



## **ETHICS CASE PROCEDURES**

### **INTRODUCTION**

The National Board for Certified Counselors (NBCC) develops and promotes high ethical standards for counselors. NBCC requires that certified counselors meet these standards. The following disciplinary procedures are the rules for processing possible violations of these ethics standards. These rules are applicable to NBCC certificants and applicants for NBCC certification. This document describes and outlines the only procedure for handling ethics cases brought to the attention of NBCC. When counselors apply for certification or recertification, they agree to abide by the NBCC policies, including the Code of Ethics and the Ethics Case Procedures. In addition, certified counselors and applicants for certification agree that: these procedures are a fair process for resolving all ethics matters; they will be bound by decisions made pursuant to these procedures; these procedures are governed by the principles of the laws of the State of North Carolina; and, these procedures do not constitute a contract between NBCC and the certificant or applicant.

### **SECTION A: GENERAL**

1. **Nature of the Process.** These procedures are the only means to resolve NBCC ethics charges and complaints. NBCC has the exclusive authority to end any ethics inquiry or case, regardless of circumstances. By applying for certification or recertification, counselors agree that they will not challenge the authority of NBCC to apply the Code of Ethics, the Ethics Case Procedures, or other corporate policies, and will not challenge the results of any NBCC action taken under these policies in a legal or government forum. These ethics procedures are not formal legal proceedings, therefore, many legal rules and practices are not observed. NBCC will review the pertinent information presented when considering ethics investigations, cases and decisions.

The NBCC Ethics Case Procedures are designed to operate without the assistance of attorneys. Any party may be represented by an attorney with respect to ethics proceedings and procedures, at the party's sole expense. However, if a party has retained an attorney, that party and attorney may be directed to communicate with NBCC only through NBCC Legal Counsel. The parties are encouraged to communicate directly with NBCC.

2. **Participants.** Ethics cases may be decided by the NBCC Ethics Officer, the NBCC Ethics Hearing Committee, the NBCC Board of Directors Ethics Appeals Committee (Board Ethics Appeals Committee) and/or any representative designated by the President/CEO or authorized by these procedures. An NBCC certificant or applicant who is the subject of an ethics charge or investigation will be, and is identified as, the respondent in these rules. The person(s) initiating an ethics complaint concerning a certificant or applicant will be, and is identified as, the complainant(s).

3. **Complainants/Ethics Charge Statement.** Any person, group or, in appropriate cases, NBCC, may initiate an ethics case and act as a complainant. A complainant other than NBCC must: contact the NBCC Ethics Officer and request an Ethics Charge Statement form; complete the information requested on the Ethics Charge Statement;

and then submit the completed Ethics Charge Statement to the Ethics Officer. Each Ethics Charge Statement must include a detailed written description of the factual allegations supporting the ethics charge(s).

4. Time Requirements. NBCC will make every effort to follow the time requirements set forth in this document. However, NBCC's failure to meet a time requirement will not prohibit the final resolution of any ethics matter. Complainants and respondents are required to comply with all time requirements specified in this document. Time extensions or postponements may be granted by the NBCC President/CEO, Ethics Officer, or Chair of the Ethics Hearing Committee, if a timely written request explains a reasonable cause.

5. Litigation/Other Proceedings. NBCC may accept and resolve ethics complaints when civil, criminal litigation or other proceedings related to the complaint have been, or are presently, before a court, regulatory agency, or professional body. NBCC may also continue or delay ethics complaints in such cases.

6. Complaints Concerning Non-certificants and Non-applicants. In the event that NBCC receives an ethics inquiry or Ethics Charge Statement concerning an individual who does not hold any NBCC credential or who is not an NBCC applicant, a representative of NBCC will inform the complainant and may refer the complainant to an appropriate authority.

7. Improper Disclosure/False or Misleading Responses. Any failure to disclose pertinent information or any misleading disclosure by an NBCC certificant or applicant with respect to an ethics charge, criminal case, disciplinary proceeding, or similar matter concerning him/her may constitute a violation, and may result in certification ineligibility.

8. Time Limitations Concerning Complaints. NBCC may consider any ethics complaint, regardless of: (a) whether the respondent held an NBCC credential at the time of the alleged violation; (b) when the alleged violation occurred; or, (c) whether the respondent continues to hold or seek an NBCC credential during the course of any ethics case.

