



# DISCIPLINARY PROCEDURES

*As of June 25, 2008*

## **1 -Preamble:**

An alleged violation of the Association's Code of Ethics or Rules of Professional Conduct and the Uniform Standards of Professional Appraisal Practice (USPAP) is a very serious matter, calling for a careful consideration of the facts alleged and for a fair, impartial and evenhanded disposition of the allegation. Canada and the United States share a common bond in English law: a person is always presumed to be innocent until proven guilty. Thus, a member charged is likewise presumed not to have committed the Code or Rule infraction of which he or she is accused. Both countries also share the concept of "due process", ensuring that an accused individual receives his or her "day in court."

In light of these principles, it should be clearly understood that the burden of proving the allegations against a member so accused rests with the accuser, the Investigation Committee and/or other fact finders. The member accused has no duty or obligation to prove that he or she did not commit the alleged ethics violation; the mere fact that such a member may not choose to offer facts or testify in his or her own behalf shall not constitute an admission of a violation.

## **2 -Confidentiality:**

All written Complaints, Letters of Charge or other documents pertaining to an alleged ethics violation shall be deemed to be confidential, and identification of the complainant shall not be released to anyone except the Member Charged, and those members of the Association responsible for investigation of Complaints and the administration of these Disciplinary Procedures.

## **3 -Definitions:**

- A. "Association" means the International Right of way Association (IRWA).
- B. "Code" means the Code of Ethics of the Association.

C. "Committee" or "IETHC" means the International Ethics Committee of the Association; where action by the Committee is indicated, the term also means the Chair of the IETHC.

D. "Complainant" means the person or persons signing and submitting the Complaint.

E. "Investigation Committee" means the chapter-level committee that is charged with investigating alleged ethics violations.

F. "Letter of Charge" means notification by the International Ethics Committee to a Member Charged that probable cause has been found so as to merit the impaneling of a hearing committee to formally inquire into the allegation(s) raised against such member.

G. "Member" means any member, including Senior members, Senior Candidates, and Certified members, whose membership is in good standing with the Association.

H. "Member Charged" means any member who has been alleged to have committed an ethics violation.

I. "Probable Cause" means an apparent state of facts found to exist upon reasonable inquiry (that is, such inquiry as the given allegation renders convenient and proper) which would induce a reasonably intelligent and prudent person to believe that the member charged has committed an ethics violation.

J. "Rules" means the Association's Rules of Professional Conduct.

K. "Standards" means the Association's Standards of Practice for the Right of Way Professional.

#### **4 -Disciplinary Actions:**

A. "Admonishment" means a written warning calling the attention of the member to a violation of the Code or Rules. An admonishment is not entered into the Member Charged's record. It is not published or made known to the membership or the general public. Additional disciplinary action of an educational nature may be required where the type of violation indicates this to be necessary or desirable.

B. "Reprimand," means a serious written warning calling the attention of the Member Charged to a violation of the Code or Rules. A reprimand is entered into the Member Charged's record for a period of two (2) years after official notification of the reprimand has been given. It is not published or made known to the

membership and/or the general public. Additional disciplinary action of an educational nature may be required where the type of violation indicates this to be necessary or desirable.

C. "Censure" means a formal written expression of criticism and disapproval for violation of the Code or Rules. A censure shall be entered into the Member Charged's record. The Censure shall be published in Right of Way Magazine, and may be published in chapter newsletters, and/or other sources of information to the membership and the general public. Additional disciplinary action of an educational nature may be required where the type of violation indicates this to be necessary or desirable.

D. "Suspension" means a temporary revocation of the rights and privileges of membership in the Association.

1. A suspension commences three (3) days following the dispatch by registered or certified mail, return receipt requested, of the order of suspension and ends upon expiration of the period of time stipulated therein, or two (2) years, whichever period is lesser.

2. During the suspension period, the suspended person may not hold himself or herself out as a member of the Association in any manner, nor shall he or she be permitted, during the period of suspension, to take any Senior or Certified examination conducted by the Association.

