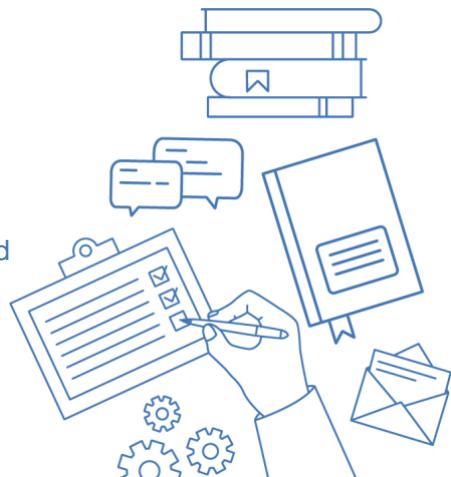


CCB HANDBOOK

Participant Conduct

Participants in CCB proceedings, including parties and their representatives, are expected to treat others with the highest degree of respect and be ethical and truthful. If they fail to uphold these standards and instead act improperly, the CCB may impose financial penalties on them or even ban them from bringing new CCB claims.



Chapter at a Glance

- **Standards of Conduct**
- **Bad-Faith Conduct**
- **Penalties Issued for a Pattern of Bad-Faith Conduct**
- **Limits on Proceedings**
- **Less Common Situations**
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Why You Need This Information

This chapter discusses the standards of conduct that are expected from participants in a CCB proceeding as well as what happens if you fail to meet those standards. Penalties for bad-faith actions by representatives of parties are discussed in the [Representative Conduct](#) chapter.

Quick Summary of Participant Conduct

- As a CCB participant, you're expected to meet certain standards of conduct, such as treating others with the highest degree of respect and being ethical and truthful in CCB appearances and submissions.
- The CCB can impose penalties, including financial penalties, against a party that acts in bad faith. Bad-faith conduct occurs when a party pursues a claim, counterclaim, or defense for a harassing or other improper purpose, or if they raise claims, counterclaims, or defenses without having a reasonable basis in law or fact. Intentionally destroying, altering, or withholding evidence is also considered bad-faith conduct.

- If a CCB party engages in a pattern of bad-faith conduct, the CCB can ban that party from starting new proceedings for a period of twelve months and dismiss any proceedings that party has already started.
- Parties can file only thirty CCB proceedings in any twelve-month period (not just the calendar year).

HOW DID YOU GET HERE?

You're a participant in a CCB proceeding, and you want to understand the expectations for conduct in CCB proceedings.

WHAT IS BAD-FAITH CONDUCT?

Bad-faith conduct includes making a claim, counterclaim, or defense or taking any actions in support of a claim, counterclaim, or defense

- for some inappropriate purpose, such as to harass someone, or
- without a reasonable factual or legal basis.

If you act in bad faith during your CCB proceeding, then the CCB may impose penalties on you.

WHAT HAPPENS NEXT?

If a participant is accused of acting in bad faith, the CCB may hold a conference to discuss the issue. If it decides that a party acted in bad faith, it may require that party to cover the other party's attorneys' fees or costs up to a certain amount. If the party engages in a *pattern* of bad-faith conduct, then the CCB may ban that party from bringing new CCB claims for a twelve-month period and may dismiss any pending claims the participant has already brought before the CCB.

Penalties for bad-faith actions by representatives of parties are discussed in the [Representative Conduct](#) chapter.

Standards of Conduct

All participants in a CCB proceeding, including parties and their representatives, are required to meet certain basic standards of conduct:

- You must act with the highest degree of respect for others.
- You must be ethical and truthful anytime you appear before the CCB and in anything you submit to the CCB.

Additionally, whenever you submit something to the CCB or take a position on an issue before the CCB, you are promising to the best of your knowledge and belief after a reasonable investigation under the circumstances that

- 1. You have a proper purpose.** You can only submit a document or other information to the CCB, make a claim, counterclaim, or defense, or take a position before the CCB if you have a legitimate reason for doing so.
- 2. Your reason for filing a claim, submitting the information, or taking the position cannot be to harass, intimidate, or annoy another participant.** For example, you cannot submit frivolous requests to the CCB just to overwhelm the other participant or force them to waste

time responding. Similarly, you can't make baseless arguments or claims during conferences to try to throw the other participant off balance or bias the CCB against the other participant.

It will also be considered bad faith to file a claim you know cannot be heard by the CCB just so you can show a third party, such as an online service provider, that you have filed a claim.

3. **Any legal arguments you're making are in good faith based on your reasonable understanding of existing law.** Anyone who makes a legal argument to the CCB must sincerely believe their argument is supported by the law.

If you're representing yourself, you won't be penalized because you aren't a copyright expert or don't become one, as long as you had a reasonable belief that you were making your arguments in good faith.

4. **Any factual statements you're making or denials of another party's factual allegations are or likely will be supported by evidence.** If you include facts in documents you submit to the CCB or in positions you take before the CCB, they must be supported by evidence or are likely to be supported by evidence once you have a reasonable opportunity for further investigation. This includes investigation during **discovery**. If you don't currently have evidentiary support but think you likely will after further investigation, you must make that clear to the CCB. You need to be clear about which facts you have evidence for and which facts you think there's a good chance you'll have evidence for once you have a reasonable opportunity to investigate.

