



## HIGH JUDICIAL AND PROSECUTORIAL COUNCIL GUIDELINES FOR DETERMINING DISCIPLINARY MEASURES

To assist the Disciplinary Panels making determinations about disciplinary measures under Article 59 Law on HJPC<sup>1</sup>, at its session held on July 8, 2016 the High Judicial and Prosecutorial Council has adopted Guidelines for Determining Disciplinary Measures. These guidelines set forth a means for determining the appropriate disciplinary measure in a particular case and to ensure consistency and fairness across cases dealing with similar misconduct and surrounding circumstances. The guidelines help fulfill the primary purposes of discipline, which include:

- (a) protection of the public, judicial institutions and the justice system;
- (b) maintenance of the highest professional standards; and
- (c) preservation of public confidence in the judiciary

Although not binding, the guidelines should be followed whenever possible. The Council will adopt a disciplinary determination that is consistent with the guidelines unless it has grave doubts about the propriety of the recommended sanction. Any disciplinary determination that deviates from the guidelines must include clear reasons for the departure.

(1) In addition to the aspects set forth in Article 59(1), the Disciplinary Panels should consider the following factors:

### **(A) Characteristics of Misconduct.**

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<sup>1</sup> Article 59 - *Principles for Determining Measures*

(1) Disciplinary measures imposed should be governed by the principle of proportionality. Before pronouncing the measures for a disciplinary offence, the following aspects shall be taken into consideration by the Disciplinary Panels:

- (a) the number and severity of the disciplinary offence committed and its consequences;
- (b) the degree of responsibility;
- (c) the circumstances under which the disciplinary offence was committed;
- (d) the previous work and behaviour of the offender; and
- (e) any other circumstances that may affect the decision on the severity and type of disciplinary measure, including the degree of remorse and/or cooperation shown by the judge or prosecutor during the disciplinary proceedings.

(2) The disciplinary measure of dismissal shall only be used in cases where a serious disciplinary offence is found and the severity of the offence makes it clear that the offender is unfit or unworthy to continue to hold his or her office.

(3) The Council may take into account any prior suspension, imposed in the course of the proceedings in question, and may reduce the disciplinary measure accordingly, or may, at its discretion, determine that the prior suspension is itself a sufficient measure for the disciplinary violation or violations found.

- (1) The number of acts of misconduct.
- (2) The nature and seriousness of the misconduct.
- (3) Whether the misconduct occurred in the judge or prosecutor's official capacity or in his or her private life.
- (4) Whether the misconduct involved dishonesty or lack of integrity.
- (5) Whether the misconduct was intentional, premeditated, negligent, or spontaneous.
- (6) The nature and extent to which the misconduct has been injurious to other persons.
- (7) Whether the judge or prosecutor was motivated by a desire to satisfy a personal or venal interest, vindictiveness, or an interest in justice, or compassion.
- (8) Whether the misconduct undermines the integrity of the judiciary, respect for the judiciary or the administration of justice.
- (9) Whether the misconduct involves unequal application of justice on the basis of such considerations as race, ethnicity or national origin, gender, sexual orientation, or religion.

**(B) Service and Demeanor of the Judge or Prosecutor.**

- (1) Whether the judge or prosecutor has acknowledged the acts occurred and has shown an appreciation of the impropriety of his or her acts.
  - (2) Whether the judge or prosecutor cooperated fully and honestly in the disciplinary proceedings.
  - (3) Whether the judge or prosecutor has evidenced an effort to change or modify the conduct.
  - (4) The judge or prosecutor's length of service in a judicial or prosecutorial capacity.
  - (5) Whether there has been prior disciplinary action concerning the judge or prosecutor.
  - (6) Whether there are exceptional personal circumstances that warrant consideration.
  - (7) The judge or prosecutor's reputation for administering his or her duties in a fair, impartial, and dignified manner and for making positive contributions to the court or community.
- (2) When a judge or prosecutor has previously been disciplined, the following considerations should apply:

(a) If a judge or prosecutor has a single prior record of discipline, the sanction should be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

(b) If a judge or prosecutor has two or more prior records of public discipline, dismissal is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct:

1. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
2. The prior disciplinary matters coupled with the current record demonstrate the judge or prosecutor's unwillingness or inability to conform to ethical and/or professional responsibilities.

(c) Sanctions may be imposed, including dismissal, even if a judge or prosecutor has no prior record of discipline.

(3) A written warning that is not to be made public is appropriate only in cases of minor misconduct, when there is little or no injury to an individual, the public or the justice system, and when there is little likelihood of repetition by the judge or prosecutor.

(4) Salary reductions are appropriate for serious misconduct not warranting dismissal, a pattern of misconduct or when a judge or prosecutor has previously received a public reprimand. Salary reductions of 25% or more for greater than 6 months should be considered for serious offenses that are deliberate, a pattern of misconduct and when a judge or prosecutor has had a previous salary reduction.

(5) Dismissal is appropriate for an act of moral turpitude<sup>2</sup>, dishonesty<sup>3</sup>, fraud<sup>4</sup>, corruption<sup>5</sup> or concealment<sup>6</sup> of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled anyone and related to the judge or prosecutor's professional duties.

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<sup>2</sup> Generally defined as an act contrary to honesty and good morals; act of baseness, vileness or depravity in the private and social duties which man owes to his fellowmen. The concept of moral turpitude depends on the state of public morals and may vary according to the community and the times as well as the degree of public harm produced by the act in question.

<sup>3</sup> The quality of being untruthful or deceitful.

<sup>4</sup> Deliberate deception to secure unfair or unlawful gain; using dishonest means to take something valuable from another person.

<sup>5</sup> Misuse of entrusted power for personal gain.

<sup>6</sup> To keep from being observed or discovered; to hide.