



Discipline Committee

PRACTICE DIRECTION CASE MANAGEMENT

The Discipline Committee has been using case management to ensure efficiency and fairness are achieved while moving its cases towards a timely resolution.

The Committee will be enhancing its case management in both its pre-hearing, hearing and post-hearing processes.

In that respect, the following practice direction applies:

1. Scheduling of Pre-Hearing / Case Management Conference

The Discipline Committee's hearings benchmark is to commence, and if possible complete, hearings within one year of the date of service of the Notice of Hearing.

Where a matter is referred to the Discipline Committee, the Hearings Office will schedule a Pre-Hearing Conference (PHC) within 90 to 120 days from the date of referral. If a PHC has not been scheduled within 120 days, a case management Chair will hold a teleconference with counsel for the parties to consider why a PHC has not been scheduled and to put in place a schedule for any steps that need to be taken in order to schedule a PHC.

2. Pre-Hearing / Case Management Conferences

The PHC Chair will continue to act in a dual role. As PHC Chair, the Chair will act to serve the objective of achieving an appropriate resolution in whole or in part of the matter referred. As case management Chair, the Chair will act to control and direct the discipline process to ensure it proceeds in an efficient and timely way.

In reporting on PHC's, the PHC Chair will continue the practice of instructing Independent Legal Counsel to provide a letter to counsel for the parties following the pre-hearing conference, in summarizing steps taken or to be taken towards a potential resolution.

With respect to agreements reached, undertakings made, and directions given of a case management nature, the Chair wearing the hat of case management Chair will issue a procedural order to be followed by the parties. This may include matters such as scheduling where appropriate of motions (e.g. disclosure, severance, third party records), directions regarding expert witnesses and the delivery of expert reports, and fixing dates for the delivery of materials and oral argument on motions, and fixing dates for the hearing on the merits. It is expected that parties will comply with such procedural orders as with other orders made by the Discipline Committee. Compliance with the Rules of the Committee and compliance with procedural orders on the scheduling of steps leading to a hearing are critical to ensuring that the scheduled hearing dates themselves are maintained, and that unnecessary delays or adjournments are avoided. Failure to do so may be considered when the matter of costs is put before the panel.

3. Additional Case Management Teleconference

It is recognized that dates for hearings are scheduled at the PHC up to a year before a hearing is to proceed on the merits. Counsel for the parties are told in writing following a PHC that if the requirements for hearing days change, and if fewer or more days are necessary, they should contact the Hearings Office so that this may be dealt with. Counsel are generally good at doing so, but when it is not done, it creates problems for the Committee. When more days are needed, it can impact the maintenance of the hearing days scheduled. Requesting additional days can result in the completion of the hearing being unduly delayed, given the logistics of dealing with the schedules of the panel members and the parties.

By this Practice Direction, the parties are directed to inform the Hearings Office at the earliest date they know that fewer or more days will be required for a hearing. The Hearings Office will take such steps with the panel Chair and members to obtain the earliest dates available to meet the objective of timely completion of hearings. The PHC Chair or Chair of the Committee, before a hearing has commenced, or the Chair of the hearing panel, after the hearing has commenced, may hold scheduling conferences as necessary to address any requested additions or changes in scheduling, with the objective of achieving timely completion of the hearing.

Furthermore, a new step will be initiated. There will be a teleconference in contested cases with a case management Chair and the parties no later than 3 weeks before the scheduled commencement of a hearing, to ensure that the time scheduled for the hearing is sufficient and to deal with any procedural issues that may have arisen. The scheduling of this case management teleconference by the Hearings Office may be earlier than 3 weeks before the hearing, where a party requests the intervention of a case management Chair to assist with a procedural issue.

4. Scheduling of a Penalty Hearing in the Event of a Finding

Where a finding is made against a member at the conclusion of the finding phase of the hearing, or after the delivery of a written decision on finding, there has been difficulty in some cases to schedule the penalty hearing in a timely way. A decision on finding by the panel in such cases usually directs that a hearing be scheduled at the earliest possible date.

The Committee directs that if the Hearings Office cannot obtain within 2 weeks of the finding an agreement with the parties on dates for the penalty hearing, a scheduling conference shall be set up by the Hearings Office with the hearing panel Chair or such other person on the panel as is delegated by the Chair, to schedule the dates for the penalty hearing.

The requirement of public safety and protection will be the paramount factor in the scheduling of a penalty hearing following a finding.

Approved: October 1, 2013; effective January 6, 2014