3. Immediately upon receipt of notice of suspension, a suspended person shall transmit to International Headquarters his or her general, Senior, Senior Candidate and/or Certified membership certificate(s), membership card, membership pin(s), seal and any other evidence of membership to the Association to be held for the period of such suspension.

4. At the expiration of the period of suspension, and subject to any additional disciplinary educational requirements having been fulfilled, the suspended person shall automatically be restored to previous membership status, and the evidence of membership shall be returned to him/her. However,

a.) A Senior member so suspended shall not be reinstated as a Senior member unless he or she enrolls as a candidate and successfully completes all requirements of the Senior program in effect as of the date of expiration of the period of suspension;

b) A Senior Candidate so suspended shall not be reinstated with candidate status but must re-enroll in the candidate program;

c.) A Certified member so suspended shall not be reinstated unless he or she enrolls as a Certified member and completes all requirements of the Certified program in effect as of the date of expiration of the period of suspension.

5. Although a suspended person is not entitled to the rights and privileges of membership and may not refer to his or her affiliation with the Association, he or she remains a basic member for all other purposes, including payment of dues, and any failure to conform to the Code or Rules shall be grounds for further disciplinary action. A suspension shall be published in Right of Way Magazine, and may be published in chapter newsletters and/or other sources of information on the membership and the general public. It will remain permanently on his/her record.

E. "Expulsion" means a complete termination of membership or any affiliation with the Association.

1. An expulsion becomes effective seventy-two (72) hours following receipt by registered or certified mail, return receipt requested, by the Member Charged of the notice of his or her expulsion.

2. Immediately upon receipt of such notice, the expelled person shall transmit his or her general, Senior, Senior candidate and/or Certified membership certificate(s), membership cards, membership pin(s), seal and any other evidence of membership in or affiliation with the Association. All reference to membership in, or affiliation with, the Association must, in whatever form, immediately and henceforth cease.

3. Expulsion shall be published in Right of Way Magazine, and may be published in chapter newsletters or other sources of information to the membership and the general public.

4. The grounds for expulsion of a member shall include but not be limited to the following:

a) Conviction of a felony;

b) Conviction of any act discreditable to or inimical to the best interest of the Association;

c) A proper showing that the Member Charged's application for membership, at the time that membership was granted, was materially falsified, or that he or she knowingly failed to give

complete, factual information in said application, which information, had it been submitted, would have resulted in denial of his or her application for membership in the Association; and

d) A proper finding that the Member Charged has been dishonest or has lied and knowingly and materially misrepresented or withheld information in the course of his or her right of way professional activities.

## **5 -Complaints:**

A. Before any action is taken to discipline a member, a written and signed Complaint must be made by a Complainant PROVIDED, however, that a notice of conviction of any local, state, provincial or federal felony or indictable offense statute, or any misdemeanor or summary conviction statute which reflects adversely upon the professional character, trustfulness, morality or reputation of a member, shall be deemed to be a Complaint, as shall a notice that any other professional organization to which the Member Charged belongs and/or any licensing or regulatory agency under which he or she is licensed or otherwise regulated, has censured, suspended or expelled the Member Charged.

B. Such Complaints shall be referred immediately to the President of the Chapter to which the Member Charged who is the subject of the complaint belongs. In the event that the Member Charged is the member of two or more chapters, his or her primary chapter shall have jurisdiction.

C. The Chapter President shall acknowledge in writing his or her receipt of the Complaint to the Complainant within ten (10) days and shall advise that the matter will be referred to an investigating committee for review as to probable cause.

D. The Chapter President shall also notify in writing the Member Charged that a Complaint has been filed, and he or she shall provide the Member Charged with a copy of the Complaint, together with a copy of the Code of Ethics, Rules of Professional Conduct, Standards of Practice for Right of Way Professionals, and these Disciplinary Procedures. If the alleged ethics violation involves an alleged violation of USPAP, the Member Charged shall be informed that a copy of the latest USPAP edition will be furnished if he or she requests in writing a copy thereof.

