



## **RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE OF THE ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS**

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# RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE OF THE ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS

## RULE 1 – INTERPRETATION AND APPLICATION

### 1.01 Definitions

1.01 In these rules, unless the context requires otherwise,

“*Act*” means the *Social Work and Social Service Work Act, 1998*, SO 1998, c 31, as amended from time to time;

“agent” means a person, other than a lawyer, who is permitted by the Discipline Committee to represent a member;

“Chair” means the Chair of the full Discipline Committee or his or her designate;

“College” means the Ontario College of Social Workers and Social Service Workers;

“Discipline Committee” means the Discipline Committee of the College, and includes a panel of the Discipline Committee;

“electronic” or “electronically” with respect to a proceeding means a proceeding held by telephone conference call, videoconference, or any other form of electronic technology allowing persons to communicate with and hear one another;

“hearing” means the process before a panel in which the panel receives evidence and/or submissions regarding an issue for determination in a proceeding, including the merits of the proceeding;

“Hearings Office” means the office of the employee or employees of the College who are specifically assigned the duty of providing administrative assistance to the Discipline Committee;

“holiday” has the same meaning as in the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194, as amended;

“lawyer” means a lawyer or paralegal licensed by the Law Society of Ontario;

“member” means a member of the College 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, other than an order pursuant to subsections 26(4), 26(5), 26(6), 26(7) or 26(9) of the *Act*;

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

“oral hearing” means a hearing in which the parties or their counsel or agents attend in person before the Discipline Committee;

“panel” means a panel of members of the Discipline Committee selected by the Chair of the Discipline Committee to hold a hearing, pursuant to subsection 25(1) of the *Act* or section 4.2 of the *SPPA*;

“party” means a party under subsection 28(2) of the *Act*;

“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 the entire process before the Discipline Committee that commences with the referral of a matter to the Discipline Committee pursuant to the *Act*, encompasses a pre-hearing conference, and may include one or more hearings on issues for determination by a panel, in addition to a hearing on the merits of the referred matter;

“*SPPA*” means the *Statutory Powers Procedure Act*, RSO 1990, c S.22;

“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;

“written hearing” means a hearing held by means of the exchange of documents.

## **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 and least expensive determination of all proceedings on their merits.

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, subject to an order by the Discipline Committee under subsection 23(3) of the *SPPA*.

## **1.03 Application of Rules**

1.03(1) These rules apply to all proceedings before the Discipline Committee including, with all the necessary modifications, applications for reinstatement or variation made under section 29 of the *Act*.

1.03(2) A panel may exercise any of its powers under these rules on its own initiative or at the request of a party.

1.03(3) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity.

1.03(4) In respect of any proceeding before it, a panel may issue procedural directions or orders with respect to the application of the rules.

1.03(5) The Discipline Committee may, from time to time, issue procedural directions or practice guidelines with respect to the application of the rules generally, as may be appropriate.

#### **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 events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
- (b) where a period of less than seven days is prescribed, holidays shall not be counted; and
- (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.

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 – WAIVER OF A RULE**

2.01(1) In respect of any proceeding before it, the Discipline Committee may waive any provision of these rules at any time:

- (a) on the consent of the parties and, where applicable, motion participants, or
- (b) where it is just and equitable, and/or in the public interest to do so.

2.01(2) A request for waiver of a provision of these rules may be made before or after a failure to comply with these rules has occurred.

2.01(3) The Discipline Committee may refuse a request for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.

2.01(4) 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 3 – SERVICE AND FILING OF DOCUMENTS**

#### **3.01 Notice to be in Writing**

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

#### **3.02 Delivery of Documents**

3.02 Where these rules require a document to be delivered, it shall be served in accordance with subrule 3.03 and filed in accordance with subrule 3.04.

#### **3.03 Service of Documents**

3.03(1) All documents required to be served under these rules may be served by:

- (a) personal delivery to the person to be served of a copy of the notice or document ;
- (b) sending a copy of the notice or document by mail to the person to be served at the last address for that person in the records of the College;
- (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 College;
- (d) sending a copy of the notice or document by facsimile transmission to the person to be served at the most recent telephone number for facsimile transmission known to the College;
- (e) electronically to the e-mail address of the party or the counsel or agent of the party, if the recipient has consented in advance to service by e-mail; or
- (f) where the person to be served is represented by a lawyer, sending a copy of the notice or document by mail, courier or facsimile transmission to the person's lawyer

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

3.03(2) Service is deemed to be effective, when delivered:

- (a) by personal delivery, on the day of delivery;
- (b) by mail, on the fifth day after the day of mailing;

- (c) by courier, on the earlier of the date on the delivery receipt or the second day after it was sent;
- (d) by facsimile transmission or electronically, on the day it was sent, unless:
  - (i) 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
  - (ii) the document was sent after 5:00 p.m., in which case the copy shall be deemed to be received on the next day that is not a holiday.