9. Confidentiality. In order to protect the privacy of the parties to an ethics case, all material prepared by or submitted to NBCC will be confidential. An exception will be made if a release of information or documents is authorized by these rules. The identities of all members of the Ethics Hearing Committee and the Board Ethics Appeals Committee shall remain confidential, and will not be released without the specific authorization of each committee member.

Until an ethics case has been closed or finalized pursuant to Section M, all parties must maintain the confidentiality of all information related to the ethics case, including its existence, consistent with these rules. If any party discloses information related to the ethics case contrary to these rules, the President/CEO, Ethics Officer, Ethics Hearing Committee, or Board Ethics Appeals Committee may terminate the ethics complaint if such disclosure is by the complainant; or may impose any sanction included within these rules if such disclosure is by the respondent.

10. Failure to Cooperate. If any party refuses to fully cooperate or participate with NBCC or its representatives, and it is determined that the lack of cooperation was without good cause, NBCC may take the following actions: (a) the President/CEO, Ethics Officer, Ethics Hearing Committee, and/or Board Ethics Appeals Committee may terminate the ethics complaint of an uncooperative complainant; (b) if a respondent is uncooperative, the Ethics Officer, Ethics Hearing Committee, and/or Board Ethics Appeals Committee may impose any sanction included within these rules. No appeal of such NBCC actions is permitted.

11. Resignation from NBCC. Should a respondent attempt to relinquish NBCC certification or withdraw an application during the course of any ethics inquiry or case, NBCC reserves the right to continue the matter to a final resolution according to these rules. NBCC may require that a certificant agree to conditions related to the relinquishment of a certification.

## **SECTION B: MEDIATION**

1. **Cases Appropriate for Mediation.** The Ethics Officer will receive all charges, complaints, and Ethics Charge Statements. The Ethics Officer will consider the seriousness of the allegations, the respondent's background, prior conduct, and any other pertinent material, and make a decision concerning the likelihood that the matter can be resolved fairly without formal disciplinary proceedings as described in these rules. Ethics cases concerning charges issued by a regulatory agency or professional body, and those involving criminal or civil litigation, are not appropriate for mediation.
2. **Mediation Determination.** Should the Ethics Officer determine that a particular ethics matter is appropriate for mediation and the complainant and respondent agree to mediation, he or she will attempt to resolve the dispute to a fair and just conclusion.
3. **Successful Mediation.** In the event of successful mediation, the Ethics Officer will prepare a report summarizing the terms of each mediated resolution of an ethics case and forward it to the parties. A mediated resolution of an ethics matter may not be appealed after the acceptance of the mediation report by all parties.
4. **Unsuccessful Mediation.** In the event of unsuccessful mediation, the Ethics Officer will refer the case for resolution consistent with these procedures.

## **SECTION C: ETHICS INQUIRIES/ETHICS CHARGE STATEMENTS**

1. **Ethics Inquiries.** Any person or group seeking to file a complaint concerning an NBCC certificant or applicant should contact the NBCC Ethics Officer. The Ethics Officer will forward to the complainant a copy of the NBCC Code of Ethics, Ethics Case Procedures and the Ethics Charge Statement form. The Ethics Officer will record all ethics inquiries and identify: the person(s) making the inquiry; the NBCC certificant/applicant; the state from which the inquiry originates; and the nature of the problem. This case log will remain confidential, and will be available only to authorized representatives of NBCC, or released for review to cooperating agencies and organizations.
2. **Ethics Charge Statement/Description of Charges.** In order for NBCC to consider an ethics complaint, a complainant other than NBCC must complete and submit to the Ethics Officer an Ethics Charge Statement, including all information required by the form. The Ethics Charge Statement is a formal written communication from a complainant describing the allegations against an NBCC certificant or applicant, and is the only form of complaint submission accepted. Documents such as government agency complaints and/or decisions, court complaints and/or decisions, or other public documents or materials, may be submitted in support of an Ethics Charge Statement, or may serve as the basis of an Ethics Complaint by NBCC.

When an Ethics Charge Statement is received by NBCC, the Ethics Officer will: (a) review the material received and assign a case number to the matter; (b) review the allegations made concerning the charges; (c) determine whether the charges are presented in sufficient detail to permit NBCC to conduct a preliminary investigation; and, if necessary, (d) contact the complainant and request additional factual material. The Ethics Officer will send a letter to the complainant and respondent stating whether the charges submitted are accepted or rejected for a formal ethics investigation.

