United States Soccer Federation

Hearings and Appeals Handbook

WINTER 2007

Introduction

This handbook has been produced by the United States Soccer Federation, through its Appeals Committee and its legal department, for the benefit of its Organization Members. It is intended to provide guidance to those members who wish to implement, improve, or reorganize disciplinary processes, and also to provide answers to some of the most common questions about these processes.

Two sets of rules create a requirement that USSF Organization Members provide certain minimum procedural rights to its athletes, coaches, and administrators. First, the Ted Stevens Olympic and Amateur Sports Act ("the ASA"), a federal law, states that a national governing body (such as USSF) is only eligible for recognition if it "provides an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate . . . with fair notice and opportunity for a hearing . . . before declaring the individual ineligible to participate." Second, USSF has incorporated this requirement into its Bylaws in several ways:

(1) Bylaw 212 requires every USSF Organization Member to "comply with the [ASA], to the extent applicable;"

(2) Bylaw 213 requires Organization Members to provide "procedures for fair notice and opportunity for a hearing with respect to any Athlete, coach, trainer, manager administrator or official . . . concerning a proposed declaration that any such individual is ineligible to participate . . ." (emphasis added).

(3) Bylaw 241 states that suspensions and other disciplinary actions taken by Organization Members shall be recognized by the Federation and all other Organization Members upon "determination by the Federation that the party subject to the action received hearing and procedural rights substantially similar to those set forth in the bylaws." (emphasis added).

(4) Bylaw 701 requires that parties to all hearings conducted under USSF Bylaws be afforded a list of eleven specific rights, including notice, time to prepare a defense, an impartial panel, etc.

(5) Bylaw 704 provides the USSF Appeals Committee with jurisdiction over final decisions by Organization Members.

Copies of each of these Bylaws are contained in this handbook at **Tab A.**

These various provisions, in combination, support one general premise: USSF, its Organization Members, and the clubs and teams within those Organization Members need to provide due process to players, coaches, and administrators if they wish to discipline them. This handbook describes this obligation in more detail by explaining: (1) How to hold a hearing; and (2) How the USSF appeals process works.

In addition to this handbook, USSF has information on its website, www.ussoccer.com, relating to hearings and appeals. To access this information, click on the "Federation Services" button on the left side of the main page. Click on the "Resource Center" button that appears on the left side underneath "Federation Services." A Table of Contents appears on the page – the bottom selection is "Legal." Once you click on the "Legal" section, there is link to "Grievances and Appeals." Under this section, information is available that includes:

- How to hold a hearing
- How to file an appeal
- Powerpoint presentations prepared by the Appeals Committee
- Summaries of past appeals decisions

You should also feel free to contact the Greg Fike, the Appeals Committee Liaison in the USSF Legal Department with any further questions. He can be reached by email at gfike@ussoccer.org or by phone at 312-528-1278.

How To Properly Run a Disciplinary Hearing

♦ **Step 1: The Notice Letter**

Bylaw 701, section 1 requires that parties to a hearing must be provided "notice of the specific charges or alleged violations in writing and possible consequences if the charges are found to be true." This is achieved by sending out a notice letter. A sample notice letter is contained in this handbook at **Tab B**.

The notice letter should include answers to the following questions:

- *Who is being charged/accused?*

This is usually simple – it is the person to whom the letter is addressed. Even in that circumstance, however, make sure to be clear that "you" are being charged. The Federation Appeals Committee has been faced with situations where the letter simply says "charges are being brought" or "a hearing will be held." This requirement becomes even more important when more than one person is being charged at once – make it very clear who is being charged, and which charges apply to each person.

- *What are the charges?*

The letter should include a reference to the incident or behavior that forms the basis for the charges, as well as a specific citation to the rule, bylaw, or policy that is alleged to have been violated. The letter should contain specific facts (date, place, etc.) so that the accused party can clearly identify the incident in question.

- *If the charges are found to be true, what are the possible consequences?*

The letter should inform the accused as to the possible penalties. Can the accused be suspended, fined, warned? How broadly can this penalty be applied? For instance, it may be helpful to include language indicating that if the accused is suspended, the suspending organization may ask that the suspension be recognized by other USSF organizations as well. The letter should also list any minimum or maximum punishment.

