

PRACTICE DIRECTION NO.3: AIFC COURT JUDICIAL DISCIPLINARY PROCEDURE RULES 2023**PART 1
General****Citation and commencement**

1. These Rules are made by the Chief Justice pursuant to Regulations 14, 21(7) and (8) and 30 of the AIFC Court Regulations dated 5 December 2017. They may be cited as the AIFC Court Judicial Disciplinary Rules 2023, and shall come into force on the date they are made.

Interpretation

2. In these Rules:
 - “Disciplinary Panel” means a panel of two Judges constituted as indicated in Rule 56.
 - “Governor” means the Governor of the AIFC.
 - “Investigating Judge” means the Judge identified as indicated in Rule 32.
 - “Judge” includes the Chief Justice, unless otherwise appears.
 - “Judge in Charge” means the Chief Justice or other Judge to whom the complaint is made under Rules 4 and 5 or the Judge who, following a review under Rules 23 to 25 takes over charge of the complaint under Rule 25.
 - “Judicial Officer” means the Registrar and Chief Executive and any other officer of the AIFC Court specifically identified by the Chief Justice as a Judicial Officer for this purpose.
 - “List” means a list, to be maintained and kept up to date by the Registrar in a form available for public inspection without disclosing the nature of any complaint or the identity of any complainant or office holder, of all Judges not already involved in the current or any other complaint (whether as complainant or as Judge to whom, or in respect of whose conduct, the complaint was made).
 - “Office holder concerned” means the Judge (including the Chief Justice) or Judicial Officer in respect of whom any complaint is made.
 - “The Reviewing Judge” has the meaning assigned in Rule 23.

Complaint about judicial misconduct

3. A complaint of misconduct on the part of any Judge or Judicial Officer of the AIFC Court must be made to the Chief Justice, save where
 - a. it is made about the conduct of the Chief Justice, in which case it must be made to another Judge of the Court; or
 - b. it is made by the Chief Justice, in which case it must be made to a Judge of the Court other than the office holder concerned.
4. Where Rule 3(a) or Rule 3(b) applies, the Judge to whom the complaint must be made is to be nominated by the Registrar at the complainant’s request.
5. The Chief Justice or other Judge to whom the complaint is made under Rules 3 and 4 shall be the Judge in Charge of the complaint, unless and until replaced in that capacity by a Reviewing Judge under Rule 25 below.

6. Unless the Judge in Charge agrees to accept a complaint in another form, a complaint must be made in a document in writing which—
 - a. is legible;
 - b. contains an allegation of misconduct on the part of a named or identifiable Judge or Judicial Officer of the AIFC Court;
 - c. states the date, or dates, the alleged misconduct took place; and
 - d. states the name and address of the person who is making the complaint.
7. A complaint is to be accompanied by the originals or copies of all the documents within the control of the complainant to which they intend to refer.
8. The Judge in Charge must not accept the complaint in any case where the complainant states that they do not want the office holder concerned to see a copy of the complaint document or of any document accompanying it.

Time limits for any complaint

9. A complaint must be made within three months of the event or matter complained of.
10. Subject to Rule 12 (extension of time limits), the Judge in Charge must not accept a complaint if the complaint is made outside the time limit in Rule 9.
11. The complainant must be notified—
 - a. that their complaint has not been accepted because it is out of time; and
 - b. that they may make representations within ten business days of such notification to the Judge to whom the complaint was made for an extension of the time limit.

Extension of time limits

12. The Judge in Charge may extend the time limit for making a complaint only in exceptional circumstances.
13. The fact that a complaint may contain an allegation of misconduct will not, by itself, be sufficient reason for such an extension.
14. The Judge in relation to whom any other step requires to be taken within any other time limit under these Rules may extend such time limit, whether or not the time limit has expired, where there is good reason to do so.
15. Where any time limit is extended under Rule 14, the Judge in question must—
 - a. inform the complainant and, if they are aware of the complaint, the office holder concerned; and
 - b. keep a record of the reasons for the extension.

