

RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE OF THE ONTARIO PROFESSIONAL PLANNERS INSTITUTE

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RULE 1 – INTERPRETATION AND APPLICATION

1.01 Definitions

1.01

In these rules, unless the context requires otherwise, "Agent"

means a person, other than a lawyer;

"Chair" means the Chair of the full Discipline Committee or his or her designate; "defence counsel"

means the lawyer or lawyers retained by or on behalf of a member;

"deliver" means to serve on every other party or, in the case of a motion, motion participant and to file with the Institute Personnel with proof of service, and "delivery" and "delivering" have corresponding meanings;

"Discipline Committee" means the Discipline Committee of the Institute, and includes a panel of the Discipline Committee;

"electronic" with respect to a proceeding means a proceeding held by telephone conference call or some other form of electronic technology permitting persons to hear and communicate simultaneously with one another;

"Institute Personnel" means the employee or employees of the Institute who are specifically assigned the duty of providing administrative assistance to the Discipline Committee;

"holiday" means,

- (a) any Saturday or Sunday,
- (b) New Year's Day,
- (c) Family Day;
- (d) Good Friday,
- (e) Easter Monday,
- (f) Victoria Day,
- (g) Canada Day,
- (h) Civic Holiday,
- (i) Labour Day,
- (j) Thanksgiving Day,
- (k) Christmas Day,
- (l) Boxing Day,
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- (n) any other day designated by the Institute as a holiday;

and where New Year's Day, Canada Day, Christmas Day or Boxing Day falls on a Saturday or Sunday, the day designated by the Institute as a holiday;

"Institute" means the Ontario Professional Planners Institute; "lawyer" means a member of the Law Society of Ontario;

"member" means a member of the Institute who is the subject of a hearing before the Discipline Committee and includes a former member;

"motion" is a request made to the Discipline Committee to make an order in a particular proceeding;

"motion participant" is a party and any other person who would be affected by the order sought in a motion;

"order" means any decision made by the Discipline Committee or by the Chair or, in the context of a pre-hearing conference, by the presiding officer, and includes a direction given by any of the Discipline Committee or the Chair or, in the context of a pre-hearing conference, the presiding officer;

"parties" means the Institute and the member, and "party" has a corresponding meaning;

"presiding officer" in respect of a pre-hearing conference, means the person designated by the Chair to preside over the pre-hearing conference;

"proceeding" means any step in the discipline hearing process and includes a motion, a pre-hearing conference and the hearing itself;

"prosecutor" means the lawyer or lawyers appointed by the Institute to prosecute allegations against one or more members before the Discipline Committee;

“vulnerable witness” means a witness who, in the opinion of the Discipline Committee, will have difficulty testifying or will have difficulty testifying in the presence of a party, for appropriate reasons related to age, handicap, illness, trauma, emotional state or similar cause of vulnerability.

1.02 Interpretations of Rules

1.02(1) These rules shall be liberally construed to secure the just and, where justice for the member would not be compromised, the most expeditious determination of the allegations against the member.

1.02(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

1.02(3) Where a member is not represented by a lawyer, anything these rules require or permit a lawyer to do shall or may be done by the member or by the member’s Agent where the member is represented by an Agent.

1.03 Application of Rules

1.03 These rules apply to all proceedings before the Discipline Committee.

1.04 Computation, Extension or Abridgment of Time

1.04(1) In the computation of time under these rules or under an order, except where the contrary intention appears,

- (a) where there is a reference to a number of days between two (2) events, they shall be counted by excluding the day on which the first (1st) event happens and including the day on which the second (2nd) event happens, even where the words “at least” are used;
- (b) where a period of less than seven (7) days is required, holidays shall not be counted;
- (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

1.04(2) Where a time of day is mentioned in these rules, in an order, or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

1.04(3) The Discipline Committee may extend or abridge any time prescribed by these rules or an order, on such terms or conditions as the Discipline Committee considers just either before or after the expiration of the time prescribed.

RULE 2 –
DOCUMENTS

2.01 Notice to be in Writing

2.01 Where these rules require a notice to be given, it shall be given in writing.

2.02 Delivery of Documents

2.02 Where these rules require a document to be delivered, it shall be served in accordance with subrule 2.03 and filed in accordance with subrule 2.04.