- *When and where will the hearing take place?*

Bylaw 701 requires that there be a "reasonable time" between the receipt of notice and the time of the hearing. There is no specific amount of time that is automatically "reasonable" or "not reasonable" in every case – it depends on the circumstances. As a general rule, it is considered sufficient advance notice if it is received at least one full week before the hearing. It should also be noted that some rules do provide a limit to

how far out a hearing can be scheduled. For instance, under the USSF referee assault policy (531-9), an accused must have a hearing within thirty days of "verification" (typically this means 30 days from the time of their automatic suspension).

Bylaw 701 also requires that the hearing be "conducted at a time and place so as to make it practicable for the person charged to attend." Whether the time and place for a hearing is "practicable" will depend on the specific circumstances: the distance from the party's home to the place of hearing, the party's work schedule, etc. Generally, if a party asks for a hearing to be rescheduled due to a scheduling conflict or difficulty in appearing at the hearing, it is probably most appropriate to grant the request – at least if it is the first such request – to ensure that it is practicable for the person to attend the hearing.

- *What procedural rules will apply at the hearing?*

If there are any rules set forth in relevant bylaws or policies that will control at the hearing, a general reference should be made to such rules. Sometimes, organizations may decide (but are not required) to specifically reference and cite one or two rules that they deem especially important – for instance, that a minor may not testify if no parent or guardian is present, or that there is a specific limit on the number of witnesses.

Some organizations actually attach to the notice letter a copy of the actual rule or bylaw that the accused has been charged with, or the set of procedural rules, or a list of due process rights to which the accused is entitled (such as USSF Bylaw 701). This is clearly helpful to the accused, and is encouraged because it makes the process more transparent, but it is not required by USSF bylaws.

The notice letter should also notify the parties that they have the opportunity to learn the identity of witnesses in advance of the hearing and either lists those witnesses expected to attend or invites an exchange of witness lists. This helps the accused to prepare for the hearing and makes it less likely the accused will be surprised by certain testimony or issues arising at the hearing.

It is recommended that the notice letter be sent in a way that provides a written receipt to the sender (such as FedEx, certified mail, or even facsimile), to avoid any

questions about whether the letter was received. This can eliminate any concerns about notice arising on appeal.

♦ **Step 2: The Hearing**

The hearing should typically take place in a room that is set aside at that time for that purpose only. The hearing panel should be able to eliminate distractions and to control who is in the hearing room (so that they may, if they wish, exclude witnesses when other witnesses are testifying, or conduct portions of the hearing without having the public admitted).

The most important goal of the hearing is to allow the accused an opportunity to present his or her case to the hearing panel – to refute allegations made by others, to explain his or her version of the facts, and to offer any relevant evidence that the hearing panel may not already have seen.

It is also important that all evidence and testimony that will be used to make the decision is formally introduced and disclosed to the accused. A decision by the hearing panel must rely solely on the "evidence of record" – the evidence admitted during the hearing.

USSF Bylaw 701 (see **Tab A**) sets forth a number of requirements for hearings. These are:

- *The hearing panel must be "disinterested and impartial" (section 4)*

A hearing is run by a hearing panel. Typically, hearing panels consist of either three or five members (an odd number to avoid tie votes in split decisions). Sometimes, the disciplinary rule in question dictates the size of the panel (for referee abuse/assault under USSF Policy 531-9, the panel must consist of "at least three neutral members"; for referee misconduct under USSF Policy 531-10, the panel has "at least five members"). One panel member is designated as chairperson. The chairperson runs the meeting, indicates whose turn it is to speak, and otherwise facilitates the hearing.

The hearing panel should be chosen in a way that excludes not only those clearly interested in the outcome, but anyone who would appear interested, partial, or biased. If an objective outsider would consider a panel member to be biased, they should not be on the panel, even if they are in reality quite fair and unbiased.

There is no specific list of people who are to be excluded from a hearing panel, but the following are some examples of people who are less likely to qualify as "disinterested":

-- Family members or close friends of any of the parties
-- The individual who filed the complaint or report that led to the charges
-- Anyone who is a witness at the hearing

Section 11 of the Bylaw also requires that there can be no "ex parte" communication. This means that the members of the hearing panel should not communicate with either party about anything to do with the case outside of the hearing unless it is to provide procedural explanations.

