

CHAPTER 7: HOUSE-LEVEL DISPUTE RESOLUTION; HEARING, APPEALS & DUE PROCESS; DISPUTE ASSISTANCE AND RESOLUTION TEAM; AND MEMBER RESOLUTION PANEL (06/2010-2011)

7.1 HOUSE-LEVEL DISPUTE RESOLUTION: The ICC considers these procedures for resolving disputes a part of its educational mission and is committed to processes which provide both peer review and mediation. This chapter describes various pathways to conflict resolution available in the ICC. Members are expected to settle disputes and address uncooperative behavior at the house level whenever possible, using procedures outlined in their house constitutions and ICC standing rules. Typically one or more informal or alternative resolution options are attempted at the house level before more formal options are enacted. Further resources regarding the conflict resolution process are provided in Chapter 6 of these standing rules and the Supplemental Conflict Resolution Guide, which can be found in the ICC office or by contacting members of Dispute Assistance and Resolution Team (DART: SR 7.3).

7.1.2 The ICC endorses house’s use of an array of both alternative and adjudicative dispute resolution options:

Alternative Dispute Resolution Pathways	
A. Verbal warning	a. Verbal communication issued by two house officers, intended to make an individual aware that a violation has occurred, any remedial actions required, and possible consequences for noncompliance.
B. Written warning or notice	b. Written communication issued by two house officers, intended to make an individual aware that a violation has occurred, any remedial actions required, and possible consequences for noncompliance.
C. Penalty Fines	c. Financial compensation for loss or damages resulting from uncooperative behavior.
D. Penalty Labor	d. Work compensation for loss or damages resulting from uncooperative behavior.
E. Mediation	e. Various methods of alternative dispute resolution carried out by a third party who facilitates communication between disputants in an attempt to help them to identify relevant issues, frame those issues constructively, and seek mutually satisfying agreements.
F. Facilitated dialogue	f. A conversation between two or more persons, guided by a neutral facilitator to increase the potential that the individuals will arrive at a mutually satisfying agreements
G. Restorative	g. Restorative Justice Circles are mediated gatherings that engage

justice	all stakeholders (complainants, respondents, affected house members. etc) in settling a dispute through discussion about the nature of the offense, the harm or loss caused, and the requirements for restoring all the relationships in the community to good standing. Thus, restorative justice is a cooperative process that typically requires an apology from the offender, mutually agreed upon restitution for the offense, and forgiveness from the complainant, house or community.
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Adjudicative Dispute Resolution Pathways	
A. Hearing by House or Member Resolution Panel (SR 7.2, 7.4)	a. A formal process for resolving allegations and/or determining responsibility for uncooperative behavior, including referrals and expulsions. In a hearing, a house or member panel considers testimony and evidence from both sides of a dispute and renders a decision, including remedies and sanctions.
B. Referral (SR 6.7)	b. Referral is a temporary, probationary process that seeks: <ol style="list-style-type: none"> 1. To provide an incentive for members to improve uncooperative conduct. 2. To compensate any loss or damages caused by uncooperative behavior. 3. To notify future houses and ICC administration that a member might be a problem. 4. To document and interrupt patterns of chronic uncooperative behavior. 5. To return a member to good standing and restore all the rights and responsibilities of ICC membership.
C. Expulsion (SR 6.8)	c. Expulsion is the severest penalty that can be imposed on a member of the ICC. Expulsion is the termination of a person’s membership in the ICC with all of the rights and responsibilities contained therein.

7.1.3 DUE PROCESS: Houses are expected to respect due process rights of all parties involved in a dispute and to administer agreements, remedies and/or sanctions in a fair and consistent manner.

7.1.4 HOUSE SANCTIONS: Houses may apply any of the sanctions in SR 7.1.10 as an outcome of a resolution process.

7.1.5 REQUESTS FOR ASSISTANCE: At any time outside of a house-level dispute proceeding, any member (not only the complainant or respondent) may request the assistance of the Dispute Assistance and Resolution Team (DART.)

