

JUDICIAL AND LEGAL SERVICES COMMISSION

Complaints Procedure in relation to the Cayman Islands Judiciary

This procedure is drawn up by the Cayman Islands Judicial and Legal Services Commission pursuant to Section 106(10)(a) of the Cayman Islands Constitution Order 2009.

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Complaints Procedure

1. DEFINITIONS

In this Complaints Procedure –

“Complaints Committee” means a Committee of the JLSC appointed under paragraph 3(1);

“JLSC” means the Judicial and Legal Services Commission;

“judicial office-holder” means a person holding or acting in the office of—

- (a) judge of the Court of Appeal;
- (b) judge of the Grand Court; or
- (c) magistrate;

“Manager” means the Manager of the Commissions Secretariat;

“President” means the President of the Court of Appeal;

“Special Investigator” means the person to whom a complaint is referred under paragraph 4(1)(a), (b) or (c).

2. FORM OF COMPLAINTS

- (1) Complaints concerning a judicial office-holder shall be made to the Commissions Secretariat on the form in the Schedule.
- (2) Notwithstanding subparagraph (1), the Judicial and Legal Services Commission may of its own motion initiate a complaint against a judicial office-holder where the JLSC has reasonable cause to believe that the conduct of the judicial office-holder should be investigated.

3. PRELIMINARY CONSIDERATION

- (1) Where a complaint has been initiated against a judicial officer, whether by the Commission on its own motion or by a Complainant on the prescribed form, the Manager shall refer to a Complaints Committee, comprised of the Chief Justice, the President of the Court of Appeal, and not less than two members appointed by the Chairman of the JLSC, for preliminary consideration; and the Manager may, if so directed by the Commission, serve the judicial office-holder who is the subject of the complaint, with a copy of the complaint.
- (2) Unless there are reasons why it believes that a complaint should be investigated, the Complaints Committee may recommend dismissal of a complaint, or part of a complaint, to the JLSC if the complaint falls into any of the following categories—
 - a) it is about a judicial decision or judicial case management, and raises no question of misconduct;
 - b) the action complained of was not done, or caused to be done, by a judicial office-holder;
 - c) it is vexatious, frivolous or unmeritorious;
 - d) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
 - e) it is manifestly untrue, mistaken or misconceived;
 - f) it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;
 - g) it is about a person who no longer holds any judicial office;
 - h) it is about the private life of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office;

- i) it is about the professional conduct in a non-judicial capacity of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office;
 - j) for any other reason it does not relate to misconduct by a judicial office-holder.
- (3) Where a complaint is about a judicial decision or judicial case management, and raises a question of misconduct, the Complaints Committee shall defer consideration until the appeal process in the case is complete or the time for appealing has expired without an appeal being lodged; and the Complaints Committee shall then review the matter, and proceed in the light of any appellate ruling
- (4) Where a complaint alleges criminal offences, including corruption, it should not be investigated by the Complaints Committee unless the complainant is first advised to report the matter to the police or other appropriate authority for investigation by them and the police or other such authority has failed to pursue the complaint within a reasonable time.
- (5) Where a judicial office-holder is convicted of a criminal offence (including any traffic offence other than a parking offence), the Manager shall ask the Director of Public Prosecutions for a report on the matter and, on receipt of that report, shall refer it as follows—
- a) if the report concerns the President or the Chief Justice, to the Governor;
 - b) if the report concerns a judge of the Court of Appeal (other than the President), to the President; and
 - c) if the report concerns a judge of the Grand Court (other than the Chief Justice) or a Magistrate, to the Chief Justice;
- and the Governor, the President or the Chief Justice, as the case may be, shall treat the report in the same way as he or she would treat a report from a Special Investigator, and proceed accordingly.
- (6) Where the Committee is satisfied that a complaint requires further particulars from the Complainant, the Committee may seek the same from the Complainant;
- (7) Upon conclusion of its work the Committee shall issue a Report to the JLSC. The Report shall indicate whether the complaint should be dismissed and, if so, for what reasons; or shall provide the Committee's initial observations on the complaint including in particular whether there is need for the Commission to a) refer the complaint to the Chief Justice or the President of the Court of Appeal for their consideration under Section 106(1B) of the Constitution, or b) employ a Special Investigator to investigate the complaint.