E. The Chapter President shall send copies of such notices, together with all attachments thereto, to the IETHC Chair.

F. A Complaint may be withdrawn by a Complainant at any time during the disciplinary process prior to the adjournment of a chapter-level Hearing Board into an executive session as described in section 11. Hearing Board, below.

#### **6 -Appointment of Investigating Committee: Probable Cause Investigation:**

A. The Chapter President shall thereupon establish an Investigating Committee comprised of two (2) members of the Member Charged's Chapter to be appointed by the Chapter President and one (1) member to be appointed by the IETHC Chair. The latter appointee shall be a member of a Chapter within the Member Charged's Region other than his or her own Chapter. At least one (1) of the members of the Investigating Committee shall be an SR/WA.

B. The Investigating Committee shall elect a Chair who shall coordinate the Investigating Committee's review of the Complaint to determine the existence of probable cause. The Investigating Committee shall consider such matters as the seriousness of the charges, whether or not the conduct complained of is a violation of a specific Code or Rules provision, the relationship of the Complainant and the Member Charged, the professional standing and veracity of the parties and witnesses, and such other facts as the Investigating Committee deems appropriate. It may also interview the Complainant, the Member Charged or any other person it feels is necessary to aid in its investigation. The Investigating Committee shall complete its investigation within forty-five (45) days of the receipt of the Complaint from the Chapter President.

C. After such investigation, the Investigating Committee shall make one of the following findings:

1. That there is no probable cause to believe that the Member Charged has committed an ethics violation and, therefore, the Complaint should be dismissed;
2. That there is probable cause to believe that the Member Charged has committed (an) ethics violation(s) (which shall be specifically identified) and that the Member Charged should receive an admonishment or a reprimand;
3. That there is probable cause to believe that the Member Charged has committed (an) ethics violation(s) (which shall be specifically identified) and that the disciplinary action could result in censure, suspension or expulsion.

#### **7 -Investigating Committee Finding of No Probable Cause:**

If the Investigating Committee makes a finding of **no probable cause**, the Chapter President and the IETHC Chair shall be so notified in writing by the

Investigating Committee Chair. The Chapter President shall immediately give written notice of such finding to the Complainant and to the Member Charged, and the Complaint shall be dismissed and all files pertaining thereto shall be destroyed.

## **8 -Investigating Committee Finding of Probable Cause:**

A. "Admonishment or Reprimand" -If the Investigating Committee makes a finding of probable cause with a recommendation that the Member Charged receive an **admonishment or reprimand**, the Chapter President and the IETHC Chair shall be so notified in writing by the Investigating Committee Chair. Thereafter, the Chapter President shall notify the Member Charged in writing by registered or certified mail, return receipt requested, of the Investigating Committee's findings and recommendations, and shall allow the Member Charged twenty (20) days from his or her receipt of such written notice to respond thereto. The Member Charged may respond orally and/or in writing. After due consideration is given to the Investigating Committee's recommendations and all responses offered by the Member Charged or additional information by other parties, the Chapter President shall make a finding in writing and shall make a disposition of the matter in accordance with his or her finding. The Chapter President shall notify the Member Charged in writing by registered or certified mail, return receipt requested, of his or her decision in the matter, with a copy to the IETHC Chair, the Complainant and the members of the Investigating Committee, and in the event that an admonishment or reprimand is imposed, a copy of the admonishment or reprimand shall in turn be provided to International Headquarters by the IETHC Chair..

B. "Appeal" -In the event that the Member Charged receives an **admonishment or reprimand**, he or she may, within ten (10) days of his or her receipt of the admonishment or reprimand, give written notice of his or her decision to appeal to the IETHC Chair by registered or certified mail, return receipt requested. If no appeal notice is made or received by the IETHC Chair within the said ten-(10) day period, there shall be no further appeal.