3.03(3) Where a document has been served in a manner other than one set out in subrule 3.03(1), a panel may make an order validating service where the panel is satisfied that

- (a) the document came to the notice of the person being served; or
- (b) the document was served in such a manner that it would have come to the notice of the person served, except for the person's own attempts to evade service.

3.03(4) The Discipline Committee may make an order dispensing with service of a document on a person, other than a document whose purpose is to provide notice of a hearing, where the Discipline Committee is satisfied that all reasonable efforts have been made to serve the document on the person, and that it is necessary in the interest of justice to dispense with service.

3.03(5) This rule shall, for purposes of serving documents relating to a proceeding, be deemed to be a by-law respecting service and shall apply to serving documents relating to a proceeding, notwithstanding the provisions of By-law No. 1 of the College, as amended.

### **3.04 Filing of Documents**

3.04(1) All documents to be filed with the Discipline Committee in advance of a hearing shall be filed, with proof of service, in the Hearings Office.

3.04(2) Any document may be filed in the Hearings Office (a) by leaving it with a person at the Hearings Office; (b) by mailing it or by sending it by courier to the offices of the College, 250 Bloor Street East, Suite 1000, Toronto, Ontario M4W 1E6, (c) if it is less than 10 pages, by facsimile, to (416) 972-1512; or (d) where the Chair of the Discipline Committee or a panel consents, by e-mail.

3.04(3) Any document filed in the Hearings Office shall be clearly marked "Attention: Hearings Office".

3.04(4) A document shall not be considered filed until it is actually received by the

Hearings Office.

3.04(5) A party or, where relevant, a motion participant can confirm whether a document has been filed by telephoning the Hearings Office.

3.04(6) The person filing a document shall file six copies of the document, unless it is sent by facsimile or e-mail, except in the case of a pre-conference memorandum, in which case one copy must be filed.

## **RULE 4 – WRITTEN SUBMISSIONS TO THE DISCIPLINE COMMITTEE**

4.01(1) Where these rules provide that the Chair of the Discipline Committee can direct or order anything, or where the Discipline Committee directs, a party or, in the case of a motion, a motion participant, may make submissions in writing to the Chair or to the Discipline Committee, as the case may be.

4.01(2) Written submissions permitted under subrule 4.01(1) shall be made by addressing a letter to the Chair and delivering a copy of the letter in accordance with rule 3, within the time period specified by the Chair or by the Discipline Committee. Any such submissions shall be copied to all other parties or motion participants.

4.01(3) The other parties or motion participants may respond to the submissions described in subrule 4.01(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 4.01(2), or within such other time period as may be directed by the Chair or by the Discipline Committee. Any such submissions shall be copied to all other parties or motion participants.

4.01(4) Where the Chair or the Discipline Committee has given a direction or made an order before receiving submissions under this rule, the Chair or the Discipline Committee may reconsider the direction or order and may confirm, vary, suspend or cancel the direction or order.

4.01(5) Where appropriate the Chair or the Discipline Committee may direct that a matter that has been the subject of written submissions under this rule be dealt with in another manner.

## **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 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) set out the manner in which the motion is requested to be heard;
  - (d) state the precise relief sought;
  - (e) specify the grounds to be argued, including a reference to any statutory provision or rule, if any, to be relied on;
  - (f) list the affidavits and any other materials to be used at the hearing of the motion;
  - (g) 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 shall be in Form 1A.

5.01(5) Unless otherwise directed by the Discipline Committee:

- (a) a person bringing a motion shall serve on all other parties and file the notice of motion, the documentary evidence to be relied upon, and any written submissions at least ten (10) days before the motion is to be heard; and
- (b) the responding party and any other motion participants who intend to rely on any documentary evidence and/or written submissions in respect of the motion shall serve on the other parties and file with the Hearings Office their materials at least five (5) 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 Hearings Office 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 served and filed in accordance with subrule 5.01(5).

