

STUDENT DISCIPLINARY COMMITTEE PROCEEDINGS RULES*

(Effective date: 17 November 2022)

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* These rules were made by the Council to ensure that any registered student being faced with a complaint is handled under due process. The Institute may from time to time, make new rules and regulations or make amendments to existing rules and regulations.

PART I
CITATION AND INTERPRETATION

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| 1. | These rules may be cited as the Student Disciplinary Committee Proceedings Rules. | Citation |
| 2. | In these rules, unless the context otherwise requires: | Interpretation |
| (a) | <p>"By-laws" means the Professional Accountants By-laws (Cap. 50A);</p> <p>"Chairman" means the chairman of the Student Disciplinary Committee;</p> <p>"Clerk" means the Clerk to the Student Disciplinary Committee;</p> <p>"Committee" means the Student Disciplinary Committee as the Council may constitute under by-law 33A of the By-laws from time to time;</p> <p>"Complainant" means the person making or, where the context so requires, presenting the complaint (and includes the Registrar where the complaint is made or presented by the Registrar);</p> <p>"Respondent" means any registered student against whom a complaint is made;</p> <p>"parties" means the Complainant and the Respondent(s).</p> | |
| (b) | Words and expressions used in these rules shall have the same meaning as in the By-laws. | |

PART II
MAKING COMPLAINTS

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| 3. | A complaint under by-law 34(1) of the By-laws, shall be in writing and signed by the Complainant, setting out the grounds of the complaint, the proposed sanctions, and annexing the documentary evidence which is relied upon. The complaint and relevant documentary evidence shall be made to the Registrar who shall submit the complaint to the Council. | Making and receipt of complaints |
| 4. | Where the Registrar has reason to believe that by-law 34(1) of the By-laws applies to a registered student, he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Committee. | Referral by Registrar |
| 5. | The Council shall, if it refers a complaint to the Committee, transmit to the Clerk all documents received by the Council pursuant to rules 3 and 4. | Transmission of documents to Clerk |

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| 6. | The Clerk shall send to the parties a Notice in the form set out in Schedule 1 informing them that proceedings have commenced, and shall supply the parties with the procedural timetable for the proceedings, a copy of these rules and all documents transmitted by the Council to the Clerk pursuant to rule 5. | Procedural timetable |
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PART III PROCEDURAL MATTERS

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| 7. | The Clerk shall be responsible for circulating all documents filed in the proceedings amongst the parties. | Circulation of documents |
| 8. | <p>(1) All enquiries on procedural matters, other than those arising during the course of a hearing, shall be directed to the Clerk.</p> <p>(2) Written communications with the Clerk may be by way of letter.</p> <p>(3) Where any enquiry on a procedural matter calls for a decision, the Clerk shall refer the matter to the Chairman for determination.</p> | Enquiries on procedural matters |
| 9. | The Chairman shall be at liberty to decide all enquiries on procedural matters or to refer such matters to the Committee for decision in his discretion. | Chairman to decide procedural matters |
| 10. | The Chairman or the Committee may, in their discretion and at any stage of the proceedings, on request of the parties or on their own motion, dispense with or vary any of the requirements of these rules (including the procedural timetable) or make such directions for the conduct of the proceedings as they consider appropriate (including adjourning a hearing on specified terms as to costs). | Variation of procedures and making of directions |

PART IV BURDEN OF PROOF AND FUNCTION OF COMMITTEE

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| 11. | The function of the Committee is to decide whether a complaint has been proved in light of all the relevant facts before it and, if so, to determine the sanction which ought to be imposed. | Function of Committee |
| 12. | Notwithstanding anything to the contrary in these rules, the Committee may inquire into any matter and consider any argument arising from the evidence and/or materials which the Committee considers relevant to the complaint, whether or not it has been previously raised or relied upon by a party, provided that the parties are given a reasonable opportunity to address the Committee that matter or argument before any determination is made. The Committee shall not be constrained by any analysis in any complaint letter or other | Power to inquire into any matter arising from the evidence |

document referred by the Council or by the way the parties have chosen to present their respective cases.

