

## **What Happened to My Player Memo? Part 2: the Disciplinary Process (cont.)**

*By Robb Gordon, National Recorder*

In Part 1, I discussed the time line for the player memo. Now we are going to assume the investigation has taken place and the charging party chooses to request that a tournament disciplinary committee (TDC) act. We are going to assume these were not serious ethical (cheating) violations – that is a different process.

This case is about a conduct incident that took place at a fictional NABC. It happened on the second day of the tournament and involved behavior that went beyond a Zero Tolerance violation.

Because of the timing, this case could be heard by a TDC. The advantages to the TDC are that events are fresh and the parties are generally still on site. The disadvantage is that it gives both sides little time to prepare. More complex cases are generally not heard by a TDC for this reason. Also, because of the limited time, the TDC's powers to discipline are limited to a maximum of 90 days total suspension and/or probation. However, the TDC can send the case to a regular disciplinary committee and ask that they review it and impose further discipline.

A notice of hearing will be sent to the charged party (as well as the charging party). It puts the charged party on notice that he or she is facing a TDC and the reasons for it. The charged party should think about who has information about the incident and who could possibly testify at the hearing on his or her behalf and talk to those people about it. Before the hearing, the charged party is strongly encouraged to consult the Code of Disciplinary Regulations (CDR) for specific information about charges and the disciplinary hearing process at a tournament.

So the charging party (who is the director-in-charge) appearing in front of a TDC may represent himself or appoint an advocate who may not be an attorney. Generally, the advocate is the Recorder, but it really can be any non-attorney. If the charged party is not comfortable speaking for himself or herself, the charged party may also appoint an advocate, who may not be an attorney, to speak for him or her at the hearing. If the charged party chooses an actual attorney to assist him, the attorney may not appear at the actual hearing, but the charged party could consult with that attorney in-person outside in the hallway during the hearing or by phone. This is intended for both the charging party and the charged party to have a level playing field before the TDC.

The charging party or his advocate *must* be present for the hearing. The charged party is not required to appear and not appearing will have no effect on the outcome except to the extent that a defense might have been presented.

Both parties should have submitted a list of witnesses (so they can be contacted) and witnesses may be required to appear (which can be telephonic) if their testimony is crucial.

The chair of the TDC sets ground rules – these may include opening statements, evidence presented, and closing statements. Usually each part is time-limited. During the evidentiary

portion, witnesses may be asked questions by the charging party as well as the charged party. These hearings are informal, and the chair will give the charged party or his advocate some leeway with procedure since that party may be unfamiliar with a hearing process. If you feel that any member of the TDC is biased, you must speak up at the beginning of the hearing and state your reasons for that conclusion.

After the closing statements, the TDC retires to consider the case. First, the committee must determine, for each charge, whether the charged party is culpable for that charge by a “preponderance of evidence.” This happens when the charging party has convinced the TDC that the evidence shows that there is a more than 50% chance that the allegations are true. Note however that, if the violation was ethical in nature, the burden of proof would be “comfortable satisfaction” which is a much higher standard, somewhere between a “preponderance of evidence” and “beyond a reasonable doubt.” It is the fiduciary duty of the TDC members to use their best common-sense judgment about these matters. The charged party will be promptly notified of the TDC’s decision.

At this point, the appeal process may begin. Either side can appeal. The levels of appeal, depending on where the case originates, can go from a district appellate committee all the way to the Appeals and Charges Committee of the ACBL Board of Directors. Consult the CDR for more information on the appeals process.

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