- 7.1.6 GENERAL MANAGER CONSULTATION:** Houses are required to consult with the ICC President and the General Manager when enacting an expulsion hearing.
- 7.1.7 DART CONSULTATION:** Members and houses are encouraged to work in consultation with DART in resolving the following situations:
- A.** Situations involving sexual harassment or assault, discrimination or prejudicial behavior, mental health or ability issues.
 - B.** Situations which are legally sensitive.
 - C.** Situations in which a house officer, including the President, is directly involved.
 - D.** Situations affecting recruitment or retention.
 - E.** Situations involving multiple houses.
 - F.** Whenever a house feels strongly that they cannot deal with the situation adequately or fairly.
 - G.** Whenever either party directly involved in a dispute requests DART assistance.
 - H.** Situations which constitute a significant threat to the health, safety, or welfare of co-op members; whether or not such actions are also subject to penalties under civil or criminal law.
- 7.1.8 EMERGENCIES:** Any behavior which poses an imminent and immediate threat to the safety of ICC members or property should be promptly reported to the appropriate law enforcement authorities and the General Manager or ICC President. They in turn may activate an Emergency House Operation Team (See SR 8.11)
- 7.1.9 AGREEMENTS, REMEDIES, AND SANCTIONS:** The ICC recognizes and endorses the following list of possible agreements, remedies and sanctions as common and appropriate outcomes of a dispute resolution process. Outcomes of a hearing should embody the interests of all parties involved and the ICC as a whole. Sanctions are designed to promote wellbeing, safety, education, and/or to deter future uncooperative behavior. Appropriate sanctions serve to allow a member to accept the consequences of their actions, make amends, and to be welcomed back into the community in good standing. The following remedial actions are considered appropriate outcomes of a dispute resolution process in the ICC:
- A.** Formal Reprimand
 - B.** Mediation
 - C.** Apology (public or private)
 - D.** ICC or House Service
 - E.** Restitution or Compensation
 - F.** Training or Workshop Attendance
 - G.** Restriction from House officer positions
 - H.** Restriction from Board and Committees

- I. Restriction from entering specific ICC Houses or Properties
- J. Restriction from all forms of contact with certain person(s)
- K. Placement in another room or house
- L. Voiding of future contracts
- M. Restriction from signing future ICC contracts
- N. Restorative Justice
- O. Restriction from specific uncooperative actions.
- P. Referral
- Q. Expulsion
- R. Compensatory Fine
- S. Compensatory labor

7.2 HEARINGS, DUE PROCESS AND APPEALS

7.2.1 HEARING DEFINED: A hearing is a formal process for resolving allegations and/or determining responsibility for uncooperative behavior, including referrals and expulsions. In a hearing, a house or Member Resolution Panel considers testimony and evidence from both sides of a dispute and renders a decision, including all necessary agreements, remedies and sanctions.

A member or body that initiates a complaint or action is known as a “complainant.” The accused member is known as the “respondent.” The ICC considers hearings to be a cooperative effort to reach appropriate resolutions to conflicts whenever informal dispute resolution strategies are inappropriate or ineffective. Further resources regarding the conflict resolution process are provided in Chapter 6 of these standing rules and the Supplemental Conflict Resolution Guide, which can be found in the ICC office or by contacting members of Dispute Assistance and Resolution Team (DART). (See SR 7.3)

7.2.2 HEARING PROCESS: A house or member resolution panel conducting a hearing may derive appropriate procedures as needed, provided that these procedures do not violate the protocols outlined below. The ICC shall recognize as fair and sufficient any hearing which adheres to the following protocols:

- A. **DUE PROCESS:** Houses are expected to respect due process rights of all parties involved in a dispute and to administer agreements, remedies and/or sanctions in a fair and consistent manner. The concept that no one should be assumed to have committed any violation of ICC rules, legal or ethical codes without having a fair hearing in front of people who can judge him or her impartially according to reasonable objective standards and without prejudice. Essential to the fairness of such a hearing is the idea that anyone accused has the right to face their accusers and defend themselves.
- B. **NOTICE:** 4 days advanced written or electronic notice must be given to the member respondents detailing the time and place of the hearing, the alleged grounds for the action, possible sanctions, hearing facilitators or

Member Panelists. A copy of the notice must also be conspicuously posted in the member's house(s).

- C. FACILITATION AND ATTENDANCE:** The following should generally be present at ICC hearings:

 - a. The complainant and respondent
 - b. The facilitator
 - c. A note taker
 - d. Process observer/ time keeper
 - e. Household or Member Resolution Panel
 - f. The Panel Advisor
 - g. Advisors to complainant and respondent
 - h. Witnesses to the facts directly related to the grounds for the hearing.