## **SECTION D: ACCEPTANCE/REJECTION OF ETHICS CHARGES**

1. **Charge Acceptance.** The Ethics Officer will review each charge presented in an Ethics Charge Statement

submitted by a complainant and then determine if it will become the subject of a formal Ethics Complaint and Investigation. The following criteria will be considered to determine if a charge is accepted or rejected: (a) whether the respondent is an NBCC certificant or applicant; (b) whether a proven charge would constitute a violation of the Code of Ethics; (c) whether the passage of time since the alleged violation requires that the complaint be rejected; (d) whether relevant, reliable information or proof concerning the charge is available; (e) whether the complainant is willing to provide proof or other information to NBCC concerning the complaint; and, (f) whether the charge appears to be justified or insupportable, considering the proof available to NBCC.

The Ethics Officer will determine whether the charge(s) and available proof support a formal Ethics Complaint, and upon such determination, will issue a formal Ethics Complaint and Investigation Notice.

2. **Charge Rejection.** If the Ethics Officer determines that an allegation should not become the subject of a formal Ethics Complaint, the Ethics Officer will reject the charge(s). The Ethics Officer will notify the complainant and respondent of the rejection in writing, including the reason(s) for the rejection.

3. **Appeal of Charge Rejection Determination.** Within thirty (30) days of the mailing date of a charge rejection letter, the complainant may appeal to the Ethics Hearing Committee. In order to have the Ethics Hearing Committee reconsider the rejection, a complainant must state in writing the following: (a) the procedural errors possibly made by the Ethics Officer with respect to the charge rejection, if any; (b) the specific provisions of the Code of Ethics believed violated; and, (c) the specific information believed to support the acceptance of the charge(s).

The Ethics Hearing Committee will consider and decide any charge rejection appeal at the next scheduled Committee meeting, and such decision cannot be appealed.

## **SECTION E: ETHICS COMPLAINTS AND INVESTIGATION**

1. **Ethics Complaint and Investigation Notices.** After an ethics charge is accepted, the Ethics Officer will issue a formal Ethics Complaint and Investigation Notice identifying each Code of Ethics violation alleged and the supporting factual basis for each complaint. This notice will be delivered to the respondent, at the last known address(es) by regular mail and other verifiable delivery service, return receipt requested, and will be marked, "Confidential." The notice will also state that the respondent may submit the case for review and resolution to either: the Ethics Officer; or, the Ethics Hearing Committee, which will include a hearing. If the respondent does not request a hearing, the complaint will be resolved by the Ethics Officer under Section H of these procedures.

## **SECTION F: ETHICS COMPLAINT RESPONSE**

1. **Submitting an Ethics Complaint Response.** Within thirty (30) days of the mailing date of an Ethics Complaint and Investigation Notice, the respondent must submit an Ethics Complaint Response according to the instructions in the notice. The Ethics Complaint Response must include the following: (a) a full response to each complaint; (b) the identification and a copy of each document that the respondent believes to be relevant to the resolution of the Ethics Complaint; and, (c) any other information that the respondent believes will assist NBCC in considering the Ethics Complaint fairly.

2. **Response Deficiencies.** The Ethics Officer or the Ethics Hearing Committee may require the respondent to supplement or expand a response.

3. **Optional Reply to Ethics Complaint Response.** The Ethics Officer/Ethics Hearing Committee will forward a copy of the Ethics Complaint Response to the complainant within approximately ten (10) days following the receipt

of the response by NBCC. The complainant may submit a reply to the respondent's Ethics Complaint Response by letter or similar document within ten (10) days of the mailing date of the response to the complainant. If submitted, this reply must fully explain any objections that the complainant wishes to present to the Ethics Officer/Ethics Hearing Committee concerning the Ethics Complaint Response.

## **SECTION G: PRELIMINARY ACTIONS AND ORDERS**

1. **Voluntary Temporary Suspension of Certification.** At any time following the issuance of an Ethics Complaint and Investigation Notice, the respondent may be asked to agree to a temporary suspension of NBCC certification, pending the final resolution of the ethics complaint. If the respondent accepts this request, the counselor will agree to and sign a Voluntary Suspension Agreement. This agreement will state the temporary suspension and that the respondent voluntarily ceases from representing himself or herself as certified, credentialed or otherwise endorsed by NBCC until further notice. The respondent will also return any certifications to NBCC to be held until the suspension, or other disciplinary action, has ended.

