

**RULES IN HANDLING COMPLAINTS
AND DISCIPLINARY MATTERS**

of

**HONG KONG MEDIATION CENTRE
__Revised 16 April, 2012__**

DEFINITIONS

1. In these Rules, except where the context otherwise requires:-
- (a) “**Mediators’ Code**” means the standard practice prescribed for Mediator Members by the Council from time to time.
 - (b) “**Secretariat**” means the Administration Office headed by the Secretary General of the Centre, responsible for the carrying out of the administrative functions of the Council, including the receipt of complaints from members of the public lodged in accordance with these Rules.
 - (c) “**Complainant**” means any member of the public residing in the HKSAR or abroad who lodges a complaint in accordance with these Rules.

Unless the context otherwise requires, the words and expression contained in these Rules bear the same meanings as in the Articles of Association of the Centre. Words importing the singular shall include the plural and vice versa. Words importing the masculine shall include the feminine and vice versa.

DISCIPLINARY COMMITTEE

2. There shall be a committee set up by the Council (“**Disciplinary Committee**”) with authority to handle and investigate complaint(s) made against members of the Centre; investigate and decide on matters concerning professional conduct of members; recommend certain penalties and sanction(s) to Council against members who have been found guilty of professional misconduct and/or breach(es) of the Mediators Code or any rules and regulations made by the Council. The Disciplinary Committee shall compose of not less than three persons to be appointed by the Council for with such powers and for such term as the Council shall see fit. The President shall not be a member of the Committee.

PROCEDURE FOR HANDLING COMPLAINTS

3. The Complainant, and anyone so authorised to lodge the complaint on behalf of the Complainant under the Rules herein, shall disclose his/her name, address and

telephone number to the Secretariat when lodging the complaint, in default of which the complaint shall not be entertained by the Secretariat.

4. A complaint shall be made by lodging a notice of complaint in the form prescribed in Schedule 1, duly completed and signed by or on behalf of the Complainant. The Complainant may in writing authorise another person to lodge the complaint. The Secretariat shall maintain a register for all complaints received ("**the Register**").
5. Where a Complainant lodges a complaint with the Secretariat, the Secretariat shall, as soon as practicable upon receipt thereof, submit such complaint to the Disciplinary Committee for consideration.
6. To help investigate the complaint, the Disciplinary Committee or the Secretariat upon direction from the Disciplinary Committee may inform and send a copy of the complaint to the Member who is subject to the complaint ("**the Respondent**") requesting a reply within 14 days. The Respondent may also be drawn to certain professional conduct issues arising out of the complaints and may be asked to comment thereon.
7. Formation of Task Force for complaint cases
 - i. A complaint is to be investigated and made recommendation by 2 members, adjudicated by simple majority vote by another 3 members or 5 members (comprising a Chairman) – each separate task force is assigned for separate complaint case and shall be appointed by the Disciplinary Committee (represented by the Committee convenor);

In each circumstance, the Task Force Group operates under the terms and references of the Disciplinary Committee, consults the Committee as when necessary.

- b. In normal circumstances, Complaint cases shall complete within 6 months. However, depending on the circumstances of the complaint, respective task force group shall inform the Disciplinary Committee the extension or abridgement of time frame provided in Rule 6 above within which the Respondent shall reply.
 - c. Legal advice will be sought as necessary, reasoned award shall in normal circumstance be included in the recommendation that will take the benchmark laid down after resolution from time to time updated in the meeting minutes of the Disciplinary Committee.
8. The Disciplinary Committee will inform the Council the recommendation from the respective Task Force Group. The Secretariat will then notify the Complainant of the decision.

9. In any complaint where a Respondent informs the Council or the Secretariat that it does not wish to respond to the complaint or that the Respondent does not respond to the Disciplinary Committee or the Secretariat as required under Rule 6 above the Disciplinary Committee may still handle the complaint in accordance with these Rules with due regard to the gravity of the circumstances accordingly.
10. The Disciplinary Committee shall inquire into the complaint and if appropriate, may direct the Secretariat to assist the parties to resolve the matter through peaceful negotiation and conciliation. The Committee shall have power to investigate into the complaint by writing to either the Complainant and/or the Respondent asking for information or clarifications to be provided. In appropriate cases, the Committee shall also have power to summons a hearing requiring both the Complainant and the Respondent to attend to answer questions raised by the Committee. In such event, the Committee shall have full power to decide on the rules in conducting such hearing.

PENALTIES AND SANCTIONS

11. Where a complaint has been referred to the Disciplinary Committee under these Rules and having considered the complaint and any comments/reply from the Respondent and/or after a hearing has been held the Disciplinary Committee is of the opinion that the result of the complaint is resolved as according to a scale of levels of findings resolved from time to time in the meeting minutes of the Disciplinary Committee, the Disciplinary Committee may recommend to the Council summarily the following actions to be taken against the Respondent.
 - (i) no action;
 - (ii) issue an advice to the Respondent;
 - (iii) issue a letter of reprimand to the Respondent;
 - (iv) recommend to the Council for suspension of membership with or without terms;
 - (v) recommend to the Council for termination of membership;
 - (vi) refer the case to the Vice-President to make recommendation.

In the event of (ii), (iii), (iv) and (v) above, the recommendation(s) shall be considered by the Council who can decide to approve; reject and/or substitute with other sanction(s) as the Council shall think fit. The President shall not participate in any of the decisions made by Council in relation to the above.

APPEAL

12. Upon a decision being made either by the Disciplinary Committee or by Council under Rule 11 above, the Secretariat shall notify such decision to both the

Complainant and the Respondent and shall keep a copy of such decision in the Register. Either the Complainant or the Respondent shall have a right to appeal that decision to the President within 30 days from the date thereof. The President shall decide the appeal afresh whose decision shall then be final. The Complainant shall have a similar right of appeal as above in cases where a decision is made under Rule 9 above.

MISCELLANEOUS

13. The officers of the Secretariat, the members of the Disciplinary Committee and the Council and the staff of the Council, shall during the performance of or assisting in the performance of the handling of the complaint, preserve and aid in preserving secrecy with regard to any matter coming into their knowledge in the performance of their duties in pursuance thereof.
14. If there is a settlement between the Complainant and the Respondent before any decision is made in Rule 11 or 12 above, such a settlement must be recorded and agreed by the Council and the said proceedings shall then be stayed.

SCHEDULE 1

NOTICE OF COMPLAINT

TO: Secretariat of Hong Kong Mediation Centre

I,of.....do
(full name) (address and contact number)

hereby make complaint to Hong Kong Mediation Centre

against,
(name of the mediator)

the details of which are as follows:-

(Here state concisely the grounds and particulars of complaint)

Dated this day of 20....

.....
Signature
[for and on behalf of.....]