

Questionnaire 2022 of the 1st Study Commission IAJ-UIM
“Disciplinary proceedings and judicial independence”



Introduction: Judicial Guidelines and Complaint process

The judiciary publishes the *Guidelines for Judicial Conduct*. These are intended to provide practical guidance to members of the Judiciary in New Zealand. The general principles identified underpin the legitimacy of judicial function which is essential to any society organised by law. As such, the general principles can readily be accepted as standards all judges agree to live by when accepting appointment. The public of New Zealand is entitled to expect judges to follow the principles identified.

In practice, the application of the principles to circumstances as they arise every day is not always as clear cut as agreement on the general principles might suggest. The application of a principle may be novel or may be affected by changing community values. In some cases, whether the principle is engaged at all in the particular circumstances may be a matter of reasonable differences of view. In other cases, there may be reasonable differences of opinion as to whether particular conduct by a judge affects the judicial function or whether it is private.

For these reasons, the guidance and comments provided are not intended to be a code of conduct. Rather, it is advice designed to assist judges to make their own choices, informed by a checklist of general principles and illustrations drawn from experience.

The *Guidelines* illustrate the difficult choices confronting individual judges from time to time. In the end, the legitimacy of judicial function and the independence of the judiciary depend upon public confidence. Stripping away the mystique attached to what judges do and making explicit the process by which ethical dilemmas are confronted respects the community’s vital interest in judicial standards and their maintenance.

The *Guidelines* were approved in 2003 and are subject to revision from time to time. The most recent review was in November 2019.

[Guidelines for Judicial Conduct](#) (PDF, 665 KB)

Questionnaire 2022 of the 1st Study Commission IAJ-UIM
“Disciplinary proceedings and judicial independence”

Introduction Complaints:

Anyone can complain about a Judge, but complaints must be about the conduct of a Judge, whether inside or outside court.

Complaining about a Judge is a serious matter. While Parliament makes laws, Judges interpret and apply laws to the cases they deal with in court. Judges must be independent of the Government and be able to make decisions which are right in law and fairly arrived at, without being influenced by any other factors.

When considering a Judge's conduct, complainants are warned to be aware that it is sometimes necessary for Judges to be assertive in their manner. Judges must manage the court so that the proceedings are dealt with efficiently and effectively, without undue delay.

The Office of the Judicial Conduct Commissioner receives and assesses complaints about the conduct of judges. The Commissioner cannot challenge the legality or correctness of a judge's decision in relation to any legal proceedings.

Depending on the seriousness of the conduct, a range of options are available to the Judicial Conduct Commissioner: dismissal of the complaint, reference to the relevant head of bench or, in the most serious cases, recommendation to the Attorney-General that a judicial conduct panel be appointed to inquire into the complaint.

The complaints process cannot be used to complain about a judge's decision. Disagreements with judges' decisions are dealt with through the judicial system. The decision can usually be appealed or judicially reviewed. Information about making a complaint can be found on the Commissioner's website.

- [Complaints about judicial conduct](#)
- [The Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004](#)

The process is explained in the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (the Act). The Act provides a number of options following the investigation.

On their receipt, complaints are referred to the Commissioner, or sometimes the Deputy Commissioner, for investigation (described in the Act as a preliminary examination).

In the most serious cases the Commissioner can recommend that the Attorney-General appoint a Judicial Conduct Panel. This will happen if the Commissioner is of the opinion that an inquiry is necessary or justified and that the Judge's conduct may warrant the consideration of removal from office.

In some cases where the Commissioner has concern but not sufficient to justify consideration of the removal of a Judge, there will be a referral of the complaint to the Judge (known as the Head of Bench) who is in charge of the Court in which the Judge complained about sits. What action may then follow is a matter entirely for the Head of Bench.

The Commissioner may also dismiss a complaint or take no further action in respect of it.

You can read more details of the Judicial Complaints Process and see a [diagram](#) of how it works.

The process is intended to help maintain public confidence in the Judicial system, and to protect its impartiality, integrity and independence.

Questionnaire 2022 of the 1st Study Commission IAJ-UIM
“Disciplinary proceedings and judicial independence”

Referring a Complaint

The Commissioner must refer complaints to a Head of Bench unless he or she has decided to take no further action in relation to the complaint, has dismissed the complaint or has recommended a Judicial Conduct Panel. The Commissioner will refer the complaint to the Head of Bench responsible for the court the Judge complained about currently sits on.

A complaint may also be referred to the Head of Bench where both the Commissioner and Deputy Commissioner decide they have a conflict of interest in relation to a complaint.

The Judiciary in 1999 set up an internal complaints process and this process continues to apply to deal with complaints that would not justify a Judge's removal from office.