PART 2
Conduct of complaint

Initial consideration

16. A complaint must initially be considered by the Judge in Charge.
17. The Judge in Charge must dismiss a complaint, or part of a complaint, if it falls into any of the following categories—
 - a. it does not adequately particularise the matter complained of;
 - b. it is about a judicial decision or judicial case management, and raises no question of misconduct;
 - c. the action complained of was not done or caused to be done by a person holding an office;
 - d. it is vexatious;
 - e. it is without substance;
 - f. even if true, it would not require any disciplinary action to be taken;
 - g. it is untrue, mistaken or misconceived;
 - h. it raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not present any material new evidence;
 - i. it is about a person who no longer holds an office;
 - j. it is about the private life of a person holding an office and could not reasonably be considered to affect their suitability to hold office;
 - k. it is about the professional conduct in a non-judicial capacity of a person holding an office and could not reasonably be considered to affect their suitability to hold office;
 - l. for any other reason it does not relate to misconduct by a Judge or other Judicial Officer of the AIFC Court.

Procedure

18. The Judge in Charge may not dismiss a complaint under Rule 17(a) unless the complainant has been given an opportunity to provide adequate details of the complaint. A complainant must provide any further details within 15 business days of the request for details made to the complainant.
19. Where an account of facts given by a complainant differs from an account given by the office holder concerned, the Judge in Charge must consider any source of independent evidence which exists and which may help to verify the facts in dispute before they dismiss a complaint, unless to do so would be disproportionate in all the circumstances.
20. Where the Judge in Charge dismisses a complaint under Rule 17, the Judge must inform—
 - a. the complainant of the dismissal and the reasons for it; and
 - b. if they are aware of the complaint, the office holder concerned.
21. The complainant, if dissatisfied with the dismissal of the complaint may, within 15 days of receiving information of such dismissal, require the dismissal to be reviewed by another Judge (“the Reviewing Judge”), giving the complainant’s reasons for disagreeing with the Judge’s dismissal of the complaint.

22. Where the Judge in Charge concludes that the complaint should not be dismissed under Rule 17, the Judge in Charge must—
- a. deal with the complaint under the summary process under Part 3; or
 - b. refer the complaint to an Investigating Judge to consider under Part 4.

Review

23. Where a request for a review is duly made, then the Reviewing Judge shall be the next Judge in the List to be maintained by the Registrar who is not already involved in the current or any other complaint (whether as complainant or as Judge to whom, or in respect of whose conduct, the complaint was made).
24. The Reviewing Judge shall (a) have power to require the complainant to provide any further details the Reviewing Judge may require within 15 days of a request for such details, and (b) decide whether the complaint should be dismissed, in whole or in part, and communicate such decision to the office holder concerned with reasons.
25. Where the Reviewing Judge concludes that the complaint should not be dismissed, the Reviewing Judge becomes thereafter the Judge in Charge and must—
- a. deal with the complaint under the summary process under Part 3; or, if or to the extent that the complaint cannot so be resolved,
 - b. refer the complaint to an Investigating Judge to consider under Part 4.

PART 3

Summary process

Scope

26. The summary process applies where the Judge in Charge concludes that the office holder-
- a. has been convicted in the Republic of Kazakhstan or any other jurisdiction of a criminal offence punishable with imprisonment and has been sentenced to imprisonment, including a suspended sentence;
 - b. has been committed to prison in any jurisdiction for contempt of court (including a suspended committal order);
 - c. has been convicted or cautioned in any jurisdiction of an offence involving dishonesty, deception, theft or perverting the course of justice,
 - d. has been convicted or cautioned in any jurisdiction of a sexual offence, or of a violent offence;
 - e. is in any jurisdiction an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged;
 - f. is in any jurisdiction the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order of like effect;
 - g. has in any jurisdiction made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
 - h. has failed to disclose material information concerning their suitability to hold office to the person who made the appointment or who made any recommendation for the appointment, in circumstances where the office holder was specifically requested to

disclose any information material to their suitability to hold office and knew of the material information in question before their appointment to their office;

