

# How to Properly Run a Disciplinary Hearing

Any disciplinary hearing held by a Softball Association should provide certain minimum rights to the parties for whom the hearing is held. The following is a list of the rights that should be provided:

## **Step 1 Notice of the specific charges or alleged violations in writing and possible consequences if the charges are found to be true**

Prior to any disciplinary hearing, the organization holding the hearing must send out a written notice of that hearing to the parties. That notice must provide answers to the following questions:

- Who is being charged/accused?
- What are the charges being brought? What incident/behavior forms the basis for these charges? What rule(s), bylaw(s), or policies are alleged to have been violated?
- If the charges are found to be true, what are the possible consequences? What penalties are available? What is the maximum penalty possible?
- When and where will the hearing take place?
- What procedural rules will apply to the hearing?
- When will a decision be rendered (in accordance with local rules)?

## **Step 2 Reasonable time between receipt of the notice of charges and the hearings within which to prepare a defense**

There is no specific amount of time that must be provided between notice and the actual hearing - it must simply be "reasonable." This will depend on the method of notice, the nature of the charges, etc., but generally one week will be considered "reasonable." If a party asks for an extension of time, it is probably most appropriate to grant it - at least if it is the first such request - in order to ensure that there is sufficient time to prepare a defense. The time of notice is generally deemed to be whenever it is deposited in the mail, or otherwise sent out (by FedEx, facsimile, etc.). It is recommended that the written notice be sent in a way that provides a written receipt to the sender, to avoid having the issue of notice become an issue on appeal.

## **Step 3 The right to have the hearing conducted at a time and place so as to make it practicable for the person charged to attend**

Whether the time and place for a hearing is "practicable" will depend on the specific circumstances: the distance from the party's home to the place of hearing, the party's work schedule, etc. Generally, if a party asks for a hearing to be rescheduled due to a scheduling conflict or difficulty in appearing at the hearing, it is probably most appropriate to grant the request - at least if it is the first such request - to ensure that it is practicable for the person to attend the hearing.

## **Step 4 A hearing before a disinterested and impartial body of fact-finders**

It is advisable to select hearing panels in a way that excludes not only those who are clearly interested in the outcome, but also anyone that would appear to be interested, partial, or biased. In other words, if a panel member would appear to be biased to an objective outsider, they should not be on the panel, even if in reality they are unbiased and impartial. There is no specific set of people who must be excluded, but the following are some examples of people who are less likely to qualify as "disinterested" and "impartial":

- Family members or close friends of any of the parties
- The individual who actually filed the complaint or report that led to the charges

- In an appeal, an individual who had any role in making the decision that is on appeal
- Anyone who is a witness at the hearing

### **Step 5 The right to be assisted in the presentation of one's case at the hearing**

A person giving assistance may be, but does not have to be, an attorney. The person assisting must be allowed to attend the hearing. Leagues, clubs, States, etc. should be careful to set its rules and regulations so that they do not keep the person assisting out of the hearing room. There is no requirement that the person assisting be allowed to speak at the hearing on behalf of the party - this will depend on the rules governing the hearing. However, the person assisting must be permitted to participate to the same extent as the opposing party's assistant.

For instance, if the Softball Association's representative is allowed to question witnesses directly, the accused's assistant should also be given this opportunity. The person assisting should not be allowed to take control over the hearing, or attempt to conduct the hearing as if it were a trial in court - the hearing should be conducted in accordance with applicable rules.

### **Step 6 The right to call witnesses and present oral and written evidence and argument**

While a party should be allowed to present their case and a full defense to any charges, there are limits to that right. For instance, while a party has a right to "call witnesses," these hearings do not take place in a court of law, and there is no way to mandate that a certain witness appears at the hearing. If a witness refuses to appear, and a party thus has no opportunity to question him or her, this does not mean that the party was denied due process. A league, club, or association may reasonably limit the introduction of evidence or the questioning of witnesses. For instance, if a party brings twelve character witnesses to a hearing, the hearing panel may limit their testimony by number of witnesses or time. However, where a party brings three eyewitnesses who can testify as to what actually occurred during an incident, it may be appropriate to allow all three to testify. It is in the discretion of the Association, League, etc. to determine what should be allowed - but the party must be provided a reasonable opportunity to present his/her case

