
APPENDIX 5: Policies and Rules Governing the Conduct of Hearings:

(see 1980-105, 1989-017, 2003-003, and 2004-025)

Adopted by the
American Mensa Committee
November 29, 1980

Amended March 30, 1985
Amended March 16, 2002
Amended March 29, 2003
Amended March 20, 2004

STATEMENT OF POLICY

These Rules are adopted by the American Mensa Committee ("AMC") in fulfillment of its duty to assure all members of American Mensa, Ltd. ("AML") the opportunity for a fair and impartial hearing of any charges brought under Article IX (5) of the American Mensa bylaws ("bylaws"). These Rules are binding upon all members of AML.

The function of the Hearings Committee is limited to:

1. Receiving and reviewing charges of acts inimical to Mensa;
2. Determining whether sufficient facts have been alleged to warrant a hearing on some or all of such charges;
3. Judging whether or not the preponderance of the evidence presented in a hearing shows the respondent to have committed acts inimical to Mensa;
4. Imposing sanctions, as specified in the bylaws, if the respondent is adjudged to have committed an act or acts inimical to Mensa; and
5. Enforcing these rules.

The Hearings Committee only hears charges of acts inimical to Mensa. The Hearings Committee shall rule only on the facts as presented to it. The Hearings Committee does not exist to resolve personal conflicts between members, nor is it a mediator, arbitrator, or counselor.

All members of the Hearings Committee must maintain an arms-length impartiality in all matters pertaining to charges, or the possibility of charges. Notwithstanding the foregoing, a putative Hearings Committee member who is in the line of succession to the Committee, but not on the Committee as of the time charges are brought, shall not be held to the same standard of arms-length dealing with the Parties as is a standing member of the Committee, but is encouraged to conduct him/herself with the understanding that he/she may be called upon to serve on the Hearings Committee. Members of the Hearings Committee must:

1. Refrain from giving counsel as to whether charges should or should not be filed;
2. Insist that all communications between any individual and a Hearings Committee member with respect to charges or a pending hearing be in writing; and
3. Transmit to the other members of the Hearings Committee all communications received with respect to charges or a pending hearing that have not also been received by the other members.

The Hearings Committee is a standing empowered committee. Its membership is not fixed for the hearing of particular charges until after any challenges to its composition have been decided. Thus, from time to time there may be formed different panels of the Hearings Committee consisting of different members. The three Hearings Committee members finally seated in accordance with these Rules shall be the ones to consider the matter, regardless of subsequent changes in AMC composition that change the makeup of the Hearings Committee under the bylaws. Once charges are filed on a given matter, there will be no changes in the membership of the Hearings Committee, except for those provided for in the bylaws and these Rules.

RULES GOVERNING THE CONDUCT OF HEARINGS

RULE 1

- A. Charges of acts inimical to Mensa may be made by any member or group of members, or by the Advocate or one acting under the authority of the Advocate, or by mandate of a majority vote of the members present and voting at an Annual Business Meeting. The party bringing such charges shall be the "Complainant." The party accused of committing the acts inimical shall be referred to as the "Respondent." The Complainant and the Respondent may together be referred to as the "Parties."
- B. In the event that charges are brought as the result of a mandate from the members at an Annual Business Meeting, the membership shall be the Complainant, and the Chairman of AML shall select one or more Mensa members to represent the Complainant in the matter.
- C. Written communications between the Hearings Committee and the Parties may be transmitted in any form acceptable to the Hearings Committee Chairman (the "H. C. Chair"), including email, fax, regular U.S. Mail, and overnight mail services, but only if the chosen method is available to all of the Parties. The H. C. Chair shall advise the Parties as to which methods shall be acceptable in a given case and the H. C. Chair's decision shall be final. In the event no chosen method is available to all Parties, Regular U.S. Mail shall be the default method. All notices required to be sent to the Parties by the H. C. Chair ("served") shall be deemed served on the day they are sent by the H. C. Chair to the Parties, by whatever means has been selected by the H. C. Chair.

RULE 2

Reserved for future use.