- i. has at any time been subject to any investigation or proceedings concerning their fitness to practise by any licensing body, the final outcome of which was—
 - i. the suspension of the office holder concerned from a register held by the licensing body, and that suspension has not been terminated,
 - ii. the erasure of the name of the office holder concerned from a register held by the licensing body,
 - iii. a decision that had the effect of preventing the office holder concerned from practising the profession licensed or regulated by the licensing body, or
 - iv. a decision that had the effect of only allowing the office holder concerned to practise that profession subject to conditions, and those conditions have not been lifted;
- j. has been removed from another office in accordance with prescribed procedures;
- k. has failed without reasonable excuse to comply with any sitting requirement specified in the terms of appointment to the office concerned.

27. In such event, the Judge in Charge shall give the office holder concerned an opportunity to make representations as to—

- a. whether the alleged ground or grounds existed and applied to the office holder, and
- b. if so, why they should not be removed from their office.

28. The office holder concerned must provide the representations referred to in Rule 27 within 15 business days of the request for them.

29. After receiving any such further representations, or after the expiry of 15 days if no such representations are made, the Judge in Charge may determine to put in hand, and notify the office holder that they propose to put in hand, steps towards suspension or removal of the office holder from office, whether by recommendation to the Chief Justice or (in a case where the Chief Justice is the Judge in Charge and there has been no review or is the office holder concerned) recommendation to the Governor for such suspension or removal.

30. The office holder may, within 15 days of receiving notification of such proposal, require the proposal to be reviewed by a disciplinary panel, giving the office holder's reasons for disagreeing with any such proposal.

31. Where no request for a review by a disciplinary panel is made within 15 days, then the Judge in Charge, as the case may be, may proceed to take the proposed steps towards suspension or removal from office of the office holder concerned.

PART 4
Investigation by investigating judge

Identity

32. The Investigating Judge shall be the next Judge in the List, to be maintained by the Registrar, who is not already involved in the current or any other complaint (whether as complainant or as Judge to whom, or in respect of whose conduct, the complaint was made).

Procedure

33. The Investigating Judge must consider a complaint and—
- a. determine the facts of a matter, with any question as to whether a fact is established being decided on the balance of probabilities;
 - b. determine whether the facts amount to misconduct; and
 - c. advise as to whether disciplinary action should be taken and if so what.
34. The Investigating Judge must—
- a. decide how to conduct the investigation;
 - b. notify the office holder concerned and any complainant of the proposals for the conduct of the investigation, and whether oral evidence will be taken;
 - c. invite the office holder concerned to make representations about the procedure adopted; and
 - d. invite the office holder concerned to give evidence, where the Investigating Judge thinks this relevant, and determine whether such evidence should be oral or written.
35. For the purposes of considering a complaint the Investigating Judge may also—
- a. make all such inquiries into the allegation as they consider appropriate;
 - b. request any documents which appear to be relevant;
 - c. interview, or invite to give written or oral evidence, any person they consider appropriate.
36. Any evidence or representations from the complainant, the office holder concerned or any other person must be provided to the Investigating Judge within ten business days of an invitation under Rules 34(c) or 35.
37. The Investigating Judge must disclose any evidence (including documents) obtained under Rule 35 to the office holder concerned and must invite them to make any representations thereon.
38. The office holder concerned must make any representations under Rule 37 within ten business days of the invitation under that Rule.

Report of Investigating Judge

39. The Investigating Judge may decide the form of their report.
40. The Investigating Judge must disclose a draft of their report to the office holder concerned and invite the office holder concerned to comment on it. The comments may include proposals for changes to the report.

41. The Investigating Judge may show a draft of their report to any other person, and invite them to comment on it. The comments may include proposals for changes to the report.
42. Disclosure of the draft report under Rule 41—
 - a. may be of the whole or part,
 - b. may be in the form of a summary,
 - c. must omit any information the disclosure of which is prohibited by law.
43. Any comments must be provided to the Investigating Judge within ten business days of disclosure of the draft report under Rules 40 to 42.
44. After considering any comments received in accordance with Rules 40 and 41 the Investigating Judge must—
 - a. complete their report and submit it to the Judge in Charge with details of any requested changes which the Investigating Judge has not made,
 - b. send a copy of their report to the office holder concerned; and
 - c. send a copy of their report or the relevant part of it to any other person who has been invited to comment upon it, but omitting any material the disclosure of which is prohibited by law.