C. If there is a timely appeal filed, the IETHC Chair shall consider the appeal and render a decision within thirty (30) days of his or her receipt of the said notice of appeal. The written decision of the IETHC Chair shall be sent to the Chapter President, the Complainant, and the Member Charged; there shall be no further appeal from an admonishment or reprimand, and the Complaint shall be disposed of in accordance with the IETHC's decision.

D. "Censure, Suspension or Expulsion" -If the Investigating Committee makes a finding of probable cause with a recommendation or notation that the discipline could involve censure, suspension or expulsion, the Complaint shall be handled as set forth in Section 9, below.

## 9 -International Ethics Committee Review; Letter of Charge:

A. In the event of a finding of probable cause involving the possible censure, suspension or expulsion of the Member Charged, the Investigating Committee Chair shall immediately forward to the Chapter President a full and detailed written report of its investigation including a recitation of facts supporting its conclusions. The report, together with the entire investigation file, shall be immediately transmitted to the IETHC Chair for action.

B. Upon receipt of the said report and file, the IETHC Chair shall notify the Member Charged of the pendency of the IETHC's review.

C. The IETHC Chair shall review the findings of the Investigating Committee and may request additional information from the said committee, the Complainant, the Member Charged, and/or any other person. Such review shall be completed within thirty (30) days of receipt of the report and file.

D. In the event that the IETHC Chair finds that **no probable cause** in fact exists, the Complaint shall be dismissed, the files shall be destroyed and all parties shall be notified of such dismissal..

E. In the event that the IETHC Chair finds that **probable cause exists** but that the Member Charged should be **admonished or reprimanded**, he or she shall so notify the Chapter President and the matter shall proceed as provided in section 8(A), above. However, due process having been satisfied with respect to the Complaint, there shall be no further appeal from the Chapter President's action.

F In the event that the IETHC Chair agrees with the Investigating Committee's conclusions, he or she shall prepare a formal Letter of Charge which shall be sent to the Member Charged by registered or certified mail, returned receipt requested, with copies to the International President, the International President-Elect, International General Counsel, and the Chapter President. The said Letter of Charge shall include:

1. A copy of the Complaint;
2. The name of the Complainant;
3. The specific Ethics Code or Rule sections allegedly violated;
4. A review of the facts which support the finding of probable cause which could result in censure, suspension or expulsion;

5. and copies of the Code of Ethics, Rules of Professional Conduct, Standards of Practice for Right of Way Professionals and these Disciplinary Procedures.

#### **10 -Letter of Charge Answer Period:**

A. The Member Charged shall have thirty (30) days from his or her receipt of the Letter of Charge to answer the Letter of Charge. If the Member Charged fails to respond to the Letter of Charge within the said thirty (30) day period, the IETHC Chair shall render a decision to censure, suspend or expel the Member Charged and shall so notify the Member Charged by registered or certified mail, return receipt requested, with copies to the International President, International President-Elect, International General Counsel, the Complainant, and the Chapter President. There shall be no further appeal and the International Headquarters shall note the action taken in accordance with the IETHC Chair's directions.

B. If, within the said thirty (30) day period, the Member Charged makes a written answer to the Letter of Charge and either denies the charges in whole or in part, or admits the charges in whole or in part, but requests a hearing in mitigation of any discipline which may be imposed, the IETHC Chair shall order the Chapter President to convene a Hearing Board within thirty (30) days.

#### **11 -Hearing Board:**

A. A three (3) person Hearing Board comprised of Association members of the Member Charged's Chapter (excluding members of the Investigation Committee), at least one of whom shall be an SR/WA, shall be selected as follows:

1. One shall be appointed by the Chapter President
2. One shall be appointed by the Member Charged; and
3. One shall be appointed by the above appointees.

B. In the event that either the Member Charged or the appointees fail for any reason to make their appointment(s) within fifteen (15) days of the Chapter President's appointment, the IETHC Chair shall make such appointments in their behalf.