2. **Involuntary Suspension of Certification.** If a respondent fails to agree to and sign a Voluntary Suspension Agreement, pursuant to Section G.1, above, the Ethics Officer, the Ethics Hearing Committee, or the Board Ethics Appeals Committee may issue an order suspending the respondent's certification(s). This Suspension Order will stay in effect until the final resolution of the complaint.

3. **Circumstances of Involuntary Suspension Orders.** Suspension Orders are authorized where: (a) the respondent has been convicted of a criminal or quasi-criminal act, or the respondent has not contested a criminal indictment under any statute, law or rule; (b) the respondent has been indicted or similarly charged with any criminal act or violation of criminal law under statute, law or rule; (c) the respondent has been found in violation of any law, regulation or rule by a professional regulatory body, or has been sanctioned or disciplined by such a regulatory body; (d) the respondent is the subject of a formal complaint or similar charge and/or investigation by a professional regulatory body; (e) the respondent has been found in violation of an ethics code of a professional association or certifying body; (f) the respondent is the subject of a formal complaint or similar charge and investigation by a professional association or certifying body concerning ethics or disciplinary matters; or, (g) the respondent is the subject of litigation or a petition relating to their counseling practice.

4. **Other Preliminary Orders.** The Ethics Officer, the Ethics Hearing Committee, or the Board Ethics Appeals Committee may require the respondent to do or to refrain from doing certain acts by preliminary and temporary order, including the disclosure/submission of documents relevant to review of an ethics investigation. Any temporary and preliminary order requested will be reasonably related to the complaint under consideration; or to a party's responsibilities under the Code of Ethics.

5. **Failure to Comply with Preliminary Orders.** The Ethics Officer, the Ethics Hearing Committee, or the Board Ethics Appeals Committee may discipline a respondent who fails to comply with a temporary or preliminary order. The Ethics Officer, the Ethics Hearing Committee, or the Board Ethics Appeals Committee will consider the severity of the failure to comply and other relevant factors in determining the discipline. Preliminary and temporary orders cannot be appealed.

## **SECTION H: ETHICS OFFICER/COMPLAINT RESOLUTION**

1. **Ethics Officer Resolution of Complaints.** In the event that the respondent does not request a hearing before the Ethics Hearing Committee, the Ethics Officer will consider the matter under these procedures, resolve the ethics complaint, and issue a Final Decision and Order.

2. Final Resolution/Decision and Order. The Decision and Order of the Ethics Officer is a final resolution and is binding on the parties, but may be appealed to the Board Ethics Appeals Committee, consistent with the requirements of these procedures.

## **SECTION I: ETHICS HEARING COMMITTEE/ETHICS COMPLAINT HEARINGS**

1. Ethics Hearing Committee. The NBCC President/CEO shall appoint a Chair and Vice-Chair of the Ethics Hearing Committee. The Chair or Vice-Chair will preside over and conduct each Ethics Complaint Hearing, with at least two (2) Ethics Hearing Committee members, including the Ethics Officer, who shall be a permanent member of the committee. In the event that the respondent requests a hearing, the Ethics Hearing Committee will conduct an Ethics Complaint Hearing designed to collect and weigh all of the available information and proof. Unless a case has been resolved by the Ethics Officer under the procedures, the Ethics Hearing Committee will be the initial decision-making body to determine whether violations of the Code of Ethics and/or the Ethics Case Procedures have occurred. The Ethics Hearing Committee will have full authority and responsibility to convene, preside over, continue, and conclude an Ethics Hearing.

2. Hearing Schedule and Location. The hearing date for each ethics case will be scheduled by the Ethics Officer, in consultation with the Chair of the Ethics Hearing Committee and the parties. Each hearing will be held at a site determined by the Ethics Officer, or via telephone conference, and, if practical, held no less than sixty (60) days and no more than one hundred twenty (120) days from the receipt of an Ethics Charge Statement by NBCC. Hearings will not be held prior to the date permitted in these rules in order to permit each party to submit a response or a reply.

