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Appeal Policy

Definitions

1. The following terms have these meanings in the Policy:
 - a) *“Affected Party”* – any individual or entity, as determined by the Appeal Manager, who may be affected by a decision rendered under the *Appeal Policy* and who may have recourse to an appeal in their own right.
 - b) *“Appeal Manager”* – an individual who may be any staff member, committee member, volunteer, director, or an independent party, who is appointed to oversee the Appeal Policy.
 - c) *“Appellant”* – the Party appealing a decision.
 - d) *“Days”* – calendar days¹.
 - e) *“Event”* – an event sanctioned by ABA or a Member, and which may include a social event.
 - f) *“Member(s)”* – all categories of membership defined by the ABA Bylaws as well as all individuals employed by, or engaged in activities with, ABA including, but not limited to, clubs, athletes, coaches, officials, volunteers, managers, administrators, directors and officers of ABA.
 - g) *“Party or Parties”* – the individual(s) or entities, including an Affected Party, involved in the appeal.
 - h) *“Respondent”* – the Party responding to the appeal.
 - i) *“SDRCC”* – Sport Dispute Resolution Centre of Canada.

Purpose

2. This *Appeal Policy* provides Members and Parties to a Discipline and Complaints Policy process with a fair and expedient appeal process.

Scope and Application of this Policy

3. This policy applies to all Members and Parties to a Discipline and Complaints Policy process.

¹ For the purpose of calculating deadlines, the following shall apply: the day of the act is not included in the calculation (i.e., the date of receipt of a decision is not Day 1); instead, the deadline would start on the day following receipt of the decision and would expire at midnight (in the location of the individual seeking to file an appeal) on the last day of the period. If the end date is a Saturday, a Sunday or a legal holiday, the period runs until the next day that is not a Saturday, a Sunday or a legal holiday. For example, if an individual receives a decision on Thursday December 17, 2020, the 14-day deadline to appeal this decision starts on Friday December 18, 2020 and would expire on Friday January 1, 2021. However, since January 1, 2021, is a legal holiday, January 2, 2021 is a Saturday, and January 3, 2021 is a Sunday, the deadline to appeal would expire at midnight (in the location of the individual seeking to file an appeal) on January 4, 2021.

4. Any Party to a Discipline and Complaints Policy process or Member who is directly affected by a decision made by ABA shall have the right to appeal that decision if there are sufficient grounds for the appeal under the **Grounds for Appeal** section of this policy.
5. This policy **will apply** to decisions relating to the following, except where excluded by policy:
 - a) eligibility;
 - b) selection;
 - c) conflict of interest;
 - d) discipline; and
 - e) membership, including application for membership.
6. This policy **will not apply** to decisions relating to:
 - a) employment;
 - b) infractions for doping offenses;
 - c) the rules of the sport;
 - d) selection criteria, quotas, policies, and procedures established by entities other than ABA;
 - e) substance, content and establishment of team selection or carding criteria;
 - f) volunteer/coach appointments and the withdrawal or termination of those appointments;
 - g) budgeting and budget implementation;
 - h) the Organization's operational structure and committee appointments;
 - i) decisions or discipline arising within the business, activities, or events organized by entities other than ABA (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by ABA at its sole discretion);
 - j) commercial matters for which another appeals process exists under a contract or applicable law;
 - k) decisions made under this policy;
 - l) any appeal to which the Athlete Team Selection Appeal Policy applies, or any decisions made under that policy

- m) any complaint or report dealt with under the CSSP process, and any resulting outcome;
or
- n) Any decision made by the Safeguarding Tribunal or the Appeal Tribunal of the SDRCC.

Timing of Appeal

7. Party to a Discipline and Complaints Policy process or Members who wish to appeal a decision have fourteen (14) Days from the date on which they received notice of the decision to submit all the following, in writing, to ABA or their identified designate:
 - a) notice of the intention to appeal;
 - b) their contact information;
 - c) name and contact information of the Respondent and any Affected Parties, when known to the Appellant;
 - d) date the Appellant was advised of the decision being appealed;
 - e) a copy of the decision being appealed, or description of decision if written document is not available;
 - f) grounds for the appeal;
 - g) detailed reasons for the appeal;
 - h) all evidence that supports these grounds;
 - i) requested remedy or remedies; and
 - j) an administration fee of five hundred dollars (\$500).
8. A Party to a Discipline and Complaints Policy process or Members who wishes to initiate an appeal beyond the fourteen (14) day period must provide a written request stating the reasons for an exemption. The decision to allow, or not allow an appeal outside of the fourteen (14) day period will be at the sole discretion of the Appeal Manager and may not be appealed.