RULE 3

Charges of acts inimical shall be made in writing, signed by the individual(s) making the charges or by the representative of same as defined in Rule 1A or 1B, and contain:

- A. A specific statement of each alleged act inimical (each such statement to constitute a "charge"),

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- B. The name(s) of the individual(s) alleged to have committed each act,
- C. Sufficient facts in support of each charge to convince the Hearings Committee that a hearing is warranted, and
- D. An acknowledgement by each Complainant that s/he understands that knowingly making a false or misleading oral or written statement to the Hearings Committee is an act inimical for which sanctions may be imposed by the Hearings Committee.
- E. A postal address to which communications from the Hearings Committee to the Complainant may be sent, and, if available, an email address and a fax number for the Complainant. Multiple persons filing charges together shall not designate more than one postal address, email address, or fax number.

RULE 4

Charges shall be "filed" by delivering them to the H. C. Chair identified in the most recent Mensa Bulletin. Supporting documentation may be included with the charges. Charges shall be deemed filed on the date they are received by the H. C. Chair.

RULE 5

- A. The Chair shall, within 30 days of the H. C. Chair's receipt of a complaint, send a notice to the other members of the Hearings Committee, the Respondent, and the Chairman of the AMC that a complaint has been filed. The notice shall also identify the charges alleged in the complaint.
- B. The Hearings Committee shall promptly decide whether the facts alleged warrant a hearing on any of the charges. The H. C. Chair shall serve a copy of this decision on each of the Parties, and on the AMC's Chairman, within 60 days after the H. C. Chair's receipt of the complaint. Should the Hearings Committee decide that a hearing is not warranted, the charges will be deemed dismissed and no further action shall be taken on the complaint.
- C. If the Hearings Committee decides to hold a hearing, the H. C. Chair shall promptly:
1. Serve upon the Respondent a copy of any supporting documentation furnished by the Complainant.
 2. Transmit to the Parties a list of the names of the three members of the Hearings Committee as originally constituted, plus the names of any members who have succeeded to the Hearings Committee after the Rule 5(B) decision was issued, and finally a list of the names of every remaining potential member of the Hearings Committee as given in Article IX, section 5(a) of the bylaws of AML, in the order in which they would succeed to Committee membership.
 3. (a) The H. C. Chair shall promptly ask the Respondent whether the charges are contested. If the Respondent advises the H. C. Chair that s/he does not contest the charges, but still wants a hearing to determine penalties, the Respondent may ask for a hearing limited to the penalty phase. If the Respondent does not contest the charges and does not want a hearing, the Respondent may

waive the right to a hearing, and, if such waiver is made, the Hearings Committee may render a decision without actually holding a hearing (Rule 12).
(b) A Respondent's failure to timely cooperate with the Hearings Committee or the hearings process may be considered by the Hearings Committee in rendering a decision on the merits.

RULE 6

- A. If any committee member is incapacitated, elects to withdraw from service, or is otherwise unavailable to serve, that member shall not serve on the Hearings Committee. The resulting committee vacancy shall be filled as set forth in the bylaws. If a new member is added to the Hearings Committee to fill a vacancy, that new member is subject to challenge as provided for below.
- B. Any Party may challenge any members of the Hearings Committee, and any potential members of the Hearings Committee as given in Rule 5(C)(2) above, by filing a written challenge with the H. C. Chair. Any and all such challenges to Hearings Committee members and potential members must be received by the H. C. Chair no later than fifteen calendar days after the H. C. Chair has served upon the Parties the list of Committee members and potential Committee members per Rule 5(C)(2). Each challenge shall state the name of the member being challenged and the reasons for the challenge.
- (1) All challenges to potential Hearings Committee members shall be held in abeyance until such time as the potential member succeeds to Committee membership.
 - (2) The other members of the Hearings Committee, i.e., those members of the Hearings Committee who have not been challenged, shall decide the challenge. If the challenge is sustained, the challenged member(s) shall not serve on the Hearings Committee and the vacancy shall be filled as set forth in the bylaws and these Rules.
 - (3) In the event that all three Hearings Committee members are simultaneously challenged, the Ombudsman shall decide all three challenges. The Ombudsman shall serve copies of this decision on the three members of the Hearings Committee and the Parties, using the method designated by the H. C. Chair under Rule 1(C). The Ombudsman shall only decide challenges if there is no "other member" of the Hearings Committee who is not challenged. Should a challenged member(s) recuse him/herself prior to service of a decision by the Ombudsman, then the Ombudsman shall not issue a decision on any of the pending challenges. The new member of the Hearings Committee, and not the Ombudsman, shall decide the remaining one or two challenges under Rule 6(B)(2). If the new member was also challenged, the decision as to all three challenged members will again revert to the Ombudsman, unless another Hearings Committee member recuses him/herself prior to the Ombudsman's service of his/her decision on the H. C. Chair. The Ombudsman shall decide all three challenges in the same decision.