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| 13. | The initial burden of proof is upon the Complainant. | Burden of proof |
| 14. | The strict rules of evidence do not apply. The Committee may, at any stage of the disciplinary proceedings, receive any material, and attach such weight to that material, as it considers appropriate. | Rules of evidence |
| 15. | If any party fails or refuses to make submissions or answer questions on any matter or issue, the Committee shall be entitled to draw an adverse inference against that party. | Drawing of adverse inferences |
| 16. | <p>(1) If, prior to the hearing conducted under Part VII, the Chairman or the Committee considers the evidence presented or to be presented is insufficient to determine the issues raised but the required evidence may be available, the Chairman or the Committee may in their discretion indicate what additional evidence is required to determine the issues raised in the parties submissions and make appropriate directions to allow such evidence to be obtained and presented.</p> <p>(2) If the Complainant or Respondent files additional evidence pursuant to directions made under paragraph (1), the Chairman or the Committee shall ensure that the opposing party is given an opportunity to respond to such evidence.</p> | Insufficient evidence |

PART V

WRITTEN SUBMISSIONS

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| 17. | The Respondent shall submit a written reply submission to the complaint on all material matters and annexing all documentary evidence on which they rely. The reply submission shall be in the form set out in Schedule 2 and shall be submitted to the Clerk in accordance with the procedural timetable. | Respondent's Reply Submission |
| 18. | Unless the Chairman or the Committee orders otherwise, the Complaint and Respondent's submission (including annexed documentary evidence) shall constitute submissions of the parties in the proceedings and evidence in the proceedings. | Status of Cases and Replies |
| 19. | Following the filing of the Respondent's reply submission, no further written submissions or documentary evidence shall be admitted without the leave of the Chairman or the Committee. | No further written material without leave |

PART VI
DIRECTIONS

20. The parties shall submit a checklist in the form set out in Schedule 3 in accordance with the procedural timetable. Checklist procedure
21. (1) Following the filing of the parties' checklists, the Chairman shall make such directions for the conduct of the proceedings as he considers appropriate. Directions
- (2) For the purposes of making such directions, the Chairman may, if he considers it expedient, convene a directions hearing to be conducted in whatever manner he considers appropriate (including telephone conference).

PART VII
HEARING

22. (1) The Clerk shall inform the parties of the date of the hearing in writing. Oral hearing
- (2) The hearing shall be held in public unless the Committee determines (on its own motion or upon application) that in the interests of justice a hearing or part thereof shall be held in private.
- (3) Notwithstanding anything in rules 8 and 9, any application for the hearing or any part thereof to be held in private shall be made in writing (stating the grounds for the application) prior to the hearing and shall be submitted to the Clerk who shall refer the application to the Committee for determination.
23. The principal purpose of the hearing shall be to allow the Committee to ask questions of the parties and clarify matters. Purpose of hearing
24. The parties may present oral submissions if they consider it necessary to do so, however such oral submissions should be succinct and should not unnecessarily repeat the written submissions. Oral submissions
25. The parties shall be permitted by way of the checklist procedure to express their views as to whether witnesses should attend the hearing and give evidence and whether particular parties should be subject to cross-examination by other parties, however witnesses shall only attend and give evidence at the hearing and parties shall only be subject to cross-examination by other parties if the Chairman or the Committee so direct. Witnesses

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| 26. | At the hearing, the following order of procedure shall be observed: | Order of procedure |
| | <ul style="list-style-type: none"> (a) the Chairman shall introduce the proceedings and the Committee shall deal with any procedural matters arising; (b) at any stage during the hearing, the Committee may put such questions to the parties and the witnesses as the Committee thinks expedient; (c) the Complainant may (but is not obliged to) present an oral opening submission; (d) the Respondent may (but is not obliged to) present an oral opening submission; (e) if the Chairman or the Committee has so directed, witnesses and/or the parties shall be examined and cross-examined; (f) the Complainant and then the Respondent may present an oral closing submission. | |
| 27. | The Committee shall invite the parties to make submissions as to the sanction (if any) which should be imposed at such time as the Committee considers appropriate. | Submissions as to sanctions |
| 28. | The decision of the Committee shall be set out in writing and shall specify the terms of any orders made. | Decision of Committee |
| 29. | The Clerk shall file any order made by the Committee under by-law 35(1) of the By-laws, with the Registrar, who shall cause a copy of the order to be served forthwith on the Respondent either personally or by post addressed to his registered address and to be published in accordance with the prevailing policy of the Hong Kong Institute of Certified Public Accountants. | Filing of orders |

PART VIII

CONSENT ORDER PROCEDURE

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| 30. | <p>(1) In relation to any complaint that by-law 34(1)(c) or (e) of the By-laws applies to a registered student, if at any stage of the proceedings the Committee is of the view that the complaint is of such a nature that, if the complaint is proved, the appropriate order or orders to be made should fall within one or more of the types of order provided for in by-law 35(1)(a), (b) or (c) of the By-laws, the Committee may in its discretion give notice to the parties in accordance with by-law 35B of the By-</p> | Consent order procedure |
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laws inviting the parties to consent to the proposed order or orders.

