

The COVID pandemic and migration to online play have created unusual and unforeseen challenges for all of us, including those of us who are in leadership positions of bridge disciplinary bodies throughout the world. Our rules governing bridge ethics were written for a world of face-to-face bridge, and we are all confronting square-pegs-in-round-holes problems. The number of alleged Ethical Violations has increased sharply, and the demands on investigators and hearing panel members have required an uncomfortable adjustment to a new reality. Regrettably, the online game is conducive to exchanging unauthorized information in a much greater way than in face-to-face bridge. Questions remain concerning the appropriate initial treatment of particular cases, the selection of the correct formal Charge for cases of unethical online behavior, the manner of prosecuting these Charges, the pre-hearing handling of cases, the methodology of proving online violations, the factors that should be considered in imposing discipline, and how to achieve some measure of consistency across similar cases.

The A&C Committee has authority to review a decision of any ACBL disciplinary panel under 2 sections of the CDR: through an Appeal by one of the parties under CDR § 603(B)¹, which is granted at the discretion of the A&C Committee Chair, or through an Automatic Review to the A&C Committee under CDR § 603(E)², which, as its name implies, is

¹ § 603(B) How to Appeal to the Appeals and Charges Committee. A written request for an appeal must be given to the Appeals and Charges Committee within thirty (30) days following the mailing of the official notice of the ruling. For an appeal to be granted by the Appeals and Charges Committee chairperson, and considered by the Appeals and Charges Committee, a written statement must accompany the request. The statement, with a summary of the reasons supporting their position, shall provide an allegation that at least one (1) of the following exists:

- (1) The decision is not supported by the weight of the evidence presented at the hearing held by the lower level Disciplinary Body (i.e. not an appellate body except CDR § 503(M));
- (2) Procedures employed were inconsistent with this CDR which affected the substantial rights of the appellant or which undermine confidence in the integrity or fairness of the disciplinary process.
- (3) Discipline imposed is inappropriate; and/or
- (4) One (1) or more person(s) on the hearing panel had a bias which effected the decisions of the panel, when objection to such bias was raised at the hearing.

² § 603(E) Automatic Review by the Appeals and Charges Committee

- (1) All disciplinary cases in which
 - (i) a Suspension of one (1) year or longer is imposed;
 - (ii) Expulsion is imposed; or
 - (iii) a discipline for an Ethical Violation is imposed

shall be automatically reviewed by the Appeals and Charges Committee within six (6) months of receipt of the decision or Hearing Report, whichever is earlier, by the ACBL (an “Automatic Review”). On such Automatic Review, the Appeals and Charges Committee may increase or reduce discipline imposed as well as affirm, reverse or modify the disciplinary determination or remand the case for further proceedings. In conducting such Automatic Review, the Appeals and Charges Committee shall not conduct a new hearing but shall review the previous hearing to ensure that:

- (1) procedures were followed in accordance with the CDR;
- (2) the decision and discipline imposed was supported by the evidence; and
- (3) a fair hearing was conducted.

automatic. A finding of an Ethical Violation by a disciplinary panel, as opposed to a Conduct Violation or Administration Violation, is subject to Automatic Review (among other findings). We have determined that there is no reason for a discretionary Appeal in cases where an Automatic Review will occur, as the role of the A&C Committee is substantively identical when hearing an Appeal and conducting an Automatic Review. Any difference in the wording of CDR § 603(B) and CDR § 603(E) governing the standard of review has minimal significance, and requiring a Party to distinguish between these meanings is an unnecessary trap for the unwary. Conflating the standards governing an Appeal and an Automatic Review also allows for more expeditious resolution of cases, as the 30-day appeals period in CDR § 603(B) is not required. Accordingly, we have determined that any arguments that may be raised in an Appeal may be presented before the A&C Committee, and any rights a Party may have in an Appeal will be retained in an Automatic Review.

Several points relating to standards governing an Appeal and an Automatic Review should be emphasized. In conducting its review, the A&C Committee does not conduct a new hearing. Instead, we focus on the procedures used by the original disciplinary panel in conducting its hearing to ensure that the process was not fundamentally unfair to the Parties. The A&C Committee does not hear new evidence. We do not re-weigh the evidence presented to the original disciplinary panel, but we are required to determine that there is adequate support for the panel's decision based on the evidence presented.

Consistent with the limited scope of review of appellate tribunals in judicial and other administrative settings, the A&C Committee grants great deference to the original disciplinary panel in its determination on “responsibility,”³ i.e., whether the alleged CDR violations have been proved. EOC and OEOC Committee members are selected to ensure that any 3-person panel has sufficient bridge expertise to evaluate the evidence presented and determine if the CDR violation has been proved sufficiently.⁴ The history of A&C Committee review reveals that it upholds the original disciplinary panel determination of responsibility or non-responsibility in many cases.

We are also required to determine whether the discipline imposed by the original disciplinary panel is “inappropriate.”⁵ On this question, the deference granted to the original disciplinary panel is not as great as with the finding of responsibility. The discipline warranted for a particular CDR violation is guided by the CDR under the authority of the ACBL Board of

3 Because ACBL disciplinary hearings are not legal proceedings, we use the word “responsibility” instead of “guilt.”

4 The quality of the evidence required to prove an Ethical Violation must rise to the level of “comfortable satisfaction.” See CDR, Appendix A, sec. VI(A): Burden of Proof. This burden of persuasion is defined as

A burden of proof that is met when, after a careful weighing of the evidence and the facts proved by direct, circumstantial or other evidence, the decision maker has a comfortable satisfaction that he or she has reached a correct and just conclusion. It is higher than “preponderance of the evidence” standard but not as high as “beyond a reasonable doubt.”

CDR, Definitions.

5 CDR § 603(B)(3).

Directors (BOD). The BOD has delegated its authority to determining the appropriate discipline to the A&C Committee, which reviews the disciplines selected by the various 3-person OEOC panels. These panels may separately have very different judgments on the discipline warranted given identical facts. Given the various compositions and different value judgments for 3-person disciplinary panels, the need for A&C to bring some measure of consistency across all cases is warranted. The A&C Committee “may increase or reduce discipline imposed” in light of the facts of the case and the need to treat similar cases similarly. The history of A&C Committee review reveals that it disagrees with the original disciplinary panel on some aspect of the appropriate discipline in many cases.