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NDBA ADVISORY COMMITTEE PAMPHLET NO.13

SUGGESTED PROCEDURAL STRUCTURE FOR CLUBS WITH AN APPEAL SITUATION

CONVENING AN APPEAL HEARING

1(a) Procedure commences with the Club President/Chairman stating that he will chair the Appeal Board which will consist of all Directors present excluding those who have taken part in the initial Judicial proceedings, eg. the Members of the Judicial Committee and any Director who has given evidence as a witness.

1(b) Where the President/Chairman has brought the original citation or has appeared as a witness thus making him ineligible to be a Member of the Appeals Board, the Directors present, prior to the commencement of the Appeal, will elect a Chairperson from those among the Board Members present.

2. The Chairperson will introduce and welcome any legal advisers present and then read the following Club Rule extract (quote the Rule number and page).

“At the time of the Appeal process the Judicial Committee is to be present but only to answer direct questions from the Board or the Appellant or their legal representative.

Both the Appellant, their legal representative and the Judicial Committee shall withdraw prior to the Board commencing the decision making process. The Judicial Committee shall have no right of vote at any Appeal hearing. In an Appeal situation no Member shall be warned, reprimanded, fined, suspended or expelled, unless a majority of two-thirds of the Board then present shall vote for the warning, reprimand, fine, suspension, or for a Special Resolution to be put to the Members for expulsion.’

Where a Member intends to exercise their right to legal representation they must notify the Board or Judicial Committee so they may exercise the same right.”

3. The Chairperson will then proceed to outline the further steps in the procedure as follows:

- (a) The Appellant and their legal adviser will present their Grounds of Appeal and will be heard without question or interruption of any kind. If the Appellant calls any witnesses they may be questioned at the conclusion of their evidence.
- (b) At the conclusion of the Appellant’s presentation the Appeal Board Members and their legal representative may ask questions. The Members of the Judicial Committee are reminded that they have the right to answer a question specifically directed to them, but they do not have the right to ask questions or take any other part in the discussion. The Appellant and their legal adviser have the right to question.
- (c) At the conclusion of the question period the Appellant or their legal representative may make a final concluding statement after which the Appellant and their legal representative along with the Judicial Committee will withdraw and the Appeal Board will commence deliberations.

4. The Appellant will be advised of the Board's decision in writing.
5. The Chairperson answers any questions arising, then reads out the citation that led to the original hearing.
6. The presentation of the Appeal then proceeds as outlined above.

Notes Relating to the Consideration of an Appeal

The three focal points in an Appeal situation of the type under consideration usually involve:

- a) The Citation
 - b) The Penalty incurred
 - c) The Procedures involved
- I. An Appellant should endeavour to show the Citation itself was false or incorrect in part or whole of substance.
 - II. That the Penalty incurred was excessive.
 - III. The Procedures adopted deprived him of Natural Justice.

We define Natural Justice as:

“The rules and procedures to be followed by any person or body charged with the duty of adjudicating upon disputes between, or the rights of others. The Chief rules are to act fairly, in good faith, without bias, and in a judicial temper, to give each party the opportunity of adequately stating his case, and correcting or contradicting any relevant statement prejudicial to his case, and not hear one side behind the back of the other A man must have notice of what he is accused.”

Ref, Osborn's Concise Law Dictionary, 7th Edition 1983

Note: The person cited must be present at all stages of a Judicial Committee or Appeal Board hearing up to the point of deliberation.

An Appeal seeks to demonstrate that there has been a miscarriage of justice at the time of the initial hearing.

Members of an Appeal Board should:

- i. Look for any evidence not presented at the previous hearing.
- ii. See if a different approach has left previously presented evidence open to new interpretation.
- iii. Ask has bias, emotion, or personal dislikes clouded the issue.
- iv. Was the procedure adopted by the Judicial Committee fair in its approach to the initial hearing.
- v. Relating to the sentence previously imposed – Was any consideration given to prior good behaviour of the Appellant?

Note: All situations should be taken on their own merit. Although consistency from previous similar cases should be taken in consideration to send a clear message that all certain types of behaviour will not be tolerated.