Dismissal, referral and recommendations by Investigating Judge

45. The Investigating Judge may advise the Judge in Charge—
 - a. that the complaint should be dismissed;
 - b. that the complaint should be dealt with informally and be considered as a pastoral or training matter;
 - c. that the office holder should be removed or suspended from office; or
 - d. that some other disciplinary action (including, for example and without limitation, formal advice, a formal warning or a reprimand) should be taken.
46. The Investigating Judge may only recommend that the complaint be dealt with under Rule 45(b) where they consider that there has been no misconduct; and in any case where the judge does this, they must also—
 - a. inform the complainant of the dismissal and the reasons for it and, if applicable, that a direction has been given that the complaint is to be considered as a pastoral or training matter; and
 - b. inform the office holder concerned.
47. In any case where the Investigating Judge advises under Rule 45(a) that the complaint should be dismissed, the Investigating Judge shall prepare a report, stating-
 - a. what findings of fact the Investigating Judge has made;
 - b. why they consider that the complaint should be dismissed.

48. In any case where the Investigating Judge advises under Rule 45(c) that the office holder should be removed or suspended from office, the Investigating Judge shall prepare a report, stating:
 - a. what findings of fact the Investigating Judge has made;
 - b. what misconduct there has been; and
 - c. why the nominated judge considers removal or suspension from office to be necessary or appropriate.
49. 38. In any case where the Investigating Judge advises under Rule 45(d) that some other disciplinary action should be taken, the report must state—
 - a. what findings of fact the Investigating Judge has made;
 - b. what misconduct there has been;
 - c. what disciplinary action the Investigating Judge considers should be taken and why.
50. The Investigating Judge must send their report to the Judge in Charge, who must send it to the office holder concerned.
51. If the report recommends removal or suspension from office, the Judge in Charge must when sending it to the office holder concerned ask the office holder if they want a disciplinary panel to consider the complaint.
52. The office holder concerned may—
 - a. provide comments on the report to the Judge in Charge;
 - b. make representations to such Judge regarding the need for further investigation into the complaint;
 - c. where the report recommends removal or suspension from office, state whether they want a disciplinary panel to consider the complaint.
53. The office holder concerned must respond under Rule 52 within 15 business days of the day that the report is sent to them.
54. If the office holder concerned confirms in accordance with Rule 52(c) that they want a disciplinary panel to consider the complaint, the Judge in Charge must—
 - a. refer the complaint to a disciplinary panel to consider in accordance with Part 5 of these Rules; and
 - b. send the report and any comments received under Rule 52 to the disciplinary panel.
55. Where no request is made that a disciplinary panel consider the complaint, the Judge in Charge may decide in the light of the report:
 - a. whether any and if so what disciplinary action is necessary or appropriate, including, where the report so recommends, putting in hand steps towards suspension or removal of the office holder from office, whether by recommendation to the Chief Justice (or, in a

- case where the Chief Justice is the Judge in Charge or is the office holder concerned) by recommendation to the Governor for such suspension or removal; but
- b. where the report does not recommend suspension or removal of the office holder from office, the Judge in Charge shall not decide upon or put in hand any steps towards that end, without referring the complaint to a disciplinary panel to consider in accordance with Part 5 of these Rules and taking into account the advice given by that Panel.

PART 5

Disciplinary panel

Constitution

56. A disciplinary panel shall consist of the two next Judges, in the List to be maintained by the Registrar, not already involved in the current or any other complaint (whether as complainant or as Judge to whom, or in respect of whose conduct, any such complaint was made).

Functions of a disciplinary panel

57. A disciplinary panel may consider and review—
- a. any findings of fact;
 - b. any recommendation as to the conduct of the office holder concerned; and
 - c. any proposed disciplinary action.
58. Where an Investigating Judge has recommended that the office holder concerned should be suspended or removed from their office, the disciplinary panel must advise the Judge in Charge whether suspension or removal is justified.