2.03 Service of Documents

2.03(1) A document may be served by:

- (a) leaving a copy of the notice or document with the person to be served;
- (b) sending a copy of the notice or document by mail, registered mail or email to the person to be served at the last address for that person in the records of the Institute;
- (c) sending a copy of the notice or document by courier to the person to be served at the last address for that person in the records of the Institute;
- (d) where the person to be served is represented by a lawyer, sending a copy of the notice or document by mail, courier or email to the person's lawyer;

unless otherwise provided in these Rules or otherwise directed by the Discipline Committee.

2.03 (2) If a copy is sent by mail, it shall be deemed to be received on the fifth day after the day of mailing.

2.03 (3) If a copy is sent by email, it shall be deemed to be received on the day it was sent, unless:

- (a) that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday; or
- (b) the copy was sent between 4:00 p.m. and midnight, in which case the copy shall be deemed to be received on the next day that is not a holiday.

2.03 (4) If a copy is sent by courier, it shall be sent to the most recent address known to the Institute and shall be deemed to be received on the day the copy is signed for by a person at that address.

2.04 Filing of Documents

2.04(1) All documents to be filed in a proceeding shall be filed, with proof of service, with the Institute Personnel, except where they are filed in the course of a proceeding.

2.04(2) Any document may be filed with the Institute Personnel by leaving it with the Institute Personnel or by mailing it or emailing it to admin@ontarioplanners.ca or by sending it by courier to 234 Eglinton Avenue East, Suite 201, Toronto, Ontario, M4P 1K5.

2.04(3) A document filed with the Institute Personnel shall be filed in an envelope clearly marked "Attention: Discipline Committee Institute Personnel" or, where filed by email, with a subject line clearly including "Attention: Discipline Committee Institute Personnel."

2.04(4) A document shall not be considered filed until it is actually received by the Institute Personnel.

2.04(5) A party or, where relevant, a motion participant can confirm whether a document has been filed by telephoning the Institute Personnel.

2.04(6) The person filing a document shall file six (6) copies of the document, unless it is sent by email.

RULE 3 – WAIVER OF A RULE

3.01 Methods of Waiving a Rule

3.01(1) Any provision of these rules may be waived
a) on the consent of the Discipline Committee, the parties and, where applicable, motion participants, or
b) by an order of the Discipline Committee.

3.01(2) A party or motion participant requesting that a provision of these rules be waived who does not have the consent of the other parties and, where applicable, motion participants shall bring a motion to the Discipline Committee requesting the waiver.

3.01(3) A motion under this rule may be made before or after a failure to comply with these rules has occurred.

3.01(4) The Discipline Committee may refuse to grant a motion for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.

3.01(5) The Discipline Committee may waive a provision of these rules on its own initiative if it first gives notice to the parties or motion participants and provides an opportunity for submissions to be made on the proposed waiver.

RULE 4 – WRITTEN SUBMISSIONS TO THE DISCIPLINE COMMITTEE

4.01 Procedure for Making Written Submissions to the Discipline Committee

- 4.01(1) A party or, in the case of a motion, a motion participant, may, with the prior permission of the Discipline Committee, make submissions in writing to the Discipline Committee.
- 4.01(2) Written submissions permitted under subrule (1) shall be made by addressing a letter to the Chair and delivering a copy of the letter in accordance with Rule 2, within the time period specified by the Discipline Committee.
- 4.01(3) The other parties or motion participants may respond to the submissions described in subrule (2) by addressing a letter to the Chair and delivering a copy of the letter within 7 days from the delivery of the submissions described in subrule (2), or within such other time period as may be directed by the Discipline Committee.
- 4.01(4) Where the Discipline Committee has given a direction or made an order before receiving submissions under this rule, the Discipline Committee may reconsider the direction or order and may confirm, vary, suspend or cancel the direction or order.

RULE 5 – MOTIONS

5.01 Initiating Motions

- 5.01(1) All procedural or interlocutory issues shall be raised in a motion as soon as possible and shall be heard on a day that is at least two (2) weeks before the day upon which the hearing is scheduled to commence, or at such other time as may be directed by the Discipline Committee, unless the nature of the motion requires that it be heard during the hearing itself.
- 5.01(2) A motion shall be initiated by the delivery of a notice of motion, unless the nature of the motion or the circumstances make the delivery of a notice of motion impractical.
- 5.01(3) A notice of motion shall;
- (a) identify the moving party;
 - (b) set out the time and place for the hearing of the motion;
 - (c) state the precise relief sought;
 - (d) specify the grounds to be argued, including a reference to any statutory provision or rule, if any, to be relied on;
 - (e) list the affidavits and any other materials to be used at the hearing of the motion;

- (f) identify the name, address and telephone number of the moving party (or the moving party's lawyer) and the other motion participants (or their lawyers).