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 5.03(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.

#### **5.04 Assigning a Motion Panel**

5.04(1) The Chair may, in accordance with sections 4.2(1) and 4.2.1 of the *SPPA*, assign a panel of one member of the Discipline Committee to hear a motion.

5.04(2) Notwithstanding subrule 5.04(1), the Chair shall assign a panel of three members of the Discipline Committee to hear each motion where the nature of the motion requires that it be heard by a three 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 Manner of Hearing for Motions**

5.05 A motion in a proceeding shall be heard orally unless the Discipline Committee directs that the motion be heard electronically or in writing in accordance with subrules 8.01(1), 8.01(2), 9.01(1) and 9.01(2). Where the moving party requests a manner of hearing other than an oral hearing of the motion, the notice of motion shall set out the grounds on which an electronic or written hearing is appropriate. If the Discipline Committee is of the opinion that the manner of hearing requested by the moving party is not appropriate to the nature of the motion, the Discipline Committee may direct a different manner of hearing for the motion, subject to subrules 8.01(2) and 9.01(2).

#### **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. If the Discipline Committee has given written reasons for its decision on the motion, those reasons shall also be served on the motion participants.

## **5.07 Time Limits on Oral Submissions**

5.07 No motion participant shall take more than one 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) A pre-hearing conference shall take place at the request of either party or if directed by the Discipline Committee or the Chair. A pre-hearing conference must take place prior to the scheduling of dates for a contested hearing unless the Discipline Committee or the Chair directs otherwise.

6.01(2) The Chair shall designate a person to act as the presiding officer at the pre-hearing conference. The Discipline Committee shall notify the parties at least twenty (20) days before the date of the pre-hearing conference if the designated presiding officer is not a member of the Discipline Committee.

6.01(3) The presiding officer shall, after consultation with the Hearings Office, the member (or the member's counsel, if any) and College counsel, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date.

6.01(4) College counsel, a member of the College staff, the member and, where the member is represented by counsel, the member's 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 College shall deliver its pre-hearing conference memorandum twenty (20) days before the date of the conference and the member shall deliver the member's pre-hearing conference memorandum ten (10) days before the date of the conference.

### **6.03 Procedure at the Pre-hearing Conference**

6.03(1) The subject matter considered at a pre-hearing conference may include any of the following:

- (a) whether any or all of the issues can be settled;
- (b) whether the issues can be simplified;
- (c) the advisability of attempting other forms of resolution of the matter;
- (d) whether there are any facts, documentary or evidence that may be

agreed upon;

- (e) issues relating to disclosure and the exchange of information;
- (f) identification of any preliminary motions and the scheduling of any motions that can be heard before the hearing;
- (g) procedural issues, including the dates by which any steps in the proceeding are to be taken or begun, and the scheduling of the various stages of the hearing on the merits;
- (h) the estimated duration of the hearing on the merits, and the time to be allotted to each party, either globally for the entire hearing, or for any component of the hearing;
- (i) the scheduling of any motions that cannot be heard before the hearing;
- (j) the use and scheduling of expert witnesses; and
- (k) any other matter that may assist in the just and expeditious disposition of the proceeding.

6.03(2) A pre-hearing conference shall be held in the absence of the public, and all pre-hearing conference memoranda, any discussion of settlement at a pre-hearing conference, and all statements made by the parties regarding settlement at a pre-hearing conference shall be on a without prejudice, confidential basis, unless the parties consent otherwise.

6.03(3) On consent of the parties, or after giving the parties an opportunity to make submissions, a presiding officer may give directions and, if the presiding officer is a member of the Discipline Committee, may make such orders consistent with these rules as he or she considers necessary or advisable with respect to the conduct of the proceeding, including any procedural order that may be made by a panel under these rules and with respect to any matter set out in paragraphs (d) through (k) of subrule 6.03(1), unless the presiding officer is satisfied that the proposed order warrants a hearing before a panel.

6.03(4) The presiding officer shall prepare a report after the pre-hearing conference, in accordance with Form 2B, listing every agreement reached under subrule 6.03(1), every direction given or order made under subrule 6.03(3) and every undertaking given by the parties and shall send a copy of the report to the parties.