- C. The Hearings Committee (or Ombudsman, as appropriate) shall notify the Parties, the Chairman of the AMC and the Ombudsman of its decision regarding any and all challenges.
- D. In the event that the list of persons eligible to serve on a Hearings Committee pursuant to the bylaws is exhausted by challenges, recusals, or otherwise, additional Hearings Committee members shall be selected as follows, in accordance with the membership and interest criteria listed in the bylaws for the original Hearings Committee members: first, the three most recent Treasurers who are not currently serving on the American Mensa Committee; then the most recent RVC from each Region who is not currently serving on the AMC, ordered by a random draw conducted by the Ombudsman; then the second-most recent RVC from each Region who is not currently serving on the AMC, ordered by a random draw conducted by the Ombudsman; and then the third-most recent RVC from each Region who is not currently serving on the AMC, ordered by a random draw conducted by the Ombudsman.

RULE 7(A)

If the Hearings Committee determines that a hearing shall be held, the time, means, and venue thereof shall be determined by the Hearings Committee as finally constituted after all challenges have been resolved. The hearing shall not be set for a date sooner than thirty days after notice of the charges has been served upon the Respondent. Notice of the date and venue of the hearing shall be served on the Parties by the Hearings Committee Chair or by the Arbitrator (see Rule 7(B)).

RULE 7(B)

At any time up until seven days after the H.C. Chair has served the notice described in Rule 7(A), the Respondent may waive his/her right to a hearing before the Hearings Committee, and may elect instead to proceed before a single arbitrator to be selected by the American Arbitration Association as the finder of fact. If the Respondent chooses to use an AAA arbitrator as the finder of fact, the AAA process shall be conducted according to the AAA Rules, and shall take the place of Rules 9, 10, and 11 herein. If the Respondent chooses to use the AAA as the finder of fact, the decision of the Arbitrator shall be binding on the Parties."

RULE 8

- A. The Hearings Committee may appoint persons to assist it for any purpose. No person who has any direct interest in the charges may be so appointed.
- B. The Hearings Committee may appoint persons to assist a Party in the interest of providing a fair hearing or to otherwise prevent manifest injustice.

RULE 9

All decisions of the Hearings Committee regarding any matter, at any time, shall be made by majority vote of the Hearings Committee as then constituted. The reasoning behind such decisions shall not be publicly disclosed, but may be disclosed to the AMC, in executive session, in connection with its review of the Hearings Committee's report, if any, pursuant to Rule 13.

RULE 10

The following procedures shall apply to all hearings:

- A. The Parties are responsible for presenting sufficient evidence to support or refute the charges;
- B. Each Complainant shall be offered a reasonable opportunity to present all relevant evidence in support of the charges;
- C. Each Respondent shall be offered a reasonable opportunity to present all relevant evidence in defense against the charges;
- D. The Parties may call and question witnesses in their behalf at the calling Party's own arrangement and expense, and the Parties themselves may be called and questioned as witnesses;
- E. The Hearings Committee shall have the right to call and question witnesses and to question any witness called by the Parties;
- F. Any Party shall have the right to be represented by another person of his or her choosing;
- G. The Hearings Committee may authorize and limit discovery as it sees fit;
- H. All "in person" hearings shall be recorded by audio recording or a similar medium ("verbatim record"), for the sole purpose of assisting the Hearings Committee in preparing its Decision. Such verbatim record shall be retained at the AML National Office until the matter is finally concluded in accordance with Rule 13(E). Once the matter is finally concluded, such tapes shall be retained for a period of time consistent with AML's record retention policy. In the event that a hearing is held as an on-line chat, the verbatim record may be a hard copy printout of such chat signed by each hearings committee member. The verbatim record shall not be made available to any person other than the Hearings Committee members for any reason, except in the event of a discovery request made in a civil litigation where AML is a party, or under court order or subpoena.
- I. If the Hearings Committee permits or requests that any Party file additional documents or written argument, the Party shall transmit copies to the other Parties at the same time such materials are sent to the H.C. Chair. The other Parties shall have ten days after such materials are served in which to file comments or a response with the Hearings Committee, which comments or response shall also be served upon the other Parties.
- J. Hearings shall be deemed "confidential communications" of AML. Attendance shall be limited to the Parties, the Hearings Committee members, persons representing Parties or asked to assist either Party or the Hearings Committee under Rule 8, the Ombudsman (if requested by either Party), any witnesses to be called, and members of AML as non-participating observers. Witnesses may be asked to leave the room for all or part of the hearing other than their own testimony. The Hearings Committee may, during a hearing, determine that all or part of the hearing be closed to observers.

