



## **Ethical Testimony and Court Case Review: Complaint Review Process**

### **Ray E. Helfer Society**

**A. Introduction.** The Ray E. Helfer Society has developed guidelines 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 policy is designed to ensure that concerns about violations of this policy are examined and addressed by the Society in a fair, objective and consistent manner.

### **B. Definitions.**

- **Complainant:** The person who brings a complaint against a member of the Society. The Society will accept complaints only from members of the Society.
- **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.
- **Ex Parte Communication:** Unsolicited communication by the Respondent with Professional Conduct Committee members, witnesses, or any Complainant, outside of the disciplinary proceedings.
- **Expulsion:** Termination of membership in the Society, with or without the option to reapply for membership under certain specified conditions.
- **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.
- **Hearing:** A proceeding held for the purpose of examining evidence and deciding issues of fact.
- **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.
- **Suspension:** Temporary revocation of a Respondent's privileges as a member of the Society.
- **Respondent:** The member against whom a complaint has been submitted.
- **Service of Notice:** The formal delivery of notice.

**C. Professional Conduct Committee.** The Professional Conduct Committee shall be chaired by the Vice President and shall consist of at least 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 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.

**D. Review of Allegations.** The Professional Conduct Committee shall receive written and signed allegations of a breach of the *Guidelines 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 the testimony was given or the date of the disposition of the case, whichever is later.

1. At the time of submission, the Complainant will commit to maintaining the confidentiality of the complaint process until final resolution as described in Section E. Confidentiality.
2. Allegations should include an identification of the section of the Society's guidelines that the Complainant contends was breached and a detailed description of how the Respondent violated each section.
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 – Initial Review and Full Review.
4. The Initial Review is to assess whether the complaint has enough validity to warrant Full Review. The Respondent is not notified of any complaint at this point. The Panel shall review the information provided by the Complainant (the written complaint and relevant court records). Based on this review, the Panel will vote (majority vote) whether this complaint has enough merit to require a Full Review; if the Panel votes "no," then the complaint will be ended and the Respondent will not be notified there was a complaint. 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.
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.
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 and Court Case Review Guidelines and Complaint Review Process, and it will invite the Respondent to provide a written response to the Panel within 60 days of receipt. The notice, including all information specified, shall be sent via any carrier that maintains confidentiality and with return receipt requested.
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.
8. The Panel shall meet either in person or by telephone within 45 days after receipt of the information to discuss and vote (majority rule) whether there was a breach of the Ethical Testimony Policy. The preliminary findings of the Panel shall state whether there was clear and convincing evidence to support the complaint in whole or in part.
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 case will end here. If the preliminary finding is that there was a breach, the Respondent will have 30 days to decide and notify the Vice President if the Respondent wants a Hearing before the Executive Committee. One EC on panel. A date for the Hearing shall be set no later than 120 days after the request made by the Respondent.

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 chair 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 Executive Committee will conduct any questioning of the Complainant and Respondent or any witnesses.
  - a. Ex Parte communication prior to the hearing between the Respondent and the Executive Committee members, Hearing witnesses, or any Complainant, is prohibited and shall result in suspension of Respondent's membership in the Society and reporting to the National Practitioner Data Bank.
  - 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. Participants may attend the hearing in person or by secure internet platform. 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 of a final response after all questioning has been completed.
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. 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.

**E. 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. Exception to this confidentiality: If there is a finding against the Respondent which results in suspension or expulsion from the Ray E. Helfer Society, this will be summarized in the Helfer newsletter.

**F. 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.