

THE RAY E. HELFER SOCIETY



POLICY TITLE: Ethical Testimony and Court Case Review:
Complaint Review Process

CLASSIFICATION: Ethical

POLICY NUMBER: 2024-02

DATE APPROVED: January 29, 2024

Introduction

The Ray E. Helfer Society has developed policies regarding the ethical standards which should be the foundation for testimony and other legal activities that relate to children who may have experienced abuse, neglect, or other forms of maltreatment. Ensuring that members of the Society adhere to these guidelines is a core interest to the Society. This Compliant Review Process is designed to ensure that possible violations of the Policy for Ethical Testimony and Court Case Review are examined and addressed by the Society in a fair, objective, and consistent manner.

Definitions

- 1.1 Complainant: The person who brings a complaint against a member of the Society. The Society will accept complaints only from members of the Society.
- 1.2 Complaint: A written allegation submitted by a Complainant, describing conduct by a member of the Society that conflicts with the ethical standards and principles of the Society.
- 1.3 Ex Parte Communication: Unsolicited communication by the Respondent or the Complainant with Professional Conduct Committee members, witnesses, or any party, regarding the complaint and outside of the disciplinary proceedings.
- 1.4 Expulsion: Termination of membership in the Society, with or without the option to reapply for membership under certain specified conditions.
- 1.5 Formal Complaint: A written allegation submitted by the Professional Conduct Committee, describing conduct by a member of the Society that conflicts with the standards and principles of the Society.
- 1.6 Hearing: A proceeding held for the purpose of examining evidence and deciding issues of fact.
- 1.7 Reprimand: Notification to a member in writing of a finding of misconduct and that such conduct should be changed. A reprimand detailing how the Respondent's conduct conflicted with the standards of the Society and an admonition to correct such behavior may take the form of a private letter to Respondent or a public notice in a Society publication.
- 1.8 Respondent: The member against whom a complaint has been submitted.
- 1.9 Service of Notice: The formal delivery of notice.
- 1.10 Suspension: Temporary revocation of a Respondent's privileges as a member of the Society.

Professional Conduct Committee

The Professional Conduct Committee shall be chaired by the Vice President and shall consist of at least seven (7) additional members appointed by the Executive Committee. When the Vice-President is recused, or if the Vice President is the subject of the complaint, the President or President's designee will fulfill all roles assigned to the Vice President. The Vice President will function in a leadership role, assigning committee members to specific cases, and ensuring the resolution of any conflict of interest. The term of appointment is two (2) years, and terms may be renewed. Committee members whose terms have expired will continue to fulfill existing responsibilities to a case or cases under consideration but will thereafter retire from the panel.

Review of Complaint

The Professional Conduct Committee shall receive the Complaint or written and signed allegations of a breach of the *Policy for Ethical Testimony and Court Case Review* (Ethical Testimony Policy) against members from any member of the Society. Allegations shall have a time of filing limitation of three years from the date of the alleged breach of *Policy for Ethical Testimony and Court Case Review* (Ethical Testimony Policy) which occurred on the date the testimony was given or the date of the disposition of the case, whichever is later.