- *The accused may be "assisted" in presenting his or her case (section 5)*

A person giving assistance may be, but does not have to be, an attorney. The person assisting must be allowed to attend the hearing. However, there is no requirement that the person assisting be allowed to speak during the hearing. (If the "assistance" being provided is translation for an accused who does not speak English well, it may make more sense to allow that person to speak).

USSF Policy 701-1 (see **Tab A**) sets forth the "minimum" rights to be afforded an accused at a hearing with respect to the right to assistance. That policy indicates that if the complaining party (or charging association) is permitted to have a representative speak, ask questions, etc., then the representative of the accused must also be allowed to speak or ask questions. It also states that the accused must have the ability to "confer briefly" with his or her assistant during the hearing, and to request a recess to confer with the assistant, so long as the frequency and duration of these conferences is not unreasonable. An Organization Member's hearing rules may also provide for broader rights to assistance.

- *The accused may "call witnesses and present oral and written evidence" (section 6)*

Generally, an accused should be permitted to present evidence that supports his or her case and testimony from relevant witnesses. The more opportunity that an accused has to present his or her case, the harder it is for the accused to contend that they did not receive due process.

Of course, the hearing panel is also permitted to attach limits to the introduction of witnesses or documents, especially where evidence becomes repetitive, irrelevant, or

excessively time-consuming. In exercising its discretion in this area, the hearing panel must ensure that the accused was provided a *reasonable* opportunity to present his or her case. Obviously, this will depend in part on the circumstances. For instance, if a party brings twelve character witnesses to a hearing, the hearing panel may limit their testimony by number of witnesses or time. However, if the party brings three eyewitnesses who can testify as to what actually occurred during an incident, it may be appropriate to allow all three to testify. The best strategy is often to simply provide a time limit to each side. For instance, allow them half an hour to present their case and allow them to choose how they will use that time – they can use this time to offer oral argument, present one witness, or present several brief witnesses.

If in doubt as to whether to accept certain evidence, the hearing panel should probably err on the side of accepting it, especially where it is not excessively time-consuming or unmanageable. For instance, if a hearing rule states that no witness statements will be accepted unless they are notarized, and the accused presents unnotarized witness statements that otherwise appear to be genuine, it may make sense for the hearing panel to accept the statements and perhaps give them less weight than they would have otherwise. Not only does this ensure that the hearing panel considered all of the evidence, it can often persuade the accused that the process was fair.

- *The accused may "confront witnesses" and "be provided with the identity of witnesses in advance of the hearing" (section 7)*

It is important to remember that hearing panels do not have subpoena power – they cannot force a witness to attend a hearing. Generally, a reasonable effort should be made to have witnesses appear. If an accused specifically requests that a certain witness be present, that witness should be encouraged to attend. Where reasonable, the hearing should be scheduled so as to allow this witness to attend. However, if a witness cannot attend, or refuses, the witness's mere absence does not mean that the accused did not receive due process. If a witness sends a letter but refuses to appear, the panel may consider the letter even though the witness was not "confronted." (Of course, the accused should be given a copy of the letter and an opportunity to answer any allegations in it).

If a witness does testify for one party, the other party should in most cases be afforded the opportunity to cross-examine the witness. However hearing rules may require that any questions be directed to witnesses through the hearing panel, and the hearing panel may refuse to ask witnesses questions that are irrelevant, harassing, or repetitive.

- *The accused has a "right to have a record made if desired" (section 8)*

While it is advisable for organizations to record all hearings, this is not practicable for many organizations. At a minimum, therefore, organizations must provide the opportunity for a recording if requested, at the requesting party's expense. If a party requests a transcript of a hearing, they may be required to pay for the cost of transcription.

In hearings for which no transcript will be prepared, many organizations have someone take notes and prepare minutes or a synopsis report. While not required, these hearing reports are incredibly helpful when an appeal is filed. The USSF Appeals Committee strongly encourages organizations to prepare minutes or a synopsis report for all hearings.