For example, if you're asked how much money you made from the sale of your work and you don't know off the top of your head, it is not acceptable to say you don't know if you can figure that information out from your records or by asking your manager or accountant. A reasonable investigation would include consulting possible sources of information that you can reasonably access.

Note that you're also required to make a reasonable investigation before submitting something to the CCB or taking a position before the CCB. What counts as a reasonable investigation will depend on the circumstances. It will likely include reviewing your files (including emails and text messages), discussing the issue with people who were involved, and consulting other publicly or easily available sources.

Bad-Faith Conduct

Bad-faith conduct can occur at any point in a proceeding, including before the proceeding enters the **active phase**. Bad-faith conduct isn't just limited to the claim, counterclaim, or defense itself. It also includes any actions a participant takes before the CCB or anything the participant submits or communicates to the CCB. For example, purposefully avoiding CCB requirements or filing a claim despite knowing that such claim, counterclaim, or defense cannot be heard by the CCB is considered bad-faith conduct.

Actions taken as part of discovery, arguments made during written testimony or at conferences or hearings, or requests filed with the CCB can also count as bad-faith conduct. The CCB's rules also identify specific actions that may count as bad-faith conduct:

- Taking actions for the sole purpose of getting around the [limit on the number of proceedings](#) a participant can file in a twelve-month period of time
- Violating a **protective order** (To learn more, see page 7 of the [Discovery](#) chapter.)
- Including large amounts of irrelevant or duplicative material in response to a document request
- Destroying, altering, or withholding evidence

If a party acts in bad faith, the CCB may award the other participant their costs and attorneys' fees (if any) as part of its final determination, up to certain limits, which are discussed later in this chapter under "[Penalties for Bad-Faith Conduct](#)."

Reporting Bad-Faith Conduct

If you have a good reason for thinking another participant, whether a party or a representative of a party, has acted in bad faith before the CCB, you can request a conference with the CCB to discuss the issue. Your request must be submitted through a fillable form on eCCB. It must be limited to 10,000 characters and must describe the bad-faith conduct. You can attach any relevant documents to your request.

If another participant files a request accusing you of bad-faith conduct and you would like to respond, you must submit your response through a fillable form on eCCB within fourteen days of the request. Your response must be limited to 10,000 characters.

Bad-Faith Conduct Raised by CCB

The CCB can also raise bad-faith conduct on its own before it issues a final determination by issuing an **Order to Show Cause** stating that it thinks a participant may have acted in bad faith and asking that participant to respond.

If you're the participant that the CCB alleges may have acted in bad faith, you must file a response to the order through a fillable form on eCCB within fourteen days of the order. The response must be limited to 10,000 characters. Other participants in the proceeding do not need to respond.

Proving Bad-Faith Conduct

After the CCB has received responses from the participants or the response time has expired, the CCB will either determine that no bad-faith conduct took place or will schedule a conference to discuss the accusations. At the conference, each participant will have a chance to discuss with the CCB why they think bad-faith conduct did or didn't take place.

If the CCB determines a party has acted in bad faith, it may require that party to cover the affected party's attorneys' fees and costs. Costs can include any filing fees paid by the other participant, such as the costs associated with hiring a process server.

In deciding whether to award attorneys' fees or costs for bad-faith conduct, the CCB will consider any requests and responses submitted by the participants and any arguments at the conference. The CCB will also consider the party's conduct in any other CCB proceedings in which they have participated.

If a party harmed by the bad-faith conduct has an attorney, then the attorneys' fees that can be recovered by that party are typically capped at \$5,000. Parties who did not have an attorney

representing them can only receive costs, and they are typically capped at \$2,500. The CCB may raise these caps in extraordinary circumstances, such as when it finds that a party has engaged in a **pattern of bad faith**.

NOTE: Penalties for bad-faith actions by representatives of parties are discussed in the [Representative Conduct](#) chapter.

Penalties Issued for a Pattern of Bad-Faith Conduct

There are additional penalties for participants who engage in a **pattern of bad-faith** conduct before the CCB. The instances of bad-faith conduct don't need to have taken place within the same proceeding.

For example, a participant acts in bad faith in your proceeding. You find out that the participant acted in bad faith in another proceeding three months ago. That earlier instance of bad-faith conduct would be counted as part of the same pattern.

The previous bad-faith conduct did not have to result in an award of fees or costs for the CCB to consider it in deciding whether the participant has a pattern of bad-faith conduct. If you wish to investigate whether there have been any prior bad-faith findings against a participant, you can search for a party or their representative on eCCB.

Reporting a Pattern of Bad-Faith Conduct

If you have a good reason for thinking a participant, whether a party or their representative, has acted in bad faith more than once over the last twelve months, you can request a conference with the CCB to discuss the issue at any point after a proceeding has started. Your request must be submitted through a fillable form on eCCB. It must be limited to 10,000 characters and must describe the bad-faith conduct. You must identify the case numbers for any other proceedings where the participant acted in bad faith, and you can attach any relevant documents to your request.