3. Hearing Notice and Attendance. The Ethics Officer will schedule the hearing and notify the parties in writing. Each party will be given the option to attend the hearing in person and will be required to indicate the following at least seven (7) days before the hearing: (a) whether the party intends to appear at and participate in the hearing in person; (b) whether the party intends to participate in the hearing via telephone; if so, the telephone number where the party is to be reached during the hearing; (c) whether the party intends to appear at the hearing with an attorney or other representative; if so, the name, address and telephone number of such attorney or representative; (d) whether the party intends to present witnesses at the hearing; if so, the name, address and telephone number of each witness and a brief summary of the content of the witness' proposed testimony; and, (e) whether the party intends to present or offer any documentary information or other written proof during the course of the hearing that has not been previously considered by NBCC. If such information is offered, the party must provide a copy of each document and a brief description of the document's relevance. Any Ethics Hearing may proceed to a conclusion and decision whether or not the parties are present.

4. Postponement of Hearing. A respondent or complainant may request a hearing postponement. This request must be in writing and received by NBCC at least ten (10) days prior to the hearing date. The President/CEO, Ethics Officer, or Ethics Hearing Committee Chair may grant a postponement. Postponement decisions cannot be appealed.

5. Participation of NBCC Legal Counsel. Should NBCC Legal Counsel be present at an ethics case hearing, Legal Counsel shall have the privilege of the floor and may conduct the hearing with the Ethics Hearing Committee. Legal or other representatives of the parties do not have such privilege, and are bound by the determinations and rulings of the Ethics Hearing Committee.

6. Responsibilities and Rights of the Parties. In addition to other responsibilities and rights, the respondent and the complainant may do, or be required to do, the following: (a) attend the hearing and be present during the testimony of all witnesses; (b) present witnesses, written information and argument on their behalf; (c) review or inspect all oral or written information presented in the case; and, (d) comply with all orders or directives issued by the NBCC, including those of the Ethics Officer and the Ethics Hearing Committee.

7. Witnesses. All witnesses will be excluded from the hearing except during the presentation of their testimony. The Ethics Hearing Committee Chair or Vice-Chair will rule on any request to the contrary, and the ruling will not be subject to appeal.

8. Confidentiality/Inclusion of Other Persons. All hearings are confidential and private. No observers are permitted without special permission. A party may request the presence of an observer in the hearing room, or on the telephone conference, during all or part of a hearing. The Ethics Hearing Committee or the Ethics Hearing Committee Chair will rule on such a request, and the ruling cannot be appealed.

9. Information and Proof Accepted. The Ethics Hearing Committee will receive and consider all information appearing to be relevant to an ethics complaint, including any information which may be helpful to a complete understanding of the case. The Ethics Hearing Committee may consider information concerning relevant prior conduct. Objections relating to relevance of information and similar issues will be decided by the Ethics Hearing Committee or the Ethics Hearing Committee Chair, and these decisions cannot be appealed.

10. Record of the Hearing. A written or summary record of the Hearing will be made by the Ethics Hearing Committee, another NBCC representative, or a stenographer/recorder. Off-the-record conversation may be requested by parties and will not be part of the hearing record.

11. Hearing Expenses. Parties will be responsible for their expenses associated with the case hearing.

12. Closing of the Hearing Record. The hearing record will be closed following the conclusion of the hearing, unless otherwise directed by NBCC. Any party, including the Ethics Hearing Committee Chair, may request that the record remain open for thirty (30) days for the purpose of receiving additional documentary information and proof. The Ethics Hearing Committee Chair may deny requests to keep records open, and such decisions cannot be appealed.

## **SECTION J: ETHICS OFFICER/ETHICS HEARING COMMITTEE DECISIONS AND ORDERS**

1. Ethics Officer Decision and Order. A Decision and Order will be prepared by the Ethics Officer within thirty (30) days of the closing of the case record, or as soon thereafter as practical.

2. Ethics Hearing Committee Decision and Order. A Decision and Order will be prepared by the Ethics Hearing Committee within thirty (30) days of the closing of the hearing record, or as soon thereafter as practical.

3. Contents of the Ethics Officer/Ethics Hearing Committee Decision. The following information will be included in the Ethics Case Decision: (a) a summary of the case, including the positions of the parties; (b) a summary of all relevant factual findings based on the record; (c) a final ruling on each Code of Ethics violation charged; (d) a statement of any disciplinary action(s) and/or sanction(s) issued; and, (e) any other material that the Ethics Officer/Ethics Hearing Committee determines to be appropriate.

