ADMINISTRATIVE PROCESSING OVERVIEW - DISCIPLINE REVIEW

Case No._____,

_____ _____

VS.

_____ _____

Complainants **Respondents**

This checklist is intended for use in conjunction with processing a disciplinary complaint under the rules and procedures of the *California Code of Ethics and Arbitration Manual*. "References" are taken from the *CA Code of Ethics and Arbitration Manual (Manual)* and the *Implementation Guidelines – Discipline (Guidelines)*. This checklist may be reproduced and used to help process disciplinary complaints.

Notes:

The preferred method for serving notices in the disciplinary procedure is email, as set forth in Section 13 of the *Manual*.

Complainant Party includes all named complainants, their legal counsel, if any, Ethics Advocate, if any and the broker's representative, if any.

Respondent Party includes all named respondents, their legal counsel, if any, Ethics Advocate, if any and the broker's representative, if any.

☐ **REFERENCE**	**ACTION**
☐ 38(a) *Manual* – Request for Review ☐ G.1 *Guidelines* – Distributing the Decision	**Request to File Discipline Review** ☐ Request for Discipline Review paperwork should be sent to the parties, included with the Decision of the Hearing Panel packet, within five (5) days from the date the Decision is handed over to the Association. ☐ Request for Discipline Review is due within twenty (20) days from the date the Decision was transmitted to the parties. ☐ _____ (Date Due)
☐ 38(a) *Manual* – Request for Review	**Receipt of Request for Review** ☐ _____ (Date Filed) ☐ Date-stamp the Request with its postmark date or, if no postmark date is given/applicable, with the date of receipt and record above.
☐ 38(a) *Manual* – Request for Review ☐ 38(b) *Manual* – Deposit Requirement ☐ 38(c) *Manual* – Basis for Review	**Preliminary Review of Request** ☐ Within ten days, conduct a preliminary review of the Request to determine if it has been properly and timely filed. The preliminary review should be limited to the following considerations: 1. Was the request submitted timely?; 2. Does the request come with the proper paperwork?;

☐ 38(d) *Manual* – Preliminary Review; Opportunity to Amend ☐ G.2 *Guidelines* – Review by Directors	3. Was the $_____ deposit submitted?; 4. Does the request cite and clearly indicate alleged a) mis-application/misinterpretation of the Code, b) procedural deficiency or any lack of procedural due process and/or c) unwarranted discipline recommended by the hearing Panel? ☐ If the Request does not meet the filing requirements, return the Request to the Requesting Party and give ten days to amend the request. • ***Note:*** Any preliminary review conducted by staff is not a decision on the merits of the Request and is only intended to make sure the basic filing requirements have been met. In the event of a dispute as to whether the Request states a proper basis for review, the Request should be processed and the Directors should rule on the disputed issue at the time of the hearing. ☐ If the Requesting Party has submitted form D-14 *Request for Duplication of Recording,* along with the $_____ duplication fee, transmit the recording to the requesting party.
☐ 38(e) *Manual* – Notice of Request for Review ☐ 38(k) *Manual – Automatic Disqualification; Certificate of Qualification*	**Notice of Request for Review** ☐ Send the **Notice of Review Packet** to the Parties and to the Original Presiding Officer, including: 1. Cover Letter; 2. D-18 *Notice of Request for Review;* 3. Copy of Request for Review; 4. D-4 *Notice of Right to Challenge Panel Members and Availability of the Parties;* 5. List of Board of Directors; 6. D-5 *Reasons for Challenge;* 7. D-13 *Notice of Availability of Rehearing and Review;* 8. D-14 *Request for Duplication of Recording;* 9. D-19 *Reply to Request for Review.* ☐ ***ETHICS CHECK:*** Upload the entire Request for Review onto Ethics Check under the same file as the Discipline Complaint – you do not need to create a new file in Ethics Check for the Review.
☐ 38(f) *Manual* – Reply not Required; Late Filing	**Reply to Request for Review** ☐ Reply is due within fifteen (15) days from transmittal of notice of receipt of review. The Non-Requesting Party does not have to submit a response or attend the review hearing, but is entitled to both. ☐ The Original Presiding Officer should not submit a written response, but should be provided with any and all documentation submitted by the parties and all relevant correspondence/documentation.
☐ 38(g) *Manual* – Notice of Reply	**Reply to Parties** ☐ If a Reply is submitted, send the following to the parties and the Original Presiding Officer: 1.Cover Letter; 2.Copy of Reply. ☐ ***ETHICS CHECK:*** Upload Reply onto Ethics Check.

