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## FAQs for Professional Standards Enforcement During COVID-19

These FAQs will assist associations with questions about how to safely enforce the Code of Ethics, including the duty to arbitrate, during COVID-19.

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May an association postpone ethics and arbitration hearings due to COVID-19? [—](#)

Yes. The safety and health of members and staff is the number one priority. In fact, state and local shelter-in-place, or stay-at-home, orders, and other executive orders shutting non-essential businesses, may even prohibit an in-person ethics hearing from being held at this time. In all cases, associations should leverage and offer virtual alternatives to in-person hearings to the greatest extent possible, and consider local, state, and national recommendations, including the [White House](#) and the [Center for Disease Control](#)'s recommendations regarding social distancing, and avoiding in-person gatherings.

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May the 180-day timeframe for filing ethics complaints and arbitration requests be extended? —

No. Associations should encourage such complaints and requests be submitted electronically to the greatest extent possible, but provided the ethics complaints and arbitration requests may be submitted by mail or electronically, extensions should not be provided. Keep in mind, staff should not go to the office to verify receipt in contradiction to any local, state or federal recommendations.

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May the deadline to file for an appeal or a procedural review be extended? —

No. Associations should encourage these requests to be submitted electronically to the greatest extent possible, provided the appeal or procedural review requests may be submitted either by mail or electronically, and that the association is able to take

payment over the phone. Keep in mind, staff should not go to the office to verify receipt in contradiction to any local, state or federal recommendations.

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What if a complaint or request is held or delayed by the United States Postal Service? —

Grievance committees should rely on the postmarked date rather than the date the complaint or arbitration request is received by the association when determining if the complaint or request was timely filed. This is another good reason to encourage submissions be made electronically.

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May Grievance Committee meetings be held virtually? —

Yes. The last paragraph of [Professional Standards Policy Statement 33](#) encourages associations to use conference calls or alternative communication technologies to hold meetings, including Grievance Committee meetings.

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How does a party provide remote testimony? —

Pursuant to [Professional Standards Policy Statement 56](#), parties, their witnesses, and counsel may participate in ethics and arbitration hearings via teleconference and videoconference. Keep in mind that only those parties eligible to attend the hearing in person may be granted permission to attend the hearing remotely, and witnesses may only participate remotely for their own testimony.

If an association elects to hold a remote hearing, the following is a sample revised hearing panel chair's script:

**Swear for Remote Testimony (adjust for affirmation):**

*(Chair) Will you please stand, raise your right hand and one at a time state your name? Do you swear that you are who you say you are, that you are the only person (people, as appropriate) present in the room and that the testimony you are about to give in this proceeding shall be the truth, the whole truth and nothing but the truth so help you God?*

*Let the record show that (all parties, witnesses and counsel [counsel not providing testimony]) have answered in the affirmative.*

**Presentation by complainant (same repeated when respondent's presentation begins):**

*This is a confidential hearing.*

*Are you secluded in a room away from other people?*

(If No): Please find a private location away from other individuals.

See below for sample ethics and arbitration scripts that the Minnesota Association of REALTORS® shares for your consideration that includes a section for remote hearing verifications relating to private locations, no other unauthorized individuals being present, no recording, or accessing devices other than to participate in the electronic hearing, and agreeing to observe these measures throughout the hearing:

· [Example One](#)

· [Example Two](#)

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## How is a remote hearing recorded?

The association should audio record the hearing, and in its discretion, may allow the parties to record the hearing. If the association does not permit the parties to record the hearing, the association should inform all participants in advance that only the association is permitted to record the hearing. The following is a sample opening statement for the chair to remind participants that only the association is authorized to record the hearing:

*Cell phones and other transmitting devices may not be operated during the hearing absent specific, advance authorization from the panel chair. The (\_\_\_\_\_) Association of REALTORS® is recording this hearing; others are not authorized to record the hearing.*

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## How can associations protect member and case confidentiality? May hearings and mediations be held in part—or completely virtual?

Associations should verify the identity of remote participants, ensure the remote participant is alone or in the presence of an unauthorized individual, and should employ appropriate safeguards to ensure the confidentiality of the proceedings.

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## Must an association observe all timeframes in the Code of Ethics and Arbitration Manual (Manual) when processing professional standards cases? For example, what if an

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association decides to have hearing, appeal, and procedural review tribunal members meet physically yet can't meet, for example, because of a shelter in place order?