4. Contents of the Ethics Officer/Ethics Hearing Committee Disciplinary Order. The order may include any of the following items: (a) an order directing the respondent to cease and desist from any behavior or acts found to be in violation of the Code of Ethics; (b) a statement of the disciplinary action(s) imposed and mandate directing the respondent to comply immediately with these disciplinary action(s); and, (c) any other appropriate directive consistent with the decision.

## **SECTION K: DISCIPLINARY ACTIONS**

1. **Disciplinary Actions Available.** When a respondent has been found to have violated one or more provisions of the Code of Ethics, NBCC may issue and order one or more of the following disciplinary and remedial actions: (a) a recommendation to the Board of Directors and the President/CEO that the NBCC certificant or applicant be ineligible for recertification or certification, and that any reapplication of the respondent for NBCC certification be denied; (b) a requirement that the respondent take appropriate corrective action(s); (c) a private reprimand and censure of the respondent concerning violation(s) found; (d) a public reprimand and censure of the respondent concerning violation(s) found; (e) a term of certification probation for a period of not less than six (6) months and not more than two (2) years, which may include conditions on the respondent's conduct during that period, such as the condition that the respondent be monitored with respect to counseling activities; (f) the suspension of any NBCC certification held by the respondent for a period of not less than six (6) months and not more than two (2) years, which shall include the requirements that the respondent return to NBCC all original or copied credential materials for the suspension period, and immediately stop any professional identification or affiliation with NBCC during the suspension period; and, (g) the revocation of any NBCC certification held by the respondent, which shall include the requirements that the respondent return to NBCC all original or copied credential materials, and to immediately stop any and all professional identification or affiliation with NBCC.
2. **Referral and Notification Action.** NBCC may notify appropriate government or professional bodies of any final disciplinary action taken against a respondent by sending a copy of the ethics case Decision and Order issued by the Ethics Officer, the Ethics Hearing Committee, or the Board Ethics Appeals Committee. Such notification may be sent by NBCC at any point after the time period for the respondent to appeal an adverse decision has lapsed. NBCC will not notify governmental and professional bodies until after a final ruling on the case has been made, if necessary. During an appeal period, NBCC may respond to inquiries concerning ethics cases, and may indicate the existence of such proceedings.
3. **Publication of Disciplinary Action.** Following the lapse of any appeal rights and upon case closure, NBCC may publish or release a final Decision and Order following the issuance of an adverse Ethics Officer, Ethics Hearing Committee, or Board Ethics Appeals Committee Decision and Order or ruling. Any party or interested individual may request publication of any final Decision and Order, consistent with these procedures. However, the Ethics Officer, Ethics Hearing Committee, or Board Ethics Appeals Committee may deny such requests, and such decisions cannot be appealed.

## **SECTION L: BOARD OF DIRECTORS ETHICS APPEALS COMMITTEE**

1. **Board Ethics Appeals Committee.** The Chair of the NBCC Board of Directors shall appoint three (3) or more Directors to serve as the Board Ethics Appeals Committee, which shall be responsible for resolving all appropriate appeals concerning decisions of the Ethics Officer or the Ethics Hearing Committee. The Chair shall appoint a Board Ethics Appeal Committee Chair and Vice-Chair to preside over and conduct each ethics appeal, consistent with these procedures.
2. **Time Period for Appeals to the Board Ethics Appeals Committee.** Within thirty (30) days of the mailing date of an adverse Decision and Order by the Ethics Officer or Ethics Hearing Committee, the respondent may appeal all or a portion of the Decision and Order to the NBCC Board Ethics Appeals Committee pursuant to this Section. Any appeals received beyond this time period will not be reviewed or considered by the Board Ethics Appeals Committee.
3. **Grounds for Appeal to the Board Ethics Appeals Committee.** An adverse Decision and Order of the Ethics Officer or Ethics Hearing Committee may be affirmed, reversed, or otherwise modified by the Board Ethics Appeals

Committee on appeal. However, the grounds for appeal of an adverse decision are strictly limited to the following: (a) Procedural Error: the Ethics Officer or Ethics Hearing Committee misapplied a procedure contained in these rules and prejudiced the respondent's case; (b) New or Previously Undiscovered Information: following the closing of the hearing record, the respondent has located relevant evidence that was not previously in his/her possession, was not reasonably available prior to closure of the record, and could have affected the Ethics Officer or Ethics Hearing Committee Decision and Order; (c) Misapplication of the Ethics Code: the Ethics Officer or Ethics Hearing Committee Decision and Order has misapplied the provisions of the Code of Ethics, and the misapplication prejudiced the respondent; and/or, (d) Contrary to the Information Presented: the Ethics Officer or Ethics Hearing Committee Decision and Order is contrary to the most substantial information provided in the record.

