

NBCOT Ethics Appeals Procedures

1. **Board Ethics Appeals Committee.** The Chair of the NBCOT Board of Directors shall appoint three (3) or more Directors to serve as the Board Ethics Appeals Committee (Appeals Committee), which shall be responsible for resolving all appropriate appeals concerning decisions of the Executive Director and the Ethics Hearing Committee. No members of the Ethics Hearing Committee may serve on the Appeals Committee. The Chair shall appoint an Appeals Committee Chair and Vice-Chair to preside over and conduct each ethics appeal, consistent with these Procedures.
2. **Time Period for Appeals to the Board Ethics Appeals Committee.** Within thirty (30) days of the mailing date of an adverse Ethics Case Decision, the respondent may appeal all or a portion of the Decision and Order to the Appeals Committee pursuant to this Section. Any appeals received beyond this time period will not be reviewed or considered by the Appeals Committee.
3. **Grounds for Board Appeal.** An adverse Ethics Case Decision may be reversed, or otherwise modified, by the Appeals Committee on appeal. However, the grounds for appeal of an adverse decision are strictly limited to the following:
 - a. Procedural Error: The Executive Director/Ethics Hearing Committee misapplied a procedure contained in these rules and prejudiced the respondent;
 - b. New or Previously Undiscovered Information: Following the closing of the hearing record, the respondent has located relevant proof that: was not previously in his/her possession; was not reasonably available prior to closure of the record; and, could have affected the Ethics Case Decision;
 - c. Misapplication of the Ethics Code: The Executive Director/Ethics Hearing Committee Decision has misapplied the provisions of the Code of Ethics, and the misapplication prejudiced the respondent; and/or
 - d. Contrary to the Information Presented: The Ethics Case Decision is contrary to the most substantial information provided in the record.

With respect to Sub-sections 3(a) and (c), above, the Appeals Committee will consider only arguments that were presented to the Executive Director/Ethics Hearing Committee prior to the closing of the hearing record.

4. **Contents of Appeal/Letter of Appeal.** In order to complete an appeal to the Appeals Committee under this Section, the respondent must submit a letter or other document to the Appeals Committee and to the complainant, within the prescribed time period, which contains the following information and material:
 - (a) The ethics case name, docket number, whether the case was decided by the Executive Director or the Ethics Hearing Committee, and the date of the Ethics Case Decision;
 - (b) A statement of the grounds for the appeal under Subsection L.3, above, and a complete explanation of the reasons that the respondent believes that the Ethics Case Decision should be reversed or otherwise modified; and,
 - (c) Accurate, complete copies of any material which supports the respondent's appeal.
5. **Appeal Deficiencies.** The Appeals Committee Chair may require the respondent to clarify, supplement, or amend an appeal submission.
6. **Appeal Rejection.** If the Appeals Committee Chair determines that an appeal does not meet the appeal requirements or otherwise warrant further formal review, consistent with the requirements set forth in these Procedures, the Appeals Committee Chair will reject the appeal. The Appeals Committee Chair will notify the complainant and respondent of the rejection, as well as the reason(s) for the rejection, by letter within approximately twenty-one (21) days of the determination. Appeal rejection determinations are not subject to appeal.
7. **Optional Reply to Appeal Letter.** Within fifteen (15) days of the mailing date of a respondent's appeal, the complainant may submit to the Appeals Committee a Reply to the Appeal by letter or similar document. If submitted, this Reply must fully explain any objections that the complainant wishes to present to the Appeals Committee concerning the appeal.
8. **Optional Response to Complainant Reply.** If an optional Reply to the Appeal is submitted by the complainant, the Appeals Committee will forward a copy of the Reply to the respondent within approximately ten (10) days following the receipt of the Reply by Certified Mail. The respondent may submit a Response to the complainant's Reply by letter or similar document within ten (10) days of the mailing date of the Reply to the respondent. If submitted, the Response must fully explain, and is limited to, any objections that the respondent

wishes to present to the Appeals Committee concerning the complainant's Reply to the Appeal.

Request to Appear Before the Board of Ethics Appeals Committee

The complainant or respondent may request the opportunity to appear before the Appeals Committee concerning an appeal under this section. The Appeals Committee Chair will determine whether a request to appear before the Committee is accepted. In the event that a request to appear before the Committee is approved, the Chair may limit the appearance in any manner. Denials of requests to appear before the Appeals Committee cannot be appealed.