♦ **Step 3: The Decision**

The hearing panel should deliberate in private after the hearing, so as to allow each panel member the ability to voice his or her opinion without creating conflict with either of the parties. Once the panel has reached its decision, it must put this decision into writing. Bylaw 701, section 9 requires a "written decision." A sample decision letter is contained in this handbook at **Tab C**.

The decision must rely solely on the "evidence of record" – the evidence and testimony introduced at the hearing. The hearing panel must not rely on their dealings with either party outside of the hearing or rumors or other information they learned outside the hearing.

Section 9 also requires that the decision include "reasons for the decision." This means that it should include the specific findings of the panel: a description of the charges for which the accused was found guilty (which must be charges referenced in the notice letter); the factual conclusions made by the panel that led to its decision; and the discipline imposed.

Generally, it is not enough to say "the committee finds you guilty and suspends you for ten years." It should be much more specific. For instance: "The committee finds that you punched a referee on the nose, causing him physical injury. This constitutes 'referee assault' under USSF Policy 531-9. The committee hereby imposes a one year

suspension in accordance with section 5(A) of that Policy. This suspension will begin on January 3, 2004 and end on January 3, 2004."

The decision should also clearly explain the scope of any discipline. For instance, if the decision includes a "suspension," it should clearly indicate what this means: the types of activities it covers, the organizations that it covers, etc.

Finally, the decision should, whenever possible, inform the accused as to the next procedural option. If there is any right to appeal, it is advisable to inform the accused about where an appeal should be filed, how long they have to file the appeal, any appeal fee required, and where to locate any necessary appeals forms. Many organizations even attach a notice of appeal form to their decisions. Including information about the right to appeal is quite important. If the accused is not notified of his or her appeal rights and the time limits for filing, they may argue that they should not be bound by those time limits. The USSF Appeals Committee has, in some cases, accepted appeals filed outside the 10-day window where the accused was not properly notified of his or her appeal rights in the decision letter.

The USSF Appeals Process

Jurisdiction

USSF Bylaw 705 (see **Tab A**) provides a process for filing appeals from "final decisions rendered by Organization Members." This means that an appeal may not be filed with USSF until the issue has been ruled upon by the Organization Member. This "final" decision happens in different ways for each Organization Member. In some Organization Members, clubs hold the original hearing, and the club's decision is appealable to the Organization Member – the "final" decision is the Organization Member's decision on appeal. In other organizations, the Organization Member holds the hearing, but sets up an appeals committee that hears appeals – the appeals committee's decision issues the "final" decision. In a few organizations, the Organization Member holds the hearing and offers no right to appeal other than to USSF. Generally, if the Organization Member provides a process for further consideration of a decision – such as through an appeal – the decision is not yet final.

For a decision to be appealable to USSF, it must not only be "final," but must also have "consequence." Generally, for a decision to have "consequence," it must involve some sort of denial of the right to participate, play, or otherwise engage in activities sponsored by USSF or USSF and the Organization Member. Where a decision relates to the result of a particular match (for instance, a game protest) or imposes discipline that does not interfere with the right to participate (for instance, a letter of reprimand), the USSF Appeals Committee has no jurisdiction to consider the appeal. Additionally, the consequence must be substantial enough that the Appeals Committee's decision is not moot. If a player is simply suspended for three games and misses those three games

before an appeal is even filed, the Appeals Committee will usually not accept the appeal because there are no consequences that it will have the ability to remedy.

The consequence must also be "beyond the competition." The term "competition" is defined to include games, tournaments, league play, or a regular season. In practice, what this means is that a suspension is not appealable to USSF unless it applies to something beyond league play or a specific tournament.

The Filing Process

An appellant initiates the appeals procedure by filing a USSF Notice of Appeal. A copy of the Notice of Appeal form is contained in this handbook at **Tab D**. The appellant must include an appeals fee (currently $300) and a copy of the decision from which he or she is appealing. USSF Bylaw 705 requires that the Notice of Appeal be submitted within 10 days of receipt of the decision by the appellant.

