



National Funeral Directors Association

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**ENFORCEMENT PROCEDURES
FOR THE
PROFESSIONAL CONDUCT COMMITTEE
OF THE
NATIONAL FUNERAL DIRECTORS ASSOCIATION**
Amended 8/1/08

1. Professional Conduct Committee. The Chairperson of the Professional Conduct Committee (“PCC”) shall assign each of the twelve (12) members to one of four (4) geographic regions. The PCC members assigned to a particular region shall be appointed by the Chairperson on a rotating basis to investigate complaints that arise from the region. Members of the PCC shall also serve from time-to-time on the three-member investigation panels set forth in Section 2 and the three-member hearing panels set forth in Section 7 below. PCC members shall recuse themselves from investigating a complaint or sitting on a panel to hear a complaint that involves an NFDA member from the PCC member’s home state or that the PCC member has a business or personal relationship with that could influence or appear to influence the PCC member in any way.

2. Filing a Complaint. (a) Any individual or entity (the “Complainant”) who believes himself/herself/itself to be aggrieved by any action or omission of an NFDA Firm, Individual, Retired or Student Member that violates the NFDA Constitution, Bylaws or Code of Professional Conduct may file a complaint with NFDA (the “Complaint”). To be considered for resolution under these Enforcement Procedures for the Professional Conduct Committee (the “Enforcement Procedures”), the complaint shall: (i) be submitted in writing to the Chairperson of the PCC at the NFDA’s headquarters, (ii) be signed by the Complainant and include the Complainant’s address and phone number, (iii) include a concise statement of the complaint, the names of the NFDA member allegedly responsible for, causing or whose conduct is otherwise the subject of the complaint (the “Adverse Party”), including if available any applicable names, addresses and phone numbers of the Adverse Party and all persons related directly to the occurrence, and (iv) state the relief sought. If the Complainant is an entity, the Complainant shall designate one spokesperson or designated contact.

(b) From time-to-time, the Chairperson may appoint three members of the PCC to investigate an incident involving a member to determine if it warrants the filing of a complaint against that member. In those instances where the Chairperson becomes aware of an incident through the media or by any other means that leads the Chairperson to believe a violation of the NFDA Constitution, Bylaws, or Code of

Professional Conduct may have occurred, the Chairperson may appoint three members of the PCC to serve as an investigation panel to examine the facts surrounding the incident and determine if there is probable cause to believe a violation has occurred (the "Investigation Panel"). By a majority vote, the Investigation Panel may determine that there is probable cause that a violation has occurred and file a complaint against one or more members. Any such complaint shall be processed in accordance with these Enforcement Procedures with the Investigation Panel serving as the Complainant.

3. Processing the Complaint. Upon receipt of a complaint, the PCC Chairperson, with the administrative assistance of the NFDA staff, shall promptly undertake the following actions:

a) The Chairperson shall make a preliminary determination that the complaint is directed against a Firm, Individual, Retired or Student Member of NFDA and alleges an act or omission that could be a violation of the NFDA Constitution, Bylaws, or Code of Professional Conduct. The Chairperson may seek additional information from the Complainant to make the preliminary determination. If it does not, the Chairperson shall notify the Complainant that the PCC will not take jurisdiction of the complaint and the reason why it will not accept jurisdiction. The Chairperson may also decline to take jurisdiction of the Complaint if the matter is: (i) the subject of an investigation already in progress with NFDA or with a state association; or (ii) the subject of a criminal, civil or administrative investigation or proceeding before any court, licensing board or other governmental entity. In that event, the Complainant would be advised by the Chairperson that the complaint will be held in abeyance for up to two (2) years and may be re-activated by the Complainant at such time as the criminal, civil or disciplinary investigation or proceedings have been resolved.

b) Prior to accepting a complaint and opening a file on it, the Chairperson may, in his or her sole discretion, elect to contact the Complainant and the Adverse Party to pursue a private settlement of the complaint. If the Adverse Party indicates a willingness to pursue a settlement of the complaint, the Chairperson may opt to hold the complaint without filing it in order to give the parties an opportunity to reach a private settlement. If the parties reach a private settlement, the Chairperson shall close the matter without filing the complaint. If the parties do not reach a settlement in a timely manner or if one of the parties indicates to the Chairperson that a resolution cannot be reached, the Chairperson shall accept the complaint and open a file on it.

c) If the complaint is accepted by the PCC and a file opened on the complaint, the Chairperson shall assign a PCC member (the "Investigator") to investigate the complaint and distribute a copy of the complaint to the Investigator.

d) The Chairperson shall acknowledge in writing to the Complainant that the complaint has been accepted and inform the Complainant that the Investigator will be contacting the Complainant. A copy of these Enforcement Procedures shall be sent with the notice.

e) The Chairperson shall acknowledge in writing to the Adverse Party that a complaint has been filed against the Adverse Party and that the Investigator will be contacting the Adverse Party. A copy of the complaint, the complaint response form, and these Enforcement Procedures shall be sent with the notice. The notice shall also inform the Adverse Party that the Adverse Party may submit a written response to the

complaint and any relevant documentary evidence to the Investigator within thirty (30) days of the date of the notice.