- (2) If either the Complainant or the Respondent informs the Committee that they do not consent to the proposed order or orders, or if the Committee does not receive a positive reply from the Complainant and the Respondent within the time prescribed in the notice (not being less than 14 days), the Committee shall inform the Council, the Committee shall be dissolved and the Council shall constitute a new Committee to deal with the complaint in accordance with these rules.

PART IX FAILURE TO COMPLY WITH RULES

31. If the Chairman or the Committee is of the opinion that a party has failed to appear at the hearing or has failed to comply with a requirement of these rules (including the procedural timetable) or of any direction or order, the Chairman or the Committee may take such steps as they consider appropriate including (but not limited to) dismissing the complaint, hearing and determining the complaint in the absence of the Complainant or the Respondent, or making such orders as to costs as they think fit. Failure to comply with rules
32. Where any question arises as to whether a written submission complies with the requirements of these rules, the Chairman and the Committee shall only order that such written submission be rejected, revised or supplemented if, in the opinion of the Chairman or the Committee, the defects in the written submission are such as to prejudice the ability of other parties to the proceeding to obtain a fair hearing. Defects in Cases and Replies

PART X MISCELLANEOUS

33. (1) Save as provided in rule 29, any notice or document required to be sent under these rules may be: Methods by which documents may be sent
- (a) delivered to the recipient by hand;
 - (b) sent to the recipient by post addressed to the last known place of abode of the recipient;
 - (c) sent to the recipient's representative by hand, post or facsimile.

- (2) Any notice or document sent to a recipient by post shall be deemed to be received at the time when the letter would be delivered in the ordinary course of post.
- (3) Save as provided in rule 29, the Chairman or the Committee may make such order for substituted service of notices and documents as in the circumstances of the case may appear just and reasonable.
34. Any summons to witnesses shall be in the forms set out in Schedules 4 and 5 and shall be signed by the Chairman. Form of summons
35. The Chairman and/or the Committee may appoint professional advisers, expert witnesses and/or such other persons as the Chairman or the Committee may in their discretion consider appropriate to assist the Committee in any particular proceeding. Appointment of professional and other advisers

SCHEDULE 1
FORM OF NOTICE OF COMMENCEMENT OF PROCEEDINGS

Proceedings No: _____

IN THE MATTER
OF

A complaint made under by-law 34 of the Professional
Accountants By-laws

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

NOTICE OF COMMENCEMENT OF PROCEEDINGS

TAKE NOTICE THAT disciplinary proceedings have been commenced in respect of a complaint by the abovenamed Complainant against the abovenamed Respondent.

Enclosed for your information is a copy of the Student Disciplinary Committee Proceedings Rules, the procedural timetable for the proceedings and all documents which have been referred to the Student Disciplinary Committee in connection with the complaint.

OVERVIEW OF PROCEDURES

Written Submissions

The Student Disciplinary Committee Proceedings Rules place an emphasis on written submissions (which includes the Complaint). The written submissions are required to fully set out the parties' respective positions on all relevant matters and to annex all relevant evidence upon which the parties rely. This gives all parties fair notice of the issues in dispute and ensures that the hearing can be conducted efficiently.

The Complainant has already filed a written Complaint, which stands as the Complainant's submissions and sets out the Complainant's case on all relevant matters and annexed all documentary evidence on which the Complainant relies. The Complainant bears the burden of proving the complaint.

The Respondent must file the Respondent's written reply submission in accordance with the procedural timetable to the Complaint. The Respondent's reply submission must be in the form set out in Schedule 2 of the Student Disciplinary Committee Proceedings Rules, setting out the Respondent's submissions on all relevant matters and must annex all documentary evidence on which the Respondent relies (unless already annexed to the complaint).

Once the Respondent's reply submission has been submitted, no further written submissions or documentary evidence may be filed without the leave of the Chairman or the Student Disciplinary Committee.

Checklist procedure

After the filing of written submissions, the parties are required to file a checklist in the form set out in Schedule 3. The Chairman will then issue directions for the future conduct of the proceeding.

The Committee may invite the parties to consent to a proposed sanction. If the parties so consent, the oral hearing will be dispensed with and the agreed sanction imposed. If either or both of the parties refuse or fail to consent, the proceedings will be dissolved and the matter dealt with afresh by a new Student Disciplinary Committee. You will be given an opportunity to indicate whether you would be agreeable to the consent order procedure (if offered) by way of the checklist procedure.