Upon receipt of the notice of appeal, the Appeals Committee reviews the decision to determine whether it has jurisdiction. If the Appeals Committee determines that it does not have jurisdiction to consider the issue, the appeals fee is returned to the appellant. Otherwise, if the Appeals Committee considers an appeal, the appeals fee is non-refundable, regardless of whether the appeal is granted or denied.

Submission of Documents

If the appeal is accepted, a scheduling letter is sent out to both the appellant and the Organization Member. That scheduling letter will inform the parties that the appeal will proceed according the following timetable:

- -- The Organization Member must submit the record within 10 business days (two weeks)
- -- The appellant must submit any argument he or she wishes to make within 10 business days (two weeks) of the due date for the record

-- The Organization Member must submit any argument in opposition to the appeal within 10 business days (two weeks) of the due date for appellant's argument.

Neither side needs to submit materials until the scheduling letter is received.

The Record

USSF Policy 705-2 (see **Tab A**) sets forth the documents that shall be included in the record submitted on appeal. These include "all documents, exhibits, and other evidence in the case," "copies of all rules, procedures, and bylaws used," the "notice of charges," and the "decision of the hearing body and any appeals decisions." If there are any receipts showing proof of mailing or delivery, those should also be included.

A few tips that Organization Members should keep in mind when preparing the record:

- A table of contents and some sort of numbering system for the pages is helpful, especially for larger records.

- The documents are usually most easily understood when arranged chronologically.

- If the accused submitted documents at the hearing, even if the hearing panel decided that these documents were inadmissible, it is probably best to include them in the record unless doing so creates some sort of hardship. Generally, if an accused complains that certain evidence was excluded, the appeals panel will want to at least see the document(s) in question, if for no other reason than to confirm that it was properly excluded.

- All relevant bylaws, policies, and rules should be included. This is the most common omission from records submitted to USSF.

- If a recording was created for the hearing, it is only required for inclusion in the record if the appellant or the Organization Member feels it is relevant. In that instance, four copies must be submitted to USSF and one copy must be provided to the appellant.

- A copy of the full record must be sent to the appellant.

The Arguments

Once the record is submitted, each party may submit written argument for consideration by the Appeals Committee panel appointed to hear the case. There is no specific format for this written argument – it can be a letter, a legal brief, or even a collection of documents with some sort of introductory statement as to their relevance. However, it is important to remember that this is the only opportunity to address the appeals panel – the parties are generally not invited to take part in the appeals panel's telephone conference – and thus the argument should set forth and explain each point the party wishes to raise.

Appeals Committee Consideration

The USSF Appeals Committee is made up of approximately 40 volunteer members. When a new appeal is ready for consideration, a three-person panel is appointed to the panel using the following guidelines:

- No panel members can reside in the state involved or have any specific knowledge or relationship with the parties that would prevent them from being disinterested and impartial.
- In all appeals by players, at least one of the three panel members must be an Athlete member of the Appeals Committee.
- No two panel members can come from the same Organization Member.

Other than these specific guidelines, panels are selected so as to spread out the work – generally an Appeals Committee member will not be placed on a panel more than once every few months.

The panel, once appointed, is given a copy of everything that has been submitted: the original notice of appeal (including any attachments), the record, and the arguments from each party. The panel is generally given about one week to review and consider these materials, and then meets by telephone conference to discuss the appeal.

In most cases, the panel is able to reach a decision in its first telephone conference. On a few occasions, the panel has determined that it requires additional information from one or both parties. In such a case, the panel sends out a letter asking for more information and schedules a second telephone conference date.

The panel makes its decision based on majority vote – at least two of the three panel members must support the decision. The panel has only three options: (1) deny the appeal and uphold the decision that is being appealed; (2) grant the appeal and reverse the decision that is being appealed; or (3) remand the case to the Organization Member for a new hearing or further consideration based on the decision of the Appeals Committee.

The Appeals Committee Decision

The Appeals Committee decision is issued in writing to both parties. USSF Policy 705-1 provides that the appeals panel must issue its final written decision within ten days of its determination of the appeal, and not more than twenty days after initial consideration (except for just cause). Generally, most appeals panels issue the decision in less than one week. Policy 705-1 also provides that the decision of the appeals panel is "final and may not be further appealed."