- D. ADVISORS:** Parties to a dispute may enlist the assistance of an advisor of their choosing in preparation for a hearing, or during a hearing. Advisors may not question witnesses or make presentations at a hearing. Respondents may ask for reasonable breaks during the hearing to consult with their advisor.

- E. CHALLENGE FOR BIAS:** Members may challenge the selection of panelists or facilitator for bias within two days of notification. Bias is defined as prejudice in a general or specific sense, usually having a preference to one point of view or ideological perspective.

- F. EVIDENCE:** Members may present information in the course of the hearing; including oral and written information and witnesses.

- G. CROSS EXAMINATION:** A member respondent may challenge any information presented in a hearing and question any witnesses.

- H. OPEN HEARINGS:** Hearings must be open to all members of the house and other appropriate persons concerned with, or affected by, the issue, however, either party may request a closed hearing per SR: 7.2.3.

- I. RESPONDENT ATTENDANCE:** A member respondent may decline to attend a hearing. The proceedings will continue and the member will be bound by any determinations made.

- J. REFUSAL TO ANSWER:** Member respondents may decline to answer any question. Silence will neither be used as evidence of responsibility for a charge, nor as evidence to invalidate the charges.

- K. FINDINGS AND PROOF:** A finding of responsibility is only acceptable when there is proof that is clear and convincing.

- L. **APPEAL:** Member respondents may file an appeal of the hearing decision within 7 days of receiving notice of that decision.

7.2.3 CLOSED HEARING: To make the process as democratic and transparent as possible, hearings shall generally be open to all ICC members and other appropriate people affected by the case. Exception: ICC bylaw 1.3 requires that all expulsion hearings be open. In special circumstances, DART may decide to hold a closed hearing, using the following criteria as guidelines:

- A. Mutual Request of the complainant and respondent.
- B. If allegations in the case involve issues of sexual harassment or assault, discrimination or prejudicial behavior, mental health or ability.
- C. If there are legally sensitive reasons for requiring confidentiality.
- D. The following people may be present at a closed hearing and must be informed that the proceedings are confidential:
 - i. The complainant and respondent
 - j. The facilitator
 - k. A note taker
 - l. Process observer/ time keeper
 - m. Household or Member Resolution Panel
 - n. The Panel Advisor
 - o. Advisors complainant and respondent
 - p. Witnesses to facts directly related to the grounds for the hearing

7.2.4 ICC APPEAL PROCESS: An appeal is a process for requesting a formal change to an official decision. No decision to place a member on referral shall be overturned or otherwise set aside unless:

- A. It can be proven that there was a prejudicial error or omission in the procedures that seriously impacted the outcome of the case.
- B. It can be proven that the evidence clearly does not support the findings.
- C. Sanctions are insufficient or excessive relative to the violation.
- D. There is new evidence not reasonably available at the time of the hearing.

7.2.4.1 Any member may file an appeal within 7 days of receiving a hearing decision.

7.2.4.2 Hearing decisions by a house may be appealed to a DART Member Resolution Panel.

7.2.4.3 Hearing decisions by Member Resolution Panel may be appealed to The Coordinating Committee.

7.2.4.4 Members having prior direct experience with the case or proceedings under appeal may not participate in the Appeal process, except as witnesses to the original hearing, or to testify in defense of the original decision.

7.2.4.5 Decisions on appeals must be rendered within 14 days of the appeal's submission.

7.2.4.6 All appeals rulings are final.

7.2.5 If a decision is overturned on appeal, the appeals body may either:

- A. Modify the original decision, including any remedies, agreements, sanctions, or deadlines.
- B. Vacate the original decision and recommend a new hearing.
- C. Vacate the original decision and restore the respondent to good standing.

7.3 DISPUTE ASSISTANCE AND RESOLUTION TEAM (DART) AND MEMBER PANEL

7.3.1 DISPUTE ASSISTANCE AND RESOLUTION TEAM: The mission of the Dispute Assistance and Resolution Team is to instill and support a culture of conflict resolution in the ICC which is consistent, balanced and fair. DART encourages resolution strategies that are cooperative, proactive, creative, and peaceful among ICC members and houses. DART is composed of any interested members and advised by the Directors of Education and Member Services.