6.03(5) Orders, agreements and undertakings made at a pre-hearing conference:

- (a) shall govern the conduct of the proceeding and are binding upon the parties to the proceeding, unless otherwise ordered by the presiding officer; and
- (b) shall be recorded in a memorandum prepared by or under the direction of the presiding officer, which shall be provided to the parties

and may be provided to the panel that hears the merits of the proceeding.

6.03(6) A presiding officer shall not sit on a panel that hears preliminary motions or the merits of the proceeding, unless the parties consent.

#### **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.

### **RULE 7 – DISCLOSURE AND PRODUCTION**

#### **7.01 Documentary 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) In addition to the disclosure required under rule 7.01(1), each party to a proceeding shall deliver to every other party (a) a list of, and (b) if not previously produced, copies of, all documents and things that the party intends to produce or enter as evidence at the hearing on the merits, as follows:

- (a) in the case of the College, as soon as is reasonably practicable after the notice of hearing is served; and
- (b) in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this rule, but in any case at least ten (10) days before the commencement of the hearing on the merits.

7.01(3) A party who does not disclose a document or thing in compliance with subrule 7.01(2) may not refer to the document or thing or introduce it in evidence at the hearing on the merits without leave of the panel, which may be on any conditions that the panel considers just.

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 as set out in subrule 7.01(4)(a).

#### **7.02 Disclosure of Fact Witnesses**

7.02(1) Each party to a proceeding shall deliver to every other party at the pre-hearing conference, in addition to their pre-hearing conference memorandum, a

preliminary list of the witnesses the party intends to call to testify on the party's behalf at the hearing on the merits and a summary of the evidence each witness is expected to give. Each party to a proceeding shall deliver to every other party notice of any changes to their list of witnesses and updated summaries of the evidence each witness is expected to give, as follows:

- (a) in the case of the College, at least twenty (20) days before the commencement of the hearing on the merits; and
- (b) in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this rule, but in any case at least ten (10) days before the commencement of the hearing on the merits.

7.02(2) A party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with subrule 7.02(1) may not call that person as a witness without leave of the panel, which may be on any conditions as the panel considers just.

7.02(3) A witness may not testify to material matters that were not previously disclosed without leave of the panel, which may be on any conditions that the panel considers just.

### **7.03 Expert Evidence**

7.03(1) A party who proposes to lead the evidence of an expert at a hearing shall (a) inform the other parties of the intent to call an expert, the expert's name, and the issue(s) on which the expert's opinion will be tendered; and (b) serve on every other party, at least ten (10) days before the hearing, a copy of the expert's written report or, if there is no written report, a written summary of the evidence. An "Acknowledgement of Expert's Duty" in accordance with Form 3 shall be signed by the expert and delivered with the expert's written report or the written summary of expert's evidence, and shall be filed at the hearing.

7.03(2) A party who fails to comply with subrule 7.03(1) may not call the expert as a witness or file the expert's report without leave of the panel, which may be on any conditions that the panel considers just.

### **7.04 Production of Documents**

7.04(1) A motion relating to the production of documents from a third party by summons as described in subrule 7.04(2), including motions to which the provisions of the *Mental Health Act*, RSO 1990, c M.7 may apply, shall be brought in accordance with rule 5 and shall be heard by the panel that hears the allegations against the member. The motion shall be heard after the notice of hearing has been filed as an exhibit in the hearing and after the member has entered a plea. The motion shall be heard at least forty-five (45) days in advance of the hearing of any evidence regarding the allegations set out in the notice of hearing, unless the Discipline Committee orders otherwise.

7.04(2) A party seeking production of documents in the possession of a third party shall submit to the Hearings Office a summons to witness for signature by the chair.

7.04(3) A summons to witness 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 and shall be delivered at least forty-eight (48) hours before the time fixed for the hearing of the motion.

7.04(4) A notice of a motion and motion record relating to the production of documents from a third party as described in subrule 7.04(1) shall be served on the person in possession or control of the documents and on any other person with a significant interest in the documents, including a privacy interest.

7.04(5) Affidavits of service confirming delivery of the summons to witness as described in subrule 7.04(3), and the notice of motion and motion record as described in subrule 7.04 (4) shall be filed at the hearing of the motion.

## **RULE 8 – ELECTRONIC HEARINGS**

### **8.01 Initiating an Electronic Hearing**

8.01(1) The Discipline Committee may order all or part of a hearing, including a motion, as an electronic hearing.