C. The Hearing Board shall convene a hearing within forty-five (45) days of its appointment and choose a chair and determine its own rules of evidence and

procedures to be followed in hearing evidence. The Member Charged, and an Investigating Committee member acting on behalf of the said committee as "civil prosecutor", shall have the right to be represented by counsel so long as counsel adheres to the procedure established and the procedural rulings handed down by the Hearing Board. The Member Charged shall have the right to cross-examine witnesses called by the Investigating Committee and to have witnesses of his or her own appear and testify. The Investigating Committee's civil prosecutor shall have the same rights.

D After the conclusion of the hearing, the Hearing Board shall meet in Executive Session and shall prepare a written report of its findings and recommendations for disposition. Within thirty (30) days the Board Chair shall send a confidential report with findings and recommendations of the Board to the IETHC Chair. Within thirty (30) days, or as soon as practicable thereafter, the IETHC Chair shall advise the Chapter President if the report and recommendations have been accepted or rejected, in whole or in part. The IETHC Chair may also refer the case back to the Chapter for additional investigation, and/or for a new hearing, or may dismiss the case.

E. The IETHC Chair shall advise the Member Charged in writing, by registered or certified mail, return receipt requested, of the findings and disciplinary action taken. There shall be **no appeal** if the disciplinary action involves **admonishment or reprimand**.

## **12 -Appeal/Appeals Board:**

A. If the disciplinary action involves **censure, suspension or expulsion**, the Member Charged may, within ten (10) days of his or her receipt of the IETHC Chair's findings as referenced in Section 11(E), send a written notice of appeal of the matter to the International President by registered or certified mail, return receipt requested; the International President shall convene an Appeals Board consisting of the International General Counsel (or special counsel) and two members of the International Executive Committee (IEC). The disciplinary action recommended by the Chapter Hearing Board and the IETHC Chair are thereupon stayed pending the outcome of the appeal.

B. The Appeals Board, in its sole option, may limit its review to the written record, or may ask for additional oral or written comments from the Member Charged, the Complainant, or any other party.

C. The Appeals Board shall, within thirty (30) days, render a decision from which there shall be no further appeal, and shall notify the Member Charged in writing by registered or certified mail, return receipt requested, of the said decision. The

IETHC Chair shall also receive a copy of the Appeals Board's decision and shall take appropriate action on the Association's behalf, to execute the disciplinary action ordered.

### **13 -Complaint Resolution by Mutual Agreement:**

Complaints may be resolved by mutual agreement of the Member Charged and the Association, provided that the terms and conditions of such agreement are approved in advance by the IETHC Chair.

### **14 -Resignations:**

A. A Member Charged may voluntarily tender to the Chapter President his or her resignation from the Association at any time during the disciplinary proceedings. Notice of such resignation *may* be published in Right of Way magazine, chapter newsletters and/or other sources of information to the membership and the general public. However, whenever such resignation is tendered *after* the chapter-level Hearing Board adjourns to executive session, a notice of such resignation *shall* be published in Right of Way magazine and in the member's chapter newsletter and may be published in other newsletters and/or sources of information to the membership and the general public.

B. Any such notice shall read substantially as follows:

**(Person's Name), of Chapter # \_\_\_\_, Region #\_\_\_\_\_, has given notice of his or her voluntary withdrawal of membership in the International Right of Way Association, effective immediately [or a date certain, which ever is applicable.]**

C. When such resignation occurs after the chapter-level Hearing Board adjourns into executive session, International Headquarters shall note the circumstances of such resignation in the charged member's file, and may publish the details in Right of Way Magazine, and also in chapter newsletters and other sources of information to the membership or the general public.

D. Nothing herein shall preclude publication in any Association publication of an article or other notice of conviction of any member of any local, state, provincial or

federal felony or indictable offense statute or any misdemeanor or summary conviction statute which reflects adversely upon the professional character, trustfulness, morality or reputation of a member and/or a notice of the suspension or expulsion of a member from any other professional organization and/or licensing body or authority. Such publication is considered generally newsworthy, and may be made regardless of whether a Complaint has been filed.