5.01(4) A notice of motion may be in Form 1A

5.01(5) Unless otherwise directed by the Discipline Committee, a person bringing a motion shall deliver the notice of motion and any materials in support of the motion at least ten (10) days before the motion is to be heard.

5.01(6) Unless otherwise directed by the Discipline Committee, the other motion participants shall deliver their materials, if any, at least three (3) days before the motion is to be heard.

5.02 Scheduling a Motion

5.02 Except for a motion made at a hearing or at a scheduled pre-hearing conference, the moving party shall obtain a hearing date for the motion from the Institute Personnel before delivering the notice of motion.

5.03 Evidence on Motions

5.03(1) Evidence on a motion shall be given by affidavit, unless the Discipline Committee directs that it be given in some other form or unless otherwise provided by law.

5.03(2) All affidavits used on a motion shall,

- (a) be confined to the statement of facts within the personal knowledge of the deponent, except that the affidavit may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit;
- (b) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit; and
- (c) be delivered in accordance with subrules 5.01(5) and 5.01(6).

5.03(3) A motion participant may not cross-examine the deponent of an affidavit filed by another motion participant unless the Discipline Committee directs otherwise.

5.03(4) The Discipline Committee shall not direct that the deponent of an affidavit be cross-examined unless the interests of the case require otherwise.

5.03(5) Subrules (3) and (4) do not prevent a deponent from being cross-examined on the contents of an affidavit during the hearing of the allegation(s) itself.

5.03(6) In addition to any materials delivered under subrules 5.01(5), 5.01(6) and 5.03, a motion participant may deliver a book of authorities and a statement of fact and law

consisting of a concise statement, without argument, of the facts and law relied on by the motion participant. Such books of authorities and statements of fact and law, if any, shall be delivered at least three (3) days before the motion is to be heard, unless otherwise directed by the Discipline Committee.

5.04 Assigning a Motion Panel

5.04(1) Where the parties and motion participants consent, the Chair may, in accordance with sections 4(1) and 4.2.1(2) of the *Statutory Powers Procedure Act* (<https://www.ontario.ca/laws/statute/90s22>) assign a panel of one (1) member of the Discipline Committee to hear a motion respecting the following matters:

- (a) the abridgement or extension of any time prescribed by these rules or by a previous order of a single member panel;
- (b) the holding of a pre-hearing conference, or the terms on which such a conference may be held;
- (c) the form of the hearing, including a request to hold a hearing electronically, or the form of some or all of the evidence to be tendered at the hearing;
- (d) the location of a pre-hearing conference, motion or other proceeding where it is proposed that it not be at the Toronto offices of the Institute; and
- (e) the consequences of non-compliance with a previous order of a single member panel.

5.04(2) Notwithstanding subsection 5.04(1), the Chair shall assign a panel of three (3) members of the Discipline Committee to hear each motion where the nature of the motion requires that it be heard by a three (3) person panel or that the motion be heard during the hearing itself.

5.04(3) A motion participant who believes that the motion ought to be heard by members of the Discipline Committee who will not sit on the hearing panel shall request, in his or her motion materials, a direction from the Discipline Committee on the matter.

5.05 Hearing Motions Electronically

5.05 Motions may be heard electronically in accordance with these rules unless the Discipline Committee directs otherwise.

5.06 Written Order

5.06 After a motion has been determined, the Discipline Committee shall serve on the motion participants its order in writing with respect to the motion, together with its reasons, if any.

5.07 Time Limits on Oral Submissions

5.07 No motion participant shall take more than one (1) hour, including a reply, to make oral submissions on a motion, without the permission of the Discipline Committee.

RULE 6 - PRE-HEARING CONFERENCES

6.01 Initiating Pre-hearing Conferences

6.01(1) The Discipline Committee may direct the parties to participate in a pre-hearing conference.

6.01(2) The Chair shall designate a person to act as the presiding officer at the pre-hearing conference. Such person shall be a Full Member of the Institute.

6.01(3) The presiding officer shall, after consultation with the Institute Personnel, defence counsel and the prosecutor, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date.

6.01(4) The prosecutor, a member of the Institute staff, the member and, where the member is represented by defence counsel, the defence counsel shall attend at the pre-hearing conference.

6.01(5) The presiding officer may direct a pre-hearing conference to be held electronically.

6.02 Pre-hearing Conference Memorandum

6.02(1) Where a pre-hearing conference is directed, the parties shall complete a pre-hearing conference memorandum in accordance with Form 2A.