4. Investigation and Report. The Investigator, with the administrative assistance of NFDA Staff, shall contact the Complainant, the Adverse Party and any other persons having information related to the subject matter of the complaint. The Investigator may attempt to mediate between the parties in order to obtain a resolution of the Complaint. If mediation is successful, the agreed-upon resolution must be in writing, signed by each of the parties and submitted to the PCC Chairperson. If mediation is not successful, the Investigator, after conducting the interviews and obtaining any written responses or documentary evidence submitted by the parties, shall draft a written summary of the facts of the case containing any relevant documentary evidence (the "Case Summary") and a separate written recommendation on the appropriate resolution of the complaint to the Chairperson (the "Investigator's Recommendation"). The Case Summary and Investigator's Recommendation shall be submitted to the Chairperson.

5. Preliminary Action by Chairperson. After the receipt of the Case Summary and Investigator's Recommendation, the Chairperson shall take one of the following actions on the complaint: (a) attempt to mediate it between the parties in accordance with Section 6 below; (b) refer it to a Hearing Panel in accordance with Section 7 below; or (c) if the Investigator's Recommendation finds that there is no probable cause to believe the Adverse Party violated the NFDA Constitution, Bylaws or Code of Professional Conduct, and the Chairperson agrees, inform the Complainant and the Adverse Party that the complaint is being dismissed, and provide each party with a copy of the Case Summary and Investigator's Recommendation. The Complainant would also receive notice of the right to appeal pursuant to Section 10 below.

6. Mediation of the Complaint. If the PCC Chairperson elects to mediate the complaint with the Complainant and the Adverse Party, the Chairperson may use any meeting format acceptable to the parties and the PCC Chairperson. Any mediation efforts shall be commenced within a reasonable time after the receipt of the Case Summary and the Investigator's Recommendation. If mediation is successful, the agreed-upon resolution must be in writing and signed by the PCC Chairperson and each of the parties.

7. Hearing Panel. If any attempted mediation is unsuccessful or if the PCC Chairperson deems mediation inadvisable, the PCC Chairperson will then appoint three members of the PCC to serve as the panel that will hear the complaint (the "Hearing Panel"). These appointments shall be subject to the following:

- a) The Chairperson of the PCC may not appoint himself/herself to the Hearing Panel.
- b) The Investigator may not be a member of the Hearing Panel.
- c) If the complaint was initiated by an Investigation Panel, no member of the Investigation Panel may be a member of the Hearing Panel.
- d) The appointment of the Hearing Panel will include the designation

of a Chair of the Panel (“Panel Chair”).

8. Conduct of the Hearing. The Panel Chair will select the time and place for the hearing so as to have the hearing occur at the earliest convenient date. The Panel Chair may, at the Chair’s option, conduct the hearing by conference call or other similar electronic means. The Panel Chair will communicate the information about the hearing schedule, and the identity of the other two members of the Hearing Panel, to the parties. The Panel Chair may also request that NFDA General Counsel, designated NFDA staff members, and other PCC members, including the investigator, attend the hearing. Prior to the hearing, the PCC Chairperson will provide to the Hearing Panel a copy of the Complaint, any written response previously submitted by the Adverse Party, documents collected by the Investigator, and the Case Summary. The Hearing Panel will not receive (and neither party may introduce as evidence) the Investigator’s Recommendation nor any statements or offers made by the Chairperson of the PCC or any of the parties during mediation.

At the Hearing, each party may be represented by counsel at their own expense, present oral or written evidence, cross-examine witnesses and present such factual or legal claims as are desired. The Panel Chair may place reasonable limits on the number of witnesses and the length and scope of the testimony. All procedural and evidentiary decisions shall be made by the Panel Chair. If requested, the hearing shall be recorded with a transcript made available to each party, at that party’s expense.

Decisions regarding the merits of the complaint and the form of any discipline shall be made by majority vote of the Hearing Panel. The Hearing Panel shall report its decision on the merits in the form of written findings of fact, conclusions, and any discipline imposed within ten (10) days of the conclusion of the hearing (the “Panel Report”). The Panel Report, together with notice on the right to appeal pursuant to Section 10, shall be sent to the parties, the PCC Chairperson, and the NFDA Executive Board. The decision of the Hearing Panel shall be final and binding on all parties, unless the decision is appealed in accordance with Section 10.

9. Discipline. The Panel Report may decide to impose no disciplinary measures or its decision may be to impose one or more of the following disciplinary measures on the Adverse Party:

a) Reprimand. A reprimand may be issued against the Complainant. The Hearing Panel may direct that the reprimand be private or public.

b) Probation. A ruling of probation that, for a specified time, the Adverse Party’s continued participation in NFDA’s activities, member benefits, or membership programs is conditioned upon satisfaction of certain conditions. These conditions shall be described specifically, as shall the consequences of failing to meet them. The Hearing Panel may direct that the probation be private or public.

c) Suspension. A ruling that the Adverse Party is prohibited from participating in NFDA activities, programs, and any other privileges of membership. The Hearing Panel may limit the effect of a suspension to certain benefits or programs, and may establish conditions that, if satisfied, will result in the lifting of a suspension.

d) Termination. A ruling that, either permanently or pending

reinstatement, the Adverse Party's membership in NFDA is terminated. The Hearing Panel may establish conditions that, if satisfied, will result in reinstatement. If a membership is terminated, NFDA shall not be required to refund or reimburse membership fees or dues.