Member Appeal

9. ABA may hear appeals of Members' decisions heard pursuant to this policy, at its discretion.

Grounds for Appeal

10. A decision cannot be appealed on its merits alone. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include ABA or designate:
 - a) made a decision that it did not have the authority or jurisdiction (as set out in the applicable governing documents) to make;

- b) failed to follow its own procedures (as set out in the applicable governing documents);
- c) made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views); or
- d) made a decision that was unreasonable.

Screening of Appeal

11. ABA will appoint an Appeal Manager as defined in section 1 who has the following responsibilities:

- a) to determine if the appeal falls under the scope of this policy;
- b) to determine if the appeal was submitted in a timely manner; and
- c) to decide whether there are sufficient grounds for the appeal.

12. If the Appeal Manager denies the appeal because of insufficient grounds because it was not submitted in a timely manner, or because it did not fall under the scope of this policy, the Appellant will be notified, in writing, of the reasons for this decision. This decision may not be appealed.

13. If the Appeal Manager is satisfied there are sufficient grounds for an appeal, the Appeal Manager will appoint an Appeal Panel which shall consist of a single individual, to hear the appeal.

14. In extraordinary circumstances, and at the discretion of the Appeal Manager, an Appeal Panel composed of three persons may be appointed to hear the appeal. In this event, the Appeal Manager will appoint one of the Appeal Panel's members to serve as the Chair.

Determination of Affected Parties

15. To confirm the identification of any Affected Parties, the Appeal Manager will engage ABA. The Appeal Manager may determine whether a Party is an Affected Party in their sole discretion.

Procedure for Appeal Hearing

16. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.

17. If a Party chooses not to participate in the hearing, the hearing will proceed without further notice or opportunity to participate or provide submissions for the Party refusing to participate.

18. The format of the hearing may involve an in-person hearing, an oral hearing by telephone or other electronic means, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the

procedures that the Appeal Manager and the Appeal Panel deem appropriate in the circumstances. The following guidelines will apply to the hearing:

- k) The hearing will be held within a timeline determined by the Appeal Manager;
- l) The Parties will be given reasonable notice of the day, time, and place of an oral, in-person hearing or oral hearing by telephone or electronic communications;
- m) Copies of any written documents which any of the Parties wish to have the Appeal Panel consider will be provided to all Parties in advance of the hearing;
- n) The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense;
- o) The Appeal Panel may request that any other individual participate and give evidence at an in-person hearing or oral hearing by telephone or electronic communications;
- p) The Appeal Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the appeal but may exclude such evidence that is unduly repetitious and shall place such weight on the evidence as it deems appropriate;
- q) If a decision in the appeal may affect another Party to the extent that the other Party would have recourse to an appeal in their own right under this policy, that Party will become an Affected Party to the appeal in question and will be bound by its outcome; and
- r) The decision to uphold or reject the appeal will be by a majority vote of Appeal Panel members.

19. In fulfilling its duties, the Appeal Panel may obtain independent advice.

Appeal Decision

20. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in the Grounds for Appeal section of this policy and that this error had a material effect on the decision or decision-maker.

21. The Appeal Panel shall issue its decision, in writing and with reasons, within seven (7) days after the hearing's conclusion. In making its decision, the Appeal Panel will have no greater authority than that of the original decision-maker. The Appeal Panel may decide to:

- s) reject the appeal and confirm the decision being appealed;
- t) uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
- u) uphold the appeal and vary the decision.

22. The Appeal Panel will also determine whether costs of the appeal will be assessed against any Party. In assessing costs, the Appeal Panel will consider the outcome of the appeal, the conduct of the Parties, and the Parties' respective financial resources.
23. The Appeal Panel's written decision, with reasons, will be distributed to all Parties, the Appeal Manager, and ABA. In extraordinary circumstances, the Appeal Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter. The decision will be considered a matter of public record unless decided otherwise by the Appeal Panel.

Timelines

24. If the circumstances of the appeal are such that adhering to the timelines outlined by this policy will not allow a timely resolution to the appeal, the Appeal Manager and/or Appeal Panel may direct that these timelines be revised.

Confidentiality

25. The appeals process is confidential and involves only the Parties, ABA, the Appeal Manager, the Appeal Panel, and any independent advisors to the Appeal Panel. Once initiated and until a decision is released, none of the Parties (or their representatives or witnesses) will disclose confidential information relating to the appeal to any person not involved in the proceedings, unless ABA is required to notify an organization such as an international federation, Sport Canada, or other sport organization, or notification is otherwise required by law.
26. Any failure to respect the confidentiality requirement may result in further sanctions or discipline by the Appeal Panel.

Final and Binding

27. The decision of the Appeal Panel shall be binding on the Parties.
28. No action or legal proceeding will be commenced against ABA or Members in respect of a dispute, unless ABA has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in governing documents.