



**IS THIS AN AUTOMATIC REVIEW OR APPEAL OR BOTH** Automatic Review

**CHECK THE APPELLANT** (party who filed the appeal)

<input type="checkbox"/>	Disciplined Party	Joe Pepe, Jr.	ACBL #	K728982	Disciplined Party		ACBL #	
<input type="checkbox"/>	Charging Party	Joseph Jones	ACBL #	5399696	Location of Hearing	Web-Conference using Zoom		
Appellate Body		Appeals and Charges Committee			Date of Hearing	05/05/2021		
Original Disciplinary Body		Online Ethical Oversight Committee			Date of Hearing	03/19/2021		
Original Complainant		Robb Gordon	ACBL #	K652927	Effective date of the CDR consulted		May 29, 2020	

**DISCIPLINE BEING APPEALED OR REVIEWED**

Disciplined Party	Discipline	Beginning Date	Ending Date
	Suspension, 2 years	04/21/2021	04/20/2023
	Probation, 3 years	04/21/2023	04/20/2026
	SEE ADDITIONAL DISCIPLINE BELOW		
<b>Additional comments or description regarding discipline being appealed or reviewed</b>			
Removal of MPs earned in seven charged events and in all online events in the 12 month period beginning on and preceding the first charged event. Member not in good standing and cannot direct or log into BBO using a Yellow account.			
The Disciplined Party was found responsible of violating CDR 3.20 by the OEOC. The offense cited by the OEOC panel was E19 Cheating and other Ethical Violations not specifically cited by other sections of the Appendix (CDR 3.20).			

**BASIS FOR APPEAL** (skip this section if this is an Automatic Review)

<input type="checkbox"/>	Decision not supported by the weight of evidence.
<input type="checkbox"/>	Procedures were inconsistent with CDR which affected the substantial rights of Appellant or undermined the confidence in the integrity or fairness of the disciplinary process.
<input type="checkbox"/>	Discipline inappropriate.
<input type="checkbox"/>	One or more person(s) on the hearing panel had bias (objection to such bias was raised at the hearing).

**COMMITTEE MEMBERS WHO REVIEWED THE MATTER OR HEARD THE APPEAL**

Name	ACBL #	Name	ACBL #
A.J. Stephani, Chairman	Q368694	Laurie Rowe	P508832
Dennis Carman	O828450	Tim White	M029585
Margot Hennings	N242118		
Deana Liddy	P205082		

**ALSO PRESENT** (include web-conference (WC), in person (P), telephonic (TP), etc. and include their capacity as witness, expert, etc.)

Name	ACBL #	Via	Capacity	Name	ACBL #	Via	Capacity
Linda Dunn	P197314	WC	In-House Counsel				
Scott Humphrey	P781180	WC	Charging P Co-Adv				
Robb Gordon	K652927	WC	Charging P Co-Adv				
Ella Rice	R497811	WC	Charged P Co-Adv				
John Smith	K429780	WC	Charged P Co-Adv				

See attached report.

COMMITTEE FINDINGS OF FACT (based on the evidence, state the committee's conclusion as to what happened)

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See attached report.

DECISION OF APPELLATE COMMITTEE

<input type="checkbox"/>	Remanded for rehearing	Disciplinary Body expected to rehear.		
<input checked="" type="checkbox"/>	Decision of the original hearing committee is upheld.			
<input checked="" type="checkbox"/>	Decision of the original hearing committee is amended as described below:			
	<b>Discipline</b>	<b>Beginning</b>	<b>Ending</b>	<b>Comments</b>
<input type="checkbox"/>	Reprimand	N/A	N/A	
<input checked="" type="checkbox"/>	Probation	04/21/2024	04/20/2027	
<input checked="" type="checkbox"/>	Suspension	04/21/2021	04/20/2024	
<input checked="" type="checkbox"/>	Other	N/A	N/A	<b>Please describe other decision below:</b>
Remove 10% of Mr. Pepe's total Masterpoints.				
See attached report for details regarding the amended discipline.				