- 3.1 At the time of submission, the Complainant is required to maintain the confidentiality of the complaint and the complaint process until final resolution as described in Section E., Confidentiality.
- 3.2 Allegations shall include an identification of the section of the Society's Ethical Testimony Policy that the Complainant contends was breached and a detailed description of how the Respondent violated each section.
- 3.3 The Vice President shall identify 3 members of the Committee to serve as the Review Panel (the Panel) to review the complaint. The 3-person Panel chosen for a case shall not have more than 1 member from the Executive Committee. The Panel will have up to two stages to its evaluation – an initial review and full review.
- 3.4 The Initial Review is to assess whether the Complaint has enough validity to warrant Full Review. The Respondent is not notified of the Complaint at this point. The Panel shall review the information provided by the Complainant (the written complaint and relevant court records). The Panel shall meet within 30 days after receipt of the information to discuss and vote (majority vote) whether this Complaint has enough merit to require a Full Review; if the Panel votes "no," then the Complaint will be rejected, and the Respondent will not be notified there was a Complaint. The Complainant will be notified the Complaint failed for lack of merit. If the Panel votes for a Full Review, the Panel may also discuss with the Complainant whether there should be any edits to the Complaint.
 - a. The Complainant shall be responsible for the costs associated with the Initial Review of the Complaint, including but not limited to, costs of obtaining, copying, and mailing records or scans, but excluding costs associated with Panel meetings. If the Panel determines that the Complaint warrants a Full Review, the Society shall be responsible for the costs incurred in the further review of the Complaint.
- 3.5 The purpose of the Full Review is to gather more information, allow a response from the Respondent, and make preliminary findings to the Executive Committee. The Executive Committee will make the final determination of whether there was a breach in the Ethical Testimony Policy and what the consequences will be.
- 3.6 If the Panel votes for a Full Review, the Panel will send the Complaint to the Respondent and notify the Respondent that an Initial Review identified enough concern to require a Full Review. This notice will include a copy of the Ethical Testimony Policy and Complaint Review Process, and it will invite the Respondent to provide a written response to the Panel within 60 days from the date of the notice. The notice, including all information specified, shall be sent via any carrier that maintains confidentiality and with return receipt requested.
- 3.7 The Panel may consider any evidence or testimony in addition to that used in the Initial Review. If the Respondent files a written response to the Complaint, the Panel shall send the response to the Complainant. During consideration of the Complaint, the Panel may invite the Respondent or Complainant to submit additional information to the Panel.
- 3.8 The Panel shall meet within 45 days after receipt of the information to deliberate and vote whether the Respondent committed a breach of the Ethical Testimony Policy. A vote shall be taken on whether there is clear and convincing evidence to support the Complaint in whole or part. A majority

vote is required for an affirmative finding of sufficient evidence to support the Complaint in whole or in part. Upon a majority vote in the affirmative, the preliminary findings of the Panel shall state that there is clear and convincing evidence to support the complaint in whole or in part.

- 3.9 The Panel's preliminary findings will be sent to both the Executive Committee and the Respondent and Complainant. If the finding is that there was not a breach of the Ethical Testimony Policy, the Complaint is closed and no further action is taken. If the preliminary finding is a breach occurred, the Respondent will have 30 calendar days from the date of the letter transmitting the preliminary findings to request a Hearing before the Executive Committee. Such request for hearing shall be sent to the Vice President. A date for the Hearing shall be set no later than 120 days after the request made by the Respondent and with 30 days advance notification of the hearing date.
- 3.10 Hearing Procedures: The Executive Committee shall receive copies of any additional evidentiary material and witness lists not less than fourteen days prior to the hearing. The Respondent and Complainant will each receive copies of any material submitted by the other. The Complainant and Respondent shall decide whether they will call any witnesses and shall provide the Vice President with a list of these witnesses, if any, along with a summary of their expected testimony. The Vice President shall provide these lists and summaries to the Complainant and Respondent. The hearing before the Executive Committee will be chaired by the President. If the President has a conflict of interest or must recuse themselves for any reason, the immediate Past President shall chair the hearing. The Executive Committee will conduct any questioning of the Complainant and Respondent or any witnesses. The Executive Committee may retain the services of an attorney for the purposes of advising on and/or conducting the hearing.
- a. Ex Parte communication prior to the hearing between the Respondent or the Complainant and the Executive Committee members, Hearing witnesses, or any party, is prohibited and shall result in suspension of the Respondent's or Complainant's membership in the Society and reporting to the National Practitioner Data Bank. Ex Parte communication by the Respondent will result in the Complaint being found supported and a finding of breach of Ethical Testimony Policy.
 - b. The Vice President will notify the Executive Committee, Respondent and Complainant of the date, place, and time of the hearing. The hearing shall be held no sooner than 30 days from the date of that notice. The Complainant and Respondent are responsible for all personal costs, including Respondent's attorney's fees, relating to the attendance and participation in the hearing.
 - c. At the request of any party for a good cause, the chair may postpone the date of the hearing for a reasonable period of time but reserves the right to deny postponement. The right to a hearing may be forfeited if the Respondent fails to appear without good cause.
 - d. The Respondent shall have the following rights at the Hearing:
 - i. To retain the services of an attorney, or any other person of the Respondent's choice, to advise during the hearing or in the course of the complaint process. If present during the Hearing, the attorney will not ask questions or make comments to the Executive Committee or the Complainant.
 - ii. To request a copy of the record of the proceedings at the Respondent's cost.
 - iii. To be present at the hearing when evidence is presented to the Panel.
 - iv. To submit evidence.
 - v. To call, examine and cross-examine witnesses.
 - vi. To submit a written statement within five working days of the close of the hearing.
 - vii. To receive a written decision of the Panel that includes the reasons supporting the decision.
 - e. The hearing will be conducted by a secure internet platform. If the Respondent requests that the hearing be conducted in person, the hearing may occur in conjunction with the Society's annual meeting. It is not expected that the Respondent or Complainant should incur any expenses during the hearing, but if either party wishes to attend the hearing in person or to hire a lawyer, it

