the respondent's witnesses. After each witness testifies and is cross-examined, there can be limited re-direct questioning by either party. After each party has had the opportunity to present its witnesses, the parties should be given the opportunity to present closing statements, complainant first. It is appropriate for the panel to ask questions regarding any issue(s) that may be unclear, during the course of the hearing. This should be done in a manner that does not interfere with either party's presentation or indicate a bias toward either party's case.

Typically, considering geographic issues, it is common for these hearings to be held by telephone conference call. If a hearing is held by telephone, the panel and the parties should be aware that the presentation of written evidence must be coordinated in advance. Parties should make arrangements to forward any written documentation prior to the start of the hearing. Fairness requires that there be full disclosure of written evidence prior to the hearing. Also, if witnesses are

called during a telephone hearing, the process for cross-examination is inherently more difficult. It is the responsibility of the panel chair to make sure that the hearing proceeds in an orderly and fair process, notwithstanding any difficulty which comes up because of the use of the telephone. Also, any documents a witness may refer to must be distributed in advance to the panel and the opposing party.

During the hearing, it is very important for both parties to remember that each side has the right to present his or her case. The parties should be respectful of one another, and the panel chair should enforce appropriate decorum.

During the course of the hearing, the panel should ask questions of both the parties and/or witnesses, if unanswered questions exist. However, the panel should refrain from questioning a witness until the completion of the direct questions and re-direct of both parties. In addition, as with each party, panelists should be respectful and courteous to both parties and of each other throughout the entire hearing. The panelists should go out of their way to avoid showing bias toward either party's arguments during the hearing process.

Post Hearing Issues

If, at the conclusion of the hearing, the panel feels that additional information or evidence is necessary to make a decision, it may request that the parties submit additional information. In this event, the hearing will remain open until receipt of the requested document(s). Once the panel has made a final determination, it should render a written decision within a short period of time – e.g. forty-eight (48) hours. Only a brief statement of the panel's rationale is necessary with the initial decision. The panel should provide a written opinion explaining the decision within thirty (30) days.

APPEALS

The losing party may appeal the Association's decision to a National Athletics Board of Review (NABR) panel, within thirty (30) days of the receipt of the written opinion. In addition, a party may request that the Association's decision be stayed – not enforced or implemented – until the appeal has been heard. However, such a request must be filed within ten (10) days of the Association panel's decision and must be made to the Chief Executive Officer of USATF.