### **Step 7 The right to confront witnesses, including the right to be provided with the identity of witnesses in advance of the hearing**

While a party to a hearing has the right to confront witnesses that appear at the hearing, this does not apply to witnesses who do not appear at the hearing. For instance, if a witness sends in a letter, but refuses (or is unable) to appear at the hearing, the panel may consider the letter even though the witness was not "confronted." (However, when a written statement is provided to the panel, the accused party should be given a copy of that statement and a chance to answer the allegations in it). Generally, of course, a reasonable effort should be made to have witnesses appear at the hearing, especially if their testimony is critical to the issues before the panel. If a party specifically requests that a certain witness be present, that witness should be encouraged to attend. If an important witness has limited availability, the panel should consider scheduling the hearing so as to fit that witness's schedule. If a witness does testify for one party, the other party should, in most cases, be afforded the opportunity to cross-examine the witness, or at least to ask questions through the panel. The organization running the hearing should notify the parties that they have the opportunity to learn the identity of witnesses in advance of the hearing, and should encourage the parties to exchange witness lists. If a party has no notice of a witness, the panel should consider allowing that party additional

time to prepare for the witness. This consideration should take into account the importance of the testimony, the degree of surprise to the party not having notice, any efforts the party made to learn of potential witnesses before the hearing, and the possible harm to the party not having notice.

**Step 8 The right to have a record made of the hearing if desired**

While it is advisable for organizations to record all hearings, for many organizations this may not be practicable. At a minimum, therefore, they must provide the opportunity for a recording if requested, at the requesting party's expense. If a party asks a written transcript of a hearing, they may be required to pay for the cost of the transcription without violating their due process rights.

**Step 9 A written decision, with reasons for the decision, based solely on the evidence of record, issued in a timely fashion**

A decision should be issued in writing to the accused. That decision should include the specific finding of the hearing panel - a description of the charges for which the accused was found guilty, the facts that led to that decision, and the discipline imposed. This should be something more than "The committee finds you are in violation of the rules and thus suspends you for ten years." Instead, it should provide more detail. For instance:

*"The committee finds that you punched an Umpire in the nose, causing him physical injury. This constitutes "Physical abuse directed at a game official" under Softball Ontario's Respect My Game Disciplinary Action Recommendations, and the committee hereby imposes a suspension for 6 meaningful games in accordance with Respect My Game Program's mandatory minimum penalty for that offence."*

The panel should decide the case based purely on the evidence before them - not their outside dealings with either party or rumors they heard outside of the hearing. The decision should, ideally, inform the accused as to the next procedural option. Specifically, it is advisable to tell the party if there is a right to an appeal, where any appeal should be filed, how long they have to file the appeal, and the amount of any appeal fee. Softball Ontario has prepared an Appeal Policy that Softball Associations may adopt as their own if desired. The Appeal Policy is available on the Softball Ontario web site ([www.softballontario.ca](http://www.softballontario.ca)).

**Step 10 Notice of any substantive and material action of the hearing panel in the course of the proceedings**

If the panel decides during the course of the hearing or deliberations that it needs to proceed in some way that was not originally planned, such as considering a new witness, or asking for additional arguments, the panel should notify the parties.

**Step 11 Quality concerning communications, and no ex parte communication is permitted between a party and any person involved in making its decision or procedural determination except to provide explanations involving procedures to be followed**

Every effort should be made to determine the current address of the accused, and to keep the accused well-informed of the proceedings. There should be no "ex parte" communications - these are communications about the substance or merits of the hearing that are held outside the presence of everyone concerned. For instance, if a League president accuses a coach of violating a rule, the League president should not discuss the case with a member of the hearing panel in private before the actual hearing.

The accused also should not discuss any issues with any panel member. Copies of any written communications with the panel should be sent to each of the parties involved in the hearing.

**References:**

How To Properly Run A Disciplinary Hearing, 03 June 2010. U.S. Soccer. <<http://www.ussoccer.com/About/Federation-Services/Resource-Center/Legal/How-To-Properly-Run-A-Disciplinary-Hearing.aspx>>.