



# Code of Conduct Complaint Procedures

*Adopted February 10, 2022*

These Code of Conduct Complaint Procedures (the Procedures) shall govern the receiving, examining, and resolving of complaints that a NYSBA member has violated the NYSBA Code of Conduct (the Code). The NYSBA will seek to resolve complaints in a way that best advance the goals of the making the beer industry and society a better place. Resolution will favor education and self-remediation, backed by possible sanctions up to and including removal of a member as authorized in Article III, Section 3.11, of the NYSBA By-Laws.

## **A. Filing a Complaint**

1. Any professional division member (voting or non-voting) or group of members of the NYSBA may file a complaint against another professional division member or group of members at any time relating to conduct occurring after the effective date of the Code, which is February 10, 2022. Members must submit complaint in writing, via completing the Member Complaint Intake Form by logging onto [www.Wevow.com/New-York-State-Brewers-Association](http://www.Wevow.com/New-York-State-Brewers-Association).
2. A member must file a complaint by completing the intake form available at [www.Wevow.com/New-York-State-Brewers-Association](http://www.Wevow.com/New-York-State-Brewers-Association). The complaint should explain in reasonable detail the conduct at issue and identify the provision(s) of the Code allegedly violated. NYSBA staff shall contact the complaining party if a complaint is incomplete or filled out incorrectly.
3. A complaint found to be knowingly false or misleading, frivolous, or filed for an improper purpose, may subject the complaining member to discipline. Without limitation, any complaint that is based on or motivated by competitive consideration will be treated as filed for an improper purpose.
4. Within five (5) business days of receiving a complaint, NYSBA staff shall, on the same date; (a) acknowledge the filing of the complaint; (b) provide the complaint and any supporting material to the review panel (discussed further below); and (c) notify any member directly involved in the complaint, including but not necessarily limited to the member or members subject to the complaint, of the complaint and its allegations. Each communication shall also include a copy of these Procedures. Members involved in a complaint may be referred to below individually as a “party” and collectively as “the parties”.

5. Proceedings under these procedures shall be kept confidential between the parties, the panel described below, the NYSBA and their respective employees, officers, directors, agents, and representative, subject to the following:
  - a. If asked, the NYSBA may acknowledge publicly that particular conduct has been the subject of a complaint, and that proceedings are ongoing.
  - b. Paragraph 10.e. permits a party to request that it be allowed to submit evidence “under seal” with greater confidentiality protections if it wishes to secure additional confidentiality as between the parties and/or persons involved in the proceedings.
  - c. The NYSBA will publish the Final Decision, discussed below, and that Final Decision may refer to and/or incorporate evidence submitted by the parties, arguments and submissions by the parties, and the Panel Recommendation, discussed below.
  - d. A party’s public disclosure of these proceedings outside of the parameters of these Procedures constitutes a violation of Paragraph F.5. of the Code.

**B. Investigating a Complaint.**

6. The NYSBA shall refer each complaint to its review panel to investigate and provide recommendations for the actions to be taken, if any, in light of the complaint. The NYSBA shall designate one member of its staff to act as its primary point of contact with the panel member and the parties.
7. The panel consists of three individuals chosen by NYSBA staff for their varied expertise in multiple relevant areas such as law, diversity, equity and inclusion, and employment practices.
  - a. Should any panelist have a conflict-of-interest, as determined by applying the rules for conflicts in Code of Conduct for United States Judges, then that panelist must recuse themselves from the proceeding. In such cases, the other panelists and the NYSBA shall stay proceedings and endeavor to appoint a replacement panelist as soon as reasonably possible.
  - b. In addition to the three panelists, the panel has the authority to request information, advice, or assistance for other persons, including but not limited to NYSBA staff, to aid in their investigation and deliberation. Notwithstanding the forgoing, in no event shall persons involved in the panel’s investigation or deliberation consult with members of the NYSBA Board of Directors regarding the proceedings prior to the transmission of the Panel Recommendations, discussed below, to the Board.
8. As soon as reasonably possible after convening and in no event more than seven (7) days after convening, the panel shall:
  - a. Provide to the member(s) subject to the complaint the evidence submitted in the complaint and a summary of the complaint’s allegations.
  - b. Decide whether the nature of the complaint warrants identifying the complaining member(s) to the member(s) that are the subject of the complaint. While each situation may differ, complaints involving public acts (e.g. complaints about the labeling of a product) generally will not require disclosure of the

complaining member, while those involving specific conduct (e.g. alleged harassment of an individual by another individual) generally will require disclosure to allow the subject of the complaint to address the allegations.