8.01(2) In determining whether to hold all or part of a hearing as an electronic hearing, the Discipline Committee shall consider:

- (a) in cases where oral evidence is to be heard and a party objects, whether there is significant prejudice to the objecting party;
- (b) in all cases, whether the panel's ability to hold a fair and adequate hearing will be prejudiced;
- (c) whether any obligation to hold the hearing in public can be met; and
- (d) in all cases other than where the only purpose of the hearing is to deal with procedural matters, whether the reasons for requesting an electronic hearing outweigh the desirability that members who are the subject of discipline proceedings should attend discipline hearings in person.

8.01(3) 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 *SPPA*, 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 *SPPA*.

## **8.02 Procedure on Electronic Proceedings**

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

8.02(2) If any part of a hearing is conducted electronically, all parties are entitled to receive every document that the Discipline Committee receives. For the purpose of this subrule, "document" includes a sound recording, videotape, film, photograph, chart, graph, map or other information recorded or stored by means of any device.

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

8.02(4) If the electronic proceeding is to take place by telephone conference call, at least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the Hearings Office of the telephone number where he or she can be reached for the proceeding.

8.02(5) If the electronic proceeding is to take place by videoconference or electronic technology other than telephone conference call, every person participating in the proceeding shall coordinate with each other and with the Hearings Office at least 48 hours before the electronic proceeding is scheduled to commence regarding the technology to be used for the electronic proceeding, and the means by which the person participating in the proceeding shall be contacted to join the electronic proceeding.

8.02(6) Every person participating in the proceeding shall ensure that, beginning at least five minutes before the proceeding is scheduled to commence, he or she can be reached at the telephone number provided to the Hearings Office in accordance with rule 8.02(4) if the proceeding is by telephone conference call, and at the contact details provided to the Hearings Office in accordance with rule 8.02(5) if the electronic proceeding is by videoconference or other electronic technology other than telephone conference call.

## **RULE 9 – WRITTEN HEARINGS**

### **9.01 Initiating a Written hearing**

9.01(1) In the case of a hearing whose only purpose is to deal with procedural matters, the Discipline Committee or the Chair may direct that all or part of a hearing be heard in writing.

9.01(2) In the case of a hearing to deal with matters other than procedural matters, the Discipline Committee or the Chair may direct that all or part of a hearing be heard in writing, on consent of the parties, or after giving the parties an opportunity to make submissions, unless the Discipline Committee or the Chair is satisfied that there is a good reason not to do so.

9.01(3) Where the Discipline Committee or the Chair orders that all or part of hearing be held in writing and a notice of a written hearing has not previously been given, the College shall give notice of the written hearing in accordance with section 6 of the



*SPPA* unless the parties waive the requirement.

## **9.02 Procedure on Written Hearings**

9.02 Where the Discipline Committee holds all or part of a hearing in writing, the Discipline Committee may give direction to the parties as to:

- (a) dates for service and filing of written materials;
- (b) the categories of information that must be included in the written materials; and/or
- (c) any other aspect of the procedure for exchanging and filing written materials.

## **RULE 10 – NON-PARTY PARTICIPATION**

10.01(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.

10.01(2) The notice of motion for participation by a non-party 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.

10.01(3) In deciding whether to allow a non-party to participate in all or part of the hearing, the Discipline Committee may consider the following factors:

- (a) the nature of the case;
- (b) the issues;
- (c) whether the person has a genuine interest in the issues;
- (d) the likelihood of the person being able to make a useful and different contribution to the Discipline Committee's understanding of the issues;
- (e) any delay or prejudice to the parties; and
- (f) any other matter it considers relevant.

10.01(4) 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.

10.01(5) 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 11 – NOTICE OF CONSTITUTIONAL QUESTIONS**

11.01(1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known, and, in any event, at least 15 days before the question is to be argued.

11.01(2) Where the Attorneys General of Canada and Ontario are entitled to notice, either or both of them are entitled to adduce evidence and to make submissions to the Discipline Committee regarding the constitutional question.

## **RULE 12 – ADJOURNMENTS**

12.01 Requests for adjournment of a hearing or a pre-hearing conference date shall be made at the earliest opportunity that the party or counsel making the request becomes aware that an adjournment is required. A party seeking an adjournment shall attempt to obtain the consent of the other parties before bringing a request before the Discipline Committee.