If a member is not comfortable requesting assistance from DART, they may submit their concern directly to the ICC President instead. In the event that DART involvement creates the appearance of significant personal involvement in a situation – even if there is no suspicion of unethical behavior - one or more persons may be appointed by the ICC President to handle a dispute resolution concern.

7.3.2 DART IS ESTABLISHED TO SERVE ICC MEMBERS IN THE FOLLOWING WAYS:

- A. Listen the concerns of parties or houses interested or engaged in dispute resolution; including reports of uncooperative behavior.
- B. Advise members and houses on appropriate dispute resolution resources, options and relevant ICC rules and policies.
- C. Provide alternative dispute resolution assistance to members and houses, taking care to avoid any situation which might create, or appear to create, a conflict of interest. Such options include mediation, shuttle negotiation, process observation, meeting facilitation and restorative justice circles
- D. Convene a Member Resolution Panel of House Presidents and other interested members on an ad hoc basis to adjudicate cases, including referral or expulsion per SR: 7.3.4
- E. Advocate for fair and equitably administered dispute resolution policies and processes within the ICC.
- F. Track dispute resolution outcomes in the ICC and maintain confidential case files.

7.3.3 THE DISPUTE ASSISTANCE AND RESOLUTION TEAM SHALL ABIDE BY THE FOLLOWING ETHICS IN SERVING MEMBERS AND HOUSES:

- A. **INDEPENDENCE:** DART is independent in structure, function, and appearance to the highest degree possible within the ICC. The DART Chairperson reports

directly to the Board of Directors, and does so in a way that protects the confidentiality of disputants and specific case details.

- B. NEUTRALITY AND IMPARTIALITY:** DART, as a designated neutral body within the ICC, remains unaligned and impartial towards the members and concerns brought to its attention. DART does not engage in any situation which could create a conflict of interest. DART does not advocate on behalf of any individual, house, or issue within the organization.
- C. INFORMALITY:** DART members, as an informal resource, may not participate in any formal adjudicative or administrative procedure related to concerns brought to their attention.
- D. CONFIDENTIALITY:** DART holds all communications with those seeking assistance in strict confidence to the extent provided by law. DART does not disclose confidential communications unless given permission to do so. The only exceptions to this privilege of confidentiality are:
 1. Instances where there appears to be imminent risk of serious harm.
 2. Cases involving legally sensitive issues.
 3. Situations or actions which jeopardize the interests of the membership as a whole or the interests of other co-ops.

7.3.4 MEMBER RESOLUTION PANEL (MRP)

7.3.4.1 Member Resolution Panel: A Member Resolution Panel is an ad hoc judicial panel, convened by DART. Panels are assembled from a voluntary pool and shall be composed of not less than five (5) House Presidents. If the MRP cannot be filled by House Presidents, it may include other interested members. Panelists are selected to minimize conflicts of interest and to insure fairness and impartiality. Member Resolution Panels are convened on a case by case basis. In a MRP hearing, panelists consider evidence, and determine responsibility for the charges, including relevant sanctions, agreements and remedies.

7.3.4.2 Member Resolution Panel hearings are subject to all ICC rules and policies pursuant to referral, expulsion, hearings and due process contained in these standing rules.

7.3.4.3 A Member Resolution Panel decision requires at least a 2/3 majority of voting members present to pass.

7.3.4.4 The DART Member Resolution Panel may agree to hold a referral or expulsion hearing in lieu of a house hearing only in the following cases:

- A. REQUEST BY THE HOUSE:** DART receives a request from a house vote or a petition signed by a majority of house members.
- B. REQUEST BY ANOTHER HOUSE:** Another ICC house (where the individual is not a member) votes to request a hearing.

C. ACTIONS WHICH JEOPARDIZE THE INTERESTS OF THE ICC:
DART determines that the actions of the individual “jeopardize the interests of the membership as a whole or the interests of other co-ops”.

D. PETITION BECAUSE OF INACTION: DART receives a petition of 20% of house members or 8 members, whichever is greater, requesting a hearing and the house has not or will not take action.

E. Cases involving prejudicial behavior, sexual harassment, or other legally sensitive issues.