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OUTLINE OF PROCEDURE FOR A CODE OF EXCELLENCE APPEAL HEARING

(To be transmitted in advance to both parties)

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the Chairperson¹ determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

Recording the hearing: No electronic recording is allowed by any party for any reason.

Subject(s) of hearing: The subject(s) of an Appeals Hearing are limited to:

- (1) Alleged procedural deficiencies that may have deprived the complainant of the opportunity for a full and fair hearing or other lack of procedural due process.
- (2) Respondent concerns related to:
 - a. Perceived misapplication or misinterpretation of one or more Sections of the PSAI's Code of Excellence;
 - b. Alleged procedural deficiency or any lack of procedural due process; or
 - c. The follow up corrective action/association sanction recommended by the EHP

Disqualification: Anyone who was a party to the original Code of Excellence hearing, any member of the Grievance Review Panel (GRP) present during the meeting when the complaint was reviewed, any member of the original Excellence Hearing Panel (EHP), or who was otherwise involved in this matter prior to the appeal is disqualified from serving on this Board Appeals Committee (BAC). Furthermore, anyone who is related by blood or marriage to any party to the hearing or anyone related by blood or marriage to a portable sanitation professional acting as peer counsel for either the complainant or respondent, or anyone who is an employer, partner, employee, or is in business with any of the parties is also disqualified from serving.

Use of counsel: A party may be represented in any appeal hearing by legal counsel or by a portable sanitation industry peer of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the BAC except on grounds of self-incrimination, or on other grounds deemed by the BAC to be appropriate. In this connection, the BAC need not accept the statements of counsel as

¹ The chair is typically the PSAI Board President. If the President has been disqualified or recused from the appeal process, the chair will be the highest-ranking qualified officer excepting the Secretary.

being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the BAC and shall be non-appealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel. However, such postponement shall not be authorized if it appears to members of the BAC that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised that all matters discussed are strictly confidential.

Method and objective of procedure: The BAC shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Due process procedure: The hearing procedures will be:

- (1) Chairperson cites authority to hear case and explains reason for hearing.
- (2) All persons present in the room who expect to testify will be sworn (or affirmed).
- (3) The original EHP chair will summarize the case (or provide transcripts) for the record.
- (4) The appellant will have an opportunity to offer any corrections or modifications to the summary (or transcripts), to introduce supporting evidence and/or the statements of any other parties to the original EHP hearing, and to explain the basis (bases) for appeal.
- (5) The original EHP chair and/or other parties to the original hearing will have an opportunity to explain why the original EHP decision should be upheld.
- (6) At any time during this proceeding members of the BAC may ask questions; however, parties have no right to cross-examination.
- (7) Adjournment of hearing.
- (8) Following the Appeal Hearing, the BAC will go into executive session to render a decision.

Findings in an Excellence appeal hearing: The BAC may take one of the following decisions regarding the facts of the complaint:

- Adopt or modify the recommendation of the original EHP, including the corrective action/association sanctions;² or,
- The BAC may dismiss the complaint if it concludes the findings of fact do not support the original EHP's conclusion as to the respondent's conduct.

If the BAC is concerned with a possible procedural deficiency, it may take one of the following decisions regarding the case:

² If the BAC is concerned with the appropriateness of the corrective action/association sanction, it may impose alternative measures that do not exceed the measures recommended by the EHP. Alternatively, the BAC may refer the decision back to the original EHP for further consideration accompanied by the BAC's concerns regarding the corrective measures. While the BAC may recommend that the corrective measures be increased, the EHP is not required to do so.

- Refer the case back to the original EHP for further consideration.
- Refer the case to for a new hearing before a different EHP.

If the BAC does not refer the case back to the EHP, the decision of the BAC is final and the case is closed.

(Revised 12/15)