If another participant files a request accusing you of a pattern of bad-faith conduct and you would like to respond, you must submit your response through a fillable form on eCCB within fourteen days of the request. Your response must be limited to 10,000 characters.

Pattern of Bad-Faith Conduct Raised by CCB

The CCB can also raise this issue on its own at any point during a proceeding by issuing an order saying it thinks a participant may have acted in bad faith more than once over the past twelve months and asking that participant to respond.

If you're the participant the CCB thinks may have acted in bad faith more than once over the past twelve months, you must file a response to the order through a fillable form on eCCB within fourteen days. The response must be limited to 10,000 characters. Other participants in the proceeding do not need to respond.

Proving a Pattern of Bad-Faith Conduct

After the participant accused of a pattern of bad-faith conduct has an opportunity to submit a response to the accusations, the CCB will either determine that there wasn't a pattern of bad-faith conduct or will schedule a conference to discuss the accusations. At the conference, each participant will have a chance to discuss with the CCB why they think there was or wasn't a pattern of bad-faith conduct.

If the CCB previously awarded attorneys' fees or costs against a party in a different proceeding within the past twelve months, then that will automatically count as one instance of bad-faith conduct.

The CCB can also consider other evidence of bad-faith conduct from the participant, even if it didn't result in a formal award of attorneys' fees or costs. This includes the participant's conduct related to claims that ultimately didn't enter into the active phase because they were found to be noncompliant by a CCB staff attorney or proceedings in which the respondent opted out.

If a respondent files a request for a conference accusing another participant of bad-faith conduct before the opt-out period has ended, that doesn't affect their right to opt out of the proceeding. Once the bad-faith accusation is made, the procedure for deciding whether a participant acted in bad faith can continue even after the respondent opts out.

Penalties for a Pattern of Bad-Faith Conduct

If the CCB decides that a party has acted in bad faith more than once in a twelve-month period, it will ban that participant from bringing any claims for a period of twelve months from the date of the CCB's decision. The CCB may also dismiss **without prejudice** any other proceedings brought by that party that are currently before the CCB.

However, if other proceedings brought by that party have entered the active phase, the CCB will only dismiss those proceedings if the respondent agrees that it should be dismissed. That way, a respondent who wants to continue with a CCB proceeding will not be negatively affected by the dismissal.

NOTE: This won't affect any pending proceedings in which the party who acted in bad faith is the respondent in the pending proceeding. Those proceedings will continue.

Penalties for bad-faith actions of representatives of parties are discussed in the [Representative Conduct](#) chapter.

Limits on Proceedings

A party can file no more than thirty proceedings in any twelve-month period. A proceeding counts toward this limit as soon as it's filed and no matter how it's resolved. A proceeding still counts toward your limit if, for example,

- it's dismissed because it's not compliant,
- it's dismissed because it's unsuitable for the CCB,
- you choose to withdraw it, or
- the respondent opts out.

However, the limit only applies to new proceedings, so the following do not count toward your limit:

- amending an existing claim, and

- filing counterclaims in response to a claim.

If you've reached your limit and you still try to start a new proceeding, your proceeding will be dismissed without prejudice. It may count as bad-faith conduct for you to take action for the purpose of getting around the limit.

Less Common Situations

The following situations aren't common, but CCB participants should be aware of them.

Your Representative Is Banned Because of Their Bad-Faith Conduct

Just like parties, the CCB can decide that a representative has acted in bad faith and penalize or even ban them. If the CCB decides that your representative has acted in bad faith more than once in a twelve-month period, your representative will be banned from representing any participant in a CCB proceeding for the next twelve months. This may mean the representative can't file a new claim for you. For already filed claims, the CCB may require your representative to stop representing you in your proceeding, though it will consider the impact of this on you beforehand. If your representative can no longer represent you, you can ask the CCB to pause the proceeding while you find another representative. You can learn more about bad-faith conduct by representatives in the [Representative Conduct](#) chapter.

Your Lawyer Exceeds Their Limit on Proceedings

Just like parties have limits on the number of new proceedings they can file, lawyers can only file a certain number of proceedings within a twelve-month period. If your lawyer has exceeded their limit by filing a claim for you, they'll be ordered to stop representing you in the proceeding. The CCB may pause the proceeding for sixty days to give you time to find a new representative, and this time period may be extended if there's a good reason to do so. As such, if you're thinking about working with a lawyer, it's a good idea to ask them if they're in danger of exceeding their limit if they file a claim for you. Note that this limit only applies to lawyers and not to law students or certain pro bono organizations.

Glossary

- **Active phase:** When the respondent has not opted out, the portion of the proceeding starting from the end of the sixty-day opt-out period and continuing until the CCB's final determination of your case.
- **Discovery:** The process by which the parties exchange information and documents relevant to the issues in a case.
- **Order to Show Cause:** An order that gives a participant a chance to explain why the CCB should not take action.
- **Pattern of bad faith:** A finding that a participant has engaged in bad-faith conduct at least twice in a twelve-month period.
- **Protective order:** An order that requires the parties to take steps to safeguard confidential material.
- **Without prejudice:** The claim can be filed again in the future.