

PRE-HEARING MEETING OF A HEARING PANEL

Section 1. Authority

Part Four, Section 20 (a) of the NAR Code of Ethics and Arbitration Manual (COEAM) states, in part, that when the Grievance Review Panel refers ethics complaints and arbitration requests for hearing, the hearing panel may have a pre-hearing meeting, to determine questions on the following matters:

- (1) Whether ethics complaints and arbitration requests are timely filed,
- (2) Whether arbitrable issues exist,
- (3) Whether arbitration requests are too legally complex to be fairly arbitrated, and
- (4) Other administrative issues

Section 2. Initiating a Pre-Hearing Meeting

When the Grievance Review Panel has moved the complaint forward to a hearing and respondent wishes to challenge the Grievance Review Panel's decision on any of the pre-hearing matters (1) - (4) listed above, the respondent may request a pre-hearing meeting by using the Form entitled *Request for Pre-Hearing Meeting*. Alternatively, a Pre-Hearing Meeting may be scheduled in the absence of such a request from the respondent, to review the same issues, should the Chair of the Hearing Panel deem it appropriate. If the Association receives a *Request for Pre-Hearing Meeting*, the Professional Standards Administrator shall forward the Request to the Hearing Panel Chair for review to determine if the Request will be addressed through a Pre-Hearing Meeting of the Hearing Panel at least 7 and no more than 10 days prior to the Hearing, or through a Pre-Hearing Meeting immediately prior to the Hearing. The determination of timing of the Pre-Hearing Meeting shall be within the Chair's discretion, and failure to hold a Pre-Hearing Meeting between 7 and 10 days prior to the Hearing shall not constitute a procedural deficiency. The Professional Standards Administrator shall appoint a Hearing Panel in accordance with Part Two, Section 16.1 and schedule both a Pre-Hearing Meeting, in accordance with the Chair's determination, and a Hearing Date. The materials and information that were available to the Grievance Review Panel when they made their decision along with the respondent's reply, and any supporting documents, if any, will be presented to the Hearing Panel prior to the Pre-Hearing Meeting. Neither the complaint nor the reply can be revised, modified or supplemented. The complainant and respondent may however, submit written statements regarding the contested pre-hearing matters. Any such written statement should be submitted to the Association at least three (3) days prior to the scheduled Pre-Hearing Meeting. If such written statements are submitted after this deadline, they will be forwarded to the Hearing Panel. However, the Hearing Panel may not have the opportunity to give them the same level of review before the Pre-Hearing Meeting as had they been submitted in the timeline requested. If these matters arise during a hearing, the Hearing Panel will address them within the course of the hearing and in conjunction with all other issues related to the complaint.

Section 3. Rights of Complainant and Respondent

No complainant(s), respondent(s), their counsel, witnesses or brokers, may appear or testify at the Pre-Hearing Meeting. The complainant and respondent have the right to challenge the qualifications of any individual who may be appointed to serve on an ethics proceeding or arbitration matter. The parties will be provided with a list of the individuals who will be appointed to sit on the Panel and may challenge the qualifications of any panel member by completing Form #E-7 and returning it to the Association. Challenges submitted will be determined by the Chairperson of the Hearing Panel, or if the challenge to the Chairperson is made, by the Professional Standards Committee Chairperson. A party shall be deemed to have waived any grounds of disqualification of which the party has knowledge unless the party files the request within ten (10) days from the date a list of names of the appointed panel members has been transmitted to the party. However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a panel from rendering an impartial decision. The Pre-Hearing Meeting will not be recorded, and no party will be permitted to have a court reporter or recording device present at the Pre-Hearing Meeting.

Section 4. Panel Decision

At the Pre-Hearing Meeting, the Hearing Panel will determine whether or not the complaint shall proceed to a hearing, depending upon their determination of any of the matters raised. The decision of the Hearing Panel will be determined by a simple majority vote of the panel members. If the Hearing Panel's determination at a Pre-Hearing Meeting does not preclude proceeding with the Hearing as scheduled, the matter will proceed to the scheduled hearing. In such case, the Hearing shall be held on the scheduled date and both the complainant and respondent have the right to raise all substantive and procedural issues at the hearing (including those issues reviewed within a Pre-Hearing Meeting). If the conclusion of the Hearing Panel in its Pre-Hearing Meeting is that the matter should not proceed to a hearing, the Hearing Panel shall dismiss the complaint and the complainant shall have the right to appeal the decision of the Hearing Panel to an Appeal Tribunal of the Association on the same bases as dismissals by the Grievance Review Panel (See Part Four, Section 20 (c)). The Association shall transmit the written decision of the Hearing Panel on these matters to the parties no later than three (3) days after the Hearing Panel makes their decision.

Section 5. Confidentiality

The allegations, findings, and decisions rendered in the Pre-Hearing Meeting are confidential and will not be reported or published by the Association, any member of the Panel, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* as from time to time amended.