NAR encourages associations to leverage technology to the greatest extent possible to enable professional standards cases to proceed virtually and electronically. However, where virtual or electronic means are not suitable or possible, associations should make a decision that places the health and safety of members and staff as the number one priority, and in compliance with local, state, and national recommendations, including the [White House](#) and the [Center for Disease Control](#)'s recommendations regarding social distancing, and avoiding in-person gatherings, in mind.

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Due to COVID-19, some members are experiencing financial hardships rendering them unable to pay fines related to Code of Ethics violations. May the association extend the deadline for members to pay these fines?

Yes, [Section 23](#) of the Manual authorizes the association's board of directors to finalize ethics hearing panel decisions. Therefore, the board may grant an extension for satisfaction of the discipline or even "lessen" discipline by, for example, reducing the amount of a previously imposed fine. Considering the circumstances surrounding COVID-19, the board may elect to extend such relief on a general basis or consider requests on a one-off basis.

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May an association require ethics complaints and arbitration requests be submitted electronically?

Given the extenuating circumstances surrounding COVID-19, it is reasonable for associations to encourage complainants to submit ethics complaints and arbitration requests electronically. However,

to avoid a chilling effect on Code of Ethics enforcement, because everyone may not have the ability to make electronic submissions, the association should continue to accept ethics complaints and arbitration requests by physical mail.

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May an association require parties to participate in virtual hearings? —

Yes. Absent a compelling reason, the association may require parties to participate in virtual hearings. NAR policy may be interpreted to permit associations to hold virtual hearings, and now more than ever, a divergence from historical association practice may be appropriate. Given the current pandemic and local, state, and national recommendations, including the White House [Guidelines](#) and Center for Disease Control's [recommendations](#) regarding social distancing and the avoidance of in-person gatherings, virtual alternatives should be leveraged to the greatest extent possible so that professional standards matters may continue to be processed, and to honor one of the important tenants of due process - [expedition](#). Justice delayed is justice denied.

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What if a complainant refuses to participate in a virtual hearing? —

Unless the association's policy states otherwise, the association is not required to obtain all parties consent for a virtual hearing. Absent a compelling reason, if the complainant in an ethics matter fails to participate in a virtual hearing, the matter will be referred back to the Grievance Committee. In such case, the Grievance Committee may elect to become the complainant in the matter (See [Section 21\(f\)\(3\)](#) of the Manual). If, absent a

compelling reason, a complainant in an arbitration matter fails to participate in a virtual hearing, the hearing panel chair may convene the hearing panel to determine whether such failure warrants a dismissal of the arbitration request (See [Section 20\(a\)](#) of the Manual). In all instances, the association should ensure due process is observed, and consult association counsel as necessary.

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What if a respondent refuses to participate in a virtual hearing? —

Unless the association's policy states otherwise, the association is not required to obtain all parties consent to move forward with a virtual hearing. Therefore, absent a compelling reason, the hearing panel may proceed with the ethics hearing without the respondent (See [Section 21\(g\)](#) of the Manual). If a respondent in an arbitration matter refuses to participate and the association has adopted [Option 3 in Section 48](#) of the Manual, the arbitration may move forward without the respondent. If, however, the association has adopted [Option 1 in Section 48](#) of the Manual, a respondent's refusal to participate may result in discipline consistent with [Section 49](#) of the Manual. In all instances, the association should ensure due process is observed, and consult association counsel as necessary.

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May parties submit additional relevant information at the hearing? —

While associations may request information be provided in advance, parties must be allowed to present additional relevant information at the hearing, to be accepted in the Hearing Chair's discretion.



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Does a violation of an executive, or shelter-in-place, order during COVID-19 result in a per se violation the Code of Ethics? —

No. While REALTORS® must adhere to applicable executive, or shelter-in-place, orders, violations of such orders do not automatically constitute a violation of the Code of Ethics. To determine whether a violation of an executive, or shelter-in-place, order also violates the Code of Ethics, a hearing panel will look to whether a specific Article or Standard of Practice applies to the conduct in question. For example, consider where a stay-at-home order prohibits real estate professionals from conducting in-person meetings with customers, but the in-person meeting takes place anyway. Even though conducting the in-person meeting may violate the stay-at-home order, there is no Article or Standard of Practice under the Code of Ethics that prohibits in-person meetings. Therefore, there is no violation of the Code. To learn more about how to navigate Code of Ethics responsibilities during COVID-19, please see this REALTOR® Magazine article: [COVID-19 and the Code](#).



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