- c. Promptly schedule initial calls or meeting (if practical) with the parties to discuss investigation and decision procedures, scheduling, and seek to narrow the issues. Where the panel decides not to identify the complaining member to the subject of the complaint, such calls or meeting will not invite or include the other party or parties.
9. At any time prior to making its recommendation to the Board, the panel may:
- a. Dismiss a complaint as knowingly false or misleading, frivolous, or filed for an improper purpose, along with a recommendation to the Board on whether the complaining party or parties should be subject to discipline for filing the complaint.
  - b. Dismiss a complaint where the subject of the complaint promptly takes appropriate remedial action to address the conduct complained of.
  - c. Dismiss a complaint if, in the judgment of the panel, the complaining party waited too long before making its complaint. By way of example, only, the panel may dismiss as untimely a complaint about a member's label that has been in the market for many months.
  - d. Stay the resolution of a complaint where an ongoing investigation by a governmental body or an ongoing court, arbitration or other proceeding is examining the conduct that is subject to the complaint. In staying proceedings, the panel may re-commence its evaluation of the complaint at any time, and generally should consider re-commencing its evaluation upon the resolution of any parallel investigation or proceeding.
  - e. Encourage the parties to resolve their differences in an amicable way in lieu of further proceedings under these Procedures.
10. All parties may submit evidence to the panel for its consideration. Evidence should be submitted with the complaint, and the panel must receive all evidence within thirty (30) days after the NYSBA provided its acknowledgment to the complaining member or members and notification to affected members as required in paragraph 4.
- a. No formal rules of evidence shall apply to the submission of evidence, but the panel may take into account recognized evidentiary concepts in accepting, crediting, and weighing evidence. By way of example only, the panel will give "hearsay" evidence less weight and credibility than non-hearsay evidence.
  - b. A party may provide documentary evidence, and it can request that the panel receive testimonial evidence, either in person or via electronic means. Where warranted in order to ensure a fair process, the panel may give a representative of each party the opportunity to witness or listen in on (depending on the format of testimony) any presentation of testimonial evidence. The panel shall exercise

reasonable efforts to accommodate timely requests to provide testimonial evidence, but nothing shall obligate the panel to grant any such request.

- c. The panel may, either at the suggestion of a party or on its own, request that a party provide the panel with certain evidence. The panel cannot force a party to produce any evidence, but the panel may consider the failure to provide requested evidence in its decision.
  - d. Subject only to the provision of Paragraph 10.e. below, the panel shall provide any material submitted to it to each and every other party.
  - e. The panel shall not be required to treat any evidence or other material, or communication provided to the panel as confidential from the panel, other parties, the NYSBA, or their respective employees, officers, directors, agents, and representatives. Should a party seek to submit sensitive information only to the panel and on a confidential basis, then it must submit a request to do so in writing that explains and supports the reasons for the proposed confidential treatment. The panel shall consider and respond to such requests as promptly as reasonably possible.
11. Each party shall have ten (10) days after the final day in which to submit evidence to the panel to provide the panel with a written submission explaining its position and commenting on the evidence submitted by the parties. The panel shall provide any such submission to all parties.

**C. Panel Recommendation**

12. Not later than sixty (60) days following the transmission of the acknowledgment and notices required by Paragraph 4, the panel shall issue its written finding of fact and its recommendation for any necessary further action (the Panel Recommendation) and provide that Panel Recommendation to the parties and to the Board of Directors of the NYSBA.
13. The Panel Recommendation shall summarize the evidence submitted, the panel's conclusions and recommend one or more courses of action, which may include remedial actions short of removal, removal for a defined period or definitely, or such other action that the panel deems appropriate.
14. A majority of at least two members of the panel shall issue the Panel Recommendation, Where a panel member does not agree with the Panel Recommendation, that panel member may issue a written dissent simultaneously with the issuance of the Panel Recommendation.

**D. Decision by the Board**

15. Each party may submit to the Board a written submission commenting on the panel's recommendation. The Board must receive all such submissions not later than seven (7) days following the issuance of the Panel Recommendation.
16. Any Board member who is associated with a party or with any other person or entity with a direct interest in the outcome of the proceeding shall recuse themselves from the deliberations of the Board.
17. Within thirty (30) days of receiving a Panel Recommendation, the Board shall make a decision with respect to the discipline of a member. A final decision requires a two-thirds majority vote by the Board.

18. In reaching the decision, the Board may consider the parties' submission, the Panel Recommendation, and evidence and written submission provided.
19. Any party may submit additional evidence to the Board only for good cause shown and only if the Board finds that the evidence could not have been produced during the panel's investigation.
20. The final decision of the Board (the Final Decision) may simply adopt the Panel Recommendation, or it may separately or further explain the reason of the Board.

**E. Remediation**

21. The NYSBA shall publish and carry out the Final Decision. Without limiting the formulation of other remedies than those outlined below, actions can include:
  - a. Censure;
  - b. Membership condition on a member taking certain remedial actions;
  - c. Removal from membership for a set period of time; or
  - d. Indefinite removal from membership.
22. In formulating the appropriate discipline for a member found to have violated the Code, the panel and the Board shall consider how best to ensure that the member in question remedies its conduct and does not make the same or similar transgressions in the future. Other factors that may be considered include, without limitation:
  - a. The member's good faith remorse, or lack thereof, over the conduct in question.
  - b. Whether the conduct represented a single occurrence or a pattern of behavior.
  - c. The egregiousness of the conduct in question; and
  - d. Whether the person(s) engaging in the conduct are part of the member brewery's ownership or upper management.

By joining the NYSBA, each member agrees that these Procedures constitute its sole and exclusive remedy in any case where a member alleges a violation of the Code of Conduct. Each member expressly waives all other claims, rights and remedies.