12.02 Requests for adjournment of a hearing or pre-hearing conference date in advance of the hearing or pre-hearing conference date shall:

- (a) be set out in writing;
- (b) be directed to the attention of the Chair of the Discipline Committee or his/her designate;
- (c) be copied to all parties or counsel involved in the hearing or pre-hearing conference; and
- (d) set out the extenuating circumstances which necessitate an adjournment.

12.03 Unless the Discipline Committee directs otherwise, requests for adjournment of a hearing or pre-hearing conference date in advance of the hearing or pre-hearing conference date shall be heard and decided by the chair of the panel and shall be heard in writing, or, on the request of a party, electronically.

## **RULE 13 – PROCEDURE DURING THE HEARING**

### **13.01 Vulnerable Witnesses**

13.01(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 on terms that the Discipline Committee considers just and appropriate, and may issue directions regarding the conduct of the support person during the testimony of the witness.

13.01(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.

13.01(3) The Discipline Committee shall not make an order under subrule 13.01(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 counsel while watching the testimony.

13.01(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 such an order is necessary to obtain a full and candid account of the vulnerable witness's testimony.

13.01(5) Where the Discipline Committee makes an order under subrule 13.01(4), it may appoint counsel for the purpose of conducting the cross-examination.

### **13.02 Evidence by Agreement**

13.02 A panel may receive, orally or in writing, a statement of facts that are agreed upon by the parties as evidence of those facts.

### **13.03 Evidence by Affidavit**

13.03(1) A party may present, and a panel may receive, the evidence of any of the party's witnesses in the form of an affidavit that has been sworn or affirmed by the witness.

13.03(2) Where a party presents the evidence of a witness in the form of an affidavit:

- (a) the party may examine the witness for not more than 10 minutes, or such other time as the panel may direct;
- (b) each opposing party may cross-examine the witness; and
- (c) if the witness is cross-examined, the party who filed the affidavit may re-examine the witness.

13.03(3) Where a party intends to present the evidence of a witness in affidavit form, the party shall serve copies of the affidavit on all other parties at least ten (10) days before

the commencement of the hearing, and file the original affidavit with the Discipline Committee.

13.03(4) Where an opposing party is served with an affidavit of a witness, the opposing party shall, at least five (5) days prior to the commencement of the hearing, notify the party who served the affidavit as to whether or not the adverse party intends to cross-examine the witness at the hearing.

13.03(5) If no opposing party gives notice in accordance with subrule 13.03(4) that the opposing party intends to cross-examine a witness whose evidence is to be presented by affidavit, the witness's attendance at the hearing is not required, unless the panel orders otherwise.

13.03(6) A panel may make an order striking evidence that is presented in affidavit form and is inadmissible, and may give consequential directions, including permitting the filing of a replacement affidavit containing admissible evidence, on terms that are just.

#### **13.04 Oral and Written Argument**

13.04(1) The Discipline Committee may place reasonable limits on the length of oral submissions.

13.04(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.

#### **13.05 Access to Hearing Record by the Public**

13.05 If a member of the public wishes to have access to all or part of the record of the Discipline Committee, that person 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.

#### **13.06 Electronic Devices and Publications of Proceedings**

13.06(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).

13.06(2) Subrule 13.06(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 14 – GIVING NOTICE OF FINAL DECISION**

14.01(1) The Discipline Committee may send each party and any other person who is entitled to receive same under the *Act*, a copy of its final decision or order, including the reasons, in accordance with any of the methods of service set out in rule 3.03, 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 3.03.

14.01(2) This rule shall, for purposes of giving notice of decisions of the Discipline Committee, be deemed to be a by-law respecting service and shall apply to giving notice of decisions of the Discipline Committee, notwithstanding the provisions of By-law No. 1 of the College, as amended.

#### **RULE 15 – COSTS**

15.01 Where the Discipline Committee is entitled to order the payment of costs or expenses by a party, the Discipline Committee may consider the failure of a party to comply with these rules in deciding whether to make an order for payment of costs and the amount of any costs to be paid.

#### **RULE 16 – REINSTATEMENT AND VARIATION APPLICATIONS**

16.01(1) This rule applies to applications for reinstatement or variation made under section 29 of the *Act*.

16.01(2) A written application for reinstatement or variation under subsection 29(1) or (2) of the *Act* shall specify the relief sought, state the grounds for the application and list the oral evidence to be relied upon in support of the application.

