

Checklist of Issues and Strategies for Disputes under Article IX of the USOC Constitution

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1. Obtain copies of the relevant governing documents, which may include:
 - a. Ted Stevens Olympic and Amateur Sports Act (TSOASA or the “Act”)
 - b. United States Olympic Committee (USOC) Constitution and Bylaws
 - c. National Governing Body (NGB) Selection Criteria
 - d. NGB Code of Conduct/Athlete’s Agreement (if applicable)
 - e. International Federation (IF) Constitution, Bylaws, Handbook, etc.
 - f. Competition Rules
2. Obtain a copy of the USOC’s Selection Procedures Manual (can be used as a tool in interpreting the NGB’s Selection Criteria).
3. Find out how the athlete feels he/she was wronged and what the athlete thinks should be done.
4. Explain the limitations of Article IX (generally only applies if the NGB has deprived the athlete of the opportunity to compete in protected competition; e.g., does not apply to grievance against another athlete).
5. Work to understand your client’s sport and how the subtleties of the sport affect the claim.
6. Talk with one or more coaches or other more detached observers (than your client) regarding the circumstances.
7. Understand the timing issues that affect your client’s claim. You need to know:
 - a. The date of the competition in which your client hopes to compete;
 - b. If the competition is the Olympics or Paralympics you need to know the entry by name deadline (i.e., the last day by which an athlete can be named to the team); and
 - c. Whether delay in bringing your client’s claim could result in an argument that the failure to bring the claim more rapidly prejudiced another athlete or the NGB.
8. Work to understand the institutional relationships and realities that your client faces. You and your client need to understand and assess:
 - a. Whether an aggressive legal challenge could impede future productive working relationships between your client and teammates, coaches and athletic officials;

- b. Whether you can expect support from other athletes, coaches and officials; and
 - c. Whether a legal success is worth the cost.
9. Determine whether there are internal NGB dispute resolution processes that, in contrast to an Article IX American Arbitration Association (AAA) arbitration, might be quicker, less costly, more likely to yield a favorable result and/or less damaging to your client's relationships with others within the NGB.
10. Determine if the Court of Arbitration for Sport (CAS) has jurisdiction over your dispute. Investigate whether any of the governing documents provide for CAS arbitration. Keep in mind that unless the particular IF has a different rule CAS requires that appeals be filed within twenty-one (21) days of the date of the decision appealed from.
11. Review financial considerations with your client. You need to have a frank discussion that covers:
- a. What is the athlete's budget for the matter?
 - b. Who will pay the AAA filing fee if a demand for arbitration is filed?
 - c. Who will pay for the expenses of the arbitrator?
 - d. Are there provisions that require the NGB to share in any costs?
 - e. Will the lawyer be paid and (if so) how and when?
 - f. What (if any) are the limitations of the lawyer's role on behalf of the athlete?
 - g. Who will pay for the cost of any expert services?

Any agreement or understanding regarding the foregoing matters should be in writing and should be signed by both the lawyer and the athlete.

12. Develop a theory of the case that includes: (a) a brief statement of the reason relief should be granted to your client, and (b) a summary of the relief to be requested.
- a. In a selection dispute, determine whether you can fashion your argument to vindicate NGB, IF or other institutional rights.
 - b. In a selection dispute, articulate the **objective** criteria and objective facts which you contend should have resulted in the selection of your client.
 - c. In a selection dispute, comb the NGB's selection criteria for objective factors and shape your client's case to fit them.
 - d. Focus on the relief you will request. Try to make your requested relief as narrow as possible and as minimally intrusive and impactful on the interest of others as possible. Remember that arbitrators do not generally like to intervene in areas in which they feel they have limited expertise.
13. Based on the foregoing considerations, decide whether it is necessary and appropriate to file a demand for arbitration under Article IX of the USOC Constitution.
14. Tender a demand for arbitration and filing fee to the AAA. Your demand for arbitration should include the following:

- a. A description of the applicable provisions of the Act and Article IX investing jurisdiction in the AAA;
 - b. A short and plain statement of the factual and legal basis for the claim and the relief requested;
 - c. Identification of the location requested for the hearing;
 - d. Identification of whether you are requesting an expedited hearing, and (if so) when you are requesting the hearing to take place;
 - e. A recitation that the athlete has also filed his/her complaint with the USOC; and
 - f. Identification of the parties to the arbitration, including any other athlete who could be affected by the relief requested by your client.
15. Be prepared to educate the arbitrator. Remember that (particularly in a AAA proceeding) the arbitrator may have little or no familiarity with athletic processes and disputes. Therefore:
- a. You will have to educate the arbitrator on your client's sport as well as on the procedural aspects of an Article IX hearing.
 - b. The arbitrator is likely to be interested in process issues, such as:
 - i. What is the standard of review? (i.e., *de novo* or deferential towards the underlying decision of the NGB?)
 - ii. Who has the burden of proof?
 - iii. What is the arbitrator's authority in ordering relief?

Always prepare a pre-hearing brief. The arbitrator will assume that the NGB is an expert on the foregoing issues. You will need to prove that you are an expert on the process as well.

Always appear in person if possible. The NGB's institutional advantage of assumed expertise can be offset by the natural respect most arbitrators will have for your clients' profound commitment to his/her sport.

16. Throughout the process manage your client's expectations and natural anxiety with constant communication. Involve your client in the process. Find areas in which the athlete can contribute to the effort (e.g., gathering documents or race results, tracking down non-hostile witnesses). Let the athlete see how much effort is involved in the representation. However, also be sensitive to the drain the arbitration process may have on the athlete's training.
17. Investigate the backgrounds of the arbitrator(s). Try to determine whether your arbitrator has previously issued a written opinion(s) in a case(s) involving an athletic dispute.
18. Continually look for the win/win. Understand the institutional concerns of the NGB.

Maintain open and friendly communications with the NGB's counsel. Constantly analyze the possibility of settlement. Remember that in the sticky area of athlete disputes, perhaps even more than in other sorts of litigation, a settlement of the matter short of arbitration may often be more beneficial to all concerned than going to a contentious hearing. Keep in mind also that while some arbitrations under Article IX have resulted in wins for the athlete following a contested hearing, there are far more cases in which the athlete has not obtained the relief requested.

19. Remember that in seeking a settlement it is sometimes an effective strategy to ask to speak directly to the board or decision making body that must ultimately approve the settlement.
20. Make your best points at the hearing quickly and narrow your focus. Your case will often be won or lost in the first hour of the hearing.