It is the intent of the Enforcement Procedures that the range of disciplinary measures be as broad and flexible as possible so that disciplinary measures can be employed to remedy and redress the violation that has been committed. In dealing with violations committed by Firm Members, the disciplinary measures may be tailored to address particular funeral home(s) owned by the Firm Member or funeral home personnel employed by the Firm Member who are responsible for the violation.

10. Appeals. An appeal from a dismissal of the complaint by the Chairperson or an appeal from the Panel Report may be taken by any party to the NFDA Executive Board. A notice of appeal must be filed within thirty (30) days of the date of notice of the action being appealed. The notice of appeal shall be in writing, must set forth the basis for the appeal, and shall be sent to the NFDA Chief Executive Officer. Upon receipt, the Chief Executive Officer will forward copies of the notice of appeal to the other party, who shall have the right to submit written responses to the appeal within thirty (30) days of receiving the notice of appeal. Any responses must be in writing and delivered to the NFDA Chief Executive Officer. The Chief Executive Officer will then deliver to the Executive Board the complete record on appeal, including the notice of appeal, and any responses submitted by the other party. The Executive Board shall, by majority vote of all nonabstaining members and without considering new evidence or conducting additional hearings, render a decision with respect to the appeal. A written notice of that decision shall be sent to all parties within ten (10) days of the Executive Board decision. The decision of the Executive Board with respect to an appeal shall be final and binding on all parties.

11. Report of Suspension or Termination. If an Adverse Party's membership in NFDA is suspended or terminated and such disciplinary measures is final and non-appealable, NFDA shall publish notice of such membership suspension or termination in any NFDA publication of general circulation among NFDA membership and shall send notice of such suspension or termination to the state funeral association in the state where the Adverse Party is licensed and to any applicable state funeral licensing board or agency with jurisdiction over the Adverse Party.

12. General. All notices, reports and decisions under these Enforcement Procedures shall be made in writing and delivered in person by overnight delivery, U.S. first class mail, fax or e-mail. The NFDA General Counsel will be available to the PCC Committee to maintain compliance with these Enforcement Procedures. The PCC Chairperson, Panel Chair, and Chief Executive Officer may, when warranted by the interest of justice, adjust any time periods set forth in these Enforcement Procedures. The PCC Committee, NFDA staff members who have been designated to provide administrative assistance to the PCC Committee, and NFDA General Counsel shall use their best efforts to protect against unauthorized disclosures of confidential information concerning PCC Committee activities and records.

13. Disclosure of Information. Members of the PCC, NFDA Staff and NFDA General Counsel shall utilize the following directives in the disclosure of information regarding on-going and completed activities of the PCC:

a) If a Complaint has been filed and an investigation is on-going, that fact may be confirmed by the statement: "A Complaint on this matter has been received and is under investigation; no further information may be released while the investigation is on-going."

b) If a Complaint has been dismissed without a finding of any violations by the Adverse Party, if a Complaint has been resolved by mediation, or if a Complaint is resolved by a finding that a violation has occurred, but either no discipline is imposed or the discipline imposed is not to be publicly disclosed, then the completion of the investigation shall be confirmed by the statement: "The matter has been resolved and no further information may be released."

c) If the Complaint results in a finding of a violation and the imposition of disciplinary measures which are to be publicly disclosed under Sections 9 and/or 11 above, then that fact may be confirmed by the statement: "The Professional Conduct Committee determined that [name of Adverse Party] committed a violation or violations of [name of section or sections] of the Code of Professional Conduct and has imposed [description of discipline imposed] against [name of Adverse Party]. No other information regarding this matter shall be released by NFDA."

14. Limitations Period. The Code of Professional Conduct took effect on January 1, 2003. Therefore, a violation of the Code of Professional Conduct must have occurred on or after January 1, 2003 in order to be the subject of a Complaint.

a) Complaints alleging violations of the Code of Professional Conduct shall be brought within one (1) year after the cause arose. For purposes of this Section 14, a cause arises upon the date the alleged violation occurs or the date on which, by the exercise of reasonable diligence, the Complainant should have become aware of the alleged violation, whichever is later.

15. Re-Admission to NFDA Membership. If a complaint is brought against a non-member or if a member with a pending complaint chooses to withdraw from NFDA membership before the complaint is finally resolved, the non-member or the withdrawing member shall not be admitted or re-admitted into NFDA membership until the complaint has been satisfactorily resolved. The PCC Chairperson shall be notified by NFDA of the applicant's request for admission into membership and the PCC Chairperson shall establish the requirements for admission which shall include resolution of the complaint through any of the means available under these Enforcement Procedures. The applicant may appeal any final action of the Chairperson to the NFDA Executive Board using the procedures set out in Section 10.