Oral hearing

The Student Disciplinary Committee will conduct an oral hearing of the complaint, which shall be in public unless otherwise determined by the Committee. The principal purpose of the oral hearing is to allow the Committee to question the parties and clarify matters. Whilst the procedures allow for oral submissions to be made by the parties, all relevant matters relied upon by the parties should have been fully addressed in the written submissions and it is therefore anticipated that oral submissions (to the extent they are necessary at all) will be brief.

The parties will be permitted to express their views as to whether witnesses should attend and give evidence at the hearing by way of the checklist procedure. However, it will be up to the Committee to direct whether witnesses are to give evidence and, if so, in respect of which particular issues. The Committee will only generally direct witnesses to attend and give evidence when their evidence is necessary to resolve disputed issues of fact or the Committee requires expert evidence on a particular point.

The Committee will also invite the parties to make submissions as to the sanction (if any) which should be imposed should the complaint be found proven. Parties should be prepared to address the question of sanctions at the initial hearing.

General matters

To ensure that the complaint is considered as fully as its nature requires, the Student Disciplinary Committee may inquire into any matter and any argument arising from the evidence and/or materials received whether or not it has been previously raised or relied upon by a party, provided that the parties are given a reasonable opportunity to be heard in respect of that matter or argument before any determination is made.

The strict rules of evidence do not apply. The Committee may receive any material and attach such weight to that material as the Committee considers appropriate. If any party fails or refuses to make submissions or answer questions on any matter or issue, the Student Disciplinary Committee shall be entitled to draw an adverse inference against that party.

The Clerk shall be the point of contact for all parties and shall be responsible for circulating documents received by the Committee amongst the parties. Written communications with the Clerk should be by way of letter. The contact details of the Clerk are:

[Here insert current contact details of the Clerk]

Any request for an extension of time for compliance with the procedural timetable shall be in writing and accompanied by reasons.

For the purposes of these proceedings, you are entitled to be represented by a solicitor or counsel.

PLEASE NOTE

THESE PROCEEDINGS ARE OF A SERIOUS NATURE. IF THE STUDENT DISCIPLINARY COMMITTEE IS SATISFIED THAT A COMPLAINT IS PROVEN, THE COMMITTEE MAY IMPOSE SANCTIONS AS SET OUT IN BY-LAW 35 OF THE PROFESSIONAL ACCOUNTANTS BY-LAWS. THE COMMITTEE ALSO HAS A WIDE DISCRETION TO MAKE ORDERS AS TO COSTS. IF YOU HAVE NOT ALREADY DONE SO, IT IS RECOMMENDED YOU SEEK LEGAL ADVICE.

Dated

Clerk to the
Student Disciplinary Committee

SCHEDULE 2
FORM FOR RESPONDENT'S REPLY SUBMISSIONS

Proceedings No: _____

IN THE MATTER OF

A complaint made under by- law 34 of the Professional
Accountants By-laws

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

RESPONDENT'S REPLY SUBMISSIONS

Executive Summary

[This section is only necessary if the Respondent's reply submissions exceeds six pages in length. If so, here provide an executive summary of relevant aspects of the Case. The executive summary should not exceed two pages in length.]

Response as to Complaint

[Here state whether the Respondent admits or denies the complaint.]

Facts and evidence

[This section comprises the Respondent's submissions as to the relevant facts. To the extent the Respondent disputes the facts asserted by the Complainant, the Respondent shall here identify the facts in dispute, state what the Respondent considers to be the true position, and identify the evidence upon which the Respondent relies to prove such assertions, by reference to the documentary evidence where appropriate.]

To the extent the Respondent considers additional matters not addressed in the complaint are relevant, the Respondent shall set out the relevant facts and identify the evidence upon which the Respondent relies to prove such facts, by reference to the documentary evidence where appropriate.

Evidence relied upon to prove particular facts may be identified by whatever method the Respondent considers appropriate, including the use of footnotes.]

Analysis

[Here set out the Respondent's analysis explaining why, on the basis of the facts as asserted, the Respondent considers that the allegations are unsubstantiated.]

Further matters

[Here address any further matters and set out any additional submissions which the Respondent considers the Student Disciplinary Committee should take into account when considering the complaint.]

ANNEXURES:

The Respondent shall annex to the Respondent's reply submissions all documentary evidence on which the Respondent relies, other than evidence already annexed to the complaint. Such documentary evidence shall be arranged in a logical order and indexed.