RULE 11

The Hearings Committee shall have broad discretion with respect to the conduct of hearings, including, but not limited to:

- A. Dismissal of charges;
- B. Limiting any testimony that is irrelevant, cumulative or out of order;
- C. Ruling on the admissibility of documentary or physical evidence;
- D. Ordering that witnesses be sequestered;
- E. Ordering that testimony be given under oath;
- F. Ordering that any disruptive person be removed from the hearing; or
- G. Taking any other action that it deems appropriate or necessary for the fair, orderly, and efficient conduct of the hearing.

RULE 12

A decision shall be rendered by the Hearings Committee or by the Arbitrator, as appropriate, as soon as reasonably possible after the hearing. This decision shall delineate findings of fact and shall state whether, in the opinion of the fact-finder, the respondent has committed an act inimical to Mensa.

If the decision states that the Respondent has committed an act inimical to Mensa, then, regardless of whether the decision was rendered by the Hearings Committee or by an Arbitrator, the Hearings Committee shall decide whether a sanction is warranted. The Hearings Committee may ask for written submissions from the parties regarding possible sanctions, and set time limits for receipt of same, but a live hearing need not be held for the sanction phase if the finding of fact was done by an Arbitrator.

Such sanction may be permanent or may expire upon the passage of a specified period of time, upon the occurrence of specified conditions, or both. The Hearings Committee shall report its decision regarding sanctions in writing and shall attach it to the fact-finding decision; together, these two pieces are referred to in the following rules as the Decision.

At least two members of the Hearings Committee must sign a decision for it to be a decision of the Hearings Committee. Minority reports by Hearings Committee members are permitted. Hearings Committee decisions will normally be drafted by the H.C. Chair, but the H.C. Chair may delegate the drafting to another member of the Hearings Committee or to a Rule 8(A) appointee if desired.

RULE 13

- A. After the Decision has been made final, and if such Decision recommends the suspension or expulsion of a member, the Chairman of AML shall cause such Decision to be copied and distributed to all members of the AMC, prior to the AMC meeting at which the Decision will be reviewed. Such material is deemed confidential information of AML and is to be treated as such.
- B. The Complainant and each Respondent facing suspension or expulsion shall have the right, in person or by his or her representative, to address the AMC at

the AMC meeting at which the Decision is reviewed. Each Party intending to address the AMC shall so notify the Chairman of AML such that the notice is received by the AML Chairman or the Executive Director no less than seven calendar days prior to the day of the AMC meeting. Such notice shall also identify any representative who is authorized by the Party and has agreed to speak on behalf of the Party at the AMC meeting.

- C. Each Party shall be permitted to speak to the AMC for a maximum of fifteen (15) minutes. The Complainant may reserve a portion of his or her allotted time for rebuttal. Either Party may request that their presentation be given in Executive Session. Both Parties may be present in such Executive Session for remarks by either Party. After the remarks by the Parties, the Parties shall be excluded from the remainder of such Executive Session.
- D. After the Complainant and the Respondent have been heard (if they have complied with the preceding paragraphs and exercised their rights to speak), the AMC shall vote on whether to accept the Decision. Per ASIE 2001-060, all discussion on such vote, and the vote itself, shall be done in Executive Session. A separate vote shall be taken on each charge for which the Hearings Committee has recommended a sanction of suspension or expulsion.