will be done at that person's own expense. If either party wishes to have the Hearing audio recorded and/or transcribed, it will be done at their expense and by a service approved by the Executive Committee. Any materials that the Respondent or Complainant wish to use during any stage of the proceedings that cannot be sent electronically, these will be sent at the expense of the sender. The Executive Committee shall first hear evidence in support of the complaint from the Complainant and then shall hear evidence from the Respondent. Formal rules of evidence shall not apply in the hearing, and the Executive Committee may hear any evidence relating to the issues contained in the complaint. Any witness who gives testimony shall be subject to examination by the Executive Committee. The Executive Committee shall determine if observers may attend the hearing. Observers will not be permitted to participate in the hearing. The Respondent will have the right to a final response after all questioning has been completed.

- 3.11 The Executive Committee shall issue a written decision within 90 days of the close of the Hearing; if the Respondent did not request a Hearing, then the Executive Committee shall issue a written decision within 90 days of the failure to request a Hearing
- a. A majority vote of the Executive Committee is needed to make a finding of a breach of the Ethical Testimony Policy and to decide on consequences. Any EC member who served on the Panel will not vote on whether or not there was a breach. The decision of the Executive Committee shall state whether there was clear and convincing evidence presented at the hearing that was sufficient to support the complaint in whole or in part and, if so, the recommended disciplinary action. The recommended disciplinary action may be designed to correct a specific violation found by the Panel. The disciplinary action may, in the judgment of the Executive Committee, provide for reprimand, suspension from membership in the Society for a specified period of time, or expulsion from the Society.
 - b. The President shall take appropriate steps to implement the decision of the Executive Committee which shall be final unless the Respondent submits a notice of intent to appeal. The Professional Conduct Committee shall keep records sufficient to ensure that each alleged episode of misconduct against a Respondent is not considered more than once.
 - c. A Respondent's suspension or expulsion from the Society will be made known to the Society's general membership and will be reported to the National Practitioner Data Bank.
- 3.12 Appeal Procedure: In the event that the final action by the Executive Committee includes reprimand, suspension, or expulsion of the Respondent, that Respondent shall have the right to appeal that decision to the Society's General Membership.
- a. The Respondent shall commence this appeal process by submitting a notice of intent to appeal to the President. Such notice must be in writing and must be received by the President within 30 days of the Respondent's receipt of the Executive Committee's written decision, or no later than 45 days from sending notification to the Respondent and/or their attorney of record, or it shall be deemed untimely.
 - b. Upon receipt of a timely notice of intent to appeal, the Respondent shall have a final opportunity to address the decision of the Executive Committee via submission of a written statement of appeal (of no more than 15 pages) to the General Membership. This written statement of appeal shall be submitted to the President no later than 30 days from the date of submission of the notice of intent to appeal.
 - c. The President shall be given the opportunity to submit a written response (of no more than 15 pages) to the Respondent's written statement of appeal to the General Membership to explain the basis of the Executive Committee's decision. No new matters or evidence will be permitted in the statement of appeal or response.
 - d. The written statement of appeal and the President's response shall be sent to the General Membership not less than 15 days prior to the next scheduled Ray E. Helfer Society annual meeting. At such time, the General Membership also shall be provided access to an electronic ballot via their member account. Voting on the appeal by the General Membership shall be

