Guidelines for Handling Grievances Properly

Introduction
It is inevitable that certain members within your Association will, at some time, have a complaint. Some disgruntled members will call the Association Office and make a verbal complaint; some members may be motivated to complain in writing; and yet others will contact the National Office to lodge their displeasure. Likewise, the Association may feel that an individual has acted in a manner so detrimental to the purposes and goals of the sport that she or he should be disciplined. What is the appropriate means of handling a serious complaint from a member or a decision to pursue disciplining a participant in track and field activities at the Association level?

The following are some easy guidelines for handling complaints and disciplinary proceedings that have been compiled by the USA Track & Field (USATF) legal department. Please note that by listening, understanding and compromising, many complaints can be resolved. Those that cannot be resolved by diplomacy must, in accordance with federal law, be handled by providing a fair and impartial hearing process, as outlined below.

Jurisdiction of Association over Grievances & Disciplinary Matters
USATF Bylaws authorize each Association to handle the disciplinary and formal grievance proceedings relating to matters that arise within the boundaries of an Association. Therefore, it is the Association's responsibility to handle disputes that occur within the Association. This should be done in accordance with the Association's Bylaws. If necessary, the Association must implement a disciplinary or grievance hearing process. If the Association's Bylaws do not provide for a hearing process, the USATF Bylaws may be consulted for guidance. Generally, a disciplinary matter is brought by an Association when it believes a member of the Association or other participant in Association activities has acted in a manner that violates fundamental principles, policies or rules of USATF and the Association. A grievance is a dispute between two parties about any matter that occurs within an Association. Associations may only hold disciplinary or grievance hearings about matters that are not the exclusive responsibility of USATF to resolve, as dictated by USATF Bylaws, Operating Regulations, or organizational policy.

Once an Association receives a grievance or pursues a disciplinary action, it should make every effort to resolve the matter informally (i.e. without a formal hearing). Such an effort can only be pursued if all parties to the proceeding agree. The goal of this process is to work with the parties to find a mutually acceptable solution. If the matter cannot be resolved informally, the Association must refer the matter to an "unbiased hearing panel". Generally, a hearing panel should consist of three individuals who are not officers, board or executive committee members of the Association.

Adequacy of Complaint
An Association member's grievance or an Association's disciplinary action should be in writing and should be filed with the appropriate Association officials; usually the President and Secretary. If the President and/or secretary are named in the complaint, it should be filed with the entire board or executive committee, and an officer or board member not involved in the dispute should oversee the whole resolution process. The complaint should specify the conduct or Association bylaw, rule, or policy violation that has occurred and the resolution sought. In addition, the complaint should be signed by the complainant(s) and notarized.
Choosing an Impartial and Unbiased Hearing Panel

"Impartial" or "unbiased", means that none of the individual(s) serving on the hearing panel have any involvement in the pending matter or close relationship to any of the parties to the proceeding. If a potential panelist discloses a conflict of interest, the parties and panelists may agree to proceed despite the conflict, and the person may serve on the panel; but only if all parties are in agreement. If a potential hearing panelist does not disclose a conflict of interest, and one or both parties has/have reason to believe that such individual may be biased, he or she shall not serve on the hearing panel.

For example, if Paul files a grievance complaint that has been referred to a panel, his cousin, team member, wife, or best friend should not be selected to sit on the panel. However, if Paul's cousin discloses the relationship and asserts his/her ability to be impartial, notwithstanding the relationship, the parties may agree to waive any objection to the conflict. This means that after a decision is made, neither party can object to the result on the basis that that particular panel member was not impartial.

If Paul's cousin, team member, wife, or best friend does not disclose the conflict, and the opposing party has reason to believe that Paul's cousin, team member, wife, or best friend may not be impartial, the opposing party may object to the participation of Paul's cousin, team member, wife, or best friend.

The Hearing

WHO SHOULD ATTEND: The hearing, itself, should consist of only the parties to the proceeding (complainant and defendant(s)), any witnesses that may be called to testify, and the hearing panelists. In addition, a party may at his/her own expense be represented by an attorney or other representative. Witness(es) should only be in the hearing room (or on the telephone call) when testifying, unless the parties agree that they may be present at all times. In making this determination, consideration should be given to concerns about privacy and confidentiality. In addition, provisions should be made, although not mandatory, to record the hearing either by a court reporter or tape recording. If a hearing is tape recorded, one individual, who is not a part of the proceeding, should be designated to operate the recording device.

ROLE OF ASSOCIATION STAFF: Association officers and/or staff should not participate in a proceeding, except as required to provide necessary evidence in their possession or the proper interpretation of Association bylaws, rules or regulations. USATF Competition Rules, or USATF Bylaw or Regulation, interpretation should be made by the chair of the USATF Rules Committee, the chair of the USATF Law & Legislation Committee or the USATF General Counsel, respectively.