1. **Members of the Appeals Committee.** In the event that an Appeal is requested, an Appeals Committee will be selected from members of the Disciplinary Committee that have not been involved in Ethics Committee that reviewed the initial case.
2. **Board Ethics Appeals Committee Hearings.** Within one hundred and eighty (180) days after the submission of a complete appeal, or as soon after as practical the Appeals Committee will conduct a hearing to determine the outcome and final resolution of the appeal. During the course of appeal hearings, the Appeals Committee members will review: the hearing record; any appeal submissions presented by the parties; and/or any other information determined to be relevant. Thereafter, the Appeals Committee will determine the outcome of the appeal by majority vote in closed session.
3. **Board Ethics Appeals Committee Decisions and Orders.** Within thirty (30) days of conclusion of an appeal hearing, or as soon after as practical, the Appeals Committee, by the Committee Chair, will issue an Ethics Appeals Decision and Order (Appeals Decision) stating and explaining the outcome of the appeal. With respect to each appeal, the Appeals Decision shall include the following:
 - a) A summary of any relevant portions of the Ethics Case Decision and Order;
 - b) A summary of any relevant procedural or factual findings made by the Appeals Committee;
 - c) The ruling(s) and decisions with respect to each matter under appeal; and (d) The Appeals Committee final Order affirming, reversing, amending or otherwise modifying any portion of the Ethics Case Decision and Order, including any disciplinary or remedial action or sanction.

Copies of the Appeals Decision shall be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method.

Finalizing and Closing Ethics Cases

1. **Events Which Will Cause Closure of an Ethics Case.** An ethics case will be closed and all proceedings ended when any of the following occur:
 - a) Following the lapse of any appeal rights, the ethics case has not been accepted and the charges have been rejected as the basis for an Ethics Complaint and Investigation pursuant to these rules;
 - b) Following the lapse of any appeal rights, a final Ethics Case Decision or Ethics Appeals Decision has been issued pursuant to these Procedures; or, (c) An Ethics Complaint has been terminated or withdrawn by the complainant(s).
2. **Events Which Will Cause an NBCOT Ethics Case Decision and Order to Become Final.** An Ethics Case Decision and Order that is not appealed will be final. The Decision of the Appeals Committee will be final, and no further appeals are available to any party.

Reapplication and Reinstatement Procedure Following Revocation, Suspension and Probation Orders

1. **Revocation Orders/Reapplication Petition.** Five (5) years after the issuance of a final Certification Revocation Order issued under these rules, a respondent may submit to the Board of Directors a Petition for Permission to Reapply for Certification (Reapplication Petition), as set forth in Section 4, below.
2. **Suspension Orders/Reinstatement Requests.** After the expiration of a final suspension order issued under these rules, a respondent may submit to the Board of Directors a Request For Certification Reinstatement (Reinstatement Request), as set forth in Section 4, below.
3. **Probation Orders/Reinstatement or Referral.** Following the expiration of a final probation order included

with an Ethics Case Decision or Ethics Appeals Decision, the Executive Director will determine whether the respondent has or has not satisfied the terms of the probation order, and will do the following:

- a) If the respondent has satisfied the terms of probation in full, the NBCOT, via the Executive Director, will immediately verify that the probation has been completed and reinstate the respondent to full certification status; or,
 - b) If the respondent has not satisfied the terms of probation in full, the Executive Director will refer the case to the final decision maker for review and action consistent with these rules, including, but not limited to, continuation of the probation order and issuance of additional disciplinary or remedial actions concerning the probation terms.
4. **Contents of Reapplication Petitions and Reinstatement Requests.** Subject to the time requirements above, the Board of Directors will consider Reapplication Petitions and Reinstatement Requests from those who have been the subject of a final revocation or suspension orders, respectively. Reapplication Petitions and Reinstatement Requests must include the following information:
- a) A statement of the relevant ethics case name, docket number, and the date that the final Ethics Decision was issued;
 - b) A statement of the reasons that the respondent believes support or justify the acceptance of the Reapplication Petition or the Reinstatement Request, including a statement explaining why the respondent should now receive NBCOT certification; and,
 - c) Copies of any relevant documentary or other material upon which the respondent relies in support of the Petition or request.
5. **Board of Directors Reapplication Petition and Reinstatement Request Review.** Within ninety (90) days after the submission of a complete Reapplication Petition or Reinstatement Request, or as soon after as practical, the Board of Directors will schedule and conduct a hearing to review and rule on the Petition or Request. Each Petition or Request will be considered by a quorum of the Board. During these deliberations, the Board will review the information presented by the respondent and any other relevant information. The Board will then determine the final outcome of the appeal by majority vote in closed session.
6. **Board of Directors Reapplication Petition and Recertification-Reinstatement Determination Orders.** Within thirty (30) days of conclusion of the Board of Directors' review of a Reapplication Petition or Reinstatement Request, or as soon as practical, the Board, by the Board Chair or the Executive Director, will prepare and issue a Determination Order explaining the decision with respect to the Petition or Request. The final Board Determination Order will indicate whether the Petition or Application is granted, denied, or continued to a later date. If appropriate, the Board Determination Order will indicate any conditions of certification or recertification. Copies of the Determination Order will be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method. While no appeal of the Determination Order is permitted by the NBCOT, the respondent may submit a new Petition or Request pursuant to this Section, two (2) years or more after the issuance of the Determination Order.