confidential. Ballots must be cast not more than 15 days following the annual meeting.

e. The General Membership shall vote to **overturn** the action of the Executive Committee. A vote of at least the majority of the General Membership casting ballots shall **overturn** the action of the Executive Committee and the Complaint shall be deemed dismissed. If the vote to **overturn** the Executive Committee's action receives less than a majority of the votes cast, the Executive Committee's action shall stand. The decision of the General Membership voting on the appeal shall be final.

3.13 If at any time during the review of the Complaint from submission to appeal, the Respondent intends to resign from membership in the Helper Society, Respondent must

a. Notify the Executive Committee that the Respondent intends to submit a resignation and request the Professional Conduct Committee prepare a statement of the alleged misconduct.

b. Upon receipt of the statement of alleged misconduct, Respondent may resign upon submission to the Executive Committee a resignation, sworn to or affirmed under oath, which sets forth (i) the Executive Committee's statement of alleged misconduct in the matters pending (ii) Respondent's statement that they are aware of the alleged misconduct stated in the Executive Committee's statement and that rather than defend against the allegations, they wish to permanently resign membership in the Society (iii) a statement whereby Respondent affirmatively acknowledges that the resignation bars the Respondent from reapplying for membership for 10 year from the date of resignation (iv) a statement whereby Respondent affirmatively acknowledges that upon re-application for membership, the Executive Committee shall recommence the Complaint process and (iv) a statement affirmatively acknowledging that the Executive Committee can order the Professional Conduct Committee to continue the Complaint process even after resignation if the Executive Committee determines such process is necessary to protect the interest of the Society and that no participation in such Complaint process will be permitted by the resigned Respondent.

c. Upon resignation, Respondent will be barred from membership in the Society for 10 years from the date of resignation. Upon reapplication for membership, the Executive Committee shall recommence the Complaint process and the Respondent may only be accepted for membership if it is determined that Respondent did not violate the Ethical Testimony Policy.

Confidentiality

All material concerned with these matters shall be held strictly confidential at all times. Files will be kept secure. Public release of information on any matter will be prohibited prior to final determination of the matter. At the final determination of the matter, the Complainant will be notified that the case has been dispositioned. Such notification to the Complainant will not include any identifying information about the Respondent and will refer to the date of the complaint only (This is done so that the Complainant cannot use this letter against the Respondent in the future). For all submitted materials, including but not limited to medical records, patient names and identifiers will be redacted unless a patient waiver is submitted in a form acceptable to the chair. Notwithstanding the foregoing, all materials concerned with these matters may be disclosed to (a) the Society's and/or Complainant's legal counsel, (b) to comply with any court order, subpoena, or other direction by any court, administrative agency, or legislative body, or (c) any successor organization of the Society. Additionally, if there is a finding against the Respondent which results in suspension or expulsion from the Ray E. Helper Society, such finding will be summarized in the Helper newsletter which will set forth the matters of the Complaint review process.

Conflict of Interest

Participation in the activities of the Professional Conduct Committee, Panel, or Executive Committee by members with any real or potential conflict of interest is prohibited. This prohibition includes but is not limited to any individuals who are in direct economic competition with the Respondent. The Vice President shall take appropriate steps to identify real or potential conflicts.