ROLE OF NATIONAL OFFICE STAFF & OTHERS: If questions of rule interpretation or proper procedure arise during the proceeding, either a party or a panelist may consult with the USATF Conoral Counsel, the Chair of the Law & Legislation Committee and/or the Chair of the Rules Committee. However, said Counsel or Committee Chairs, may only respond to questions regarding the administration of the hearing or the proper interpretation of USATF Bylaws, Regulations or Competition Rules and should not serve to interpret an Association's Bylaws.

SETTING THE HEARING DATE: Once a panel has been selected, the parties and panelists should work together to schedule a hearing date. However, the panel chairperson should control the conduct of the process. The date should be convenient, allowing both parties sufficient time to prepare a thorough presentation. Except in urgent matters, hearings should typically be held within 30 to 60 days after the matter has been referred to a panel. However, if a party needs more time to adequately prepare, a reasonable delay should be granted at the discretion of the panel.
chair. The hearing should be rescheduled as soon as reasonably possible. It is a generally accepted legal principle that “fairness” of a hearing process, requires adequate preparation time for both parties.

Thus, for example, a hearing that has been rescheduled ten (10) days from the date of the original hearing would generally be considered a reasonable delay. However, a hearing rescheduled fifty (50) days after the original hearing date may be considered unreasonable.

CONDUCT OF HEARING: Once the panel has been confirmed, the panelists should select one panelist to serve as panel chair. Alternatively, the panel chair may be pre-designated or appointed. The panel chair is responsible for presiding over the entire hearing proceeding. Therefore, consideration should be given to leadership skills, when selecting the panel chair. Thus, after consultation with the other panelists, the panel chair should issue the panel decisions regarding requests for delays, pre-hearing exchange of information issues, submission dates for written or documentary evidence, witness statements, and pre-hearing briefs, if necessary.

It is important to note that the formal rules of evidence are not followed in these disciplinary or grievance proceedings. Thus, all relevant evidence should be presented to the panel, which shall reserve the right to disregard irrelevant information. Lack of relevancy, or repetitiveness, are generally the only valid objections to the presentation of either party’s evidence at a hearing.

Typically, a hearing begins with the opening statements of each party; the claimant presenting first. Next, the complainant presents his/her case, which may include calling any witnesses or presenting any written documentation that s/he deems necessary to establish the allegation(s). The defendant must, however, have the opportunity to cross-examine any witnesses once the complainant has finished his/her direct presentation or questioning. Upon the completion of cross-examination, the defendant will have the opportunity to present his/her case, which may also include calling any witnesses or presenting any written documentation. The complainant should also have the opportunity to cross-examine the defendant’s witnesses. After both direct presentations, there can be limited re-direct by either party. It is appropriate for the panel to ask questions regarding any issue(s) that may be unclear, during the course of the hearing. This should be done in a manner that does not interfere with either party's presentation or indicate a bias toward either party's case. Once each party has had the opportunity to re-direct, parties should be given the opportunity to present closing statements. Closing statements should take place in the same order as the opening statement.

If a hearing is held by telephone, the panel and the parties should be aware that the presentation of written evidence must be coordinated in advance. Parties should make arrangements to forward any written documentation to all participants prior to the start of the hearing. Fairness requires that there be full disclosure of written evidence prior to the hearing. (A witness would only receive documentary evidence relevant to his or her testimony.) Also, if witnesses are called during a telephone hearing, the process for cross-examination is inherently more difficult. In this event, any documents the witness may refer to must be distributed in advance to the panel and the opposing party. If, during a telephone hearing, it becomes apparent that all parties do not have the relevant documents, the hearing must immediately be postponed and rescheduled after all documents have been properly distributed.

During the hearing, it is very important for both parties to remember that each side has the right to present his or her case. Thus, parties should be respectful of and not interrupt one another. In addition, as with each party, panelists should be respectful and courteous to all parties and of each other throughout the entire hearing. The panelists should go out of their way to avoid showing bias toward either party’s arguments during the hearing process.

POST HEARING ISSUES: If, at the conclusion of the hearing, the panel feels that additional information, testimony or evidence is necessary to make a decision, it may request that the parties submit such additional information, or that an additional hearing date be set. In this event,
the hearing will remain open until receipt of the requested document(s) or the additional hearing takes place.

Once the panel has made a final determination, it should render a written decision within a short period of time -- e.g. forty-eight (48) hours. As the written decision does not have to include an explanation, the panel should provide a written opinion explaining the decision, within no more than thirty (30) days.

**Appeals**

The losing party may appeal the Association's decision to a National Athletics Board of Review (NABR) panel, via the USATF National Office, within thirty (30) days of the receipt of the written opinion. In addition, a party may request that the hearing panel's decision be stayed -- not enforced or implemented-- until the appeal has been heard. However, such a request must be filed within thirty (30) days of the Association panel's decision and must be made to the Chief Executive Officer of USATF.