The AMC shall vote on the portion of the Decision in which the Hearings Committee has recommended a sanction of suspension or expulsion, using options 1, 2, and 3 below. If the Hearings Committee was the finder of fact, the AMC shall also vote on the portion of the Decision in which the Hearings Committee found the facts, using options 4, 5, and 6 below; however, if an arbitrator was the finder of fact, the AMC shall accept without vote the portion of the Decision in which the Arbitrator found the facts.

On each charge for which the Hearings Committee has recommended a sanction of suspension or expulsion, the AMC may:

- 1. concur with the sanction;
- 2. reduce the sanction; or
- 3. eliminate the sanction entirely.

If the Hearings Committee was the finder of fact, the AMC may:

- 4. agree with the findings of fact;
- 5. disagree with the findings of fact and dismiss the charges; or
- 6. disagree with the findings of fact and return the matter to the Hearings Committee for the development of additional facts or for clarification of the decision.

If the Hearings Committee was the finder of fact, the AMC shall vote on the findings of fact before voting on the recommended sanction.

If the matter is returned to the Hearings Committee, i.e., the AMC chooses option 6 regarding the findings of fact, the Decision shall be considered withdrawn. The Hearings Committee shall take such further steps in consideration of the AMC's return of the matter as it deems appropriate. The Hearings Committee shall issue a new Decision that

addresses the AMC's stated concerns within a reasonable time. If the Hearings Committee is unable to agree upon a resolution of the AMC's concerns, the AMC shall either accept the findings of fact and vote on the recommended sanction or reject the findings of fact and dismiss the charges.

- E. Any sanctions imposed that do not require AMC review shall take effect immediately upon service of such Decision on the Parties. Any sanctions approved by the AMC, when necessary, shall take effect immediately after AMC approval.
- F. The matter shall be deemed finally concluded as follows:
 - 1. Upon the Hearings Committee's issuance of the Decision, if no sanction is imposed, or if a sanction that does not include suspension or expulsion of the Respondent is ordered.
 - 2. If a Decision is reviewed by the AMC, when the AMC has voted final action on the matter, which includes any action contemplated in Rules 13(D)(1), (2) or (3); or
 - 3. If the matter is returned to the Hearings Committee pursuant to Rule 13(D)(4), the matter is concluded after the AMC has voted final action on the new Decision to be issued under that Rule, should such AMC vote be necessary. If the result of the return of the matter to the Hearings Committee is a lesser sanction not requiring AMC approval (or no sanction at all), then the provisions of Rule 13(F)(1) shall then apply.

RULE 14

After the matter is finally concluded under Rule 13(E), all documents that relate to the charges and proceedings held shall be forwarded to the Executive Director for storage in the National Office in accordance with AML's record retention policy, after which they shall be destroyed.

RULE 15

The Hearings Committee is not restricted in any way by actions taken by prior Hearings Committees, and is not bound to follow any precedent from prior matters in making decisions on unrelated matters.

RULE 16

A. Each gender used herein shall include the other gender, and singular shall include plural, and vice versa, as the context requires.

B. The Parties may, by mutual agreement and with the approval of the Hearings Committee, extend or shorten any period of time provided under these Rules.

C.

- 1. The reasonable and necessary costs incurred by the members of the Hearings Committee; by the Arbitrator, including AAA fees, if an Arbitrator is used; by persons appointed by the Chairman of AML to act on behalf of the membership; by the Advocate; and by persons appointed by the Hearings Committee to assist it, a Complainant, or a Respondent, shall be borne by AML. Requests for reimbursement of any such costs not paid directly by AML shall be supported by receipts or other evidence of payment, in accordance with then-current AML reimbursement procedures.
 - 2. The Hearings Committee is authorized to spend a reasonable amount for such additional costs incurred in connection with a proceeding before it as it deems necessary and appropriate. Requests for reimbursement of any such costs not paid directly by AML shall be supported by evidence of the Hearings Committee's approval and by receipts or other evidence of payment, in accordance with then-current AML reimbursement procedures.
 - 3. The Executive Committee may authorize payment of such additional costs incurred in connection with a proceeding before the Hearings Committee as it deems necessary and appropriate.
- D. The Parties (except for the Advocate) and their witnesses shall bear their own costs (including legal fees) unless both the Hearings Committee and the AMC vote to approve reimbursement of some or all of such costs.
- E. Amendments to these Rules shall only apply to a matter already initiated upon the unanimous written consent of the Parties.