This is a voluntary process, because each Judge is independent from all other Judges. In general, Judges are accountable through the public nature of their work and the requirement that they give reasons for their decisions. The immunity from direct discipline exists to ensure that justice is administered impartially. Where complaints are about the outcome of a case, someone who is affected and is dissatisfied with the outcome will generally have rights of appeal or review. A complaint about the outcome of a case cannot be considered by the Commissioner under the complaints process.

If any misconduct of the Judge could be addressed on appeal or review, a complaint will not generally be accepted about the Judges conduct until those opportunities have been taken.

Recommending a Panel

The Commissioner may recommend to the Attorney-General that a Judicial Conduct Panel be appointed to inquire further into the complaint. The Commissioner will recommend a Panel be appointed if the conduct complained of may warrant consideration of the removal of the Judge. The Panel may recommend that the Judge be removed from office.

The Commissioner must provide reasons for the recommendation that a Panel be convened.

Two of the Panel members will be drawn from the ranks of Judges or retired Judges, although one of the two can be a senior lawyer. The other member will be a person who is not a Judge, a retired Judge or a lawyer.

The job of the Panel is to inquire further into the conduct of the Judge. The Panel has the same powers as a Commission of Inquiry and is required to act according to the principles of natural justice.

Although the Act provides for Panel hearings to be held in public, part or all of a hearing may be held in private to protect privacy or the public interest. The Panel also has the power to restrict publication of any documents that are part of the hearing, or any information about the hearing.

The Attorney-General must appoint a special counsel to present the case against the Judge. The Judge being complained about may appear at the hearing and be represented by a lawyer. The Panel may also give permission for other people to appear at the hearing and be represented by a lawyer.

Once the hearing is over, the Panel reports to the Attorney-General on its:

- findings of fact;
- opinion as to whether the conduct justifies consideration of removal; and
- reasons for its conclusion.

Questions:

1)What kind of allegation can justify disciplinary proceedings against judges in your country: an individual's behaviour only in the workplace or also in his or her private life? Give some examples, please.

See answer below. To Question 2.

Can the content of the decisions taken by judges also lead to disciplinary proceedings? NO

Can judges be charged criminally for the content of their judicial decisions under any circumstances? NO

2)Which body is responsible for disciplinary proceedings against judges in your country?

The process is explained in the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (the Act) linked above. Sometimes the Judicial Conduct Commissioner alone and in more serious cases a Judicial Conduct Panel is appointed.

Is the body that carries out the disciplinary procedure the same one that imposes the penalties?

Generally, no. Although if in the process the matter is referred to a head of bench then potentially yes.

What is the composition of the body responsible for disciplinary proceedings (as well as the one who must apply penalties to judges, when it is not the same)? Is it composed only by judges, does it have a mixed composition, or is it composed only by professionals outside the of the Judiciary Branch? Kindly describe the composition of that body (those bodies).

For a more complete answer read the commentary above. The Judicial Complaints Commissioner is not generally a judge. The conduct panel of three must include someone other than a judge.

3)Which disciplinary penalties can be imposed on judges in your country?

In the most serious cases the Commissioner can recommend that the Attorney-General appoint a Judicial Conduct Panel. This will happen if the Commissioner is of the opinion that an inquiry is necessary or justified and that the Judge's conduct may warrant the consideration of removal from office. Removing a Judge

If the Panel recommends removing the Judge, the Attorney-General must decide whether to agree or disagree with the recommendation. If the Attorney-General agrees that the Judge should be removed, then one of two processes occurs, depending on the type of Judge being complained about.

- For Judges of the Supreme Court, Court of Appeal, High Court, and Employment Court, the Attorney-General must address Parliament to propose that it recommend to the Governor-General that the Judge is removed. If Parliament makes that recommendation the Governor-General will then remove the Judge from office.
- For Associate Judges and all other Judges, the Attorney-General advises the Governor-General who can then formally remove the Judge from office

Questionnaire 2022 of the 1st Study Commission IAJ-UIM
“Disciplinary proceedings and judicial independence”

In some cases where the Commissioner has concern but not sufficient to justify consideration of the removal of a Judge, there will be a referral of the complaint to the Judge (known as the Head of Bench) who is in charge of the Court in which the Judge complained about sits. What action may then follow is a matter entirely for the Head of Bench.

Is the disciplinary penalty of removal from office among them? Yes

Can a judicial conviction for a crime lead to a penalty of removal from office? Yes

4) In the disciplinary proceedings against judges in your country, is a fair trial granted?

Generally, yes.

Is there an appeal against the decision imposing a disciplinary penalty on judges?

Generally, no, except judicial review.

During the disciplinary proceedings, can the judge be suspended from office?

Generally, no.

Does the judge who is suspended during disciplinary proceedings continue to earn a salary normally.

Generally, yes.

Does the judge suffer any reduction in income?

Generally, no.

5) Were there any recent changes regarding disciplinary proceedings that maybe considered to infringe upon judicial independence in your country? If so, were those changes introduced by legislation, or were existing laws applied differently? Please specify.

NO recent changes.