16.01(3) The Hearings Office shall schedule a reinstatement or variation application for a hearing upon receipt of the written application referred to in subrule 16.01(2). The Discipline Committee may direct that all or part of a reinstatement or variation application be heard in writing, on consent of the parties, or after giving the parties an opportunity to make submissions and if the Discipline Committee is satisfied that the application may be determined fully and fairly in the absence of an oral hearing, without prejudice to any party.

16.01(4) When a reinstatement or variation application has been scheduled, the Discipline Committee shall serve a notice of hearing on the parties.

16.01(5) Unless the Discipline Committee directs otherwise, the person making an application for reinstatement or variation shall deliver copies of the record of the original hearing and the record of any previous applications for reinstatement or variation, copies of the transcript of the original hearing and any previous applications for reinstatement or variation (whether or not the transcript has previously been ordered), and copies of any document the person will introduce.

## FORM 1A – NOTICE OF MOTION

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[General Heading]

### NOTICE OF MOTION

**THE [IDENTIFY MOVING PARTY] WILL** make a motion to the Discipline Committee of the Ontario College of Social Workers and Social Service Workers on [day], [date], at [time], or as soon after that time as the motion can be heard, [insert address or that the matter will be heard orally, electronically or in writing], Toronto, Ontario. [Choose one of the following if the motion is to be heard electronically: “This motion deals only with procedural matters.” or “If a party satisfies the Discipline Committee on a motion brought under rule 8 of the Rules that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, the party may require the Discipline Committee to hold the “hearing” of this motion as an oral hearing”]. If you do not participate in the hearing in accordance with this notice, the Discipline Committee may proceed without you and you will not be entitled to any further notice in the proceeding.

**THE MOTION IS FOR** [state here the precise relief sought].

**THE GROUNDS FOR THE MOTION ARE** [specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on].

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL** be used at the hearing of the motion: [list the affidavit or other documentary evidence to be relied upon].

[Date]

[Name, address, telephone and facsimile number of moving motion participant’s lawyer or moving motion participant]

TO: [Name, address, telephone and Facsimile number of responding motion Participant’s lawyer or responding Motion participant]

## FORM 1B – ORDER

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File No.

DISCIPLINE COMMITTEE OF THE  
ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS

[names of tribunal members]                     )  
                                                                           )         [day and date of order]  
                                                                           )

BETWEEN:

ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS

- and -

[NAME OF MEMBER]

### ORDER

**THIS MOTION**, made by [identify moving motion participant] for [state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the order], was heard this day [(or heard on (date))], [insert address], Toronto, Ontario, [or by conference call].

**ON READING** the [give particulars of the material filed on the motion] and on hearing the submissions of counsel for [identify motion participants], [where applicable, add “(identify motion participant) appearing in person” or “no one appearing for (identify motion participant), although properly served as appears from (indicate proof of service)],

**THE DISCIPLINE COMMITTEE ORDERS that...**

**THE DISCIPLINE COMMITTEE ORDERS that...**

\_\_\_\_\_  
[signature of Chair]



## FORM 2A – PRE-HEARING CONFERENCE MEMORANDUM

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[General Heading]

### PRE-HEARING CONFERENCE MEMORANDUM OF THE COLLEGE [OR OF THE MEMBER, AS THE CASE MAY BE]

***Date of Pre-Hearing Conference:***

***College Counsel:***

***Member's Counsel:***

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#### **BACKGROUND INFORMATION**

1. Please attach a copy of the notice of hearing to this memorandum.
2. Set out a brief statement of the theory of the College's case, as you understand it, including factual contentions.
3. Set out a brief statement of the theory of the Member's case, as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

#### **SETTLEMENT AND AGREEMENTS**

7. What are the prospects for settlement?
8. Have counsel discussed the matter and sought instructions?
9. Would this be a suitable case to attempt informal resolution?
10. Set out the facts in numbered paragraphs that you believe should be agreed to.
11. Set out a numbered list of documents that you believe should be admitted on agreement.

## ADDITIONAL STEPS BEFORE THE HEARING

12. On the subject of motions:
  - Will you be bringing any motions before or during the hearing?
  - If so, what order will you seek and on what grounds?
  - When do you intend to bring each motion?
  
13. On the subject of disclosure:
  - Are there any issues with respect to disclosure?
  - Has the College made full disclosure to the member?
  - Have you produced all of the expert reports upon which you intend to rely?
  - If you have not yet made all required disclosure, why not and by what date will it be done?
  