SCHEDULE 3

FORM FOR CHECKLIST

Proceedings No: _____

IN THE MATTER OF

A complaint made under by- law 34 of the Professional
Accountants By-laws

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

CHECKLIST OF THE [COMPLAINANT/RESPONDENT]*

**[Delete as appropriate]*

1. Are there any material matters of fact in dispute? If so, identify those facts in dispute: Y/N

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2. Are there any questions in respect of which you consider the Committee requires expert evidence? If so, identify those questions: Y/N

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3. Do you consider it is necessary for witnesses to appear and give evidence at the hearing? Y/N

If so, include the following information in respect of each witness you consider should attend and give evidence by way of attached schedule:

- (a) Name of the witness
- (b) Address of the witness
- (c) The specific issue or issues in respect of which you consider the witness should give evidence
- (d) The reasons why you consider the witness's evidence is necessary
- (e) Whether you are in a position to produce a witness statement for the witness prior to the hearing
- (f) Whether you consider it necessary for a summons to be issued to compel the witness's attendance at the hearing

Note: The Chairman will only generally direct a witness to attend and give evidence when the witness's evidence is necessary to resolve a material dispute of fact or the Committee requires expert evidence on a particular matter.

4. Do you consider it necessary for any party to be cross-examined by another party to the proceeding? Y/N

If so, include the following information in respect of each party should consider should be cross-examined by way of attached schedule:

- (g) Name of the party
- (h) The specific issue or issues in respect of which you consider the party should be cross-examined
- (i) The reasons why you consider such cross-examination is necessary
- (j) Who will conduct the cross-examination

Note: The Chairman will only generally direct that one party may cross-examine another party to the proceeding when cross-examination is necessary to resolve a material dispute of fact.

5. Do you intend to be legally represented at the hearing? If so, identify the name of your legal representative: Y/N
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6. Are there any dates over the next 6 months during which you will be unavailable to attend a hearing? If so, list such dates: Y/N
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-
7. Do these proceedings concern complaints relating **only** to one or more of the following matters: Y/N
- (k) that the Respondent has been guilty of misconduct in carrying out his duties within the meaning of by-law 34(1)(c) of the By-laws;
- (l) that the Respondent has refused, or neglected without reasonable excuse, to comply with the By-laws as are applicable to him within the meaning of by-law 34(1)(e) of the By-laws?
8. If the answer to 7 above is "Yes", in the event the Student Disciplinary Committee is minded to impose a sanction falling within one or more of the following orders: Y/N
- (m) an order that the Respondent be reprimanded;
- (n) an order that the Respondent be admonished;
- (o) an order that the Respondent pay the costs and expenses of and incidental to the proceedings, whether of the Hong Kong Institute of Certified Public Accountants (including the costs and expenses of the Student Disciplinary Committee) or of the complainant;

would you be prepared to consent to the proposed sanction and dispense with the need for an oral hearing?

9. Are there any other matters you wish to bring to the attention of the Chairman prior to the Chairman making directions for the future conduct of the proceeding? If so, state such matters: Y/N

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SCHEDULE 4

FORM OF SUMMONS AD TESTIFICANDUM

Proceedings No: _____

IN THE MATTER OF

A complaint made under by- law 34 of the Professional
Accountants By-laws

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

SUMMONS

TO:

I,, Chairman of the Student Disciplinary Committee constituted under by-law 33A of the Professional Accountants By-laws, command you pursuant to by-law 35(3) of the Professional Accountants By-laws to attend before the Student Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants at on day, the day of at the hour of in the noon, and so from day to day until the above matter is heard, to give evidence.

Dated this day of20.....

Chairman of Student Disciplinary Committee

SCHEDULE 5

FORM OF SUMMONS DUCES TECUM

Proceedings No: _____

IN THE MATTER OF

A complaint made under by- law 34 of the Professional Accountants
By-laws

BETWEEN

A.B. of COMPLAINANT
.....

AND

C.D. of RESPONDENT
.....

SUMMONS

TO:

I,, Chairman of the Student Disciplinary Committee constituted under by-law 33A of the Professional Accountants By-laws, command you pursuant to by-law 35(3) of the Professional Accountants By-laws to attend before the Student Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants at on day, the day of at the hour of in the noon, and so from day to day until the above matter is heard, to give evidence and also to bring with you and produce at the time and place aforesaid (specify documents to be produced).

Dated this day of20....

Chairman of Student Disciplinary Committee