With respect to sub-sections 3(a) and (c) above, the Board Ethics Appeals Committee will consider only arguments that were presented to the Ethics Officer or Ethics Hearing Committee prior to the closing of the hearing record.

4. Contents of Appeal/Letter of Appeal. In order to complete an appeal to the Board Ethics Appeals Committee under this section, the respondent must submit a letter or other document to the Board Ethics Appeals Committee and to the complainant, within the prescribed time period, which contains the following information and material: (a) the ethics case name, docket number, whether the case was decided by the Ethics Officer or the Ethics Hearing Committee, and the date of the Decision and Order; (b) a statement of the grounds for the appeal under Section L.3, above, and a complete explanation of the reasons that the respondent believes that the Decision and Order should be reversed or otherwise modified; and, (c) accurate, complete copies of any information or material upon which the respondent relies in support of the appeal.

5. Appeal Deficiencies. The Board Ethics Appeals Committee may require the respondent to clarify, supplement, or amend an appeal submission.

6. Appeal Rejection. If the Board Ethics Appeals Committee determines that an appeal does not meet the appeal requirements, or otherwise does not warrant further formal review, consistent with the requirements set forth in these procedures, the Board Ethics Appeals Committee will reject the appeal. The Board Ethics Appeals Committee Chair will notify the complainant and respondent of the rejection, as well as the reason(s) for the rejection. Appeal rejection determinations are not subject to appeal.

7. Optional Response to Appeal Letter. Within fifteen (15) days of the mailing date of a respondent's appeal, the complainant may submit to the Board Ethics Appeals Committee a Response to the Appeal by letter or similar document. If submitted, this response must fully explain any objections that the complainant wishes to present to the Board Ethics Appeals Committee concerning the appeal.

8. Request to Appear Before the Board Ethics Appeals Committee. The complainant or respondent may request the opportunity to appear before the Board Ethics Appeals Committee concerning an appeal under this section. The Board Ethics Appeals Committee Chair will determine whether a request to appear before the Committee is accepted. In the event that a request to appear before the Committee is approved, the Board Ethics Appeals Committee Chair may limit the appearance in any manner. Denials of requests to appear before the Board Ethics Appeals Committee cannot be appealed.

9. Board Ethics Appeals Committee Hearings. Within one hundred and eighty (180) days after the submission of a complete appeal, or as soon after as practical, the Board Ethics Appeals Committee will conduct a hearing to determine the outcome and final resolution of the appeal. During the course of appeal hearings, the Board Ethics Appeals Committee members will review: the hearing record; any appeal submissions presented by the parties; and/or, any other information determined to be relevant. Thereafter, the Board Ethics Appeals Committee will determine the outcome of the appeal by majority vote in closed session.

10. Board Ethics Appeals Committee Decisions and Orders. Within thirty (30) days of conclusion of an appeal hearing, or as soon after as practical, the Board Ethics Appeals Committee, by the Committee Chair or the President/CEO, will issue an Appeal Decision and Order stating and explaining the outcome of the appeal. With respect to each appeal, the Board Ethics Appeals Committee Decision and Order shall include the following: (a) a summary of any relevant portions of the Ethics Officer or Ethics Hearing Committee Decision and Order; (b) a summary of any relevant procedural or factual findings made by the Board Ethics Appeals Committee; (c) the ruling(s) and decisions with respect to each matter under appeal; and, (d) the Board Ethics Appeals Committee final Decision and Order affirming, reversing, amending or otherwise modifying any portion of the Ethics Officer or Ethics Hearing Committee Decision and Order, including any disciplinary or remedial action or sanction.

Copies of the Board Ethics Appeals Committee Decision and Order shall be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method.