Procedure of disciplinary panel

59. The disciplinary panel may—
- a. decide upon the nature of the review necessary or appropriate in the circumstances,
 - b. without limiting the generality of Rule 59(a), decide how far it can safely rely on, or how far (if at all) it may be necessary or appropriate to rehear evidence or to reopen evidential findings or conclusions made or reached by the Investigating Judge in their report.
60. The disciplinary panel may-
- a. make such inquiries as it considers are appropriate to fulfil its functions;
 - b. request any documents which appear to be relevant.
61. A disciplinary panel must receive and take into account written submissions made by or on behalf of the office holder concerned; and must further, unless it concludes that this is unnecessary or would be irrelevant in relation to any issue which it has to decide, take oral evidence from the office holder concerned.
62. A disciplinary panel may take evidence, including oral evidence, from any other person.

Report and recommendation

63. The disciplinary panel must prepare a report that sets out—
- a. the facts of the case;
 - b. whether in its opinion there has been any misconduct; and
 - c. whether disciplinary action should be taken and if so what.

Report procedure

64. The disciplinary panel must send its draft report to the office holder concerned.
65. The disciplinary panel may disclose its draft report to the complainant or any other person who may be affected by its contents.
66. Disclosure of the report under Rule 65—
- a. may be of the whole or part;
 - b. may be in the form of a summary;
 - c. must omit any information the disclosure of which is prohibited by law.
67. The disciplinary panel must invite each person to whom it discloses its report to comment on it.
68. Any comments on the report must be made within ten business days of the day on which the report was sent by the disciplinary panel.
69. In finalising its report the disciplinary panel—
- a. must have regard to any comments received under Rule 68; and
 - b. must include those comments with its report.
70. The disciplinary panel must send its report to the Judge in Charge.
71. The Judge in Charge may decide in the light of the report:
- a. whether any and if so what disciplinary action is appropriate, and take appropriate action; and
 - b. where they conclude that this is required, put in hand steps towards suspension or removal of the office holder from office, whether by recommendation to the Chief Justice or (in a case where the Chief Justice is the Judge in Charge or is the office holder concerned) by recommendation to the Governor for such suspension or removal.

PART 6

Miscellaneous

Re-opening a case that has been dismissed

72. Exceptionally, an Investigating Judge may of their own volition or on the basis of representations received re-open a complaint that has been dismissed where they receive new information concerning a complaint.

73. For these purposes, new information means information which—

- a. relates to judicial misconduct;
- b. is cogent and credible;
- c. has not already been considered under these Rules; and
- d. is sufficiently serious to justify re-opening a complaint.

74. If an Investigating Judge decides to re-open a complaint, they may—

- a. consider the complaint themselves in accordance with Part 4; or
- b. refer the complaint to—
 - i. another Investigating Judge to consider in accordance with Part 4; or
 - ii. a disciplinary panel to consider in accordance with Part 5.

Withdrawal of a complaint

75. A complainant may withdraw a complaint at any time.

76. Where a complaint is withdrawn, it may still continue to be investigated if-

- a. the Judge in Charge considers it appropriate to deal with it under the summary process under Part 3 or to refer it to an Investigating Judge to consider under Part 4; or
- b. an Investigating Judge considers it appropriate to continue to investigate it under Part 4; or
- c. a Disciplinary Panel considers it appropriate to continue to investigate it under Part 4.

77. Where Rule 76 applies, the case is to continue to be considered under these Rules as if the complaint had not been withdrawn, and the complainant must be informed accordingly by the Judge in Charge, Investigating Judge or Disciplinary Panel.

This Practice Direction prescribes the rules for judicial complaints of misconduct at the AIFC Court that come into effect on 18 October 2023.

Approved by the Chief Justice of the AIFC Court in accordance with Article 14(4) and Article 30 of the AIFC Court Regulations 2017:



**The Rt. Hon. The Lord Mance
Chief Justice, AIFC Court**

Date: 18 October 2023