☐ 38(h) *Manual* – Selecting the Review Panel ☐ 38(i) *Manual* – Waiver of Objection to Director; Appointing Replacement to Challenged Director ☐ 38(j) *Manual* – Composition of Panel ☐ 38(k) *Manual* – Automatic Disqualification; Certificate of Qualification ☐ 38(l) *Manual* – Presiding Officer	**Schedule Review Hearing** ☐ After the timeframe for the Parties to submit their challenges and availability for hearing has expired, select (or have your Association President select) a panel from your Board of Directors to conduct the review. ☐ The Original Presiding Officer should be considered when applying automatic disqualifications to potential panel members. • ***Note:*** If the Original Presiding Officer is unable to attend the Review hearing, an arbitrator from the original Panel may attend instead.
☐ 38(m) *Manual* – Notice of Time and Place of Review Hearing	**Official Notice of Review Hearing** ☐ Once the hearing date, time and panel have been secured, send the Parties and the Original Presiding Officer the **Official Notice of Review Packet,** which includes: 1. Cover Letter; 2. D-20 *Notice of Review Hearing;* 3. D-26 *Notice of Additional Attendees for Hearing.* • ***Note:*** Notice of Review Hearing must be given at least 21 calendar days in advance of the review hearing. **Hearing Deadlines:** 21 days notice → Notified of hearing date, time, location and panel members 15 days prior to hearing → Notification to all parties of legal counsel and/or remote testimony requests 10 days → Notification of intent to utilize an interpreter and/or submit translated document 1 day → Reminder of review hearing
☐ 38(n) *Manual* – Documents Provided to the Panel	**Materials to Review Panel** ☐ Prepare a case file for each Panel member, including Form D-11, D-12, the Request, the Reply (if any) and any relevant documentation/correspondence; ☐ Prepare a case file for the Review Hearing Presiding Officer, including the Request, the Reply (if any), any relevant documentation/correspondence, and the following forms: 1. Form D-20 *Notice of Review Hearing;* 2. D-7 *Certificate of Qualification;* 3. D-21 *Action Upon Review;* 4. Presiding Officer's Statements (Disciplinary Review Hearing); 5. Copy of the current *CA Code of Ethics & Arbitration Manual.* ☐ ***Note:*** The Review Panel should not receive copies of the original complaint/response as they are only allowed to consider the issues cited in the Request for Review.

☐ 30 *Manual* - Witnesses ☐ F.1 *Guidelines* – Transcript/Right to Record ☐ 34(c) *Manual* – Notice (of Interpreter/Translator) ☐ F.2 *Guidelines* – Interpreters and Translators ☐ 18(b) *Manual* – Notice of Representation	**Important Pre-Review Deadlines** At least: ☐ 21 days prior to review hearing, Parties must be notified of the date, time, location and panel members. ☐ 15 days prior to the review, Parties must notify all other parties and Association staff of their intent to be represented by legal counsel and/or submit to staff their request for remote testimony. ☐ 10 days prior to the review, Parties must notify all other Parties and Association staff of their intent to utilize an interpreter and/or must submit any translated documents they intend to present at the hearing. ☐ 1 day prior to the review, staff should send a reminder to the Parties, Original Presiding Officer and Panel, which includes a list of attendees and the date/time/location of the hearing.
• 38(q) *Manual* – Failure of Requesting Party to Appear at Hearing • 38(r) *Manual* – Failure of Party Not Requesting Review to Appear at Hearing ☐ 38(s) *Manual* – Action of the Review Panel ☐ G.2 *Guidelines* – Review by Directors	**Review Hearing** ☐ Prepare hearing room – include case files, copy of current C.A.R. Manual, scratch paper. ☐ Prepare a waiting area for the parties and their witnesses (if any) and secure a location for any witnesses to wait until they are allowed in the hearing room for their testimony. ☐ Make sure the recording/transcript of the Original Hearing is available for the Directors if they need to listen. ☐ In general, the Review Panel should adopt the decision and recommendation of the original Panel. However, if the Review Panel are concerned with deficiency in the decision or the appropriateness of the discipline, they can take the following actions: ☐ Dismiss the matter if they conclude the Findings do not support the recommendations; ☐ Impose alternative discipline that does not exceed the original recommendation; ☐ Refer the Decision back to the original Hearing Panel with recommended modifications; or ☐ Refer the matter for a new hearing with the same or different Hearing Panel, as deemed appropriate. • ***Note:*** Review hearings are never recorded. The original hearing recording should be destroyed after the review panel have issued their decision.
☐ 26(a)(b) *Manual* – Withdrawal of Complaint ☐ E.4 *Guidelines* – Withdrawal of an Association Disciplinary Complaint ☐ G.6 *Guidelines* – Reporting "Public Trust" Violations to the BRE	**Hearing Documents** ☐ The following forms should be completed and retained in the case file: 1. D-7 *Certificate of Qualification,* to be signed by all panel members prior to the start of the hearing. 2. D-21 *Action Upon Review.*
☐ 38(t) *Manual* – Disposition of the Deposit ☐ 38(u) *Manual* – Review Panel's Rationale ☐ 38(v) *Manual* – Finality of Review Panel Decision	**Action of Directors to Parties** ☐ The Directors' decision must be in writing and provided to the Parties within five (5) days after the written award is handed over to staff. ☐ If the Directors so rule, a new hearing or reconvening of the original Hearing Panel should be scheduled. ☐ If the Directors modify or adopt the original Decision, the Decision is considered ratified and final.

	☐ If the Directors dismiss the Complaint, the file should be closed. ☐ The **Action of Directors Packet** should include the following: • Cover Letter; • D-21 *Action Upon Review;* [If Directors refer case for new hearing] • List of Potential Panel Members (excluding those who have already participated in this case); • D-4 *Availability for Hearing* and D-5 *Notice of Right to Challenge Panel Member & Reason for Challenge;* • Refund of Review Deposit (to Requesting Party Only); [If Decision is modified or adopted] • Copy of the modified or original D-11 *Decision and Findings of Fact* and D-12 *Recommendations of Hearing Panel*. • ***Note:*** The decision of the directors at the review is final – there is no review process for their decision. There is no findings of fact or explanation of how the directors came to their decision. **Panel members must not discuss their decision** with anyone outside of Association staff and/or Association legal counsel, as necessary. • ***Note:*** The recording/transcript of the original Hearing should be destroyed after the Review Panel adjourns. ☐ ***ETHICS CHECK:*** Upload Form D-21 *Action Upon Review* onto Ethics Check. If the Decision is modified, replace the original Decision with the modified one.