## **SECTION M: FINALIZING AND CLOSING ETHICS CASES**

1. Events Which Will Cause Closure of an Ethics Case. An ethics case will be closed and all proceedings ended when any of the following occur: (a) following the lapse of any appeal rights, the ethics case has not been accepted and the charges have been rejected as the basis for an Ethics Complaint and Investigation pursuant to these rules; (b) following the lapse of any appeal rights, a final Decision and Order has been issued by the Ethics Officer, Ethics Hearing Committee, or Board Ethics Appeals Committee pursuant to these procedures; or, (c) an Ethics Complaint has been terminated or withdrawn by the complainant(s).

2. Events Which Will Cause an NBCC Ethics Case Decision and Order to Become Final. An Ethics Case Decision and Order that is not appealed will be final. The Decision of the Board Ethics Appeals Committee will be final, and no further appeals are available to any party.

## **SECTION N: REAPPLICATION AND REINSTATEMENT PROCEDURES**

1. Revocation Orders/Reapplication Petition. Five (5) years after the issuance of a final revocation order issued under these rules, a respondent may submit a Petition For Permission To Reapply For Certification (Reapplication Petition) to the NBCC Board of Directors, consistent with the requirements of Section N.4, below.

2. Suspension Orders/Reinstatement Requests. After the expiration of a final suspension order issued under these rules, a respondent may submit a Request For Certification Reinstatement (Reinstatement Request) to the NBCC Board of Directors, consistent with the requirements of Section N.4, below.

3. Probation Orders/Reinstatement or Referral. Following the expiration of a final probation order included with a Final Decision of the Ethics Officer, Ethics Hearing Committee, or Board Ethics Appeals Committee, the Ethics Officer will determine whether the respondent has satisfied the terms of the probation order, and will do the following: (a) if the respondent has satisfied the terms of probation in full, NBCC, via the NBCC Ethics Officer, will immediately verify that the probation has been completed and reinstate the counselor to full certification status; or, (b) if the respondent has not satisfied the terms of probation in full, the Ethics Officer or the President/CEO will refer the case to the final decision maker for review and action consistent with these rules, including, but not limited to, continuation of the probation order, and/or issuance of additional disciplinary or remedial actions concerning the probation terms.

4. Contents of Reapplication Petitions and Reinstatement Requests. Subject to the time requirements above, the NBCC Board of Directors will consider Reapplication Petitions and Reinstatement Requests from those who have

been the subject of a final revocation or suspension orders, respectively. Reapplication Petitions and Reinstatement Requests must include the following information: (a) a statement of the relevant ethics case name, docket number, and the date that the final NBCC Ethics Decision was issued; (b) a statement of the reasons that the respondent believes support or justify the acceptance of the Reapplication Petition or the Reinstatement Request, including a statement explaining why the counselor should now receive NBCC certification; and, (c) copies of any relevant documentary or other material upon which the respondent relies in support of the Reapplication Petition or Reinstatement Request.

5. Board of Directors Reapplication Petition and Reinstatement Request Review. Within ninety (90) days after the submission of a complete Reapplication Petition or Reinstatement Request, or as soon after as practical, the Board of Directors will schedule and conduct a hearing to review and rule on the Reapplication Petition or Reinstatement Request. Each Reapplication Petition or Reinstatement Request will be considered by a quorum of the Board. During these deliberations, the Board will review the information presented by the respondent and any other relevant information. The Board will then determine the final outcome of the appeal by majority vote in closed session.

6. Board of Directors Reapplication Petition and Recertification-Reinstatement Decisions and Orders. Within thirty (30) days of conclusion of the Board of Directors' review of a Reapplication Petition or Reinstatement Request, or as soon as practical, the Board, by the Board Chair or the President/CEO, will prepare and issue a Decision and Order explaining the decision with respect to the Reapplication Petition or Reinstatement Request. The final Board Decision and Order will indicate whether the Reapplication Petition or Reinstatement Request is granted, denied, or continued to a later date. If appropriate, the Decision and Order will indicate any conditions of certification or recertification. Copies of the NBCC Board of Directors Decision and Order will be sent to the parties, via U.S. mail, return receipt requested, or other appropriate delivery method. While no appeal of the Board Decision and Order is permitted by NBCC, the respondent may submit a new Petition or Request pursuant to this Section, two (2) years or more after the issuance of the Board Decision and Order.

Approved by the NBCC Board of Directors: June 21, 2002.

Amended: October 8, 2005; June 6, 2008.

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