

## **SUMMARY OF DIRECTOR'S REVIEW**

### **GRIEVANCE COMMITTEE DECISION**

- A. Grounds for Review
  - 1. Error in dismissal of complaint or Articles/Rules
- B. Type of Review
  - 1. paper review only
  - 2. no hearing
  - 3. Complainant cannot attend
  - 4. Complainant cannot challenge directors
- A. Action of Directors
  - 1. Dismissal of Complaint
    - a. affirm or
    - b. overturn and send to hearing
  - 2. Deleted Articles or Rules
    - a. affirm or
    - b. overturn and send to hearing with original Articles or Rules
    - c. CANNOT ADD Articles or Rules

### **ETHICS HEARING PANEL RECOMMENDATION**

- A. No Request for Review
  - 1. Type of Review
    - a. paper review only
    - b. no hearing
    - c. parties do not attend
    - d. parties cannot challenge directors
  - 2. Directors must accept Findings of Fact as true
    - a. No weighing of the merits
  - 3. Directors must adopt hearing panel decision and recommendation, UNLESS
    - a. Deficient on its face
      - i. discipline excessive or
      - ii. clear lack of due process
  - 4. Action of Directors
    - a. ratify recommendation of hearing panel including recommended discipline
    - b. refer back to same hearing panel with recommendation for modifications
    - c. directors make modifications ONLY if panel refuses and such refusal would subject Association to liability
  - 5. Decision Final
    - a. Upon being entered into minutes of Board of Directors
- B. Request for Review
  - 1. Grounds for Review
    - a. misapplication or misinterpretation of Article or Rule
    - b. lack of procedural due process
    - c. unwarranted discipline

2. Type of Review
  - a. due process hearing
  - b. parties and counsel attend
  - c. parties can challenge directors
3. Directors must accept Findings of Fact as true
  - a. No weighing of the merits
4. Action of Directors
  - a. adopt recommendation of hearing panel including recommended discipline
  - b. dismiss case if findings of fact do not support recommendation
  - c. refer back to same or different hearing panel with recommended modifications
  - d. modify discipline-REDUCE ONLY
5. Decision Final
  - a. Upon being entered into minutes of Board of Directors

### **ARBITRATION PANEL AWARD**

- A. No Request for Review
  1. No review hearing
  2. Action of Directors
    - a. None
  3. Decision Final
    - a. Upon expiration of time to request review
- B. Request For Review
  1. Grounds for Review
    - a. lack of procedural due process
  2. Type of Review
    - a. full due process hearing
    - b. parties and counsel attend
    - c. parties can challenge directors
  3. NO weighing of the merits
  4. Action of Directors
    - a. confirm award
    - b. send back for new hearing before a different panel
    - c. CANNOT modify award
  5. Decision Final
    - a. Court has final authority (100 days to request court to vacate award)
    - b. Moore v. First Bank of San Luis Obispo (2000) 22 Cal. 4th 782.
      - i. Even if legally erroneous, an arbitral decision as to who, if anyone prevailed in a contractual dispute would not ordinarily be reviewable. The contested issues of law and fact submitted to the arbitrator for decision is final and cannot be judicially reviewed for error, because the Arbitrator's resolution of these issues is what the parties bargained for in the arbitration agreement.