6.02(2) The Institute shall deliver its pre-hearing conference memorandum twenty (20) days before the date of the conference and the member shall deliver his or her pre-hearing conference memorandum ten (10) days before the date of the conference.

6.02(3) Despite anything in these rules, a member is not required to disclose evidence that would prejudice the member's defence of the allegations and which also is not otherwise disclosable by law.

6.03 Procedure at Pre-hearing Conference

6.03(1) At the pre-hearing conference, the presiding officer shall first discuss the following with the parties:

- (a) whether any or all of the issues can be settled;
- (b) whether the issues can be simplified;
- (c) whether there are any agreed facts; and
- (d) the advisability of attempting other forms of resolution of the matter.

6.03(2) After the discussion referred to in subrule (1), the presiding officer shall discuss with the parties and then may give directions or make orders about the following:

- (a) the adding of parties;
- (b) the scheduling of any motions that can be heard before the hearing;

- (c) the content and timing of any additional disclosure;
- (d) the delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
- (e) the delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Discipline Committee before the commencement of the hearing;
- (f) the scheduling of the hearing;
- (g) the scheduling of any motions that cannot be heard before the commencement of the hearing;
- (h) when the witnesses to be called at the hearing must be available to testify;
- (i) the use and schedule of panels of expert witnesses; and
- (j) any other matter that may assist in the just and most expeditious disposition of the proceeding.

6.03(3) The presiding officer shall prepare a report after the pre-hearing conference, in accordance with Form 2B, listing every agreement reached under subrule (1), every direction given or order made under subrule (2) and every undertaking given by the parties and shall send a copy of the report to the parties.

6.04 Motions at the Pre-hearing Conference

6.04

Where the presiding officer is a member of the Discipline Committee, a party may bring a motion to be heard at the pre-hearing conference in accordance with Rule 5.

6.05 A member of the Discipline Committee or other person who conducts a pre-hearing conference at which the parties attempt to settle issues shall not participate in the hearing into the matter unless the parties consent.

RULE 7 – DISCLOSURE AND PRODUCTION

7.01 Disclosure

7.01(1) The parties shall make such disclosure as is required by law and may make such additional disclosure as will assist to make the pre-hearing conference and the hearing effective and fair.

7.01(2) A party to a hearing shall be given an opportunity to examine before the hearing any documents that will be given in evidence at the hearing.

7.01(3) A person who proposes to lead the evidence of an expert at a hearing shall give any other party, at least ten (10) days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.

7.01(4) Any person who receives disclosure relating to a proceeding before the Discipline Committee, whether under these Rules or otherwise, shall:

- (a) only use the information for the purposes of the proceeding and not for any other purposes; and
- (b) ensure that any other person to whom he or she gives the information undertakes to restrict the use of the information.

7.02 Production of Documents

7.02(1) A summons for the production of documents that are not in the possession of a party shall not require the production of any documents before the commencement of the hearing.

7.02(2) A motion relating to the production of documents that will likely require the examination of the documents by the Discipline Committee, including motions to which the provisions of the *Mental Health Act* (<https://www.ontario.ca/laws/statute/90m07>) may apply, shall not be heard until the commencement of the hearing.

7.02(3) Notice of a motion relating to the production of documents shall be served on the person possessing the documents and on any other person with a significant interest in the documents, including a privacy interest.

RULE 8 – ELECTRONIC HEARINGS AND PROCEEDINGS

8.01 Initiating an Electronic Hearing

8.01(1) The Discipline Committee may order an electronic hearing except where oral evidence is to be heard and a party objects, and provided that any obligation to hold the hearing in public can be met.

8.01(2) Where it proposes to order an electronic hearing, the Discipline Committee shall:

- (a) give notice of the electronic hearing in accordance with section 6 of the *Statutory Powers Procedure Act*, (<https://www.ontario.ca/laws/statute/90s22>) unless the parties waive the requirement; and
- (b) provide the parties with an opportunity to make submissions on the issue in accordance with subsection 6(5)(c) of the *Statutory Powers Procedure Act* (<https://www.ontario.ca/laws/statute/90s22>).

8.01(3) The Discipline Committee may order that part of a hearing be held electronically where the parties consent.

8.02 Procedure on Electronic Proceedings

8.02(1) This rule applies to any proceeding held electronically including motions, pre-hearing conferences and hearings.

8.02(2) At least forty-eight (48) hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the Institute Personnel of the telephone number where he or she can be reached for the proceeding.