4. REFERRAL FOR INQUIRY AND REPORT

- (1) Unless the Complaints Committee dismisses a complaint under paragraph 3, or the complaint is referred to the Chief Justice or the President of the Court of Appeal for their consideration (as outlined in paragraph 3(7) above), or the complaint alleges a criminal offence, the JLSC must refer the matter for investigation as follows:
- a) in respect of complaints concerning the President or the Chief Justice, to a Special Investigator, to be appointed by the Governor;
 - b) in respect of complaints concerning judges of the Court of Appeal, to a Special Investigator, to be appointed by the President;
 - c) in respect of complaints concerning judges of the Grand Court and magistrates, to a Special Investigator, to be appointed by the Chief Justice.
- (2) For the purposes of subparagraph (1), any of the following persons shall be qualified to be appointed as a Special Investigator –
- a) a retired Judge of the Court of Appeal or the Grand Court or a Judge of similar standing (retired or still sitting) from a Commonwealth country outside of the jurisdiction of the Cayman Islands;
 - b) a person qualified to practise as an attorney-at-law in the Cayman Islands or in a Commonwealth country and who has so practised for not less than fifteen years.

5. CONDUCT OF INQUIRY

- (1) Upon receipt of a referral from the JLSC, the Special Investigator shall, as soon as practicable, notify the subject of the complaint, provide him or her with a copy (which may be an extract or summary in an appropriate case), the report of the Complaints Committee and invite his or her comments in writing within fourteen calendar days or such longer period, not exceeding sixty calendar days, as the Special Investigator may specify.
- (2) Upon receipt of comments in writing from the subject of the complaint, or at the expiry of the fourteen-day period or the larger specified period, the Special Investigator must—
 - a) decide how to conduct the investigation;
 - b) notify the subject of the complaint and the complainant of the proposals for the conduct of the investigation, and whether oral evidence will be taken;
 - c) invite the subject of the complaint and the complainant to make representations about the procedure to be adopted in the case; and
 - d) record the representations on the proposals which those persons may make.
- (3) Any representations from the subject of the complaint or the complainant must be provided to the Special Investigator within ten business days or such longer period as the Special Investigator may direct of an invitation under subparagraph (2)(c).
- (4) The Special Investigator may invite the subject of the complaint, the complainant or any other person who may be able to assist the investigation to give evidence about the case.
- (5) The Special Investigator may take oral evidence if he or she considers it necessary to do so.
- (6) The Special Investigator must disclose any evidence obtained from the complainant or other person under subparagraph (4) to the subject of the complaint and must invite the subject of the complaint to make representations on that evidence.
- (7) Where the Special Investigator decides to take oral evidence, he or she must arrange for that evidence to be recorded electronically and transcribed.
- (8) The Special Investigator shall fix a date for taking the evidence and notice of such date shall be sent to the subject of the complaint and the complainant.
- (9) Where the Special Investigator considers that it is necessary to disclose evidence obtained during the course of an investigation to any person other than the subject of the complaint, he or she must first invite—
 - a) the person who provided the evidence; and
 - b) the subject of the complaint,to make representations about the proposed disclosure.
- (10) The subject of the complaint may seek legal advice and representation at all stages of the investigation.

6. REPORT

- (1) The report should be limited to the Special Investigator's findings of fact, and should not include recommendations as to disciplinary sanctions or the future conduct of the matter.
- (2) Where it falls to the Special Investigator to establish any fact, any question as to whether that fact is established must be decided on the balance of probabilities.

- (3) At the conclusion of the investigation, the Special Investigator shall report -
- a) to the Governor, in respect of a complaint concerning the President or the Chief Justice;
 - b) to the President, in respect of a complaint concerning a judge of the Court of Appeal (other than the President); or
 - c) to the Chief Justice, in respect of a complaint concerning a judge of the Grand Court (other than the Chief Justice) or a magistrate,
 - d) JLSC
 - e) the complainant
 - f) the subject of the complaint
- as to the facts of the case and whether the complaint is substantiated or not.
- (4) The Special Investigator may also send a copy of the final report to any other person who has been invited to make representations on a draft of his report.

7. GOVERNOR'S ACTION

- (1) On receipt of the Special Investigator's report, the Governor may—
- a) if he or she considers that further investigation is required, refer the case back to the Special Investigator to conduct such further investigation, or appoint an appropriate person to conduct it;
 - b) if he or she considers that no misconduct is involved, dismiss the complaint;
 - c) if he or she considers that, in the light of the report, the question of removing a judge of the Grand Court or a judge of the Court of Appeal from office for misbehaviour ought to be investigated, then he or she shall refer the report to the JLSC for further investigation where necessary and advice under either section 96(4) or 101(4) of the Constitution as applicable; or
 - d) if he or she considers that, in the light of the report, the question of removing a magistrate from office for misbehaviour ought to be investigated, then he or she shall refer the report to the JLSC for further investigation where necessary and advice under section 106(1) of the Constitution.