14. On the subject of a document brief:
  - Who will prepare and deliver a brief containing the notice of hearing, the documents admitted by agreement, and the presiding officer's report?
  - By what date will the brief be delivered?
  - Should the Discipline Committee be able to review the brief before the hearing?
  
15. On the subject of written arguments:
  - Are there any issues that should be the subject of written argument? If so, identify them.
  - When should the written arguments be delivered by?
  - Should the Discipline Committee be able to review the written arguments before the hearing?
  
16. On the subject of a book of authorities:
  - Will you be referring to any authorities other than the SPPA, *Social Work and Social Service Work Act, 1998* and the regulations defining professional misconduct? If so, list them.
  - Should those authorities be copied for the Discipline Committee or for independent legal counsel?
  - If so, who should prepare the authorities brief and when should it be delivered?
  - Should the Discipline Committee or independent legal counsel be able to review the authorities brief before the hearing?

17. On the subject of scheduling the hearing:
- Are you ready for the hearing?
  - Are there any special considerations affecting the setting of a date arising from the availability of witnesses or otherwise?
  - How long will the hearing last?
  - Other than the motions listed above, the witnesses listed above and the normal submissions, is there anything else that will have to be dealt with during the hearing itself?
  - Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Discipline Committee.
  - In numbered paragraphs, list your witnesses in the order that you will call them and estimated length of time it will take to hear their entire evidence, including cross-examination and questions from the Discipline Committee:
 

<u>Number</u>	<u>Witness's Name</u>	<u>Estimated Time</u>
1.		
  - Is there any reason why the witness list cannot be circulated to the Discipline Committee?
  - How long will it take you to make your opening and closing submissions on the issue of findings?

18. List the witnesses you intend to have available to testify for each day of your case:
- | <u>Day</u> | <u>Witnesses Available Beginning That Day</u> |
|------------|-----------------------------------------------|
| 1.         |                                               |

19. Do you believe the Discipline Committee would be assisted by hearing expert evidence on any particular issue?

[Date]

[Signature of counsel who will be attending at the hearing]

## FORM 2B – REPORT OF PRESIDING OFFICER

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[General Heading]

### REPORT OF PRESIDING OFFICER

A pre-hearing conference was held in this matter on [date]. In attendance were [list of people and their capacity].

#### Agreements

The parties agree that the following facts can be assumed to be correct for the purpose of the hearing:

[list: facts]

The parties agree that the following documents can be admitted in the hearing on consent:

[list documents]

#### Directions and Orders

The outstanding pre-hearing motions and the dates they will be heard are as follows:

<u>Number</u>	<u>Nature of Motion</u>	<u>Date to be Heard</u>
---------------	-------------------------	-------------------------

1.

The following motions will be argued at the hearing itself:

<u>Number</u>	<u>Nature of Motion</u>	<u>Date to be Heard</u>
---------------	-------------------------	-------------------------

1.

Other than for information that is discovered after the conference, disclosure is now complete [or will be “completed by (date)"].

The following document brief(s) will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
---------------	--------------------	------------------------	-----------------------------

1.

The Discipline Committee may/should not [choose one] review them before the hearing.

The following written arguments and book of authorities will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
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1.

The Discipline Committee may/should not [choose one] review them before the hearing.

The hearing is scheduled to begin on [date] for [number] day(s).

The proposed schedule for the hearing is as follows:

<u>Number</u>	<u>Motions / Arguments / Witnesses</u>	<u>Estimated Length of Time</u>
1.		

The witnesses will be immediately available when their evidence is reached on the day scheduled for their testimony and will be available on any following days.

There are no other matters anticipated to occur during the hearing itself.

**Other Matters**

[Insert any other matters the parties should be aware of]

[Date]

[Signature of Presiding Officer]

To: [list parties' counsel]

**FORM 3 – ACKNOWLEDGEMENT OF EXPERT’S DUTY**

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[General Heading]

**ACKNOWLEDGEMENT OF EXPERT’S DUTY**

1. My name is.....(*name*)  
I live at the .....(*municipality*)  
in the.....(*county or region*)  
in the .....(*province*)
2. I have been engaged by or on behalf of.....(*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Discipline Committee of the Ontario College of Social Workers and Social Service Workers.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - a. to provide opinion evidence that is fair, objective and non-partisan;
  - b. to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - c. to provide such additional assistance as the Discipline Committee may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

.....  
Signature