8.02(3) Unless otherwise provided in the rules, every person participating in the proceeding shall deliver every document, in sequentially numbered pages, he or she intends to rely upon at least three (3) days before the proceeding.

8.02(4) Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided to the Institute Personnel beginning at five (5) minutes before the proceeding is scheduled to commence.

RULE 9 – NON-PARTY PARTICIPATION

9.01 General Non-Party Participation

9.01(1) A person who is not a party who wishes to participate in the hearing shall bring a motion in accordance with these rules and, despite rule 5.04, the Chair shall assign the panel that will be conducting the hearing to hear the motion.

9.01(2) The notice of motion shall set out the extent of participation the person proposes to have in the hearing and shall be accompanied by the evidence upon which the person intends to rely in support of the motion and written submissions in support of the motion.

9.01(3) If the Discipline Committee allows the person to participate in the hearing, the person shall comply with the rules as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

9.01(4) If the Discipline Committee allows a person to participate in the hearing, the other parties shall apply the rules to the person as much as is practical unless to do so would be inconsistent with the Discipline Committee's determination of the extent of the person's participation in the hearing.

RULE 10 – PROCEDURE DURING THE HEARING

10.01 Vulnerable Witnesses

10.01(1) The Discipline Committee may order that a support person be permitted to be present and to sit near a vulnerable witness while the witness is testifying and may issue directions regarding the conduct of the support person during the testimony of the witness.

10.01(2) The Discipline Committee may order that a vulnerable witness testify outside the hearing room or behind a screen or other device that would allow the vulnerable witness not to see the member if the Discipline Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.

10.01(3) The Discipline Committee shall not make an order under subrule (2) unless arrangements are made for the member, the Discipline Committee and counsel for the parties to watch the testimony of the vulnerable witness by means of closed-circuit television or otherwise and the member is permitted to communicate with defence counsel while watching the testimony.

10.01(4) The Discipline Committee may order that a member not personally conduct the cross-examination of a vulnerable witness, if the Discipline Committee is of the opinion that the order is necessary to obtain a full and candid account of the testimony of the vulnerable witness.

10.01(5) Where the Discipline Committee makes an order under subrule (4), it may appoint counsel for the purpose of conducting the cross-examination.

10.02 Oral and Written Argument

10.02(1) The Discipline Committee may place reasonable limits on the length of oral submissions.

10.02(2) The Discipline Committee may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the hearing and may give directions as to the form and timing of such written arguments.

10.03 Access to Hearing Record by the Public

10.03 If a member of the public wishes to have access to all or part of the record of the Discipline Committee, he or she shall bring a motion before the Discipline Committee upon notice to the parties, and such motion shall be made, considered and decided in writing by the Discipline Committee or by a panel of the Discipline Committee appointed by the Chair, without an oral hearing.

10.04 Electronic Devices and Publications of Proceedings

10.04(1) No person shall:

(a) take or attempt to take a photograph, motion picture, audio or video recording or other recording or other record capable of producing visual or aural representation by any means,

(i) of any person at a hearing of the Discipline Committee,

(ii) of any person entering or leaving a hearing of the Discipline Committee, or

(iii) of any person in the building in which a hearing of the Discipline Committee is held, where there is a reasonable ground for believing that the person is there for the purpose of attending the hearing; or

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or other record taken in contravention of clause (a).

10.04(2) Subrule (1) does not apply to:

- (a) a person unobtrusively making handwritten or typewritten notes or sketches at a hearing;
- (b) a party or an Agent or lawyer representing a party unobtrusively making an audio recording at a hearing that is used only as a substitute for handwritten or typewritten notes for the purposes of the hearing;
- (c) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee for any purpose of the hearing; or
- (d) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee and the consent of the parties and of the witnesses to be recorded, for such educational or instructional purposes as the Discipline Committee approves.

RULE 11 – GIVING NOTICE OF FINAL DECISION

11.01 Giving Notice of Final Decision

11.01 The Discipline Committee may send each party a copy of its final decision or order, including the reasons, in accordance with any of the methods of service set out in Rule 2.03, in which case the final decision or order, including the reasons, shall be deemed to be received in accordance with the applicable provisions of Rule 2.03.

RULE 12 – COSTS

12.01 Costs for Non-compliance with Rules

12.01 Where the Discipline Committee makes an order against a member regarding the award and the payment of costs of a proceeding, the Discipline Committee may consider the failure of a party to comply with these rules.