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## TIP OF THE MONTH

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### Internal Appeals: Challenge Biased Panel Members

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If you have decided to appeal an adverse administrative decision, you should pay close attention to the members of the internal appeal panel (committee or board as the case may be) constituted to decide, review and make recommendations to the executive head. The right to an impartial review of the merits of the appeal is part of the right to judicial administrative due process. In some international organizations, the principle that requires impartiality is set forth in the regulations and/or rules and in the appeal process procedures themselves.

It is important to be vigilant in identifying evidence of bias, prejudice or other similar circumstances (hostility) in members of the appeal board since the recommendation from the internal appeal panel presents the first opportunity of obtaining relief. If reasonable evidence is available, it will provide grounds for disqualifying the member from hearing the appeal. In this regard, you should enlist the help of the staff association, committee or union, who are knowledgeable about the personalities and experience with appeal board members, in reviewing the panel members for bias. Normally, if a written request is made to the secretary of the internal appeal panel or board with some reasonable basis for asserting grounds for disqualification, the biased or prejudiced member will be replaced without objection. If not, the staff member can later cite to the participation of the biased panel member in attacking an unfavourable decision.

This lesson was recently highlighted by the ILOAT in Judgment No. 2671 (EPO) (issued 6 February 2008). The Tribunal repeated that the “internal appeal procedure that works properly is an important safeguard of staff rights and social harmony in an international organisation and, as a prerequisite of judicial review, an indispensable means of preventing disputes from going outside the organisation.” The Tribunal went on to set aside the impugned decision because there was evidence that the some of the members of the appeals committee had already prejudged the case before the appeal was filed.

One other important point: sometimes the administration decides that it will not receive a fair hearing if one member is not removed. Unless set forth in the staff regulations or rules (or administrative procedures), the administration has no right or standing to object to an appointed member of an appeal board. The right to a fair and impartial hearing is that of the appellant and not the administration. Staff members should strenuously object when the administration attempts to interfere with the composition of the appeals board or otherwise control the internal appeal proceedings.

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