#### **15 -Dues Abatement; Jurisdiction Retained:**

After the filing of a Complaint, and pending a resolution thereof pursuant to these Disciplinary Procedures, the Association shall abate the dues of the Member Charged, including any Senior, Senior Candidate, and/or Certified member fees, in the event that such are not paid when due by the Member Charged. The Member Charged shall thus continue to enjoy all benefits, duties and obligations of Association membership during such abatement period, and the Association shall retain jurisdiction over the Member Charged pending Complaint resolution. Upon final resolution of the Complaint, the Member Charged shall promptly pay any abated dues and/or fees EXCEPT in the case where he or she is expelled or resigns from the Association.

#### **16 -Time Extensions:**

The times within which actions are to be undertaken pursuant to these Disciplinary Procedures may be extended by the particular person or committee responsible for such actions when, in the sole opinion of such person or committee, good cause for any such extension has been demonstrated. However, any extensions involving appeals shall be granted only by the IETHC Chair and only when such extension is requested in writing and within the appeal time.

#### **17 -Reinstatement:**

A. No former member who has been expelled by the Association shall be reinstated sooner than five (5) years from the date of his/her expulsion.

B. Two or more written letters of recommendation attesting shall accompany any reinstatement request as to the good character of the said former member. Such reinstatement request shall be reviewed by the chapter from which the former member was expelled, with final approval vested in the IETHC Chair. Both the chapter and the IETHC Chair shall conduct a complete review of the said former member's current status, and must make findings that, among other matters, the said former member is not under the control or supervision of any criminal justice system.

C. There shall be no appeal from a decision not to readmit any such former members.

D. No such reinstatement to membership shall include a reinstatement to Senior membership, Senior Candidate or Certified member status.

#### **18 -Succession:**

A. Whenever a Member Charged is a person holding an office or position which would mandate participation in the disciplinary procedures set forth by these Disciplinary Procedures (including, but not limited to, a member of the IEC, the IETHC Chair, a Chapter President, etc.) the function of that person shall be undertaken by the officer charged with succeeding to the duties of the position held by the member charged. (By way of example and not limitation, if the member charged is a Chapter President, the Chapter Vice President shall undertake the duties of a Chapter President under these Disciplinary Procedures). Whenever the line of succession is unclear, International General Counsel shall establish such succession.

b) The said succession shall also apply to situations where the particular officer advises the IETHC Chair that he or she cannot participate in the disciplinary proceedings due to a conflict of interest or other good reason.

#### **19 -Special Provision for New Applicants:**

No new applicant for Association membership who has been convicted of any local, state, provincial or federal felony or indictable offense statute, or any misdemeanor or summary conviction statute which reflects adversely upon the professional character, trustfulness, morality or reputation of a member shall be approved for membership by any chapter without the recommendation of at least two (2) persons attesting to the good character of the applicant and only upon a complete review of the Chapter Membership Committee of the applicant's current status and a finding that the applicant is no longer under the jurisdiction or control of the criminal justice system. A decision to deny the application shall not be appealable by the new applicant.

#### **20 – Special Provisions for At-Large Members:**

In the event that the Member Charged is an At-Large member of the Association, the provisions of these Disciplinary Procedures that are executed at the Chapter level shall be executed by the Chapter President of chapter selected by the IETHC Chair in

conjunction with the International General Counsel, which said Chapter shall be reasonably convenient to the member charged's domicile or work place at the time of the filing of the Complaint.

**21 – Posting of notices; whereabouts of addressee unknown or the refusal by the addressee of notices sent by registered or certified mail, return receipt requested.**

All notices required to be mailed shall be mailed by pre-paid first-class mail except where these Disciplinary Procedures specifically require notice by registered or certified mail, return receipt requested. If such registered or certified mail is returned because the addressee's whereabouts are unknown, a copy thereof shall be sent to the addressee's last known address. In the event that such registered or certified mail is, for any reason, refused by the addressee, a copy thereof shall be sent to the addressee by first class mail. In either case, the addressee shall be considered properly served as of, and all deadlines shall be tolled from, the date that the said copy was posted into the mail.