RESPECTFULLY SUBMITTED (CHAIRMAN)

/s/ A.J. Stephani		Date:	5/10/2021
Electronic Signature (type name above)	Wet Signature (sign above)		

In the matter of Joe Pepe, Jr., the ACBL Appeals and Charges Committee [A&C Committee] conducted an Automatic Review of the Online Ethical Oversight [OEOC] decision finding him responsible for violating ACBL Code of Disciplinary Regulations [CDR] 3.20: Cheating and Other Ethical Violations. Citing E19 of the former Appendix B, the OEOC Panel recommended a Suspension of 2 years followed by a 3-year Probation and “the removal of masterpoints earned in the 7 charged events and in all online events in the 12-month period beginning on and preceding the first charged event.”

Before explaining our decision, we want to clarify several questions asked during the OEOC Panel and A&C Committee Hearings concerning the Disciplinary process outlined in the CDR. When someone reports a suspected case of unethical conduct, the ACBL Recorder should acknowledge the report and keep that person reasonably apprised of the progress of the case.<sup>1</sup> However, the Recorder may not reveal the name of the person making the initial report to the Charged Party(ies).<sup>2</sup> There is no right to “confront” one’s accuser in ACBL Disciplinary proceedings as there is a criminal case.

With respect to the evidence used by the ACBL Advocate at the Disciplinary Hearing to prove its case, we appreciate the confusion that may arise when it does not match the evidence stated in the original Complaint used to produce a Charge. However, any hands that may form the basis for a Charge may change in the course of continued investigation. The Advocate has an obligation to use their judgment to present the most persuasive case before the Disciplinary Panel, which may consist of different hands used to make a *prima facie* showing that the Recorder Complaint states a valid case of a CDR violation. So long as there is adequate pre-hearing disclosure of the evidence the ACBL Advocate intends to present at the Hearing such that the Charged Party(ies) have a fair opportunity to rebut that evidence and present a defense, notions of fundamental fairness and the specific requirements of the CDR are satisfied.

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<sup>1</sup> IX. GUIDELINES FOR EXECUTION OF DUTIES

G. A Recorder should communicate with the Reporter regarding the status of his or her Player Memo. Given the circumstances of any case and the need to preserve the Subject’s rights of confidentiality, the Recorder has discretion to limit the amount of information given to the Reporter. This includes the discretion to tell the Reporter only that (i) the Player Memo was received and is being addressed or (ii) the Player Memo was received and the Recorder has concluded the investigation, stipulating (a) the Incident was Recorded or (b) the Incident was referred to a Charging Party requesting a disciplinary hearing.

<http://web2.acbl.org/handbook/handbook/AppendixC.pdf>

<sup>2</sup> IX. GUIDELINES FOR EXECUTION OF DUTIES

A. The Recorder must make his or her best effort to maintain the confidentiality of the Player Memos. Unless confidentiality is waived by the Reporter, the Recorder should maintain, as confidential, the identity of the Reporter, even if this precludes speaking with the Subject of the report. Such information may be revealed only when necessary to the investigation and in maintaining Files and other records. Violating the confidentiality of the process is a basis for removal from office. This responsibility is of the highest priority and must continue even after the Recorder’s duties have ended. However, the Reporter should be made aware that a need for confidentiality may impede or preclude an investigation.

<http://web2.acbl.org/handbook/handbook/AppendixC.pdf>

This case against Mr. Pepe was an unusual case of self-kibbitzing in ACBL Virtual Club games. Most Charges of ethical conduct in online play involve an allegation of collaborative action between partners, i.e., the sharing of information about their hand to each other. We note that, in any CDR case, some theory of how the CDR violation allegedly occurred must be proved (though the method of proof in most cases is circumstantial). Mr. Pepe is an ACBL-certified director authorized to run Virtual Club game and has been granted a BBO “Yellow Account” account allowing the Yellow Account user to observe the hands and play at any table. His partners were not charged and we make no suggestion that they violated the CDR in any way.

The A&C Committee unanimously (one Committee member absent) upholds the OEOC decision finding Mr. Pepe responsible for violating CDR 3.20: Cheating and Other Ethical Violations.

Given the abuse of the trusted position held by Mr. Pepe as an ACBL-certified director and his possession of a BBO Yellow Account allowing him to self-kibbitz the games in which he was charged, the A&C Committee believes that a longer Suspension of 3 years, beginning on the effective date indicated under the CDR, followed by a Probation of 3 years, is appropriate. Attempting to surgically excise specific Masterpoints won illicitly presents a number of practical concerns, and the A&C Committee notes that CDR’s recommendation of a fixed percentage of total Masterpoints is a suitable approach. Accordingly, the Committee removes 10% of Mr. Pepe’s total Masterpoints.