8. JLSC'S CONSIDERATION

- (1) Upon receipt of a referral from the Governor otherwise than under sections 96(4) or 101(4) of the Constitution or under paragraph 7(d), the JLSC shall consider the Special Investigator's report and, in the light of the report, advise whether or not the case calls for the exercise of the powers of removal from office conferred by section 106(1) of the Constitution.
- (2) Upon receipt of a referral from the Governor under sections 96(4) or 101(4) of the Constitution, the JLSC shall conduct the inquiry required by the Constitution, and report on the facts to the Governor and advise whether he or she should request that the question of the removal of the judge in question should be referred by His Majesty to the Judicial Committee of the Privy Council.
- (3) Upon receipt of a referral from the Governor under paragraph 7(d), the JLSC shall carry out its own investigation and report on the facts to the Governor and advise whether or not the magistrate should be removed from office for misbehaviour.
- (4) Before reporting or advising under subparagraphs (2) or (3), the JLSC shall afford the subject of the referral an opportunity to be heard or to make written representations.

9. DISCIPLINARY CONTROL

- (1) Where the President in respect of a judge of the Court of Appeal, or the Chief Justice in respect of a judge of the Grand Court or a magistrate, has a concern about the conduct or performance of such a person which the President or the Chief Justice, as the case may be, considers may merit the exercise of such powers of disciplinary control as may be conferred by section 106(1B) of the Constitution, he or she may

- a) refer the matter to the JLSC which shall then refer the matter for investigation and Paragraph 5 shall apply accordingly, or
 - b) conduct an internal investigation.
- (2) In the exercise of the powers referred to in subparagraph (1), the President in respect of a judge of the Court of Appeal or the Chief Justice in respect of a judge of the Grand Court or a magistrate, may –
- a) determine that no disciplinary action is required; or
 - b) determine that disciplinary action is required and specify the disciplinary sanction by which the case can be properly disposed of.
- (3) Notwithstanding subparagraph (1), the President or the Chief Justice may informally reprimand or warn a judicial office-holder without the need to follow this Complaints Procedure.

Schedule

(Pursuant to Para. 2(1))

Complaints Procedure Complaints Form

PLEASE READ BEFORE PROCEEDING FURTHER

1. Unless there are reasons why it believes that a complaint should be investigated, the Complaints Committee of the Judicial and Legal Services Commission (the JLSC) will dismiss a complaint, or part of a complaint, if it falls into any of the following categories –

- a) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- b) the action complained of was not done, or caused to be done, by a judicial office-holder;
- c) it is vexatious, frivolous or unmeritorious;
- d) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
- e) it is manifestly untrue, mistaken or misconceived;
- f) it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;
- g) it is about a person who no longer holds any judicial office;
- h) it is about the private life of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office;
- i) it is about the professional conduct in a non-judicial capacity of a judicial office-holder and could not reasonably be considered to affect his or her suitability to hold judicial office;
- j) for any other reason it does not relate to misconduct by a judicial office-holder.

2. The Complaints Committee will not entertain any complaint which is anonymous and/or where the complainant provides no, or insufficient, contact information.

Part A – About you (the complainant)

1. Name: Mr/Mrs/Ms/Other _____ Full Name: _____
2. Physical Address: _____
3. Mailing Address: P.O. Box _____ Postal Code: KY - _____
4. Contact numbers: Home: _____ Work: _____ Cell: _____
5. Email Address: _____

Only fill out this box if someone is assisting you with the complaint – for example, a lawyer

Name of representative: _____

Organisation: _____

Physical Address: _____

Mailing Address: P.O. Box _____ Postal Code: KY - _____

Contact numbers: Work: _____ Cell: _____ Email: _____

Part C – Further information

Supporting evidence

Please attach copies of any documents that may help us investigate your complaint (for example, letters). If you cannot do this, please tell us about such documents or other evidence and how it, or they, can be obtained.

Have you made a complaint about this to anyone else? (For example, the office of the Ombudsman)

If so, please provide details of the complaint, to whom it was made and the outcome. Please also attach copies of any correspondence relating to the complaint.

I hereby declare that the above information is accurate to the best of my knowledge.

Signature: _____

Date: _____

Consent to Release Information

I understand that the Governor’s Office and the Judicial and Legal Services Commission may have to work with various individuals and agencies to investigate my complaint. Therefore, I give my consent to the use and release of my complaint, any or all of its subject-matter and any additional information that the Governor’s office, the Judicial and Legal Services Commission or any person investigating my complaint feels is necessary to complete that investigation. I also understand that they will have to be released to the person who is the subject of my complaint.

Signature: _____

Date: _____

Remember to:

- sign and date this document; and
- attach copies of any relevant documents.

**FAILURE TO PROVIDE ALL INFORMATION AND DOCUMENTS REQUESTED WILL
DELAY CONSIDERATION OF YOUR COMPLAINT**

Send your completed form to:

The Manager, Commissions Secretariat,
4th Floor, George Town Financial Center, 90 Fort Street,
George Town, Grand Cayman, Cayman Islands
info@judicialandlegalservicescommission.ky
Tel +1 345 244-3687