

THE GIARDINELLI LAW GROUP, APC

JOHN V. GIARDINELLI

SYLVIA J. SIMMONS
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Please reply to the Riverside County Office

Complainant:

Respondents:

Re:

Dear

Please find enclosed the following forms:

1. Notice of Hearing;
2. Outline of Procedure for Hearing; and,
3. Acknowledgment of Receipt of Outline of Procedure.

SAMPLE

Please complete and sign the Acknowledgment of Procedure form and bring it with you to the hearing.

All parties may be represented by legal counsel. If a party intends to have legal representation and has not previously provided notice of that representation, the party must give written notice of the legal representative's name, address and phone number to all parties and the undersigned at least fifteen (15) calendar days before the scheduled date of the hearing. Failure to comply with this notice requirement may result in a continuance being granted and a continuance fee assessed against the party. In addition to legal counsel, in ethics cases REALTORS® may represent themselves or have another REALTOR® represent them, including their broker.

The Association's goal is to give each party a fair and impartial hearing. The Hearing Panel was selected through the approved process and is both qualified and unbiased. A person is automatically disqualified as a member of the Hearing Panel if they are a party or if related by blood or marriage to the fourth degree to any party to the matter, or an employer, employee,

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Anaheim, California 92805
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partner or other business associate of a party. Before the hearing commences, each Hearing Panel member will be asked to execute a document verifying that they are not disqualified. If you have any reason to believe any assigned member of the Hearing Panel should be disqualified, please notify the undersigned immediately.

The hearing will be governed by procedures described in the California Association of REALTORS® Professional Standards Reference Manual (“Manual”). If you have a concern or a question regarding the procedures, please contact the undersigned immediately.

Continuances are not favored and, in the event there is a change in the status of any Party or, in the event that a continuance is required for any legitimate reason, you must notify the undersigned at the earliest possible opportunity. Failure to notify the Association of your unavailability at an early point will cause inconvenience to all other participants, including Hearing Panel members. If a continuance is requested, it may be granted for extenuating circumstances. Continuance fees are generally imposed as a deterrent if the Hearing Panel Chair believes it appropriate. Common valid reasons for continuances are sudden verifiable illness, accident, death of a family member, improper notice of the hearing, improper notice of another party having legal counsel, or unavoidable attorney-court conflicts. Vacations, business meetings, intervening appointments, and other similar circumstances are not deemed justification for continuances. Appointments, such as depositions or other attorney activities that are scheduled after the hearing date is cleared are not deemed unavoidable conflicts.

The hearings are relatively informal proceedings and are not designed to follow the strict rules of evidence that attorneys are generally familiar with in court proceedings. Although the technical rules of evidence are not applicable, the Hearing Panel Chairperson is empowered to rule on the admissibility of relevant evidence. If, for example, a party is consuming a great deal of time on a subject that has no bearing on the case, the Hearing Panel members may caution the party and, eventually, even disallow further submission of evidence on that point. Character evidence, unless directly related to the issues, is not admissible. Therefore, relevant evidence is as important in a hearing of this type as it is in a court proceeding, but the latitude is generally broader.

Once the Hearing Panel reaches a decision, you will be notified by mail and advised of your review or appeal rights.

We have been asked to emphasize the following points:

1. Members have a duty to give evidence in accordance with the Code of Ethics.
2. **If you wish to have witnesses present, please complete the enclosed Notice of Attending Witness form and return it to our office at least fifteen (15) days prior to the hearing.** It is your responsibility to inform them of the date, time and place of the hearing and have them at the hearing on time. You may contact the undersigned regarding requirements of REALTORS® to give evidence pursuant to Article 14 of the Code of Ethics. The Code of Ethics requires REALTORS® to cooperate and give evidence if asked to do so.

3. All witnesses, except parties, will be excused from the hearing room except while testifying. Representatives cannot testify.
4. All relevant evidence will be admitted. The Hearing Panel Chairperson may broadly construe the term “relevant.” The Hearing Panel members or Chairperson will rule on the inadmissibility of evidence. The technical rules of evidence do not apply. The Complaint and all of the exhibits attached and the Response and all of the exhibits attached will be stamped as evidence at the hearing, unless objections are raised.
5. If a translator or other special assistance is needed for any party or any witness, you should notify us immediately of the language or the assistance needed and if you intend to provide a translator. These are conditions that must be addressed before the hearing. There are some simple rules that will need to be followed regarding the testimony of translators.
6. If you are represented by an attorney, that attorney may not confuse, coerce, intimidate, or harass the parties, witnesses or Hearing Panel members. Additionally, the Hearing Panel members need not accept the statements of the attorney as being the statements of his or her client if they desire direct testimony.
7. The Hearing Panel members may ask questions they deem pertinent and significant of any person at any time during the hearing.
8. Although notarized declarations or affidavits may be considered, letters and other out-of-hearing statements are generally given little, if any, weight and may be rejected entirely. It is best, wherever possible to have witnesses present. They are excluded from the hearing until they testify. If remote testimony is required, strict guidelines must be followed. You should contact the undersigned at once if you believe remote witness testimony may be necessary.
9. All hearings are recorded. You may purchase a copy of the recording for the fee set by the Association. You may, at your expense, have a court reporter present; but you will not be allowed to independently record the hearing. If you have a transcript prepared, you must provide the Association a copy at your cost. The recording will generally be destroyed within a reasonable period after final action of the Directors.
10. You should make every effort, where possible, to file and exchange evidence and briefs, if any, prior to the hearing in order to avoid time delays to review late filed material. **IF YOU BRING ADDITIONAL EVIDENCE AND BRIEFS ON THE DAY OF THE HEARING, YOU MUST BRING AT LEAST TEN (10) ADDITIONAL COPIES WITH YOU. THE HEARING MAY NOT BEGIN WITHOUT THE APPROPRIATE NUMBER OF COPIES. IF COPYING MUST BE DONE ON THE DAY OF THE HEARING, THERE MAY BE A SIGNIFICANT COPYING CHARGE. ADDITIONALLY, IF YOU ARE SUBMITTING ADDITIONAL EVIDENCE CONSISTING OF MORE THAN TWENTY-FIVE (25) PAGES, YOU MUST ALSO INCLUDE A TABLE OF CONTENTS, LISTING THE DOCUMENTS YOU ARE SUBMITTING.** Unnecessary time delays caused by avoidable copying and reading of documents and

briefs filed on the day of the hearing can be avoided by planning ahead and by filing and exchanging before the hearing. (Although not required, it is strongly suggested that you tab each document and create an index so that documents can be found quickly and to avoid confusion.)

11. Although not required, it is generally a good practice to bring the entire transaction file to the hearing.
12. The Complainant has the burden to prove clearly that an Article has been violated and should provide evidence on each alleged Article violation. The Standards of Practice are guidelines.
13. Opening statements are summaries of the case, not the time for presentation of your entire case.
14. Cross-examination of an opposing party is a time to ask questions, not make statements or accusations.

We are hopeful you find this letter helpful in your preparation. If, after reviewing this letter, you require any additional information please notify our office and we will be pleased to cooperate. Any requested information by either side will be copied to the other. Assuming that you follow the simple rules that have been described herein, the hearing should go smoothly. It is rare that a hearing takes longer than one (1) day. If you believe that your hearing will take longer than one (1) day, please notify the undersigned.

Again, if you have any questions relative to this matter, please do not hesitate to contact the undersigned.

Very truly yours,

THE GIARDINELLI LAW GROUP, APC